The City of Morgantown

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

Office of the City Clerk

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING

July 21, 2020
7:00 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting will not be permitted. When it is time, the public may participate in the public portion by videoconference at the following link: https://cityofmorgantown.my.webex.com/meet/cityofmorgantown **with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477. All members of the public may view the meeting on Channel 15 and by streaming hosted on the City's website at www.morgantownwv.gov. If you do not wish to speak at the meeting, please view it by these methods to conserve capacity on the videoconference. Any person who wishes to speak at the meeting must complete the form at** https://www.morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-M-81 **or provide their name, phone number they will use to participate, and the topic on which they would like to speak by texting 304-288-0847 or texting 304-288-7072. Individuals may sign up to speak at any time until the meeting begins. Additionally, the public may submit written comments for the public portion of the meeting by sending written comments via email to the City Clerk at cwade@morgantownwv.gov. In the email, please use the subject line "Public Comment 07/21/2020 Regular Meeting" and indicate in the body of the email if you would like your comment read aloud during the public portion of the meeting.**

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE TO THE FLAG**

4. **APPROVAL OF MINUTES:** July 7, 2020, Special Meeting minutes; July 7, 2020, Regular Meeting minutes; July 14, 2020 Special Meeting minutes.

5. **CORRESPONDENCE:**

6. **PUBLIC HEARINGS:**

   A. **AN ORDINANCE AMENDING ARTICLE 919 GOVERNING ADDRESSING AND MAPPING STANDARDS**

   B. **AN ORDINANCE AUTHORIZING A DEED TO RDR PROPERTIES TRANSFERRING PROPERTY AT THE MORGANTOWN MUNICIPAL AIRPORT**

7. **UNFINISHED BUSINESS:**

   A. **BOARDS & COMMISSIONS:**

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

8. **SPECIAL COMMITTEE REPORTS:**

   A. **COMMUNITY POLICING & CITIZENS REVIEW BOARD – COUNCILOR ZACK CRUZE AND DEPUTY MAYOR RACHEL FETTY VICE-CHAIR**

9. **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.**

   A. **AN ORDINANCE AMENDING ARTICLE 919 GOVERNING ADDRESSING AND MAPPING STANDARDS** *(First reading July 7, 2020)*

   B. **AN ORDINANCE AUTHORIZING A DEED TO RDR PROPERTIES TRANSFERRING PROPERTY AT THE MORGANTOWN MUNICIPAL AIRPORT** *(First reading July 7, 2020)*

10. **NEW BUSINESS:**

   A. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE 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**

   B. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE 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**

   C. Consideration of **ADOPTION** of **VACANT STRUCTURE EXEMPTION PROCEDURE**

   D. Consideration of **ADOPTION** of **A RESOLUTION APPROVING THE 2020-2021 BUDGET FOR THE MORGANTOWN CAPITAL ESCROW FUND**

   E. Consideration of **ADOPTION** of **FINDINGS AND CONCLUSIONS DECLARING A PUBLIC NUISANCE AT 619 BROACKWAY AVENUE, 324 DEWEY STREET, AND 625 PENNSYLVANIA AVENUE AND ORDERING ABATEMENT**

   F. Consideration of **APPROVAL** of **(FIRST READING)** of **AN ORDINANCE AMENDING SECTIONS 1713.01 ADOPTING STATE BUILDING CODE REVISIONS**

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

   Information

   A. 2020 Census Update
   B. Downtown Bus Shelter Update

   New Business

   A. Award TIF Project – Beechurst Sidewalk Repairs
   B. Authorization to Execute Federal Aviation Administration Grant for Morgantown Municipal Airport
   C. Black Lives Matter Crosswalk

12. **REPORT FROM CITY CLERK:**

13. REPORT FROM CITY ATTORNEY:

14. REPORT FROM COUNCIL MEMBERS:

15. EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4 (2) (B) (12) to discuss potential or pending litigation.

16. ADJOURNMENT:

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

City of Morgantown

SPECIAL MEETING
July 7, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, July 7, 2020, at 6:06 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not be permitted. When it was time, the public participated by videoconference at the following link: https://cityofmorgantown.my.webex.com/meet/cityofmorgantown **with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477.**

PRESENT: Via Webex, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell. Zackary Cruze was absent.

The meeting was called to order by Mayor Kawecki.

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

Human Rights Commission

6:00 p.m. – Amy Chandler

6:20 p.m. – Kristen Cooper

6:40 p.m. – Jan Derry

ADJOURNMENT:

There being no further business, motion by Councilor Selin, second by Councilor Harshbarger, to adjourn the meeting. Time: 7:16 p.m.

_____ _____

City Clerk Mayor

City of Morgantown

SPECIAL MEETING
July 14, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, July 14, 2020, at 7:35 a.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting was not be permitted. When it was time, the public participated by videoconference at the following link: https://cityofmorgantown.my.webex.com/meet/cityofmorgantown **with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477.**

PRESENT: Via Webex Interim City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine M. Wade, Mayor Ron Dulaney, Deputy Mayor Rachel Fetty, and Council Members Zackary Cruze, Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Mayor Dulaney.

NEW BUSINESS:

A. CURRENT STATE OF COVID INFECTION AND RESPONSE IN THE COUNTY –
B. LEE B. SMITH, EXECUTIVE DIRECTOR OF MONONGALIA COUNTY HEALTH DEPARTMENT

Dr. Lee B. Smith, Executive Director of Monongalia County Health Department provided an overview of the current situation within the city and county.

C. Consideration of **EMERGENCY ORDINANCE OR OTHER ACTION OF COUNCIL REGARDING PUBLIC HEALTH MEASURES IN RESPONSE TO COVID-19 PANDEMIC** (It is anticipated that this matter may be discussed in executive session as permitted by WV State Code Section 6-9A-4(b)(1)(12))

The following public health measures went into effect at 12:00 a.m. on July 15, 2020.

- All individuals age 9 years and over within the City of Morgantown are required to wear an adequate face covering when confined, indoor spaces, other than when in one's residence or when actively engaged in the consumption of food and/or beverage, and when they are not able to adequately social distance from other individuals. Violation of this article will result in a fine of no less than $25 and no more than $500.

- Any business identified by the Monongalia County Health Department to have three new cases of COVID – 19 will be required to close and do a deep cleaning of the premises. The location may open following an inspection by the Health Department. Violation of this article will result in a fine no less than $25 and no more than $500. Additional infections identified by the Mon County Health Department may require longer closures or additional protections.

The Morgantown Police Department will enforce the Emergency Ordinance. Any fine

would be imposed by Morgantown Municipal Court if a person is convicted of a violation.

The mask requirement stated in Article II of the Emergency Ordinance is consistent with the Governor's Executive Order 50-20, which was issued on July 6, 2020. Article III of the Emergency Ordinance is meant to complement an order issued by the Monongalia County Health Department, which went into effect at 12:00 a.m. on July 15, 2020.

Motion by Deputy Mayor Fetty, second by Councilor Kawecki, to approve the Emergency Ordinance after amendment to change the fine amount from $500 to $25 - $500. After discussion, motion carried 7-0.

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Cruze, to adjourn the meeting. Time: 9:20 a.m.

_____ _____

City Clerk Mayor

Ordinance No. 2020-____

AN ORDINANCE AMENDING ARTICLE 919 OF THE CITY CODE GOVERNING THE ADDRESSING AND MAPPING PROGRAM

The City of Morgantown hereby ordains that Article 919 of the City Code, entitled "Addressing and Mapping," is amended as follows:

919.01. APPLICABILITY.

(a) The provisions of this ~~article~~ Article 919 apply to all areas of the City of Morgantown, except as may be expressly set forth below.

(b) In accordance with the provisions of Title 169, Series 2 of the West Virginia Code of State Rules, the City of Morgantown is a participating public agency in the Statewide Addressing and Mapping System. ~~Pursuant to the Emergency Rules of the West Virginia Statewide Addressing and Mapping Board on file with the office of the Secretary of State, Title 169, Series 2 of the Code of State Rules, the City of Morgantown hereby elects to participate in the West Virginia Statewide Addressing and Mapping Project.~~

919.02 COORDINATION WITH COUNTY ADDRESSING PROGRAM; ADOPTION OF ADDRESSING PROGRAM; PENALTIES FOR NON-COMPLIANCE.

(a) ~~All provisions of the 9-1-1 Addressing and Mapping Ordinance of the Monongalia County Commission, dated April, 2004, including penalties for non-compliance, hereby apply within the City of Morgantown of Monongalia County, as if fully set forth herein, except as set forth in subsection (b) hereof~~. The provisions of the "9-1-1 Addressing and Mapping Ordinance," adopted by the County Commission of Monongalia County as of March 9, 2011, as it may be amended or superseded, (the "County Ordinance") are adopted by this reference and apply within the City of Morgantown, except where the terms of this Article 919 conflict with the County Ordinance or expressly provide that the County Ordinance does not apply, in which case the terms of this Article 919 shall apply.

(b) Nothing in this article affects existing city-type addresses~~,~~ which are satisfactory for 9-1-1 and emergency services purposes, provided that those addresses are consistent with the Statewide Addressing and Mapping Project and otherwise comply with the provisions of Title 169, Series 2 of the West Virginia Code of State Rules, as they may be amended or superseded, and the provisions of West Virginia Code Chapter 24E. ~~Rules and Regulations of the West Virginia Statewide Addressing and Mapping Board.~~

919.03 APPOINTMENT AND DUTIES OF ADDRESSING AND MAPPING COORDINATORS.

(a) ~~The City Engineer or his/her appointed representative is~~ The City Geographic Information Systems Analyst shall be ~~hereby appointed~~ the Addressing Coordinator for the City of Morgantown. If the Geographic Information Systems Analyst position becomes vacant, or the Geographic Information Systems Analyst is unable to fulfill the duties of the Addressing Coordinator in the determination of the City Manager, the City Manager shall appoint an Addressing Coordinator. The Addressing Coordinator for the City of Morgantown shall cooperate with the Monongalia County Addressing Coordinator, West Virginia Statewide Mapping and Addressing Board, the Board's Project Manager, the Monongalia County 9-1-1 Director, the West Virginia Enhanced 9-1-1 Council, the Monongalia County's Assessor's office, municipal corporations within Monongalia County, the United States Postal Service, the Monongalia County Planning Commission, the Morgantown-Monongalia Metropolitan Planning Organization, and other interested agencies and persons in order to accomplish, with the City of Morgantown, city-type addressing and other systems essential to the prompt and accurate dispatch of emergency service providers or other emergency services or 9-1-1 purposes, and for such other goals of the West Virginia Statewide Addressing and Mapping Project; provided, however, that the Addressing Coordinator for the City of Morgantown shall coordinate with other agencies and persons principally through the Monongalia County Addressing Coordinator for purposes of implementation of the West Virginia Statewide Addressing and Mapping Project within the City of Morgantown. ~~The Addressing Coordinator of the City of Morgantown may not take any official action not expressly authorized in this article or in the 9-1-1 Addressing and Mapping Ordinance of Monongalia County, dated April, 2004, without the approval of the Council of the City of Morgantown.~~

(b) ~~The City Engineer or his/her appointed representative is hereby appointed~~ The City Geographic Information Systems Analyst shall be the Mapping Coordinator for the City of Morgantown. If the Geographic Information Systems Analyst position becomes vacant, or the Geographic Information Systems Analyst is unable to fulfill the duties of the Mapping Coordinator in the determination of the City Manager, the City Manager shall appoint a Mapping Coordinator. The Mapping Coordinator for the City of Morgantown shall cooperate with the Monongalia County Mapping Coordinator, West Virginia Statewide Mapping and Addressing Board, the Board's Project Manager, the Monongalia County 9-1-1 Director, the West Virginia Enhanced 9-1-1 Council, the Monongalia County's Assessor's office, the Monongalia County Planning Commission, the Morgantown-Monongalia Metropolitan Planning Organization, municipal corporations within Monongalia County, the United States Postal Service and other interested agencies and persons in order to accomplish, with the City of Morgantown, city-type addressing and other systems essential to the prompt and accurate dispatch of emergency service providers or other emergency services or 9-1-1 purposes, and for such other goals of the West Virginia Statewide Addressing and Mapping Project; provided, however, that the Mapping Coordinator for the City of Morgantown shall coordinate with other agencies and persons principally through the Monongalia County Mapping Coordinator for purposes of implementation of the West Virginia Statewide Addressing and Mapping Project within the City of Morgantown. ~~The Mapping Coordinator of the City of Morgantown may not take any official action not expressly authorized in this article or in the 9-1-1 Addressing and Mapping Ordinance of Monongalia County, dated~~

~~April, 2004, without the approval of the Council of the City of Morgantown.~~

919.04 INTERPRETATION AND APPLICATION.

~~This article is to be interpreted and applied consistent with the West Virginia Statewide Addressing and Mapping System. The Addressing Coordinator and the Mapping Coordinator of the City of Morgantown shall make any necessary application to the Statewide Addressing and Mapping Board for a waiver, or for local modifications of the Statewide Addressing and Mapping System in order to tailor it to this article.~~ This Article 919 shall be read in conjunction with the provisions of West Virginia Code Chapter 24E; Title 169, Series 2 of the West Virginia Code of State Rules; and the County Ordinance; and shall be interpreted and applied in such a way as to be consistent with these referenced laws (the "Addressing and Mapping Laws"). The Addressing Coordinator and Mapping Coordinator shall have all powers and duties authorized for the positions of Addressing Coordinator and Mapping Coordinator by the Addressing and Mapping Laws.

This Ordinance shall be effective upon adoption.

FIRST READING: _____

_____
Mayor

SECOND READING: _____

ADOPTED: _____

_____
City Clerk

FILED: _____

Ordinance No. 2020-____

AN ORDINANCE AUTHORIZING A DEED TO RDR PROPERTIES TRANSFERRING PROPERTY AT THE MORGANTOWN MUNICIPAL AIRPORT

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached deed, together with any ancillary or related documents necessary to effect the transaction described therein, transferring property at the Morgantown Municipal Airport to RDR Properties, LLC, in consideration of the payment of $33,686.49 and the mutual performance of the conditions and obligations in the attached deed.

FIRST READING:

_____
Mayor

SECOND READING:

_____
City Clerk

ADOPTED:

FILED:

This instrument was jointly prepared by:

Ryan P. Simonton
Kay Casto & Chaney PLLC
Suite 100
1085 Van Voorhis Road
Morgantown, West Virginia 26505

Robert Louis Shuman
Reeder & Shuman
256 High Street
Post Office Box 842
Morgantown, West Virginia 26507-0842

Quitclaim Deed

This Quitclaim Deed ("**Deed**") is made and entered into this the __ day of __, 2020, by and between The City of Morgantown, West Virginia, a municipal corporation, party of the first part, as grantor ("**Grantor**"), and RDR Properties LLC, a West Virginia limited liability company, party of the second part, as grantee ("**Grantee**").

For and in consideration of the amount of Ten Dollars ($10.00), and other good and valuable consideration, the adequacy, payment, receipt, and sufficiency of all of which are acknowledged, without assurance, covenant, or warranty of title, Grantor confirms, conveys, grants, quitclaims, releases, and transfers to Grantee the lot, parcel, or tract located and situate in the Sixth Ward of The City of Morgantown, Morgan District, Monongalia County, West Virginia, described as follows:

> Parcel A: Beginning at a 5/8 inch by 30 inch capped iron rod (set) standing on the north side of Monongalia County Route 119/26, known as Hart Field Road, as a corner to Parcel B depicted on the Plat (as subsequently defined); thence leaving Hart Field Road with a line of Parcel B, N 40° 36' 44" W 108.78 feet to a point standing on the east side of Monongalia County Route 857, known as Hartman Run Road, as a corner to Parcel B; thence leaving Parcel B with a line along the east side of Monongalia County Route 857, N 23° 14' 38" E 53.12 feet to a point standing on the east side of Monongalia County Route 857; thence with a curve turning to the left along the east side of Monongalia County Route 857, having a radius of 2894.79 feet, a chord bearing of N 20° 12' 38" E, and a chord length of 306.37 feet northeast along such curve for 306.51 feet to a point; thence N 17° 10' 38" E 30.85 feet to a point; thence with a curve turning to the right, having a radius of 788.51 feet, a chord bearing of N 25° 51' 39" E, and a chord length of 238.10 feet northeast along such curve for 239.01 feet to a point; thence N 34° 32' 40" E 152.60 feet to a point; thence S 55° 27' 20" E 30.00 feet to a pk nail (found) standing on the east side of Hartman Run Road as a corner to land now or formerly of RDR Properties LLC (Deed Book 1559 Page 491); thence with RDR Properties LLC, S 39° 46' 38" W 32.04 feet to a pk nail (found); thence with a curve turning to the left, having a radius of 527.50 feet, a chord bearing of S 23° 47' 29" W, and a chord length of 299.76 feet southwest along such curve for

303.95 feet to a point; thence N 82° 42' 56" W 17.50 feet to a 5/8-inch capped iron rod (found); thence with a curve turning to the left, having a radius of 545.00 feet, a chord bearing of S 02° 40' 01" E, and a chord length of 188.37 feet southeast along such curve for 189.32 feet to a 5/8 inch capped iron rod (found); thence N 77° 22' 54" E 17.50 feet to a point pk nail (found); thence with a curve turning to the left, having a radius of 527.50 feet, a chord bearing of S 14° 44" 36" E, and a chord length of 39.12 feet southeast along such curve for 39.13 feet to a 5/8 inch capped iron rod (found); thence with a reverse curve turning to the right, having a radius of 135.50 feet, a chord bearing of S 18° 15' 24" W, and a chord length of 155.92 feet southwest along such curve for 166.14 feet to a point; thence with a reverse curve turning to the left, having a radius of 111.50 feet, a chord bearing of S 27° 07' 54" W, and a chord length of 98.63 feet southwest along such curve for 102.17 feet to a pk nail (found); thence S 00° 52' 54" W 16.95 feet to a pk nail (found), standing on the north side of Hart Field Road as a corner to RDR Properties LLC; thence leaving RDR Properties LLC with a line of Hart Field Road, N 89° 40' 25" W 63.13 feet to the place of beginning, containing 1.64 acres, more or less ("**Parcel**"), and depicted and identified as "Parcel A" on the plat of survey prepared by Chad Enoch Freels, PS 2177, of Consolidated Survey, PLLC, dated May 13, 2020, appended to this Deed as an exhibit and incorporated and integrated into this Deed by this reference ("**Plat**").

The Parcel is a part of the property that was granted and conveyed to Grantor (1) as Parcel 9 in the deed dated January 3, 1936, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia ("**Clerk's Office**") in Deed Book 275 at Page 227 and (2) as Parcel 13 in the deed dated October 11, 1935, of record in the Clerk's Office in Deed Book 273 at Page 266.

The Parcel is identified as part of Parcels 0009 and 0013 on Tax Map 32A of Sixth Ward of The City of Morgantown, Morgan District, Monongalia County, West Virginia.

The Parcel is conveyed, granted, and transferred to Grantee and accepted by Grantee encumbered by and subject to the following conditions, covenants, exceptions, limitations, reservations, or restrictions which shall bind and run with the Parcel:

(1) Grantor, sponsor for the Morgantown Municipal Airport, reserves unto itself and its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Parcel, together with the right to cause in such airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in such airspace, and for use of such airspace for landing on, taking off from, or operating on the Morgantown Municipal Airport.

(2) Grantor and Grantee expressly agree for themselves and their successors and assigns to restrict the height of structures, objects of natural growth, and other obstructions on the Parcel to heights that

would not constitute an obstruction to air navigation as determined by the Federal Aviation Administration.

(3) Grantor and Grantee expressly agree for themselves and their successors and assigns to prevent any use of the Parcel which would interfere with the landing or taking off of aircraft at the Morgantown Municipal Airport or interfere with air navigation and communications serving the airport or that would otherwise constitute an airport hazard.

Grading Easement

Grantor further confirms, conveys, grants, quitclaims, releases, and transfers to Grantee, as an appurtenance to (1) the Parcel, (2) Parcel Two described in the confirmatory deed dated December 16, 2002, of record in the Clerk's Office in Deed Book 1243 at Page 524, (3) Parcel Three described in the confirmatory deed dated December 16, 2002, of record in the Clerk's Office in Deed Book 1243 at Page 524, and (4) the three (3) parcels described in the deed dated August 19, 2016, of record in the Clerk's Office in Deed Book 1559 at Page 491 ("**Benefitted Parcels**"), a perpetual easement and right of way ("**Grading Easement**") across, on, over, and upon the lot, parcel, or tract described as follows:

Parcel B: Beginning at a 5/8 inch by 30 inch capped iron rod (set) standing on the north side of Monongalia County Route 119/26, known as Hart Field Road, as a corner to Parcel A; thence leaving Parcel A with a line of Hart Field Road, N 89° 40' 25" W 106.02 feet to a pk nail (found) standing at the intersection of Monongalia County Route 857, known as Hartman Run Road, and Hart Field Road; thence leaving Hartman Run Road with a line along the east side of Monongalia County Route 857, N 23° 14' 38" E 89.22 feet to a point standing as a corner to Parcel A on the east side of Monongalia County Route 857; thence leaving Monongalia County Route 857 with a line of Parcel A, S 40° 36' 44" E 108.78 feet to the place of beginning, containing 0.10 acre, or 4,356 square feet, more or less, and depicted and identified as "Parcel B" on the Plat.

The Grading Easement shall be for the purposes of (a) clearing, controlling, cutting, trimming, and removing brush, bushes, shrubbery, stumps, trees, and other flora or vegetation located on the property burdened by the Grading Easement, (b) compacting, cutting, excavating, grading, and sloping earth, rock, soil, and similar materials or substances, removing earth, rock, soil, and similar materials or substances, and otherwise altering the contour, drainage, elevation, grade, slope, and topography of the property burdened by the Grading Easement, (c) building, constructing, creating, erecting, or establishing grades, slopes, toes, and other soil formations or engineering designs to create, give, or provide lateral support, and (d) traveling and traversing the property burdened by the Grading Easement with persons, equipment, materials, and supplies for the purpose of performing the foregoing objectives. The performance of the grading, sloping, and other activities contemplated by this Deed ("**Grading Activities**") shall be performed at the exclusive and sole cost, expense, and risk of Grantee. In addition, prior to commencing any Grading Activities, Grantee shall deliver to Grantor photocopies of all authorizations, consents, or permits required to

be obtained by Grantee in connection therewith, if any. As of the completion of the performance of the Grading Activities, Grantee shall seed or otherwise stabilize the graded portions and any other parts or portions of property incidentally disturbed in the course of the performance of such activities to prevent erosion from storm runoff. The completion of the performance of the Grading Activities shall leave the property encumbered by the Grading Easement in a condition suitable for placement of signage by Grantor. Upon the erection of signage by Grantor, any additional Grading Activities shall not disturb or impair the use of such signage erected by Grantor without the prior written consent of an authorized representative of Grantor.

Parking Easement

Grantor further confirms, conveys, grants, quitclaims, releases, and transfers to Grantee, as an appurtenance to the Benefitted Parcels, a perpetual easement and right of way ("**Parking Easement**") across, on, over, and upon the lot, parcel, or tract described as follows:

> Parcel C: Beginning at a point located N 06° 40' 59" W 97.25 feet from a ¾ inch iron rod (found) standing on the north side of Monongalia County Route 119/26, known as Hart Field Road as a corner to land now or formerly of The City of Morgantown (Deed Book 273 Page 266) (Tax Map 32A Parcel 13) and as a corner to other land of The City of Morgantown (Deed Book 275 Page 227) (Tax Map 32A Parcel 9); thence leaving Tax Parcel 9 with a curve turning to the right through Tax Parcel 13, having a radius of 274.09 feet, a chord bearing of S 13° 53' 28" W, and a chord length of 66.19 feet southwest along such curve for 66.35 feet to a point; thence with a new line, S 68° 28' 42" E 22.11 feet to a point standing in a line of land now or formerly of RDR Properties LLC (Deed Book 1559 Page 491); thence with a curve turning to the left, having a radius of 247.47 feet, a chord bearing of N 08° 22' 48" E, and a chord length of 116.07 feet northeast along such curve for 117.16 feet to a pk nail (found); thence N 84° 47' 08" E 12.59 feet to a 3/4-inch iron rod (found) standing as a corner to RDR Properties LLC and as a corner to The City of Morgantown (Tax Map 32A Parcel 13) in a line of The City of Morgantown (Tax Map 32A Parcel 9); thence with a partial line of The City of Morgantown (Tax Map 32A Parcel 9), N 06° 40' 59" W 69.02 feet to a point; thence leaving RDR Properties LLC (Deed Book 1559 Page 491) with a curve turning to the right through Tax Parcel 9, having a radius of 274.09 feet, a chord bearing of S 06° 40' 59" E, and a chord length of 129.26 feet southeast along such curve for 130.49 feet to the place of beginning, containing 0.07 acre, or 2,944 square feet, more or less, and depicted and identified as "Parcel C" on the Plat.

The Parking Easement shall be for the purposes of (1) parking automobiles, bicycles, motorcycles, and motor vehicles by Grantee and the agents, contractors, customers, employees, guests, invitees, lessees, licensees, representatives, subcontractors, tenants, and vendors of Grantee, (2) clearing, controlling, cutting, trimming, and removing brush, bushes, shrubbery, stumps, trees, and other flora or vegetation located on the property burdened by the Parking Easement to build, construct, create, or maintain parking facilities, (3) compacting, cutting, excavating, grading, and sloping earth, rock, soil, and similar materials or substances, removing earth, rock, soil, and similar materials or

substances, and otherwise altering the contour, drainage, elevation, grade, slope, and topography of the property burdened by the Parking Easement to build, construct, create, or maintain parking facilities, and (4) maintaining, repairing, replacing, upgrading, and upkeeping parking facilities on the property burdened by the Parking Easement.

The Parcel, the Grading Easement, and the Parking Easement are conveyed and granted to Grantee and accepted by Grantee encumbered by and subject to all agreements, assessments, conditions, covenants, easements, exceptions, limitations, mineral severances, reservations, restrictions, rights of way, servitudes, and other encumbrances as have been imposed upon the same of record in the Clerk's Office by Grantor and Grantor's predecessors in title which are effective and enforceable as of the delivery of this Deed.

Signage Easement

Grantor further confirms, conveys, grants, quitclaims, releases, and transfers to Grantee, as an appurtenance to the Benefitted Parcels, a perpetual easement and right of way to display, install, or place, in the second (2nd) to the top position, (1) a sign panel on each face or side of the marquee, monument, or pylon sign of the Morgantown Municipal Airport located on Grantor's property adjacent to U.S. Route 119 (Mileground Road), as such marquee, monument, or pylon sign shall be altered, built, constructed, modified, rebuilt, reconstructed, repaired, replaced, or substituted, and (2) a sign panel on each face or side of the marquee, monument, or pylon sign of the Morgantown Municipal Airport to subsequently be located on the property burdened by the Grading Easement at the intersection of Monongalia County Route 857 (Hartman Run Road) and Monongalia County Route 119/26 (Hart Field Road), as such marquee, monument, or pylon sign shall be altered, built, constructed, modified, rebuilt, reconstructed, repaired, replaced, or substituted. Each sign panel shall be in the second (2nd) to the top position and measure approximately four and one-half (4.5) feet in length and one and three-fourths (1.75) feet in height. Initially, each sign panel shall be fabricated and provided by and installed or placed at the cost and expense of Grantor or the Morgantown Municipal Airport. In the event that Grantee shall desire or intend to display, install, or place any sign panels other than those initially installed or placed by Grantor or the Morgantown Municipal Airport or initially proposed to be installed or placed by Grantor or the Morgantown Municipal Airport, the cost and expense of fabricating, providing, installing, and placing such sign panels desired or intended by Grantee shall be borne by Grantee and subject to the approval of the director of the Morgantown Municipal Airport, which approval shall not be unreasonably conditioned, delayed, denied, or withheld.

Release of Option

Effective as of the delivery of this Deed, Grantee cancels, extinguishes, and releases the option contained in the license agreement dated September 13, 2018, of record in the Clerk's Office in Deed Book 1640 at Page 752 to the extent that such option burdens, concerns, or pertains to any lots or parcels other than the Parcel, with the express intent that such option shall no longer be of force or effect as of the delivery of this Deed.

Declaration of Consideration or Value: Under and pursuant to the provisions of Article 22 of Chapter 11 of the West Virginia Code, Grantor declares that the transfer of property effected and made by this Deed is exempt from the applicable excise taxes on the basis that it is a transfer from a political subdivision of the State of West Virginia.

Signature Pages Follow

Witness the following signature.

The City of Morgantown, West Virginia,
a municipal corporation

By: _____
Name: _____
Title: _____

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

The foregoing instrument was acknowledged and sworn to before me this the _____ day of _____, 2020, by _____, in his capacity as _____ of The City of Morgantown, West Virginia, a municipal corporation, for and on behalf of such corporation, as the act and deed of such corporation.

{SEAL}

_____
Notary Public
My Commission expires: _____

RDR Properties LLC, a West Virginia limited liability company
By: Biafora's Incorporated, a West Virginia corporation
Title: Manager

By: _____
Name: Richard A. Biafora
Title: President

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

The foregoing instrument was acknowledged and sworn to before me this the _____ day of _____, 2020, by Richard A. Biafora, in his capacity as the president of Biafora's Incorporated, a West Virginia corporation, in its capacity as the manager of RDR Properties LLC, a West Virginia limited liability company, for and on behalf of such limited liability company, as the act and deed of such limited liability company.

{SEAL}

_____
Notary Public
My Commission expires: _____

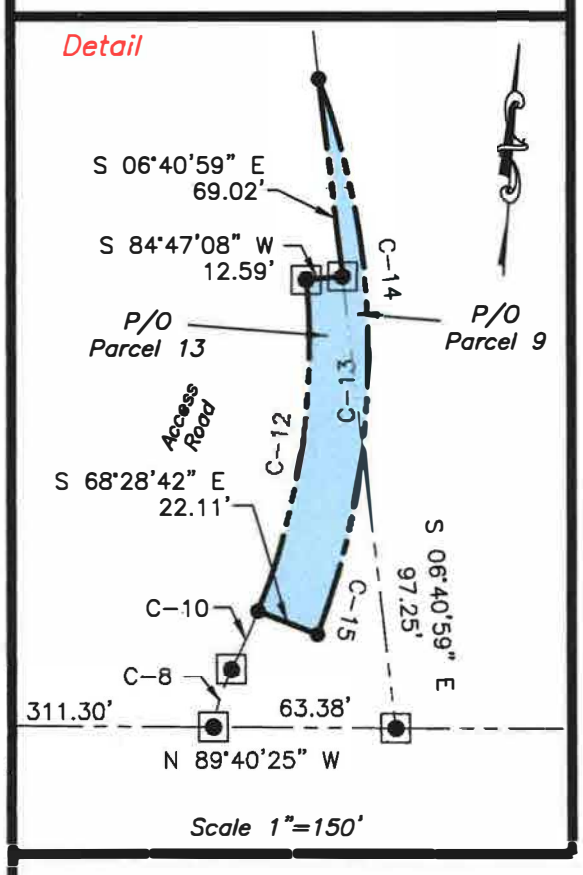
THIS INSTRUMENT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION, TITLE REPORT, TITLE CERTIFICATE, OR TITLE INSURANCE COMMITMENT AND NEITHER THE PREPARER NOR REEDER & SHUMAN BY THE PREPARATION OF THIS INSTRUMENT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS OF ANY KIND, NATURE, MANNER, OR CHARACTER, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS, OR AFFIRMATIONS RELATING TO THE QUALITY OF TITLE, THE NATURE OF TITLE, POSSESSION, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, THE CONDITION OF THE PROPERTY, ACCESS TO THE PROPERTY, OR THE CAPACITY OF GRANTOR(S) TO GRANT OR CONVEY TITLE.

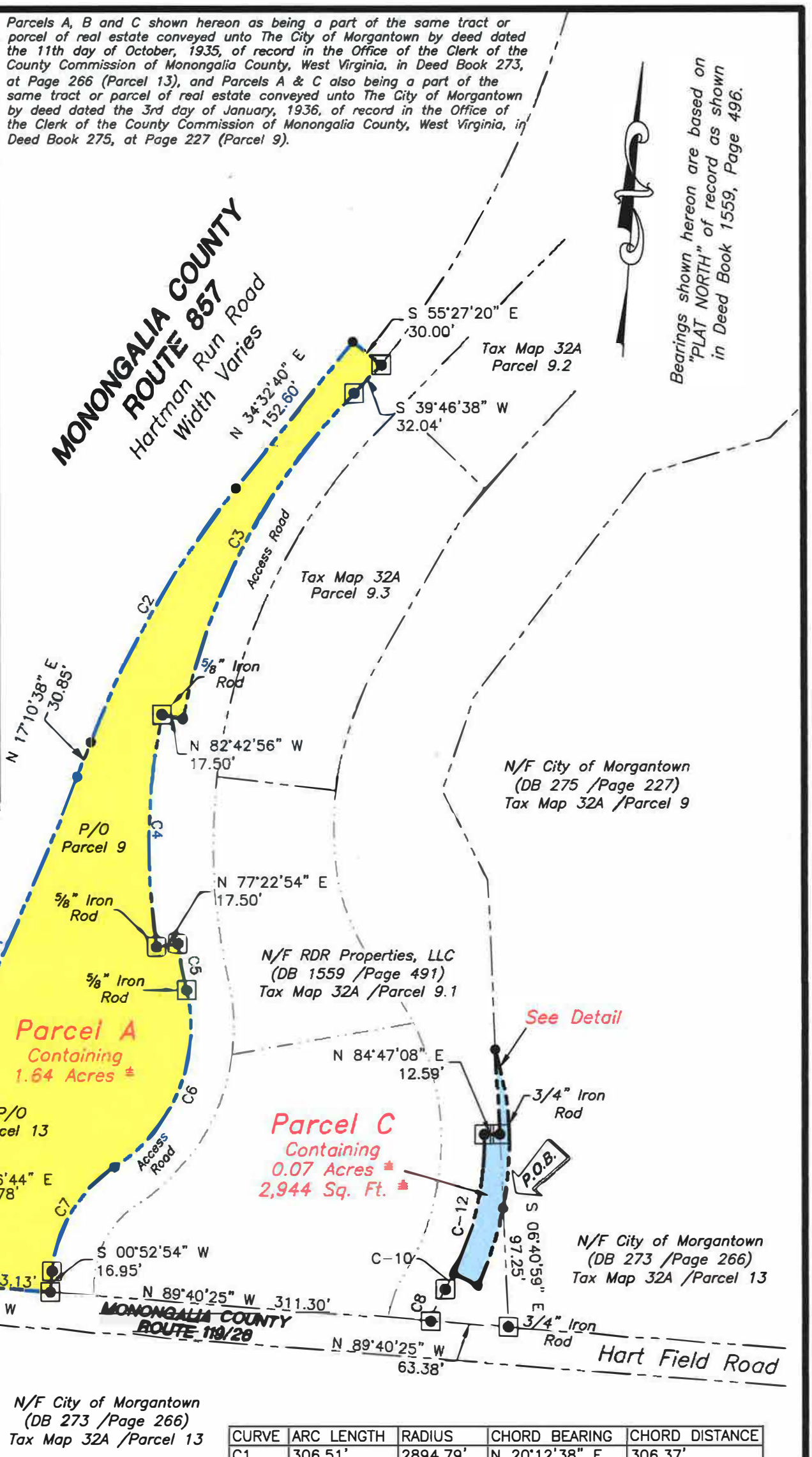
Exhibit to Quitclaim Deed

LEGEND

- PK Nail Found (Unless Noted)
- 5/8" X 30" Capped Iron Rod Set
- Point
- P.O.B. — Point of Beginning
- Adjoiner Boundary Line
- Boundary Line
- Asphalt Road
- Interior Boundary Line

Parcels A, B and C shown hereon as being a part of the same tract or porcel of real estate conveyed unto The City of Morgantown by deed dated the 11th day of October, 1935, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 273, at Page 266 (Parcel 13), and Parcels A & C also being a part of the same tract or parcel of real estate conveyed unto The City of Morgantown by deed dated the 3rd day of January, 1936, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Deed Book 275, at Page 227 (Parcel 9).





CURVE	ARC LENGTH	RADIUS	CHORD BEARING	CHORD DISTANCE
C1	306.51'	2894.79'	N 20°12'38" E	306.37'
C2	239.01'	788.51'	N 25°51'39" E	238.10'
C3	303.95'	527.50'	S 23°47'29" W	299.76'
C4	189.32'	545.00'	S 02°40'01" E	188.37'
C5	39.13'	527.50'	S 14°44'36" E	39.12'
C6	166.14'	135.50'	S 18°15'24" W	155.92'
C7	102.17'	111.50'	S 27°07'54" W	98.63'
C8	20.93'	64.50'	N 17°47'35" E	20.84'
C10	22.26'	247.47'	N 24°31'09" E	22.25'
C12	117.16'	247.47'	S 08°22'48" W	116.07'
C13	196.85'	274.09'	N 00°15'08" E	192.64'
C14	130.49'	274.09'	N 06°40'59" W	129.26'
C15	66.35'	274.09'	N 13°53'28" E	66.19'

Plat of Parcels A, B & C
Surveyed For
RDR Properties, LLC
Morgantown Corporation District
Tax Map 32A, P/O Parcels 9 & 13
Monongalia County, West Virginia
Surveyed: May, 2020
Scale 1" = 100'

0' 100' 200' 300'

Consolidated Survey, PLLC
Worthington, West Virginia
(304) 694-3696
Job No. 20-047

This survey is not valid without original blue signature and seal. Declarations made hereon on the date indicated are to the owner(s) or buyers(s) listed hereon and are not transferable to additional institutions or subsequent interested parties. This survey was conducted without the benefit of an attorney's title report and may not reflect all exceptions, rights of way, easements or restrictions.

CHAD ENOCH FREELS LICENSED No. 2177 STATE OF WEST VIRGINIA PROFESSIONAL SURVEYOR
CHAD ENOCH FREELS PS 2177
Dated: 5/13/20

AN ORDINANCE 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.

The City of Morgantown hereby ordains:

That the FY 2020-2021 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01A) attached hereto and made a part of this ordinance.

First Reading:

Adopted: _____ Mayor

Filed:

Recorded: _____ City Clerk

CITY OF MORGANTOWN
GENERAL FUND - REVISION 01A
FY 2020-2021

ACCT NO	REVENUES	BUDGET FY21	PROPOSED REV 01A	PROPOSED AMENDED BUDGET	EXPLANATION OF PROPOSED ADJUSTMENTS
299	Fund Balance Unassigned	680,000	3,020,000	3,700,000	Adjust to estimate as of 7/13/2020. Increase is predominantly a result of CARES Act funding received.
			3,020,000		

ACCT NO	EXPENDITURES	BUDGET FY21	PROPOSED REV 01A	PROPOSED AMENDED BUDGET	EXPLANATION OF PROPOSED ADJUSTMENTS
699	Contingency	605,573	2,907,800	3,513,373	Excess of total revenues to total expenses, up to 10% of General Fund budget allowed to be carried as Contingency amount
415	City Clerk	228,419	15,000	243,419	Codification and meeting management services from Municode budgeted in FY 2020 and not completed or billed.
422	Human Resources	339,336	28,000	367,336	City manager recruiting cost not completed or billed in FY 2020.
	Airport Allocation	200,000	52,000	252,000	To provide additional support due to COVID-19 related fuel sale declines.
802	Recycling	-	17,200	17,200	Unused budget from FY 2020 REAP grant of $39,286.
			3,020,000		

LGSD BR (Ver. 2017)

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

REQUEST FOR REVISION TO APPROVED BUDGET

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

CONTROL NUMBER
Fiscal Year Ending: 2020-2021
Fund: General
Revision Number: 1A
Pages: 1 of 1

City of Morgantown
GOVERNMENT ENTITY

389 Spruce Street
STREET OR PO BOX

Morgantown — CITY
26508 — ZIP CODE

Municipality
Government Type

Person To Contact Regarding Request:
Name: **James M. Goff**
Phone: **304-284-7407**
Fax: **304-284-7418**

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	680,000	3,020,000		3,700,000
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			3,020,000		

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
415	City Clerk	228,419	15,000		243,419
422	Personnel Office	339,336	28,000		367,336
758	Airports	200,000	52,000		252,000
699	Contingencies*	605,573	2,907,800		3,513,373
802	Recycling Center		17,200		17,200
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
NET INCREASE/(DECREASE) Expenditures			3,020,000		

APPROVED BY THE STATE AUDITOR

BY:
Deputy State Auditor, Local Government Services Division **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

AN ORDINANCE AMENDING THE FY 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.

The City of Morgantown hereby ordains:

That the FY 2020-2021 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 01) attached hereto and made a part of this ordinance.

First Reading:

Adopted: _____ Mayor

Filed:

Recorded: _____ City Clerk

LGSD BR (Ver. 2017)

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

REQUEST FOR REVISION TO APPROVED BUDGET

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

CONTROL NUMBER
Fiscal Year Ending: 2020-2021
Fund: 002
Revision Number: 1
Pages: 1 of 1

City of Morgantown
GOVERNMENT ENTITY

389 Spruce Street
STREET OR PO BOX

Morgantown — CITY
26508 — ZIP CODE

Municipality
Government Type

Person To Contact Regarding Request:
Name: **James M. Goff**
Phone: **304-284-7407**
Fax: **304-284-7418**

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	5,500	7,735		13,235
310	Coal Severance Tax	80,000		15,000	65,000
	#N/A				
	#N/A				
	#N/A				
	#N/A				
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			-7,265		

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

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
900	Parks & Recreation	80,300		7,800	72,500
699	Contingencies*	5,500	535		6,035
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
	#N/A				
NET INCREASE/(DECREASE) Expenditures			-7,265		

APPROVED BY THE STATE AUDITOR

BY:
Deputy State Auditor, Local Government Services Division **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

Vacant Structures Code
Exemption Procedures

1. Scope. This regulation governs the process to apply for exemption from the requirement to register a structure as vacant under the City of Morgantown ("City") Vacant Structures Code, codified at Article 1718 of the City Code, as it may be amended, supplemented, or replaced.
2. Purpose. Exemption from registration under the Vacant Structures Code is authorized by City Code Section 1718.07(c) and required as part of any local vacant structures code by *W. Va. Code* § 8-12-16c(b)(2), which provides that "The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinant (*sic*)[1] period of time."
3. Application for Exemption. The owner of a "vacant building," as defined by City Code section 1718.03(b)(i)-(iii), may request exemption from the registration requirements of Article 1718 by filing an application on the form prescribed by the City, which is attached to this regulation as **Appendix A – Exemption Application Form**. The form shall be submitted to the City Manager either by personal delivery to the City Manager's office during the City business hours or by mail to "The City of Morgantown, c/o City Manager, 389 Spruce Street, Morgantown, WV 26505."
4. Determination of completeness. The City Manager will review all submitted applications to determine whether they are complete. Only a completed application by the owner of the vacant building will be considered for exemption. A representative of the City Manager's office will take receipt of all applications and indicate the date of receipt. A determination of completeness will be made within five (5) business days, excluding the day of receipt, and notification of the determination will be delivered to the applicant by email. If the application is determined incomplete, the applicant must submit a new completed application in accordance with this regulation. If the application is determined complete, it will be submitted to City Council for determination in accordance with this regulation.
5. Delivery to City Council. Upon a determination that the application is complete, the City Manager, or a designee, will submit the application to City Council in writing and request a determination in accordance with any applicable rules of City Council to place the application on the next regular meeting for which notice of the request can be adequately provided in accordance with the law, or at a special meeting called for the purpose of hearing the application. City Council shall determine the date and time of the meeting at which the application will be heard and inform the City Manager. Upon receipt of the determination, the City Manager, or a designee, will inform the applicant by email of the date and time of the hearing and provide the applicant with a copy of this regulation or notice of the manner in which the applicant may review this regulation.
6. Documentation or Recommendation submitted to City Council. The applicant may submit any documentation in support of the application – which is not already contained

[1] The Morgantown City Code implements this portion of the requirement as a "determinate" period of time, indicating that an exemption will be granted based upon a specific period of time during which the structure cannot be occupied. The term "determinant," meaning a factor which decisively affects the nature or outcome, appears to be used erroneously in the state law.

in the application – no later than 5 p.m. on the day two(2) business days prior to the hearing before City Council. The City Manager, or a designee, may, but shall not be required to, submit any recommendation on the application and any supporting material no later than 5 p.m. on the day two(2) business days prior to the hearing before City Council. When submitting material to City Council, the applicant shall deliver the material to the City Manager by email on the same day. When submitting material to City Council, the City Manager or designee shall deliver the material to the applicant by email on the same day. These requirements for submission of documentation apply to all forms of media including written and electronic materials in any form. If any participant in the hearing wishes to present material by electronic means, such as powerpoint or video presentation, the submission of documentation shall include a written request to City Council to permit the electronic presentation.

7. Hearing by City Council. On the date and time set for the hearing, the hearing will proceed as follows:
    a. Electronic media. Prior to hearing any presentation, City Council will determine whether to permit presentations using electronic media, if a request has been submitted in accordance with this regulation. City Council may elect to permit or decline the use of electronic media in its sole discretion.
    b. City Manager recommendation. Following a determination on the use of electronic media, if needed, City Council will allow the City Manager or a designee to present a recommendation, if any, on the application. The City Manager shall have five (5) minutes to present the recommendation, and Council may extend the time in its discretion upon request.
    c. Applicant recommendation. Following the presentation of the City Manager, if any, the applicant or a designee may make a presentation in support of the exemption application. The applicant may make the presentation directly or by third parties – including legal counsel – or by a combination of those methods. The applicant shall have five (5) minutes to make the presentation, and Council may extend the time in its discretion upon request.
    d. Witness testimony. City Council will not swear witnesses or take witness testimony during the hearing.
    e. Questioning by City Council. Following the conclusion of the presentations, City Council may ask questions of any person participating in the presentations.
    f. Standard of Review. City Council will determine whether an applicant has demonstrated (i) good cause, (ii) that the applicant will be unable to occupy the building, (iii) for a certain period of time. If the applicant has not established all three of these elements to the satisfaction of Council, the application for exemption will be denied. If the applicant has established all three of these elements to the satisfaction of Council, the application for exemption will be granted.
    g. Decision on Application. Upon the conclusion of questioning by City Council, if any, the Council may (i) make a decision on the application, (ii) take the matter under advisement for future decision, or (iii) request or allow the participants to submit any additional information that may assist in the decision, including proposed findings and conclusions on the application. The decision by City Council shall be reduced to writing and delivered to the applicant by email. Any

decision granting exemption must specify a certain date upon which the exemption expires.

h. Application of Open Governmental Proceedings Act. When acting on an application for exemption from the Vacant Structures Code registration requirements, City Council is making an adjudicatory decision in a quasi-judicial or administrative capacity. Accordingly, the proceedings do not constitute a "meeting" within the definition provided by the Open Governmental Proceedings Act. *See W. Va. Code* § 6-9A-2(5)(A). City Council may choose to conduct all or any part of the proceedings in closed session.

i. Effect on application of Vacant Structures Code. The pendency of an application for exemption does not abrogate the duty of the property owner to comply with the Vacant Structures Code, including any requirement to pay registration fees. A decision by City Council to grant exemption may include a determination to waive or refund registration fees due or paid. An exemption granted by City Council may be used as a defense by the property owner in any pending criminal action for failure to register the vacant building subject of the exemption.

Adopted: _____
(Date)

_____
Mayor

_____
City Clerk

The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505

Vacant Building Exemption Form

Date Filed: [Date]	Registration Type (circle): NEW Renewal

Property and Structure Information

Address:	Tax Map/Parcel ID:

Status (circle all that are true): Vacant Open Secure Exterior Maintained Abandoned

Utilities (circle): Electricity: On / Off Water: On / Off Gas: On / Off

Date Utilities Terminated:	Electricity:	Water:	Gas:

Owner(s) Information *(P.O. Boxes are not acceptable.)*
(Attach additional sheets if necessary.)

If the property is owned by:

- an **individual**, provide the name and residence of the individual person;
- an **estate**, please provide the name and business address of the executor;
- a **trust**, please provide the name and address of all trustees, grantors, and beneficiaries;
- a **partnership**, **the** names and residence address of all partners with an interest of 10% or greater;
- a **corporation** provide the names and residence addresses of all officers and directors of the corporation and attach a copy of the most recent annual franchise tax report filed with the WV Secretary of State;
- any other form of **unincorporated association**, the names and residence addresses of all principals with an interest of 10% or **greater**.

Applicant Information

Name:

Address:

Phone:	**Email:**

Vacancy Notice or Event (attach copy, if applicable): _____

Date of Notice or Event: _____

Exemption Dates Requested: Begin _____ **End** _____

Reason for Exemption under *City Code* 1718.07(c) (attach additional sheets if necessary):

Internal Use Only:

Date received: _____

Received by: _____

Next Council Meeting: _____

Date Decision Issued: _____

Date Decision Delivered: _____

Delivery Method: _____

Applicant Certification and Signature:

I, _____ (print name), the Applicant for this exemption, am a Property Owner of the property subject of this requestl, and I have authority to control or direct the management or disposition of the property and to file this request. I certify that the statements contained in this request are true to the best of my knowledge after reasonable investigation.

_____
(Signature)

RESOLUTION

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

WHEREAS, *the budget revision 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.*

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

_____
Mayor

_____
City Clerk

CITY OF MORGANTOWN
CAPITAL ESCROW FUND - REVISION 01
FY 2020-2021

REVENUES	BUDGET FY21	PROPOSED REV 01	PROPOSED AMENDED BUDGET	EXPLANATION
Reimbursements Public Utilities	-	65,000	65,000	Dominion Energy reimbursement to City for public right of way work
CARES Act Grant	-	100,000	100,000	Reimbursement request from State of WV for July COVID-19 related expenditure
		165,000		

EXPENDITURES	BUDGET FY21	PROPOSED REV 01	PROPOSED AMENDED BUDGET	EXPLANATION OF EXPENDITURES
Capital Outlay Building - Woodburn	-	70,000	70,000	Final payment for Woodburn acquisition from Mon County Board of Education
Capital Outlay - Sidewalks	20,400	65,000	85,400	8th Street sidewalk excavation and site preparation
Agency Allocation - United Way	-	100,000	100,000	To assist with emergency feeding programs for food distressed families
Contingencies	1,172,108	(70,000)	1,102,108	
		165,000		

Resolution No. 2020-___

Resolution of the City Council
Of The City of Morgantown, West Virginia
Declaring a Public Nuisance and Ordering its Abatement

BE IT RESOLVED, by the City Council of the City of Morgantown, as follows:

At a public hearing conducted June 19, 2020, the City Council of The City of Morgantown, West Virginia, considered an application for declaration of a public nuisance, pursuant to *City Code* Article 1149, at certain properties having the street addresses 619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue, all of which are owned by Herold G. Berthy, also sometimes known as George H. Berthy (the "Application," attached as **Exhibit 1**). Notice of the hearing was delivered to Mr. Herold G. Berthy, Jr., of 5 Woodland Terrace, prior to the hearing in accordance with Article 1149. Notice of the public hearing was also posted at locations within 100 feet of the affected property in accordance with Article 1149. The hearing was conducted in accordance with procedural rules previously adopted by the City Council, which were included in the notice of public hearing delivered to Mr. Berthy (the "Notice," attached as **Exhibit 2**).[1] In accordance with the rules in the Notice, the hearing was conducted by electronic means. Mr. Berthy was informed of the opportunity to object to the conduct of the hearing by electronic means and failed to respond or submit any objection. Mr. Berthy was also informed by the Notice of the opportunity to submit documents in opposition to the Application, and he failed to respond or to submit any documents. The City Manager also did not submit any documents in addition to the Application. As the hearing, the Application was presented by City Manager Emily Muzzarelli and Deputy Chief of Police Eric Powell. Mr. Berthy did not appear for the hearing, in person or by an agent. Upon review of the Application and the information received at the public hearing, and for good cause shown, the City Council orders the following:

Findings of Fact

1. The Application requests declaration of a public nuisance properties identified as 619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue (hereinafter sometimes "the Properties").

2. Herold G. Berthy, also sometimes known as George H. Berthy, is the owner of the real estate and improvements thereon the Properties.

3. The Application comprised three separate documents prepared by Ed Preston, Chief of Police,[2] and submitted to Paul Brake, City Manager[3] as of February 25, 2020.

4. As to the property at 619 Brockway Avenue, the uncontroverted evidence shows that the following activities and incidents affecting the public health, safety, and welfare have occurred at the property within the past three years:

[1] Notice of these rules and a public hearing on the Application was previously delivered to Mr. Berthy on March 4, 2020, scheduling a hearing for March 17, 2020. That hearing was canceled by the City Council as it limited public gatherings in response to the COVID-19 pandemic.

[2] Chief Preston resigned his position with The City of Morgantown effective June 30, 2020, and Deputy Chief Eric Powell is serving as the interim Chief of Police as of the date of this Order.

[3] City Manager Brake resigned his position with The City of Morgantown effective May 14, 2020. Assistant City Manager Emily Muzzarelli is serving as the interim City Manager as of the date of this Order.

4.1. 11/24/2019 — Officers responded to the property for suspicious activity and charged three (3) individuals for trespassing (Jeffrey MARSH, Sandra TENNENT and Candace ADAMS).

4.2. 8/28/2109 — Officers assisted Code Enforcement for a condemnation and inspection of property.

4.3. 8/27/2019 — Officers found the property unsecured with an open door.

4.4. 8/16/2019 — Officers responded to a civil dispute and found one of the parties had an outstanding warrant for another jurisdiction and was taken into custody (Robert MILLER).

4.5. 8/14/2019 — Officer found and charged Jason BROOM for trespassing.

4.6. 7/24/2019 — Officers arrested Jennifer DOWNEY for an outstanding warrant for failure to appear.

4.7. 7/13/2019 — Officers and EMS responded for a drug overdose. Victim was revived, drug and drug paraphernalia were confiscated.

4.8. 7/11/2019 — Officers assisted Child Protective Services regarding a removal of children for safety reasons.

4.9. 6/20/2019 — Officers responded to a verbal argument and property damage.

4.10. 6/15/2019 - Officers responded to a verbal altercation and disorderly conduct.

4.11. 2/17/2019 — Officers responded for a juvenile call and during the investigation arrested Taylor BELT on outstanding warrants from Maryland.

4.12. 5/28/2019 — Officers arrested Joshua CRAWFORD and Nicole TYMAN for domestic battery.

4.13. 7/22/2017 – Officers responded to a complaint of Courtney MILLER trespassing.

4.14. The following individuals who have engaged in criminal and nuisance activities on a recurring basis have occupied and used the property:

• Jeffery MARSH

o 8/20/2019 — Charged with Trespassing.

o 8/14/2019 — Charged with Trespassing.

o 12/4/2009 — was found looking into cars on Decker's Creek by Officers.

• Sandra TENNANT

o 8/30/2019 — Charged with Trespassing.

o 7/13/2019 — Overdosed on controlled substances.

o 6/24/2010- Arrested and charged by U.S. Marshall's for probation violations.

• Candace ADAMS

o 8/30/2019 — charged with trespassing and currently has an outstanding warrant for Trespassing and Forgery/Uttering.

• Jason BROOM

o 11/6/2019 — Arrested and charged by the MonMetro Drug Task Force.

o 8/8/2019 — Arrested for possession of Methamphetamine.

o 7/30/2019 — was present in a vacant building where an altercation resulted in the arrest of Sheldon JACKSON for Wanton Endangerment with a Firearm.

o 1/16/2019 — Arrested for Driving on Suspended License.
• Jennifer DOWNY
o 7/24/2019 — Arrested for Failure to Appear.
• David DILLARD
o 4/28/2018 — Arrested on outstanding Fugitive warrant and for possession of cocaine.
• Taylor BELT
o 7/13/2019 — Charged with trespassing.
o 7/11/2019 — Charged with trespassing.
o 2/17/2019 — Arrested on outstanding Fugitive warrant.
• Joshua CRAWFORD
o 12/24/2018 — Arrested and charged with Burglary and Conspiracy.
o 5/28/2018 — Arrested and charged with Domestic Battery.
• Nicole TYMAN
o 7/24/2019 — Charged with trespassing.
o 6/10/2016 — Arrested and charged with Uttering (Counterfeiting).

4.15. 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.

4.16. 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray; used needles and other drug paraphernalia were observed in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.

5. As to the property at 324 Dewey Street, the uncontroverted evidence shows that the following activities and incidents affecting the public health, safety, and welfare have occurred at the property within the past three years:

5.1. 1/15/2020 — Officers met with the owner of the property, George H. Berthy and reported that the property should be unoccupied due to its "uninhabitable status". During a search of the building, Kalie Marie JOHNSON, Timothy Shane SELF, Julie Ann WELLING and Matthew Black TENNANT, were arrested for the charge of burglary at this location. There were numerous drug paraphernalia items such as dirty needles and burned melting caps throughout the building. The drug paraphernalia and condition of the house indicate that the building has been used by drug addicts for a significant period of time for the purpose of using controlled substances such as heroin and other intravenous drugs.

5.2. 1/14/2020 — Officers responded to the location due to neighbors reporting seeing individuals entering the property that was supposed to be unoccupied. Officer contacted the property owner, George H. Berthy, who reported that the property was unoccupied and that he would check it the next day.

5.3. 1/9/2020 — Officers were dispatched to the area of this property for suspicious individuals coming and going from the residence.

5.4. 9/20/2019 — Officers responded to a verbal argument that was disturbing the neighborhood. The argument was between Brittany ANDERSON and Robert MILLER, who resided at 111 Pinnacle Heights Drive at the time of the incident.

5.5. 9/3/2019 — Officers responded to a report of a domestic disturbance disturbing the neighbors. No one was found at the time of the incident but was reported on 2019-105845 and the property was found unsecured with an open door. This incident was a second report of a domestic disturbance that was previously handled.

5.6. 9/3/2019 — Officers responded to a report of a domestic disturbance that was reported by neighbors. Officers arrived and found Brittany MILLER and Robert MILLER involved in a verbal argument. The parties were separated, and Robert MILLER left the scene to stay at his father's residence.

5.7. 8/8/2019 — Officers responded to a child custody dispute following Robert MILLER's declaration that he was no longer homeless and wanted custody of his daughter back.

5.8. 5/13/2019 — Code Enforcement issued a summons to the property owner due to the condemned status of the property.

5.9. 3/7/2019 — The property was found to be an unregistered rental property by Code Enforcement and a notice was posted for violation of City Code 1751.04 — Illegal Conditions. The property was subsequently condemned and resulted in a court hearing on 9/19/2019.

5.10. 2/15/2019 — the property was found to remain in violation of city code and a notice was issued in a second attempt to bring the property into compliance.

5.11. 1/19/2019 — the property was found to be in violation of city code and a notice was issued in an attempt to bring the property into compliance.

6. As to the property at 625 Pennsylvania Avenue, the uncontroverted evidence shows that the following activities and incidents affecting the public health, safety, and welfare have occurred at the property within the past three years:

6.1. 2/25/2020 — Officer responded to the location along with Code Enforcement Officers and found the structure occupied and the conditions to be in violation of IPMC Code Section 108.1.3. The structure was cleared, and condemnation orders posted to deter trespassers. The property owner was again notified of the non-compliance by Code Enforcement.

6.2. 2/12/2020 — Officer responded to the location due to neighbors reporting loitering and trespassing on the property that is a registered vacant property. There were signs of habitation at the property, but no one was present on officer's arrival.

6.3. 1/31/2020 — Code Enforcement issued notice for Failure maintain property in Litter Free Condition — Trash, mattresses and debris piled up on the property.

6.4. 4/29/2019 — Officers assisted the Monongalia County Sheriffs Office serve an arrest warrant at this location.

6.5. 3/13/2019 — Code Enforcement issued notice for failure to Maintain Litter Free Condition and was not remedied until 5/28/2019.

6.6. 11/4/2018 — Officer responded to complaints of traffic at the residence blocking the roadway.

6.7. 10/12/2017 — Officers responded to a larceny that occurred from a vehicle that was parked in the yard. The vehicle belonged to someone that didn't reside at the residence but was using the property as a parking area.

6.8. 9/2/2017 — Officers responded to reports of people using drugs inside of vehicles parked in the yard.

6.9. 8/13/2017 — Officers responded to an unconscious and unresponsive person in the yard.

7. The owner of the Properties, Herold Berthy, has failed to secure the properties from unlawful entry.

8. The owner of the Properties, Herold Berthy, has failed to maintain the properties in compliance with the Building Code, *City Code* Article 1713, including the International Property Maintenance Code included therein.

9. Mr. Berthy does not occupy the Properties, nor do any other persons lawfully or regularly occupy the Properties.

10. The Properties are, and have been for a substantial time, unoccupied and unsecured.

11. Mr. Berthy has received multiple notices of criminal activity at the Properties, unlawful occupancies of the Properties, and violations of the Building Code at the Properties.

12. Mr. Berthy has been provided ample opportunity to correct the above-referenced violations affecting the public health and safety, and he has not done so.

13. Mr. Berthy's failure to correct these unlawful conditions and activities has diverted public resources from other responsibilities, permitted recurring criminal activity to occur at the Properties, and endangered the public health and safety, including the health and safety of those unlawfully entering the property and those residing nearby or traversing public property near the Properties.

Conclusions of Law

1. In accordance with West Virginia Code Chapter 8, Article 5, Section 12, Paragraph 23, the City Council has the plenary power and authority to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance.

2. City Council has established a procedure for declaration of a public nuisance pursuant to *W. Va. Code* § 8-12-5(23) by adopting Article 1149 of the *City Code*.

3. Section 1149.01 of the *City Code* provides, "Council may, by resolution, abate anything which, in the opinion of a majority of Council, constitutes a public nuisance after due notice to all parties that could be affected and after such hearings as Council deems necessary to ascertain a factual and rational basis for the abatement of any such public nuisance." *Id*.

4. Section 1149.03 of the *City Code* defines a public nuisance as follows:

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

hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

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

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

Id.

5. The evidence presented to City Council, and the above Findings of Fact, demonstrate that the condition of the Properties and the recurring criminal activity at the Properties endangers the health, safety and welfare of the community and is dangerous and detrimental to the public health, as well as violates the laws of the City and State and obstructs the community from reasonable and comfortable use of property. The unoccupied and unsecured Properties are repeatedly used for criminal actions that divert public safety resources. The unlawful occupancy of the Properties exposes public servants and members of the public to dangerous conditions. The failure by the owner of the Properties to secure them against unlawful entry or to occupy the properties perpetuates unlawful use of the property and danger to the surrounding community.

6. The continuing failure by the owner of the Properties to occupy the Properties, secure them against unlawful entry, or prevent recurring criminal activity hinders the neighboring community and the general public from enjoying the common and public rights enjoyed by the general community in like areas where no such public nuisance exists.

7. For these reasons, there is declared a public nuisance at the Properties, and it shall be abated as follows:

a. Herold G. Berthy, Jr., individually or by his lawful agents, shall correct the public nuisance by immediately closing all structures at 619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue to anyone other than himself or his agents who are necessary to complete repairs at the property in such a manner that no unauthorized occupant can enter the structures.

b. Within sixty (60) days of the entry of this Resolution, Mr. Berthy shall bring these properties and any structures present into compliance with the Building Code, the Fire Code, and all other health and safety codes; or he shall demolish the structures on the properties and leave the premises free from debris and in compliance with all health and safety codes.

c. Should Mr. Berthy fail to take such corrective action within 60 days of the entry of this Resolution, the City Manager may direct City employees or contractors to enter upon the Properties, or any of them, and perform necessary repairs or demolitions so that the public nuisance is abated in accordance with *City Code* § 1149.05(b). This authority explicitly includes, without limiting the generality of the foregoing, the authority to demolish any and all structures on the Properties, including any contents thereof, and remove and dispose of such structures and contents.

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

Adopted this ___ day of July, 2020:

_____

Ronald Dulaney, Jr., Mayor

_____

Christine Wade, City Clerk

EXHIBIT 1 - APPLICATION

Morgantown Police Department

300 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7522
www.morgantownwv.gov

To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

Copies: Emily Muzzarelli, Assistant City Manager
Ryan Simonton, City Attorney
Mark Caravasos, Fire Chief
Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 619 Brockway Avenue a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 619 Brockway Avenue is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The property is recorded with the Morgantown Code Enforcement Office as a "Vacant Structure". The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

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

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

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

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

This property is one of several owned by the same property owner, George H. Berthy, and is in close proximity to other properties that he owns that are either condemned or vacant, exacerbating the nuisance complaints in this particular neighborhood. Based upon the above definitions relating to public nuisance the following is submitted:

- 11/24/2019 – Officers responded to the property for suspicious activity and charged three (3) individuals for trespassing (Jeffrey MARSH, Sandra TENNENT and Candace ADAMS).
- 8/28/2109 – Officers assisted Code Enforcement for a condemnation and inspection of property.
- 8/27/2019 – Officers found the property unsecured with an open door.
- 8/16/2019 – Officers responded to a civil dispute and found one of the parties had an outstanding warrant for another jurisdiction and was taken into custody (Robert MILLER).
- 8/14/2019 – Officer found and charged Jason BROOM for trespassing.
- 7/24/2019 – Officers arrested Jennifer DOWNEY for an outstanding warrant for failure to appear.
- 7/13/2019 – Officers and EMS responded for a drug overdose. Victim was revived, drug and drug paraphernalia were confiscated.
- 7/11/2019 – Officers assisted Child Protective Services regarding a removal of children for safety reasons.
- 6/20/2019 – Officers responded to a verbal argument and property damage.
- 6/15/2019 - Officers responded to a verbal altercation and disorderly conduct.
- 2/17/2019 – Officers responded for a juvenile call and during the investigation arrested Taylor BELT on outstanding warrants from Maryland.
- 5/28/2019 – Officers arrested Joshua CRAWFOR and Nicole TYMAN for domestic battery.
- 8/27/2019 – Officers responded to a civil dispute.
- 10/15/2017 – Code Enforcement issued notice to
- 7/22/2017 – Officers responded to a complaint of Courtney MILLER trespassing.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis. The following is provided:

- Jeffery MARSH
  - 8/20/2019 – Charged with Trespassing.
  - 8/14/2019 – Charged with Trespassing.
  - 12/4/2009 – was found looking into cars on Decker's Creek by Officers.
- Sandra TENNANT
  - 8/30/2019 – Charged with Trespassing.
  - 7/13/2019 – Overdosed on controlled substances.
  - 6/24/2010- Arrested and charged by U.S. Marshall's for probation violations.
- Candace ADAMS
  - 8/30/2019 – charged with trespassing and currently has an outstanding warrant for Trespassing and Forgery/Uttering.
- Jason BROOM
  - 11/6/2019 – Arrested and charged by the MonMetro Drug Task Force.
  - 8/8/2019 – Arrested for possession of Methamphetamine.
  - 7/30/2019 – was present in a vacant building where an altercation resulted in the arrest of Sheldon JACKSON for Wanton Endangerment with a Firearm.
  - 1/16/2019 – Arrested for Driving on Suspended License.
- Jennifer DOWNY
  - 7/24/2019 – Arrested for Failure to Appear.
- David DILLARD
  - 4/28/2018 – Arrested on outstanding Fugitive warrant and for possession of cocaine.
- Taylor BELT
  - 7/13/2019 – Charged with trespassing.
  - 7/11/2019 – Charged with trespassing.
  - 2/17/2019 – Arrested on outstanding Fugitive warrant.
- Joshua CRAWFORD
  - 12/24/2018 – Arrested and charged with Burglary and Conspiracy.
  - 5/28/2018 – Arrested and charged with Domestic Battery.
- Nicole TYMAN
  - 7/24/2019 – Charged with trespassing.
  - 6/10/2016 – Arrested and charged with Uttering (Counterfeiting).

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk's Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.
- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.

- 9/6/2017 – reported that a game camera was stolen from an unoccupied rental property at 201 Overdale Street. This property was owned by Mr. BERTHY at the time of the incident.
- 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.
- 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray, used needles and other drug paraphernalia was observe in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.
- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Mr. BERTHY has been noticed on two separate occasions within the past year regarding continuing and ongoing issues with this property, some of which have been ongoing since 2012, through additional notices by Code Enforcement.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 619 Brockway Avenue Street, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating ("Squatting"), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy's expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy's business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.

Morgantown Police Department

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To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

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Ryan Simonton, City Attorney
Mark Caravasos, Fire Chief
Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 324 Dewey Street a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 324 Dewey Street is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

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

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

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

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

Based upon the above definitions relating to public nuisance the following is submitted:

- 1/15/2020 – Officers met with the owner of the property, George H. Berthy and reported that the property should be unoccupied due to its "uninhabitable status". During a search of the building, Kalie Marie JOHNSON, Timothy Shane SELF, Julie Ann WELLING and Matthew Black TENNANT, were arrested for the charge of burglary at this location. There were numerous drug paraphernalia items such as dirty needles and burned melting caps throughout the building. The drug paraphernalia and condition of the house indicate that the building has been used by drug addicts for a significant period of time for the purpose of using controlled substances such as heroin and other intravenous drugs.
- 1/14/2020 – Officers responded to the location due to neighbors reporting seeing individuals entering the property that was supposed to be unoccupied. Officer contacted the property owner, George H. Berthy, who reported that the property was unoccupied and that he would check it the next day.
- 1/9/2020 – Officers were dispatched to the area of this property for suspicious individuals coming and going from the residence.
- 9/20/2019 – Officers responded to a verbal argument that was disturbing the neighborhood. The argument was between Brittany ANDERSON and Robert MILLER, who resided at 111 Pinnacle Heights Drive at the time of the incident.
- 9/3/2019 – Officers responded to a report of a domestic disturbance disturbing the neighbors. No one was found at the time of the incident but was reported on 2019-105845 and the property was found unsecured with an open door. This incident was a second report of a domestic disturbance that was previously handled.
- 9/3/2019 – Officers responded to a report of a domestic disturbance that was reported by neighbors. Officers arrived and found Brittany MILLER and Robert MILLER involved in a verbal argument. The parties were separated, and Robert MILLER left the scene to stay at his father's residence.
- 8/8/2019 – Officers responded to a child custody dispute following Robert MILLER's declaration that he was no longer homeless and wanted custody of his daughter back.
- 5/13/2019 – Code Enforcement issued a summons to the property owner due to the condemned status of the property.
- 3/7/2019 – The property was found to be an unregistered rental property by Code Enforcement and a notice was posted for violation of City Code 1751.04 – Illegal Conditions. The property was subsequently condemned and resulted in a court hearing on 9/19/2019.
- 2/15/2019 – the property was found to remain in violation of city code and a notice was issued in a second attempt to bring the property into compliance.
- 1/19/2019 – the property was found to be in violation of city code and a notice was issued in an attempt to bring the property into compliance.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis. The following is provided:

- Kalie Marie JOHNSON has been arrested for receiving stolen property and possession of controlled substances.
  - 6/22/2019 – Officers found her under the Walnut Street Bridge and she was in possession of syringes and other drug paraphernalia in addition to a package of methamphetamine. During further investigation, JOHNSON was found in possession of items that were stolen from a vehicle that was previously reported (case 2019-37659) and property that was reported stolen from the "Friendship Room" (case 2019-67919).
  - 12/30/2018 – Officers responded to a domestic dispute involving JOHNSON and Alan WREN, at 550 Brockway Avenue. Both JOHNSON and WREN stated that they were homeless but denied any issues.
  - 11/5/2018 – Officers responded to a report of trespassers inside of 268 High Street. Officers found JOHNSON along with six (6) other homeless individuals trespassing inside of a closed business. All were issued trespass warnings.
  - 10/18/2018 – Officers responded to report of JOHNSON being observed by store personnel using heroin on the premise and wanted her trespassed from the property.
  - 8/2/2018 – Officers responded to a report of public disturbance involving JOHNSON and Joshua AUSTIN.
- Robert MILLER and Brittany ANDERSON (MILLER) have had numerous incidents.
  - 9/17/2019 – Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at 324 Dewey Street.
  - 9/11/2019 - Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at the intersection of Dewey Street and Elmina Street.
  - 9/3/2019 - Robert MILLER and Brittany ANDERSON (MILLER) were involved in a verbal altercation disturbing the peace at 324 Dewey Street.
  - 8/16/2019 – Robert MILLER was arrested on an outstanding warrant.
- Matthew TENNANT has been involved in several incidents.
  - 12/31/2019 – Officers charged him with Shoplifting.
  - 11/8/2019 – Officers responded to a report of suspicious activity on Listravia Avenue and found TENNANT and Carrie RILEY inside of a vehicle that did not belong to them. Both were charged with Auto Tampering and RILEY was found to be a fugitive with outstanding warrants from Pennsylvania.

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk's Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.

- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.
- 9/6/2017 – reported that a game camera was stolen from an unoccupied rental property at 201 Overdale Street. This property was owned by Mr. BERTHY at the time of the incident.
- 7/21/2017 – Officers responded to 619 Brockway Avenue and found the property occupied by Courtney Miller and three small children after the property had been condemned by Code Enforcement. This property was owned by Mr. BERTHY at the time of the incident.
- 4/17/2018 – Officers and Code Enforcement responded to and removed Christopher McGEE, Danielle McGEE and a dog. The residence had been condemned by Code Enforcement and was being used by vagrants and drug addicts as a place to use illegal controlled substances. The property was in complete disarray, used needles and other drug paraphernalia was observe in the residence. The property was boarded up and secured by City Personnel and the dog was surrendered to the Humane Society until an owner claimed it. This property was owned by Mr. BERTHY at the time of the incident.
- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Four different notifications of issues with this property have been given to Mr. BERTHY, in the form of door hangars, registered mail, summons and personal notification.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 324 Dewey Street, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating ("Squatting"), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy's expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy's business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.

Morgantown Police Department

300 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7522
www.morgantownwv.gov

To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

Copies: Emily Muzzarelli, Assistant City Manager
Ryan Simonton, City Attorney
Mark Caravasos, Fire Chief
Mike Stone, Chief Code Inspector
File

Date: February 25, 2020

Subject: PUBLIC NUISANCE

Pursuant to the Morgantown City Code 1149.04, I am requesting that you initiate actions to declare the property located at 625 Pennsylvania Avenue a Public Nuisance as defined by Morgantown City Code 1149.03.

The property located at 625 Pennsylvania Avenue is residential rental property that is owned by George H, Berthy, 5 Woodland Terrace, Morgantown WV 28561. The property is recorded with the Morgantown Code Enforcement Office as a "Vacant Structure". The following definitions per Morgantown City Code apply directly to this property.

1149.03 DEFINITION; PUBLIC NUISANCE

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

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

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

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

This property is one of several owned by the same property owner, George H. Berthy, and is in close proximity to other properties that he owns that are either condemned or vacant, exacerbating the nuisance complaints in this particular neighborhood. Based upon the above definitions relating to public nuisance the following is submitted:

- 2/25/2020 – Officer responded to the location along with Code Enforcement Officers and found the structure occupied and the conditions to be in violation of IPMC Code Section 108.1.3. The structure was cleared, and condemnation orders posted to deter trespassers. The property owner was again notified of the non-compliance by Code Enforcement.
- 2/12/2020 – Officer responded to the location due to neighbors reporting loitering and trespassing on the property that is a registered vacant property. There were signs of habitation at the property, but no one was present on officer's arrival.
- 1/31/2020 – Code Enforcement issued notice for Failure maintain property in Litter Free Condition – Trash, mattresses and debris piled up on the property.
- 4/29/2019 – Officers assisted the Monongalia County Sheriff's Office serve an arrest warrant at this location.
- 3/13/2019 – Code Enforcement issued notice for failure to Maintain Litter Free Condition and was not remedied until 5/28/2019.
- 11/4/2018 – Officer responded to complaints of traffic at the residence blocking the roadway.
- 10/12/2017 – Officers responded to a larceny that occurred from a vehicle that was parked in the yard. The vehicle belonged to someone that didn't reside at the residence but was using the property as a parking area.
- 9/2/2017 – Officers responded to reports of people using drugs inside of vehicles parked in the yard.
- 8/13/2017 – Officers responded to an unconscious and unresponsive person in the yard.

The property is further a nuisance to the community and disturbs the sanctity of the neighborhood further attracting individuals who engage in criminal and nuisance activities on a recurring basis. The following is provided:

- Shawn BARKLEY, Donald R. JOHNSON and Donald L. JOHNSON are associates that have been found loitering and in an intoxicated state at this and other properties in the Greenmont Neighborhood.
    - 9/30/2019 – BARKLEY was arrested for Felony Larceny
    - 2/23/2018 – BARKLEY arrested for Failure to Register as a Sex Offender.
    - 1/14/2018 – BARKLEY was arrested for Obstructing a Police Officer.
    - 4/21/2016 – BARKLEY was arrested for Battery that occurred at 649 Brockway Avenue against Donald R. JOHNSON.
    - 1/26/2015 0 BARKLEy was arrested for Grand Larceny (Motor Vehicle).
- Donald R. JOHNSON
    - 8/19/2017 – Open Container violation
    - 4/22/2017 - Disorderly Conduct and in an argument with Donald L. JOHNSON
    - 4/21/2017 – Disorderly Conduct and in an argument with Shawn BARKLEY, resulting in BARKLEY's arrest
    - 4/7/2016 0 Transported by EMS due to intoxication when he was found incapacitated in the yard of 625 Pennsylvania Avenue.
    - 3/23/2016 – Arrested for Domestic Battery.
    - 2/2/2016 – Arrested for Domestic Battery.
    - 2/2/2016 – Arrested for Disorderly Conduct.
- Donald L. JOHNSON
    - 8/22/2019 – Cited for Trespassing.

The owner of the property is George H. BERTHY. Mr. BERTHY resides at 5 Woodland Terrace, outside of the municipal limits of Morgantown.

- 2/24/2020 – The Monongalia County Clerk's Office confirmed that Mr. Berthy lists a P.O Box for his mail but changed his address for voting to 524 Dewey Street, but resides at 5 Woodland Terrace.
- Mr. BERTHY owns a significant number of vacant, abandoned or otherwise condemned property in the Greenmont Neighborhood.
- 8/13/2019 – Charged with multiple traffic violations.
- 1/29/2019 – Charged with Driving on a revoked driver license while officers attempted to serve an outstanding warrant for traffic violations.
- 1/17/2018 – Reported numerous tools stolen from his unoccupied rental unit at 629 Brockway Avenue which was owned by Mr. BERTHY at the time of the incident.
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- 3/24/2015 – Officers responded to 565 Clark Street to assist Thressie HINES who was attempting to relocate due to the building she was renting and apartment from Mr. BERTHY was condemned.

Citations have been issued and the arrests that have been made in an attempt to abate the ongoing criminal and nuisance behavior occurring at this residence, but this has not resulted in a cessation of criminal and nuisance activities.

Mr. BERTHY has been noticed on two separate occasions within the past year regarding continuing and ongoing issues with this property, some of which have been ongoing since 2012, through additional notices by Code Enforcement.

It is recommended, based upon the ongoing nature of the criminal and nuisance activities occurring at 625 Pennsylvania Avenue, that the City of Morgantown place limitations regarding the use of the property.

- Mr. Berthy be required to bring the property in compliance with current Morgantown code and regulations within 30 days of receiving sanction.
- the property be secured in such a manner as to prevent individuals from habitating ("Squatting"), in this residence or using the residence for the purposes using or selling controlled substances and/or contraband.
- In the event that Mr. Berthy is unable to perform either of these tasks, a requirement that a property manager be engaged at Mr. Berthy's expense in order to comply with these restrictions, otherwise, the city shall take reasonable steps to secure and maintain the security of the property and the cost of those actions be attached to the property.
- Should these actions fail to abate the ongoing problems, Mr. Berthy's business license to rent property should be revoked until such time as each of his properties are brought up to compliance with Morgantown Municipal Code.

EXHIBIT 2 - NOTICE

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

June 5, 2020

Mr. Herold G. Berthy, Jr.
5 Woodland Terrace
Morgantown, WV 26505
PO Box 1093
Morgantown, WV 26507
By first class mail,
Certified Mail, and
personal delivery

RE: Public Hearing before Morgantown City Council
Reported Public Nuisance at
619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue

Dear Mr. Berthy:

At its regular meeting on March 3, 2020, Morgantown City Council received a recommendation from the City Manager to conduct a hearing to determine whether you are maintaining a public nuisance at your property located at 619 Brockway Avenue, 324 Dewey Street, and 625 Pennsylvania Avenue. The recommendation was based upon the enclosed reports from the Chief of the Morgantown Police Department.

By majority vote, City Council set a hearing on the charges contained in the enclosed reports pursuant to Article 1149 of the City Code for March 17, 2020. The March 17 hearing was continued due to the COVID-19 outbreak. At its June 2, 2020 meeting, City Council set a new hearing date for **June 16, 2020** at **5:00 p.m.** The hearing will be held in Council Chambers, City Hall, 389 Spruce Street, Morgantown, WV, at 5:00 p.m. on June 16, 2020, but participants will attend only by electronic participation as described in this notice. You may appear and present evidence on your behalf, individually or by legal counsel or other agents you may choose.

The City Council consideration of the charges will proceed under the following procedures:

1. City Administration and the Property Owner may submit any documentation in support of their claims to City Council no later than 5:00 p.m. on June 12, 2020, by delivering such documentation to the office of the City Clerk, or by email to cwade@morgantownwv.gov. No documents will be accepted after that date except by order of Council at the public hearing.

2. If City Administration or the Property Owner submits any documentation, a copy of the same shall be provided to the other party at the same time by email, first-class mail, or personal delivery. Either City Administration or the Property Owner may also obtain a copy of any documentation submitted by requesting the same from the office of the City Clerk.

3. At the public hearing, the City Manager will present the City Administration's case and will have 20 minutes to present argument. The City Manager may designate other members of the City Administration, or third parties, to present all or a portion of the case.

4. Following presentation of the City Administration's case, the Property Owner will have 20 minutes to present the case. The Property Owner may designate other individuals, including but not limited to legal counsel, to present the case.

5. Council will not hear sworn witness testimony. The Property Owner and City Administration should present information from any person with knowledge of the matter within the 20 minutes allotted for presentation of the case or through submission of documentary evidence.

6. Following the conclusion of the arguments, City Council may ask questions of either or both of City Administration and the Property Owner.

7. Following the close of questioning, City Council may vote on the application for declaration of a public nuisance and, if a nuisance is found, prescribe the abatement, or Council may take the matter under advisement. If Council takes the matter under advisement, it may also elect to receive additional documents or written submissions from City Administration and the Property Owner, upon terms it may decide at the public hearing.

8. City Council shall issue a written order identifying its findings on the application.

Due to the ongoing public health response to the COVID-19 pandemic, this hearing will be conducted and recorded by videoconference through the Webex platform. You will access the meeting by using the following link: https://cityofmorgantown.my.webex.com/meet/cityofmorgantown **with meeting number (access code) 793 734 477, or by calling in at the following number 408-418-9388 and using the access code 793 734 477.**

If you object to participating in the hearing by videoconference, you must identify the reason for your objection and state each way in which a videoconference will not permit you to adequately participate in the hearing by filing such objection in the same manner as other materials filed by June 12, 2020.

A copy of this notice will be posted in a conspicuous place on the premises subject of the charges and also within 100 feet surrounding the premises. Should you have any questions regarding the conduct of the hearing, please contact the City Clerk's office.

Sincerely,

Christine Wade
City Clerk

xc: City Council
City Manager

w/encl: (1) Report of Public Nuisance – 619 Brockway Avenue
(2) Report of Public Nuisance – 324 Dewey Street
(3) Report of Public Nuisance – 625 Pennsylvania Avenue

Ordinance No. 2020-__

AN ORDINANCE AMENDING SECTION 1713.01
ADOPTING STATE BUILDING CODE REVISIONS

The City of Morgantown hereby ordains that Section 1713.01 of the City Code is amended as follows:

1713.01 ADOPTION.

There are hereby adopted and incorporated by reference herein the following portions of the State Building Code, as published by the International Code Council ("ICC"), to be known as the Building Code of the City of Morgantown, West Virginia, for the purpose of regulating construction, alteration, addition, removal and demolition of buildings and structures. together with the additions and amendments hereinafter provided:

(a) The 2015 edition, International Building Code, with the following exceptions and additions:

(i) The section entitled "Fire Prevention" and identified as Section 101.4.5 is deleted and not considered to be a part of this section.

(ii) The entire subsection entitled "Qualifications" and identified as Section 113.3 is deleted and replaced with the following:

"Section 113.3. Board of Appeals
113.3 Qualifications. The board of appeals shall consist of five members. with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work. No less than one of the members of such Board of Appeals shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor."

(iii) The following appendices are applicable:
Appendix E - Supplementary Accessibility Requirements; and
Appendix H - Signs.

(b) The 2015 edition of the International Plumbing Code

(c) The 2015 edition of the International Mechanical Code

(d) The 2015 edition of the International Fuel Gas Code, with the following exception:

(i) Section 404.10 Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained. the piping system shall be installed in conduit or shielded in an approved manner.

(e) The 2015 edition of the International Property Maintenance Code, with the following exceptions and additions:

(i) Section 110.3 Failure to Comply, shall be modified as follows:

"Unless authorized by W.Va. Code§ 8-12-16. or absent the express consent of the owner, if the owner of a premises fails to comply with a demolition order within the time prescribed. the legal counsel of the jurisdiction shall institute appropriate action in the Circuit Court of the County in which the property is located against the owner of the premises where the structure is or was located seeking an Order causing the structure to be demolished and removed. Thereafter, the local jurisdiction, through an available public agency or by contract or arrangement with private persons, shall demolish and remove the structure and the costs thereof, as well as all fees and costs incurred in the legal action, shall be a lien upon such real estate."

(ii) The following appendix is applicable:

Appendix A - Boarding standards.

(f) The 2009 edition of the International Energy Conservation Code for residential buildings.

(g) The ANSI/ASHRAE /IESNA Standard 90.1-2010 edition for commercial buildings. For purposes of this section. “ANSI” means American National Standards Institute, "ASHRAE" means American Society of Heating, Refrigerating, and Air-Conditioning Engineers, and "IESNA" means Illuminating Engineering Society of North America.

(h) The 2015 edition of the International Residential Code for One and Two Family Dwellings, with the following exceptions and additions:

(i) Chapter 11 of the 2015 edition of the International Residential Code for One and Two Family Dwellings, Seventh Printing, entitled Energy Efficiency," is exempt from this section.

(iii) Section G2415.12 (404.10) Minimum Burial Depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

(iv) Section R311.7.5 Stair Treads and Risers

(A) 311.7.5.1 Riser Heights -- The maximum riser height shall be eight and one-quarter (8 1/4) inches.

(B) 311.7.5.2 Tread Depth- The minimum tread depth shall be nine (9) inches.

(v) Section R403.1.7.1: Building Clearances From Ascending Slopes is not applicable to this section.

(vi) Section R403.1.7.2: Footings Setbacks From Descending Slope Surfaces is not applicable to this section.

(vii) Pursuant to Title 87, West Virginia Code of State Rule, Series 4, Section 5.1, New One and Two Family Dwellings over one level in height, New One and Two Family Dwellings containing a basement, and New One and Two Family Dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A ½ inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance: or (3) An Automatic Fire Sprinkler System as set forth in Section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family Dwellings: Provided, That floor

assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.

(viii) Pursuant to Title 87, West Virginia Code of State Rules, Series 4, Section 5.2, Townhouses meeting the Fire Resistant Construction Standard R302.2 will be treated as New One and Two Family Dwellings and shall comply with the referenced Section 5.1 immediately above.

(ix) The following appendices are applicable:

Appendix D - Safety inspections of existing appliances

Appendix E - Manufactured Housing used as Dwellings.

(i) The 2009 ICC/ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities

(j) The 2015 International Existing Building Code. with the following exception: (i) Omit reference to International Fire Code and substitute NFPA Life Safety Code 2015~~5~~8 edition.

(k) The 2014~~4~~7 edition of the National Electric Code, NFPA 70

(i) For renovations in one- and two-family homes where no new square footage is involved, arc-fault circuit interrupter (AFCI) protection shall not be required, except for in bedrooms. For renovation in one- and two-family homes where square footage is added but no electrical service is installed, arc-fault circuit interrupter (AFCI) protection shall not be required.

(l) The 2015 edition of the International Swimming Pool and Spa Code

Wherever referenced in the several ICC codes adopted above, any reference to the International Fire Code should be substituted with the NFPA Life Safety Code 2015~~5~~8 edition. The State Building Code and its application within this City shall be subject to Legislative Rules adopted by the West Virginia State Fire Commission and authorized by the West Virginia Legislature.

This ordinance shall be effective upon adoption.

FIRST READING:

_____

MAYOR

ADOPTED:

FILED:

_____

CITY CLERK

RECORDED:

The City of Morgantown

430 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
OFFICE: (304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

Office of the City Manager

City Manager's Report for City Council Meeting on July 21, 2020

Information:

A. 2020 Census Update

As of July 16, 2020, the City of Morgantown's Census self-response rate was 46.9%. As a comparison, the final self-response rate for Morgantown from the 2010 Census was 64.5%. While it seems frustrating to see a lower number, we have been informed that a crucial (and substantial) subsect of our population is not yet included in the self-response rates.

According to our contacts at WVU, they fully submitted and have received acknowledgment of receipt from the Census Bureau their group quarters (residence halls, apartments, and Greek housing) counts. That includes 6,054 individuals in residence halls and apartments and 304 in our Greek Houses. This is a total count of 6,354 for our group quarters.

Additionally, due to the COVID-19 pandemic, campus communities could provide the Census Bureau with off-campus housing count numbers. WVU has finished their counts and have submitted and received confirmation of receipt all Off-Campus Housing counts. That effort resulting in 21,563 individuals. Not all of these off-campus counts are within corporate limits, however, it is still vital for the community as a whole.

Together, WVU has submitted 27,921 residents of Monongalia County/other Municipalities for the 2020 count. We'd like to thank WVU and the Census Bureau for their efforts

B. Downtown Bus Shelter Update

Public Works and Engineering has been working with Mountain Line to install bus shelters downtown and other locations in Morgantown. This has been an ongoing effort to promote multi-model transportation efforts in the City. Please see the attached for pictures. Currently, there are three shelters being installed. The City installed an asphalt pad in the Parking Authority Lot at the corner of Spruce and Pleasant St. They also installed a concrete pad next to the PSB Parking Garage, near the Walnut Street Bridge. Lastly, they will install the pad for the shelter in White Park on Monday. Mountain Line is delivering and installing the three

shelters next week. All three shelters are anticipated to be installed completely by Thursday of next week.

New Business:

A. Award TIF Project – Beechurst Sidewalk Repairs

The City sought bids to perform sidewalk repairs along Beechurst Avenue between the 4 ½ and 5th Street block. This project is funded utilizing TIF money from the Sunnyside TIF District, which are funds limited in scope and location for use. Moving forward with this project allows for increased pedestrian safety and overall look of this area.

The City's Engineering Department prepared bid documents for the repairs. Engineering received eight (8) bids on the project, ranging from $52,980 to $83,997. In the attached memo, you will see that Engineering is recommending award of the project to the lowest bidder, Parrotta Paving, in the amount of $52,980. City Council approval is needed to award the bid.

B. Authorization to Execute Federal Aviation Administration Grant for Morgantown Municipal Airport

A grant offer letter from the FAA is included in your packet for the amount of $1,886,761. This grant covers the first phase of design for the Runway 18-36 Extension at the Morgantown Municipal Airport. There is no local match required for this grant offer.

The City has been working with our consultant, Michael Baker, on the design of the extension over the last year, and the design for this first phase of construction is expected to be completed mid-August. Once finalized, the project will go to bid in the Fall of 2020 with actual construction starting over the winter.

In order to accept this grant, City Council must provide the City Manager with the authority to execute the grant.

C. Black Lives Matter Crosswalk

City staff had been approached by Ash Cutright, representing an effort of the Human Rights Commission, Morgantown Pride, and Solidarity for Equality and Compassion, for installation of a Black Lives Matter crosswalk and street art. City staff asked that the group present their suggestion first to the Pedestrian and Traffic Commission, as well as the Greenmont Neighborhood Association (the proposed location of the crosswalk is at Arch and Green). The groups have reviewed the proposal and are in support of the request. Included in the packet is a memo from the Traffic Commission, as well as a diagram of the crosswalk and street art. The crosswalk would consist of yellow, white, and black (asphalt) bars, representing the BLM flag.

I requested from Ash Cutright that we put the street art on hold and further explore this particular at a later time request (due to safety, maintenance, and vandalism concerns) and also coordinate with similar efforts occurring around town. It is my understanding that Ash Cutright found this to be an acceptable plan.

If City Council is interested, City staff could plan and coordinate to have the crosswalk installed with our own employees and utilizing City funds (funds would be similar to that of a standard crosswalk installation). City staff is looking for Council's input and direction on moving forward on the Black Lives Matter Crosswalk.

Emily Muzzarelli, PE
Interim City Manager, Morgantown, WV

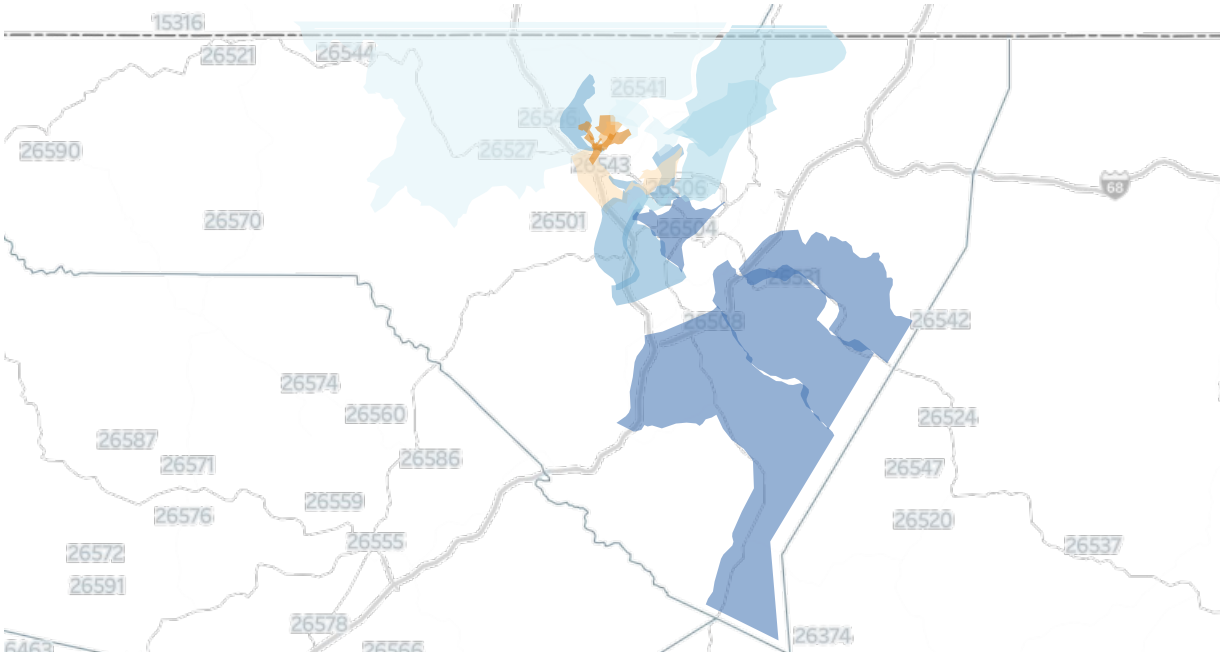
Self-Response by Census Tract

Click icon to open or close the share menu

This map features self-response rates from households that responded to the 2020 Census online, by mail, or by phone. Rates can be viewed in rankings here.

Morgantown, West Virginia
Self-Response
46.9%

Tract 101.01
Self-Response
22.6%



Select Mode
Total

Select State
West Virginia

Select City
Morgantown

Geographies

Return to State

County

City

Census Tract

Congressional District

Town and Township

Tribal Area

Self-Response Rate (%)

0-15 | 16-30 | 31-40 | 41-50 | 51-56 | 57-62 | 63-68 | 69-74 | 75-85 | 86-100

Tract 101.01, Morgantown Self-Response Rate

Operational Updates

Historical Data

Email us at responseratemap@census.gov
Responses received as of 7/14/2020.
Click here for technical details

Shape your future START HERE >
United States Census 2020

Bus Shelter – Installation Pictures
July 2020

Bus Shelter – Installation Pictures
July 2020

The City of Morgantown

Office of the City Engineer

Memorandum

To: Emily Muzzarelli, Interim City Manager

From: Damien Davis, City Engineer

Date: July 16, 2020

Re: Beechurst Sidewalk – Bid Call 2020-14

Bids were opened at 10:00am on July 16, 2020 for the demolition of exist curb and sidewalk, and the construction of new along Beechurst Ave between 4 ½ Street and 5th Street. The sidewalks are adjacent to properties owned by CNRC. This project is funded through the Sunnyside TIF district. The results are as follows:

CONTRACTOR	COST
Parrotta Paving	$52,980.00
Anderson Excavating	$54,432.00
Wolf Creek Contracting	$59,831.00
A. Merante Contractors	$67,800.00
Wolfe Landscapes Plus	$73,144.20
Mountaineer Contractors	$73,750.00
Beaver Excavating	$76,210.95
Veritas Contracting	$83,997.00

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

Figure 1. Existing Condition of Sidewalk

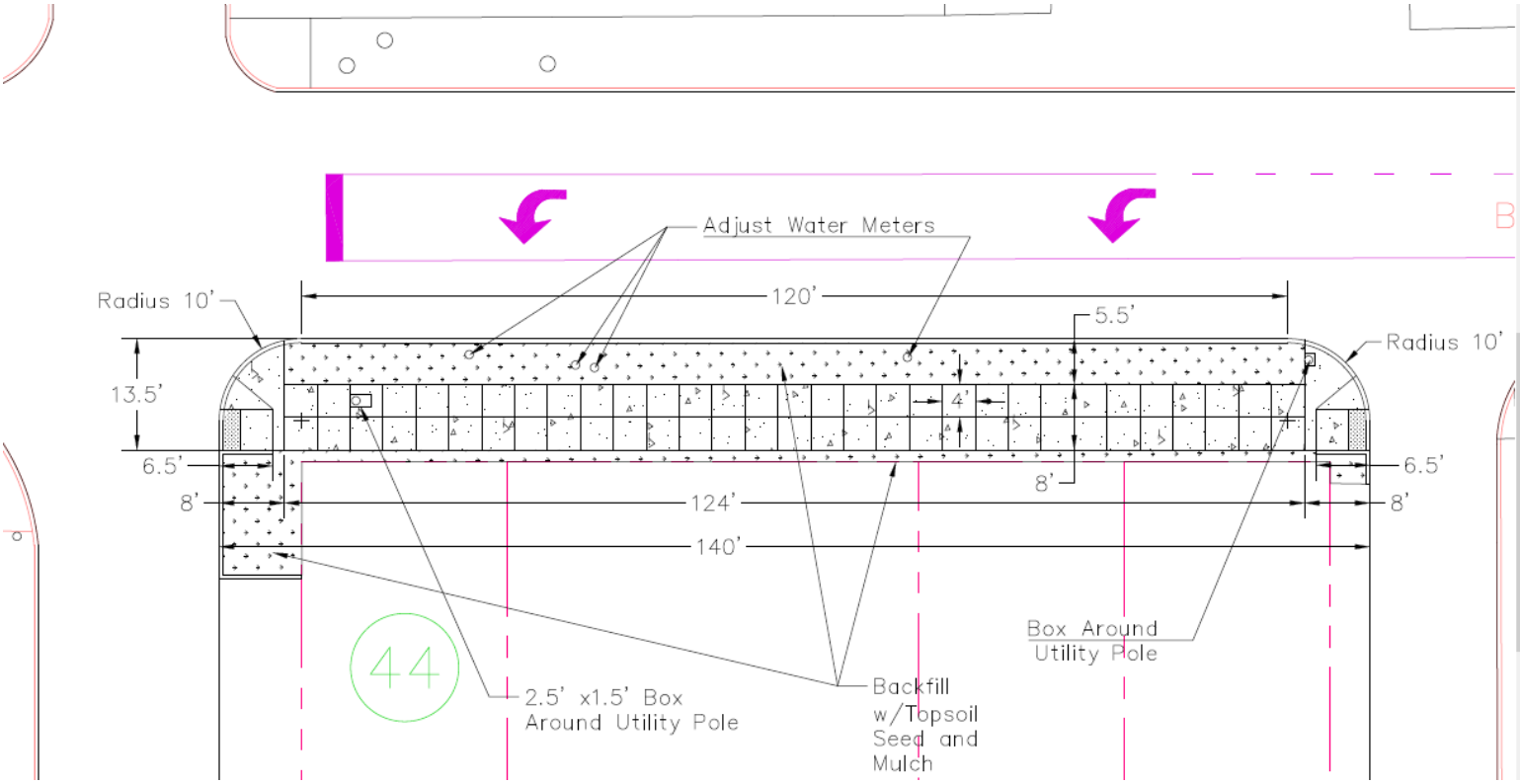


Figure 2. Proposed

U.S. Department
of Transportation
Federal Aviation Administration

Airports Division
Eastern Region
West Virginia

FAA AEA-600
176 Airport Circle
Room 101
Beaver, WV 25813

Jul 7, 2020

Mrs. Emily Muzzarelli
430 Spruce Street
Morgantown, WV 26505

Dear Mrs. Muzzarelli:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program Project No. 3-54-0015-042-2020 at Morgantown Municipal-Walter L Bill Hart Field in Morgantown, West Virginia.This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.

b. The sponsor's authorized representative must execute the grant by providing their digital signature.

c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their digital signature.

d. You will not be able to make any modification to the text, terms or conditions of the grant offer.

e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
    1. Non-construction project: Due annually at end of the Federal fiscal year.
    2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend $750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Stewart Lewis, 304-252-6216, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Matthew Di Giulian
Matthew Di Giulian (Jul 7, 2020 13:45 EDT)

Matthew Di Giulian
Manager

U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I –OFFER

Federal Award Offer Date	July 7, 2020
Airport/Planning Area	Morgantown Municipal-Walter L Bill Hart Field
AIP Grant Number	3-54-0015-042-2020
Unique Entity Identifier	177686867

TO: City of Morgantown
(herein called the "Sponsor")

FROM: **The United States of America**(acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated June 16, 2020, for a grant of Federal funds for a project at or associated with the Morgantown Municipal-Walter L Bill Hart Field Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Morgantown Municipal-Walter L Bill Hart Field Airport (herein called the "Project") consisting of the following:

Extend Runway 18/36 (Design)

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, as applied and interpreted consistent with the FAA Reauthorization Act of 2018 (see 2018 FAA Reauthorization grant condition.), (b) and the Sponsor's acceptance of this Offer; and, (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay one hundred (100) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is $1,886,761.

   The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):
   $0 for planning
   $1,886,761 airport development or noise program implementation; and,
   $0 for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

   The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR §200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR §200.343).

   The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.

4. **Indirect Costs - Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.

5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the assurances which are part of this agreement.

7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.

8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before August 14, 2020, or such subsequent date as may be prescribed in writing by the FAA.

9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor

must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

11. **System for Award Management (SAM) Registration And Universalldentifier.**

    A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at http://www.sam.gov).

    B. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at https://sam.gov/SAM/pages/public/index.jsf.

12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

    The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.

    The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

    An informal letter amendment has the same force and effect as a formal grant amendment.

14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.

15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

16. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the

United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

    A. May not be increased for a planning project;

    B. May be increased by not more than 15 percent for development projects if funds are available;

    C. May be increased by not more than 15 percent for land project if funds are available.

18. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at http://harvester.census.gov/facweb/. Provide one copy of the completed audit to the FAA if requested.

19. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR §180.200, the Sponsor must:

    A. Verify the non-federal entity is eligible to participate in this Federal program by:

        1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or

        2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or

        3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.

    B. Require prime contractors to comply with 2 CFR §180.330 when entering into lower-tier transactions (e.g. Sub-contracts).

    C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.

20. **Ban on Texting While Driving.**

    A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

        1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.

        2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

            a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

            b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

    B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

21. **AIP Funded Work Included in a PFC Application.**

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this award until project work addressed under this award is removed from an approved PFC application by amendment.

22. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated March 2014, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.

23. Employee Protection from Reprisal.

A. Prohibition of Reprisals –

1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:

   i. Gross mismanagement of a Federal grant;
   ii. Gross waste of Federal funds;
   iii. An abuse of authority relating to implementation or use of Federal funds;
   iv. A substantial and specific danger to public health or safety; or
   v. A violation of law, rule, or regulation related to a Federal grant.

2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:

   i. A member of Congress or a representative of a committee of Congress;
   ii. An Inspector General;
   iii. The Government Accountability Office;
   iv. A Federal office or employee responsible for oversight of a grant program;
   v. A court or grand jury;
   vi. A management office of the grantee or subgrantee; or
   vii. A Federal or State regulatory enforcement agency.

3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.

4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b)

6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under41 U.S.C. § 4712(c).

24. **2018 FAA Reauthorization.** This grant agreement is subject to the terms and conditions contained herein including the terms known as the Grant Assurances as they were published in the Federal Register on April 3, 2014. On October 5, 2018, the FAA Reauthorization Act of 2018 made certain amendments to 49 U.S.C. chapter 471. The Reauthorization Act will require FAA to make certain amendments to the assurances in order to best achieve consistency with the statute. Federal law requires that FAA publish any amendments to the assurances in the Federal Register along with an opportunity to comment. In order not to delay the offer of this grant, the existing assurances are attached herein; however, FAA shall interpret and apply these assurances consistent with the Reauthorization Act. To the extent there is a conflict between the

assurances and Federal statutes, the statutes shall apply. The full text of the Act is at https://www.congress.gov/bill/115th-congress/house-bill/302/text.

SPECIAL CONDITIONS

25. **Plans and Specifications Prior to Bidding.** The Sponsor agrees that it will submit plans and specifications for FAA review prior to advertising for bids.

26. **Design Grant.** This grant agreement is being issued in order to complete the design of the project. The Sponsor understands and agrees that within 2 years after the design is completed that the Sponsor will accept, subject to the availability of the amount of federal funding identified in the Airport Capital Improvement Plan (ACIP), a grant to complete the construction of the project in order to provide a useful and useable unit of work. The Sponsor also understands that if the FAA has provided federal funding to complete the design for the project, and the Sponsor has not completed the design within four (4) years from the execution of this grant agreement, the FAA may suspend or terminate grants related to the design.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

Matthew Di Giulian
Matthew Di Giulian (Jul 7, 2020 13:45 EDT)

(Signature)

Matthew Di Giulian

(Typed Name)

Manager, Beckley AFO

(Title of FAA Official)

The City of Morgantown

Office of the City Engineer

Memorandum

To: Emily Muzzarelli, P.E.

Interim City Manager & Assistant City Manager

From: J. Drew Gatlin
Staff Engineer

Date: July 15, 2020

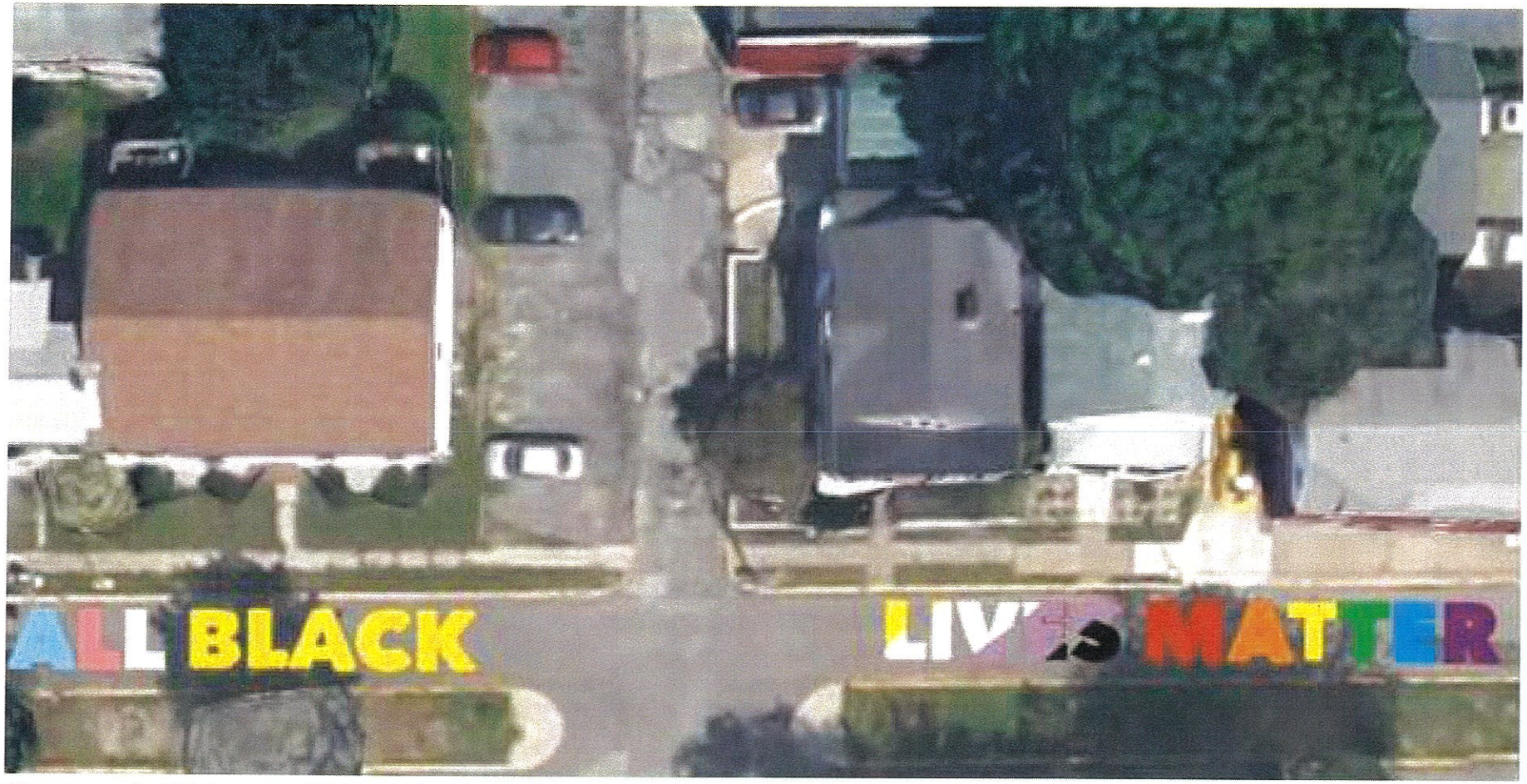
Re: Actions of Traffic Commission

The Morgantown Traffic Commission and Pedestrian Safety Board, in their July meetings, have moved to support the installation of the themed crosswalk submitted to them by Ash Bray. The themed crosswalk will be located on Arch Street at Green Street. Attached is a drawing showing the location and design of the themed crosswalk.

In their July meetings, Morgantown Traffic Commission and Pedestrian Safety Board have also moved to support the installation of street art near the WVU Center for Black Culture and Research on either Spruce Street or Prospect Street. Attached is a drawing showing the design of the street art and suggestions for the location.

Decorative Crosswalk Citizen Request: BLM

Crosswalk on Arch Street at Green Street



Design 1: This would be a painted road installation. This example is along Arch Street, but would also work down Spruce and Prospect near the WVU Center for Black Culture and Research. We ask that this be a community-led installation, allowing members of the Black, POC, and/or Queer communities to participate in the painting of this installation.