



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

AMENDED AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
June 2, 2020
7:00 p.m.

City buildings remain closed to the public 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 may complete the form at <http://www.morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-M-71> 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. You 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 06/02/2020" 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. **APPROVAL OF MINUTES:** May 19, 2020, Special Meeting minutes; May 19, 2020, Regular Meeting minutes; May 26, 2020, Special Meeting minutes; May 26, 2020, Committee of the Whole Meeting minutes

4. **CORRESPONDENCE:** **Edward Cordwell Proclamation**

5. **PUBLIC HEARINGS:**

A. AN ORDINANCE AMENDING THE FY 2019-2020 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. AN ORDINANCE AMENDING THE FY 2019-2020 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

6. **UNFINISHED BUSINESS:**

A. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AMENDING THE FY 2019-2020 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 (First reading May 19, 2020)

B. Consideration of APPROVAL of (SECOND READING) of AN ORDINANCE AMENDING THE FY 2019-2020 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 (First reading May 19, 2020)

C. BOARDS & COMMISSIONS:

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

8. SPECIAL COMMITTEE REPORTS:

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 AUTHORIZING AN EASEMENT TO SEGRA AT THE MORGANTOWN MUNICIPAL AIRPORT

B. AN ORDINANCE AUTHORIZING AN EASEMENT TO CITYNET AT THE MORGANTOWN MUNICIPAL AIRPORT

C. AN ORDINANCE ACCEPTING EASEMENT AT RIVERVIEW DRIVE

10. NEW BUSINESS:

A. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AUTHORIZING A PLANNING AND ZONING CODE TEXT AMENDMENT FOR SECTIONS 1329.02 AND 1331.05 AS THEY RELATE TO PUBLIC AND PRIVATE EV CHARGING STATIONS

B. Consideration of APPROVAL of (FIRST READING) of AN ORDINANCE AUTHORIZING A ZONING MAP AMENDMENT FOR WEST VIRGINIA HOSPITALS (445 VAN VOORHIS ROAD)

11. CITY MANAGER'S REPORT:

Information:

A. Response to Encampment Situation in Lower Greenmont

B. City Council's upcoming Strategic Planning Workshop

C. Reminder of Rescheduled Election Date – June 9, 2020

D. City's COVID – 19 Response Update

New Business:

A. Schedule Hearing on Application for Nuisance Abatement Declaration Against Problem Property Owner – 625 Pennsylvania Avenue, 324 Dewey Street, and 619 Brockway Avenue

B. Eighth Street Pedestrian Project & Blue Curb Removal

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 May 19, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, May 19, 2020, at 6:20 p.m.

City buildings remain closed to the public 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 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 were Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, and Council Members Zackery Cruze (arrival near adjournment), Jenny Selin, Ron Dulaney (arrival after call to order), Dave Harshbarger, and Barry Wendell.

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 Board and Commissions. Motion by Councilor Selin, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:22 p.m.

BOPARC Commission

6:00 p.m. - Susan Klingensmith

ADJOURNMENT:

There being no further business, motion by Councilor Selin, second by Councilor Harshbarger, to adjourn the meeting. Time: 6:59 p.m.

City Clerk

Mayor

City of Morgantown

SPECIAL MEETING May 26, 2020

The Special Meeting of the Common Council of the City of Morgantown was held via Webex on Tuesday, May 26, 2020, at 6:06 p.m.

City buildings remain closed to the public 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 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 were Mayor William A. Kawecki, and Council Members Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell. Deputy Mayor Rachel Fetty and Zackery Cruze were 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 Board and Commissions. Motion by Councilor Dulaney, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:09 p.m.

Traffic Commission – Health & Wellness Commission

6:00 p.m. – Saba Ashfaq – Traffic Commission 4th Ward

6:20 p.m. – Andrew Galland – Health & Wellness Commission

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Dulaney, to adjourn the meeting. Time: 6:58 p.m.

City Clerk

Mayor

City of Morgantown

COMMITTEE OF THE WHOLE MEETING

May 26, 2020

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 may complete the form at <http://morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-M-66> 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. You 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 05/26/2020" and indicate in the body of the email if you would like your comment read aloud during the public portion of the meeting.

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held by via Webex on Tuesday, May 26, 2020, at 7:12 p.m.

PRESENT: Interim City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor William A. Kawecki, Deputy Mayor Rachel Fetty, Council Members Zack Cruze, Jenny Selin, Ron Dulaney, Dave Harshbarger, and Barry Wendell.

The meeting was called to order by Deputy Mayor Fetty.

PRESENTATIONS:

1. Morgantown Parking Authority's Upcoming Projects – Dana McKenzie

Morgantown Parking Authority Dana McKenzie presented council with information regarding upcoming projects for the Morgantown Parking Authority. The projects include replacing the housings in 510 space meters in downtown parking areas and upgrading from a cash key to a Smart Card for meters. Assessment for repair of the University Avenue parking garage is \$1.8 million.

PUBLIC PORTION:

Deputy Mayor Fetty opened the public portion and asked if there was anyone wishing to speak.

Mollie Kennedy expressed the importance of protecting the homelessness population during the COVID – 19 pandemic, and stated that the homeless are being blamed for property crime occurring in the city during this time. She expressed her concerns with the way the homeless population were being treated.

Monongalia County Delegate Danielle Walker expressed the importance of protecting the homeless population during the COVID – 19 pandemic, and stated that city residents should not be permitted to harass homeless individuals. She expressed her concerns with the way the homeless population were being treated.

Julia Hamilton requested clarification from the city attorney regarding the section of city code that stated that camping on city property is illegal. She also stated that city residents and code enforcement should not be permitted to harass homeless individuals.

Danielle Ludwig expressed the importance of protecting the homeless population during the COVID – 19 pandemic, and stated that city residents should not be permitted to harass homeless individuals. She expressed her disappointment and concerns with the way the homeless population were being treated.

The following expressed the importance of protecting the homeless population during the COVID – 19 pandemic:

- Gage Zipperor
- Jeff Marsh
- Brent Stewart
- Nicole Rose

There being no one else wishing to speak, Deputy Mayor Fetty closed the Public Portion.

ITEMS FOR DISCUSSION:

1. Ordinance authorizing a Planning and Zoning Code Text Amendment for Sections 1329.02 and 1331.05 as they relate to Public and Private EV Charging Stations

City of Morgantown

Director of Development Services Chris Fletcher explained that approval of the ordinance would allow an amendment to the Planning and Zoning Code to add electric vehicle charging station uses. After discussion, this item was moved to June 2, 2020 Regular Meeting Agenda.

2. Ordinance authorizing a Zoning Map Amendment for West Virginia University Hospitals (445t Van Voorhis Road)

Director of Development Services Chris Fletcher explained that approval of the ordinance would allow West Virginia University Hospitals to redevelop the former Fieldcrest Hall site and build a structure to further its medical operations. After discussion, this item was moved to the June 2, 2020, Regular Meeting Agenda.

3. Ordinances authorizing Easements to Segra and CityNet at the Morgantown Municipal Airport

Interim City Manager Emily Muzzarelli explained that approval of these ordinances would allow a right-of-way easement to Segra and CityNet at the Morgantown Municipal Airport as part of the Mileground Widening Project. After discussion, this item was moved to the June 2, 2020, Regular Meeting agenda.

4. Ordinance accepting easement at Riverview Drive

Interim City Manager Emily Muzzarelli explained that approval of the ordinance would allow an easement to the owners of a Riverview Drive parcel to create a campus connector trail. After discussion, this item was moved to the June 2, 2020, Regular Meeting agenda.

5. City Council Elections and Terms of Office

Interim City Manager Emily Muzzarelli explained that this item was presented as opportunity for council to discuss term limits for city council and election cycles. The city will place potential options on its website for public viewing and will accept public input on the options. After discussion, this item was moved to the June 30, 2020, Committee of the Whole Meeting agenda.

ADJOURNMENT:

There being no further business, motion by Councilor Wendell, second by Councilor Dulaney, to adjourn the meeting. Time: 9:25 p.m.

City Clerk

Mayor



Office of the Mayor

The City of Morgantown

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

Proclamation

honoring

Edward Cordwell

Whereas, on behalf of the City of Morgantown, I wish to record our deep sorrow over the passing of Mr. Edward Cordwell on April 27, 2020; and

Whereas, Mr. Cordwell was a beloved father, friend, and community volunteer, serving approximately thirty-three (33) years on the Board of Park and Recreation Commission (BOPARC); and

Whereas, Mr. Cordwell was appointed as a board member to BOPARC on July 1, 1985, and served admirably until his passing on April 27, 2020, demonstrating a commitment to the goals and mission of BOPARC. It was stated that as a board member he was loyal and lively, and dealt with park issues directly with a “twinkle in his eye”; and

Whereas, he was a native of Morgantown and an accomplished, well-respected individual instrumental in the establishment and success of many BOPARC projects and programs, including youth sports leagues, Jack Roberts Park, the Morgantown Ice Arena, and BOPARC Softball, and

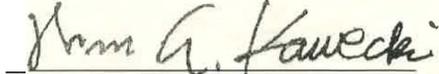
Whereas, his life was dedicated to the best interests of the community and his family, and the City of Morgantown along with Edward Cordwell’s family are blessed to have known him and been a part of his life, and

Whereas, the City of Morgantown and its citizens wish to honor Edward Cordwell for his distinguished service and unwavering commitment to Morgantown.

Now, therefore, I, William A. Kawecki, Mayor of the City of Morgantown, on behalf of the entire City Council on this 2nd day of June 2020, do hereby wish to honor the service of Edward Cordwell to the citizens of the City of Morgantown. We express our gratitude to Edward Cordwell and his family for his service to Morgantown.

Seal




William A. Kawecki, Mayor

AN ORDINANCE AMENDING THE FY 2019-2020 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 2019-2020 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 04) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REQUEST FOR REVISION TO APPROVED BUDGET

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

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: **2019-2020**
 Fund: **General**
 Revision Number: **4**
 Pages: **1 of 3**

City of Morgantown
 GOVERNMENT ENTITY

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

389 Spruce Street
 STREET OR PO BOX

Municipality
 Government Type

Morgantown 26508
 CITY ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
301-01	Property Taxes - Current Expense (Page 3-Net)	4,345,398		75,000	4,270,398
304	Excise Tax on Utilities	1,195,000		55,000	1,140,000
305	Business and Occupation Tax	15,600,000	775,000		16,375,000
306	Wine & Liquor Tax	606,000	54,000		660,000
308	Hotel Occupancy Tax	850,000		50,000	800,000
309	Amusement Tax	10,000		5,000	5,000
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			428,000		

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
409	Mayor's Office	11,488		1,500	9,988
410	City Council	68,518		1,000	67,518
412	City Manager's Office	942,928		12,000	930,928
414	Finance Office	1,092,586	38,900		1,131,486
415	City Clerk	185,999	22,500		208,499
420	Engineering	548,204		88,500	459,704
422	Personnel Office	446,710		30,400	416,310
436	Building Inspection	1,226,609	29,000		1,255,609
437	Planning & Zoning	417,800		92,500	325,300
439	Data Processing	365,010		21,000	344,010
444	Contributions / Transfers to Other Funds	5,760,440	175,000		5,935,440
NET INCREASE/(DECREASE) Expenditures			428,000		

APPROVED BY THE STATE AUDITOR

BY: Deputy State Auditor, Local Government Services Division Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

EXPENDITURES (CONT'D)

LGSD: BR City of Morgantown

City of Morgantown

CONTROL NUMBER:

2019-2020

General

4

BUDGET REVISION REQUEST-SUPPLEMENT

FY

FUND

REV#

ACCOUNT NUMBER	ACCOUNT CATEGORY	PREVIOUSLY APPROVED AMOUNT	INCREASE	DECREASE	REVISED AMOUNT
699	Contingencies*	272,884	16,000		288,884
700	Police Department	9,190,187	36,000		9,226,187
706	Fire Department	6,562,007	120,000		6,682,007
750	Streets and Highways	2,857,090	12,000		2,869,090
800	Garbage Department	1,287,000	263,000		1,550,000
900	Parks & Recreation	1,618,400		12,500	1,605,900
901	Visitors Bureau	425,000		25,000	400,000
	#N/A				
NET INCREASE/(DECREASE) Expenditures (this page)					409,500

AN ORDINANCE AMENDING THE FY 2019-2020 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 2019-2020 Annual Budget of the Coal Severance Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

Mayor

Filed:

Recorded:

City Clerk

REQUEST FOR REVISION TO APPROVED BUDGET

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

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: **2019-2020**
 Fund: **002**
 Revision Number: **2**
 Pages: **1 of 1**

City of Morgantown
 GOVERNMENT ENTITY

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

389 Spruce Street
 STREET OR PO BOX

Municipality
 Government Type

Morgantown 26508
 CITY ZIP CODE

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
310	Coal Severance Tax	80,000		2,500	77,500
	#N/A				
NET INCREASE/(DECREASE) Revenues (ALL PAGES)			-2,500		

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	80,500		2,500	78,000
	#N/A				
NET INCREASE/(DECREASE) Expenditures			-2,500		

APPROVED BY THE STATE AUDITOR
 BY: _____ Date _____
 Deputy State Auditor, Local Government Services Division

AUTHORIZED SIGNATURE
 OF ENTITY

APPROVAL
 DATE

**AN ORDINANCE AUTHORIZING AN EASEMENT TO SEGRA AT THE
MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached easement agreement, which is incorporated by reference into this Ordinance, together with any ancillary documents necessary to the easement.

This ordinance is effective upon adoption.

First Reading: _____
Mayor

Second Reading: _____

Adopted: Clerk

Filed:

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this ____ day of _____, 2020, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, GRANTOR, and LUMOS NETWORKS OF WEST VIRGINIA, INC., a West Virginia corporation duly authorized to conduct business in the state of West Virginia and operating under the registered tradename Segra, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the payment of **Two Thousand Two Hundred Seventy-eight dollars and eighty cents (\$2,278.80)**, cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration hereinafter detailed, GRANTOR does now hereby grant and convey unto the GRANTEE, its successors and/or assigns, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, operating, maintaining, and removing the following:

- (1) approximately **728 feet (728')** of subsurface 4-inch high-density polyethylene conduit housing fiber optic cable,
- (2) A single aboveground pole, not to exceed **39** feet in height, in the location identified in the FAA 1A Survey Certification and subject to all conditions in the Determination of No Hazard to Air Navigation included in **Exhibit 1** to this Agreement, or as authorized by application approved by GRANTOR and under FAA form 7460-1 and in adherence to the Grant Assurances required under Federal Aviation order 5190.6b, or the successor forms or orders thereto.
- (3) Related facilities that are necessary and appurtenant to the facilities identified in the foregoing paragraphs (1) and (2) such as conductor, transformers, anchors, guys, and appurtenances related to the facilities, provided that such facilities are placed underground or are authorized by a Determination of No Hazard to Air Navigation issued by FAA.

in and upon the part of the property of Grantor described herein and lying and being within the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia., and shown on Tax Map 32A, Parcel 1, being a part of the property conveyed to The City of Morgantown in a deed of record with the Office of the Clerk of Monongalia County at Deed Book 364, page 469 (the "Property").

The right-of-way and easement shall encompass the following area (the "Easement Area"):

15' Permanent Utility Easement

Beginning at an existing Mon Power utility pole bearing number H3-379 which bears, North 21 degrees 54 minutes 50 seconds West, a distance of 16.63 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469);
Thence, through said N/F City of Morgantown (Parcel 1) for thirteen (13) lines, North 35 degrees 41 minutes 45 seconds East, a distance of 19.96 feet to a proposed utility pole;
Thence, North 65 degrees 28 minutes 50 seconds East, a distance of 16.73 feet to a point;
Thence, North 52 degrees 57 minutes 17 seconds East, a distance of 12.70 feet to a point;
Thence, North 41 degrees 14 minutes 39 seconds East, a distance of 10.95 feet to a point;
Thence, North 22 degrees 10 minutes 30 seconds East, a distance of 27.34 feet to a point;
Thence, North 04 degrees 06 minutes 16 seconds East, a distance of 227.72 feet to a point;

Thence, North 08 degrees 22 minutes 49 seconds East, a distance of 107.99 feet to a point;
Thence, North 09 degrees 12 minutes 03 seconds East, a distance of 58.40 feet to a point;
Thence, North 19 degrees 33 minutes 32 seconds East, a distance of 7.50 feet to a point;
Thence, North 19 degrees 32 minutes 38 seconds East, passing through a Proposed Underground Electric pull box at a distance of 7.50 feet for a total distance 19.96 feet to a point, said proposed permanent utility easement width for this call is 15.00 feet left and 7.50 feet right for a total width of 22.50 feet;
Thence, North 19 degrees 31 minutes 44 seconds East, a distance of 90.61 feet to a point;
Thence, North 22 degrees 45 minutes 27 seconds East, a distance of 99.73 feet to a point;
Thence, North 28 degrees 49 minutes 41 seconds East, a distance of 8.43 feet to a point on the CL of a Proposed 10' Permanent Utility Easement;
Thence, leaving said CL of Proposed 10' Permanent Utility Easement and continuing through said N/F City of Morgantown (Parcel 1) for six (6) lines, North 28 degrees 52 minutes 23 seconds East, a distance of 88.04 feet to a point;
Thence, North 32 degrees 02 minutes 40 seconds East, a distance of 28.45 feet to a point;
Thence, North 42 degrees 34 minutes 25 seconds East, a distance of 17.62 feet to a point;
Thence, North 51 degrees 03 minutes 10 seconds East, a distance of 15.04 feet to a point;
Thence, North 58 degrees 15 minutes 53 seconds East, a distance of 23.33 feet to a point;
Thence, North 59 degrees 45 minutes 20 seconds East, a distance of 320.22 to the Point of Terminus.

The Permanent Utility Easement shall be 15.00 feet in width, 7.50 feet on either side of the above-described centerline unless otherwise noted having a total area of 0.42 acres more or less, as shown on an exhibit and made a part of this description.

10' Permanent Utility Easement

Beginning at a point on a Proposed 15' Permanent Utility Easement which bears, North 14 degrees 06 minutes 06 seconds East, a distance of 698.39 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469);

Thence, leaving said Proposed 15' Permanent Utility Easement and through said N/F City of Morgantown (Parcel 1), South 61 degrees 07 minutes 51 seconds East, a distance of 70.37 feet to the Point of Terminus.

The Permanent Utility Easement shall be 10.00 feet in width, 5.00 feet on either side of the above-described centerline having a total area of 629 square feet more or less, as shown on a exhibit and made a part of this description.

The location of said rights-of-way and easements are more particularly shown upon the drawing and description attached as **Exhibit 1** to this Agreement. There is also granted such reasonable temporary easements for construction and burial that may be needed by the GRANTEE, which temporary easements shall not interfere with airport operations and shall extend no further than thirty (30) feet on either side of the Easement Area

For the consideration aforesaid, GRANTOR does now also hereby grant and convey unto the GRANTEE, its contractors, licensees, lessees, sublessees, successors and/or assigns, the right of ingress, egress, and regress to and from the Easement Area for the purposes described in this Agreement and subject to the conditions of this Agreement.

The facility(ies) and/or structure(s) shall be constructed, maintained, and repaired at GRANTEE's sole cost and expense.

The rights granted in this Agreement, and all entry upon the Easement Area and any work to construct, install, maintain, and/or repair the facility(ies) and/or structure(s) (the “Work”), shall be subject to the following conditions:

(a) all Work shall be performed by GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, as expeditiously as possible in accordance with good construction practices and so as to minimize interference with the use of the GRANTOR’s property;

(b) any surface or subsurface damage to paved areas or other improvements in the GRANTOR’s property caused in whole or in part by GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, in connection with the Work shall be promptly repaired by Grantee to a condition equal to that existing before any such Work or actions were undertaken, or as directed by the City Engineer; and

(c) Whenever entry onto GRANTOR’s property is required for construction, maintenance, or repairs, GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, shall obtain approval from an authorized representative of GRANTOR prior to entry, and shall conduct such entry only at such times as permitted by Grantor, provided that GRANTOR shall exercise its best efforts to ensure prompt approval of entry and approval shall not be unreasonably withheld;

(d) GRANTOR will not be responsible for repair or replacement of any item or material placed in the property pursuant to this Agreement, or of any item relying upon materials or items placed in the property;

(e) In the event the property or work of GRANTEE would compromise the safety of life or property upon or adjacent to GRANTOR’s property, at the direction of the City Engineer, GRANTEE shall promptly repair the condition compromising safety and restore the surface or subsurface damage to GRANTOR’s property to a condition equal to that existing before any such Work or actions were undertaken.

(f) GRANTOR retains the right to fill, excavate, erect structures upon, and otherwise alter the ground and elevation thereof above GRANTEE’s facilities placed pursuant to this easement and right-of-way agreement, and GRANTOR shall not be responsible for any costs incurred by GRANTEE as a result of such activities. Each and every obligation of GRANTEE to repair or restore property shall include the duty to restore the property to the elevation, contour, and condition of the property as it existed immediately prior to GRANTEE’s Work, regardless of whether those conditions were the conditions in existence on the date of this Agreement;

(g) GRANTEE will place, replace, repair, maintain, and otherwise access all facilities authorized by this right-of-way and easement agreement by directional boring and will not perform excavation to access such facilities, subject only to the following exceptions:

(1) placement of the aboveground pole and placement or repair of lines or wires that may be attached thereto;

(2) upon prior written approval of GRANTOR to access facilities by excavation or other means.

(h) If requested by GRANTOR, GRANTEE shall relocate said facilities to a mutually agreeable location on GRANTOR’s lands, at GRANTEE’s expense, when determined necessary by GRANTOR in connection with maintenance or improvements to GRANTOR’s property. If GRANTOR requires that relocation will occur outside the Easement Area, the parties will enter into a separate agreement providing for dedication of the new easement area and abandonment of the easement where facilities will no longer be located.

(i) GRANTEE shall name GRANTOR as an additional insured on its insurance policy covering the Work and shall provide evidence of the same upon demand by Grantor. GRANTEE and its successor and assigns do hereby agree to defend, indemnify, hold harmless, and release the City from any and all claims, demands, lawsuits, or liability in any way related to the use of the right-of-way and easement granted in this Agreement, including without limitation the conduct of the Work and the function of any structure(s) placed in the easement area, except for claims based only upon the negligence of GRANTOR, others acting on GRANTOR's behalf, or causes outside of the control of Grantee.

(j) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s) for a period of 6 months, the easement to GRANTEE and its successors and assigns shall terminate, and no additional or other use of the easement area will be permitted; provided, however, that the defense and indemnity obligations of GRANTEE and its successors and assigns shall survive the termination of the easement.

This right-of-way and easement is subject to all exceptions, reservations, conditions, restrictions, easements, protective and restrictive covenants, and rights-of-way of record in the Office of the Clerk of Monongalia County, West Virginia or capable of observation affecting the Property. This right-of-way and easement is subject to all rules and regulations of, and obligations to, the Federal Aviation Administration, including without limiting the generality of the foregoing the "Master Agreement on Terms and Conditions of Accepting Airport Improvement Program Grants" issued by the Federal Aviation Administration, as it may be amended, revised, renamed, or restated.

This Agreement shall be binding upon the parties and their respective successors and/or assigns. The rights of way and easements granted herein shall be appurtenant to and run with the land thereby benefited and burdened.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

DECLARATION OF CONSIDERATION

Under the penalties of fine and imprisonment as provided by law, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities, agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

WITNESS the following signature and seal:

THE CITY OF MORGANTOWN, West Virginia,
a municipal corporation

By: _____
Emily Muzzarelli, P.E.
Its: City Manager

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

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Emily Muzzarelli, The City Manager of City of Morgantown, West Virginia, a municipal corporation, whose name is signed to the foregoing agreement, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as the free act and deed of said corporation, upon authority duly granted.

Given under my hand this ____ day of _____, 2020.

My commission expires: _____.

{SEAL}

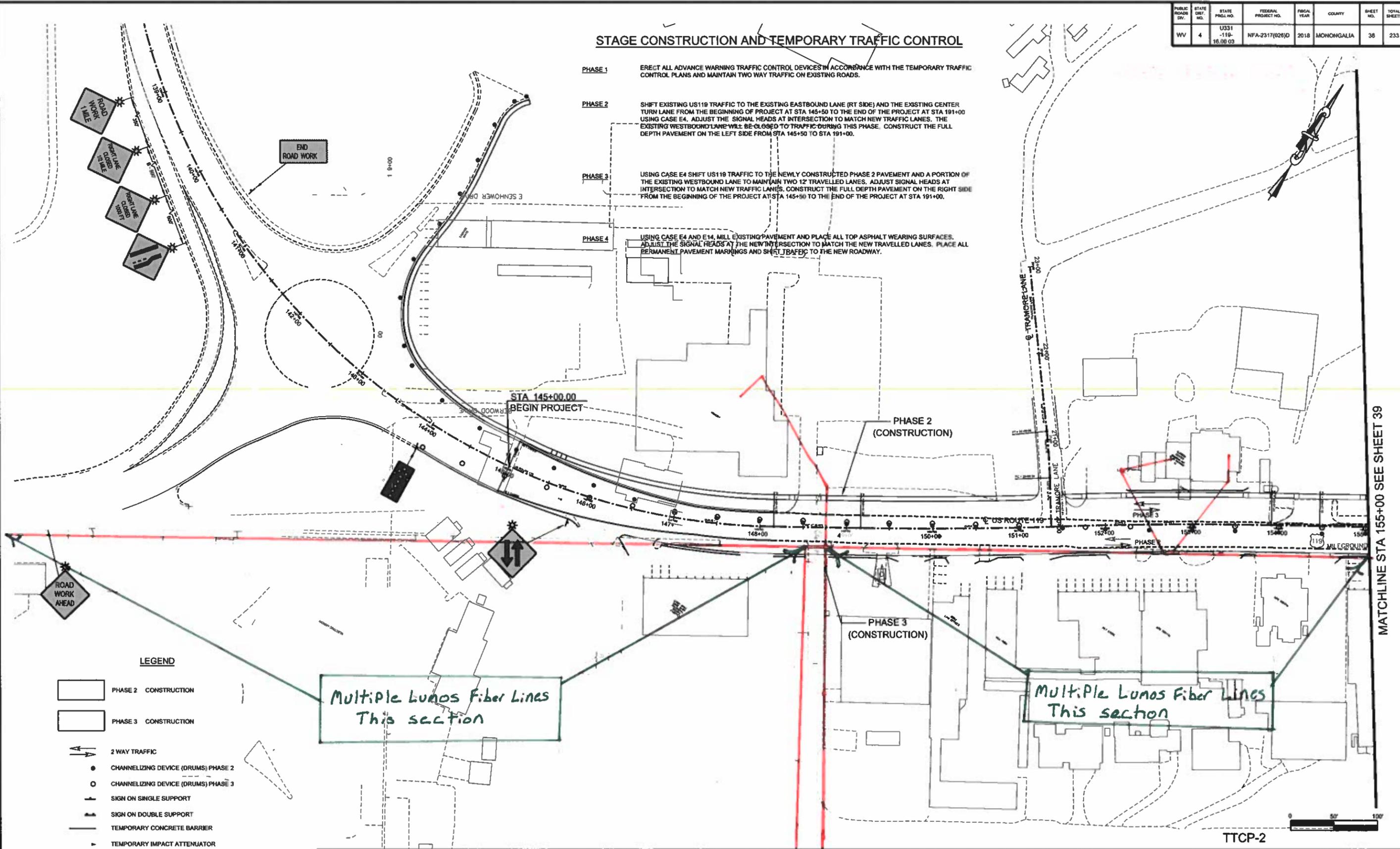
Notary Public

Prepared without title examination on behalf of Grantor by Ryan Simonton, Kay Casto & Chaney, PLLC, 1085 Van Voorhis Rd., Suite 100, Morgantown, WV 26505.

PUBLIC ROAD DIST.	STATE DIST. NO.	STATE PROJ. NO.	FEDERAL PROJECT NO.	FISCAL YEAR	COUNTY	SHEET NO.	TOTAL SHEETS
WV	4	U331-119-16.00 03	NFA-2317(020)D	2018	MONONGALIA	38	233

STAGE CONSTRUCTION AND TEMPORARY TRAFFIC CONTROL

- PHASE 1** ERECT ALL ADVANCE WARNING TRAFFIC CONTROL DEVICES IN ACCORDANCE WITH THE TEMPORARY TRAFFIC CONTROL PLANS AND MAINTAIN TWO WAY TRAFFIC ON EXISTING ROADS.
- PHASE 2** SHIFT EXISTING US119 TRAFFIC TO THE EXISTING EASTBOUND LANE (RT SIDE) AND THE EXISTING CENTER TURN LANE FROM THE BEGINNING OF PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00 USING CASE E4. ADJUST THE SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. THE EXISTING WESTBOUND LANE WILL BE CLOSED TO TRAFFIC DURING THIS PHASE. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE LEFT SIDE FROM STA 145+50 TO STA 191+00.
- PHASE 3** USING CASE E4 SHIFT US119 TRAFFIC TO THE NEWLY CONSTRUCTED PHASE 2 PAVEMENT AND A PORTION OF THE EXISTING WESTBOUND LANE TO MAINTAIN TWO 12 TRAVELLED LANES. ADJUST SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE RIGHT SIDE FROM THE BEGINNING OF THE PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00.
- PHASE 4** USING CASE E4 AND E14, MILL EXISTING PAVEMENT AND PLACE ALL TOP ASPHALT WEARING SURFACES. ADJUST THE SIGNAL HEADS AT THE NEW INTERSECTION TO MATCH THE NEW TRAVELLED LANES. PLACE ALL PERMANENT PAVEMENT MARKINGS AND SHIFT TRAFFIC TO THE NEW ROADWAY.



LEGEND

- PHASE 2 CONSTRUCTION
- PHASE 3 CONSTRUCTION
- 2 WAY TRAFFIC
- CHANNELIZING DEVICE (DRUMS) PHASE 2
- CHANNELIZING DEVICE (DRUMS) PHASE 3
- SIGN ON SINGLE SUPPORT
- SIGN ON DOUBLE SUPPORT
- TEMPORARY CONCRETE BARRIER
- TEMPORARY IMPACT ATTENUATOR
- TYPE III BARRICADE

Multiple Lunos Fiber Lines
This section

Multiple Lunos Fiber Lines
This section

NO.	REVISION	BY	DATE

Lunos Aerial Fiber 1840'
Lunos Buried Fiber 0'

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
MILEGROUND - AIRPORT ROAD
MONONGALIA COUNTY, WEST VIRGINIA

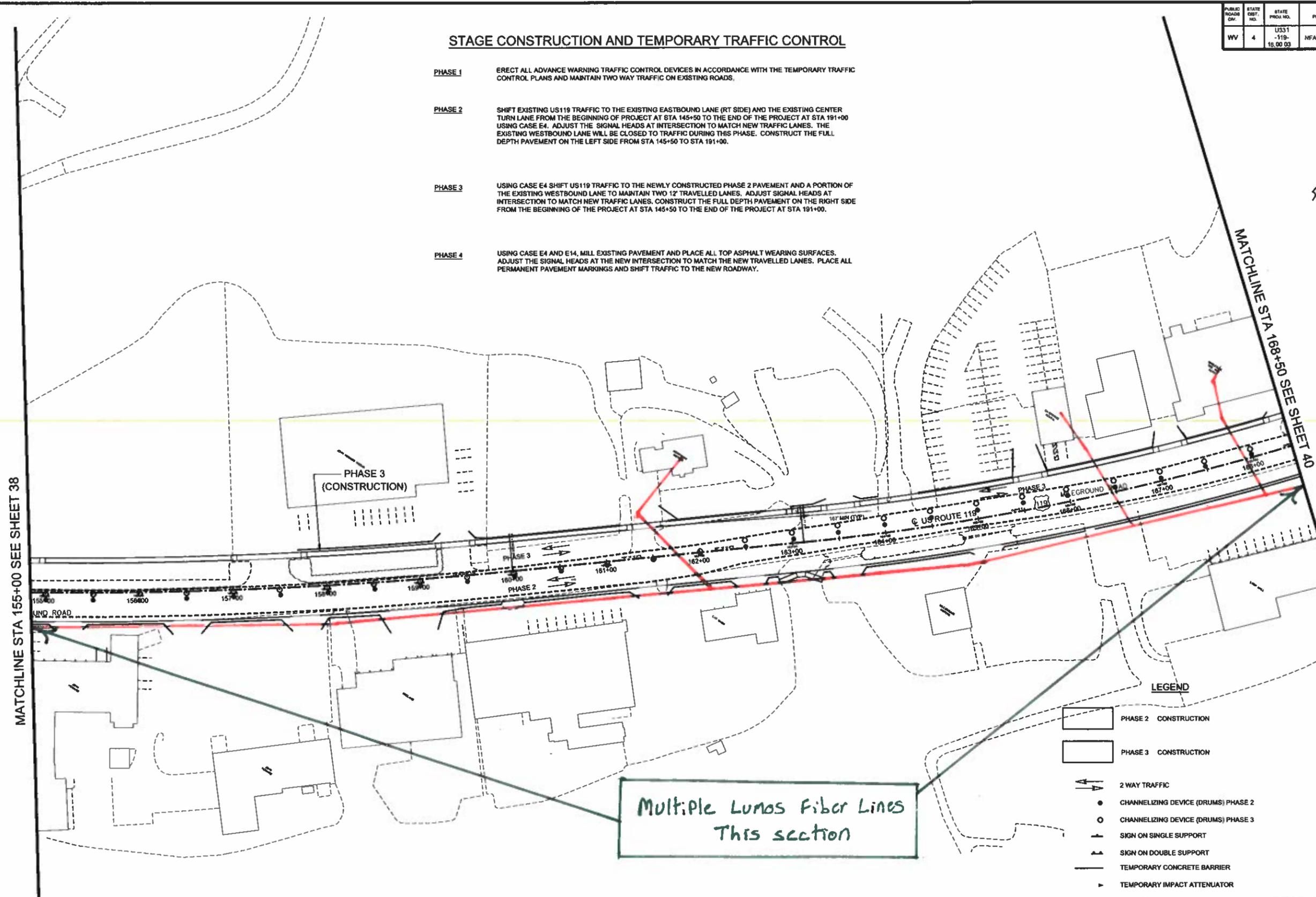
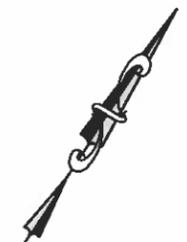
TEMPORARY TRAFFIC CONTROL PLAN

SHEET NO. **38**

PUBLIC ROAD DIST.	STATE DIST. NO.	STATE PROJ. NO.	FEDERAL PROJECT NO.	FISCAL YEAR	COUNTY	SHEET NO.	TOTAL SHEETS
WV	4	US31-119-16.00.03	NFA-2317(026)D	2018	MONONGALIA	39	233

STAGE CONSTRUCTION AND TEMPORARY TRAFFIC CONTROL

- PHASE 1** ERECT ALL ADVANCE WARNING TRAFFIC CONTROL DEVICES IN ACCORDANCE WITH THE TEMPORARY TRAFFIC CONTROL PLANS AND MAINTAIN TWO WAY TRAFFIC ON EXISTING ROADS.
- PHASE 2** SHIFT EXISTING US119 TRAFFIC TO THE EXISTING EASTBOUND LANE (RT SIDE) AND THE EXISTING CENTER TURN LANE FROM THE BEGINNING OF PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00 USING CASE E4. ADJUST THE SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. THE EXISTING WESTBOUND LANE WILL BE CLOSED TO TRAFFIC DURING THIS PHASE. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE LEFT SIDE FROM STA 145+50 TO STA 191+00.
- PHASE 3** USING CASE E4 SHIFT US119 TRAFFIC TO THE NEWLY CONSTRUCTED PHASE 2 PAVEMENT AND A PORTION OF THE EXISTING WESTBOUND LANE TO MAINTAIN TWO 12' TRAVELLED LANES. ADJUST SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE RIGHT SIDE FROM THE BEGINNING OF THE PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00.
- PHASE 4** USING CASE E4 AND E14, MILL EXISTING PAVEMENT AND PLACE ALL TOP ASPHALT WEARING SURFACES. ADJUST THE SIGNAL HEADS AT THE NEW INTERSECTION TO MATCH THE NEW TRAVELLED LANES. PLACE ALL PERMANENT PAVEMENT MARKINGS AND SHIFT TRAFFIC TO THE NEW ROADWAY.



MATCHLINE STA 155+00 SEE SHEET 38

MATCHLINE STA 189+50 SEE SHEET 40

- LEGEND**
- PHASE 2 CONSTRUCTION
 - PHASE 3 CONSTRUCTION
 - 2 WAY TRAFFIC
 - CHANNELIZING DEVICE (DRUMS) PHASE 2
 - CHANNELIZING DEVICE (DRUMS) PHASE 3
 - SIGN ON SINGLE SUPPORT
 - SIGN ON DOUBLE SUPPORT
 - TEMPORARY CONCRETE BARRIER
 - TEMPORARY IMPACT ATTENUATOR
 - TYPE III BARRICADE

Multiple Lumos Fiber Lines
This section



TTCP-3

NO.	REVISION	BY	DATE

Aerial Footage 1607'

Buried 0'

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
MILEGROUND - AIRPORT ROAD
MONONGALIA COUNTY, WEST VIRGINIA

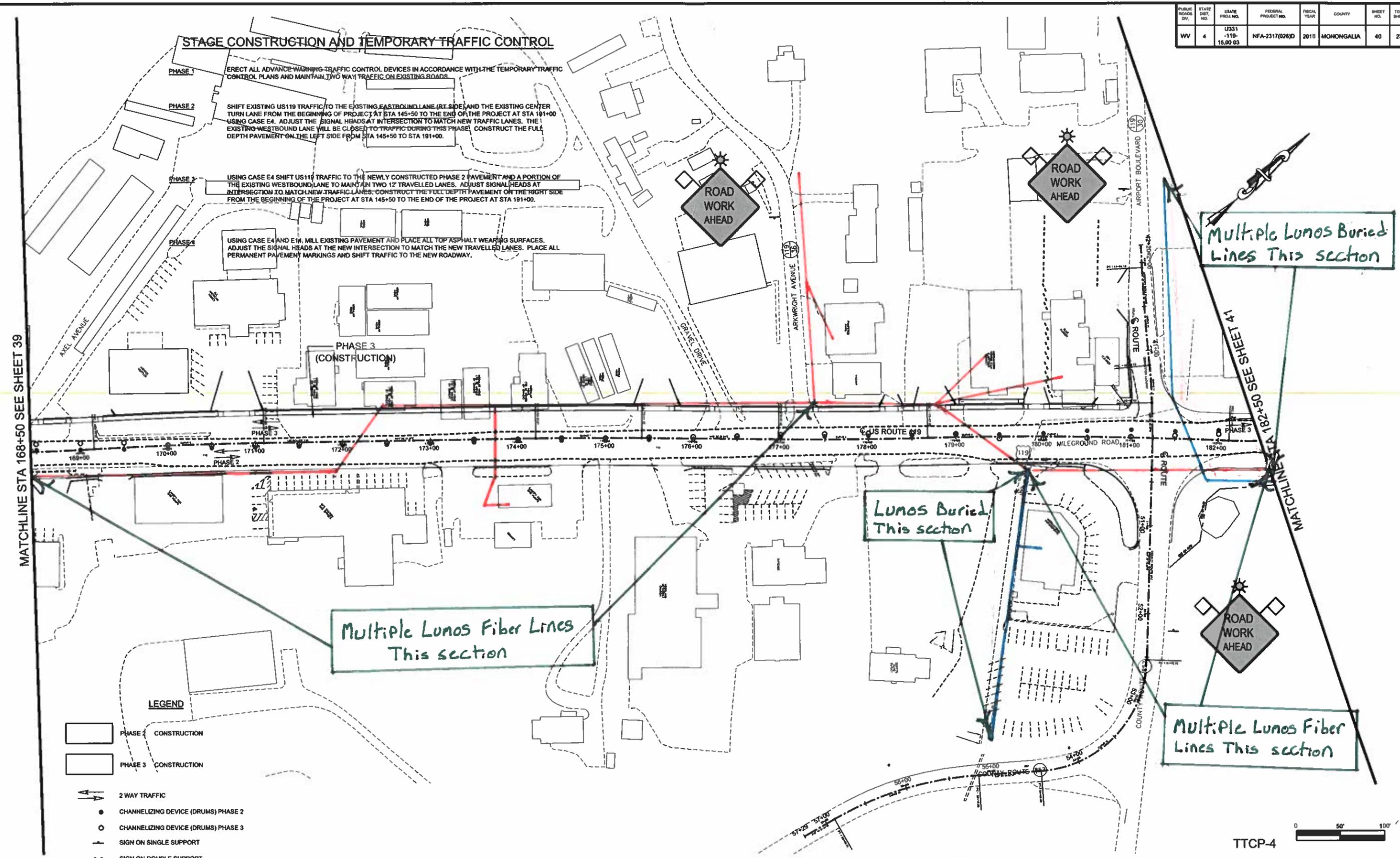
TEMPORARY TRAFFIC CONTROL PLAN

SHEET NO.
39
SEP 18

PUBLIC ROAD DIST.	STATE DIST. NO.	STATE PROJ. NO.	FEDERAL PROJ. NO.	FISCAL YEAR	COUNTY	SHEET NO.	TOTAL SHEETS
WW	4	1331-119-16.00 03	NFA-2317(028)D	2018	MONONGALIA	40	233

STAGE CONSTRUCTION AND TEMPORARY TRAFFIC CONTROL

- PHASE 1**
ERECT ALL ADVANCE WARNING TRAFFIC CONTROL DEVICES IN ACCORDANCE WITH THE TEMPORARY TRAFFIC CONTROL PLANS AND MAINTAIN TWO WAY TRAFFIC ON EXISTING ROADS.
- PHASE 2**
SHIFT EXISTING US 119 TRAFFIC TO THE EXISTING EASTBOUND LANE (RT SIDE) AND THE EXISTING CENTER TURN LANE FROM THE BEGINNING OF PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00 USING CASE E4. ADJUST THE SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. THE EXISTING WESTBOUND LANE WILL BE CLOSED TO TRAFFIC DURING THIS PHASE. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE LEFT SIDE FROM STA 145+50 TO STA 191+00.
- PHASE 3**
USING CASE E4 SHIFT US 119 TRAFFIC TO THE NEWLY CONSTRUCTED PHASE 2 PAVEMENT AND A PORTION OF THE EXISTING WESTBOUND LANE TO MAINTAIN TWO 12' TRAVELLED LANES. ADJUST SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE RIGHT SIDE FROM THE BEGINNING OF THE PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00.
- PHASE 4**
USING CASE E4 AND E14, MILL EXISTING PAVEMENT AND PLACE ALL TOP ASPHALT WEARING SURFACES. ADJUST THE SIGNAL HEADS AT THE NEW INTERSECTION TO MATCH THE NEW TRAVELLED LANES. PLACE ALL PERMANENT PAVEMENT MARKINGS AND SHIFT TRAFFIC TO THE NEW ROADWAY.



Multiple Lunos Fiber Lines This section

Lunos Buried This section

Multiple Lunos Buried Lines This section

Multiple Lunos Fiber Lines This section

- LEGEND**
- PHASE 2 CONSTRUCTION
 - PHASE 3 CONSTRUCTION
 - 2 WAY TRAFFIC
 - CHANNELIZING DEVICE (DRUMS) PHASE 2
 - CHANNELIZING DEVICE (DRUMS) PHASE 3
 - SIGN ON SINGLE SUPPORT
 - SIGN ON DOUBLE SUPPORT
 - TEMPORARY CONCRETE BARRIER
 - TEMPORARY IMPACT ATTENUATOR
 - TYPE III BARRICADE

NO.	REVISION	BY	DATE

Aerial Footage 1910'

Buried 728' 4" HDPE

Page 23 of 55

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
 MILEGROUND - AIRPORT ROAD
 MONONGALIA COUNTY, WEST VIRGINIA

TEMPORARY TRAFFIC CONTROL PLAN

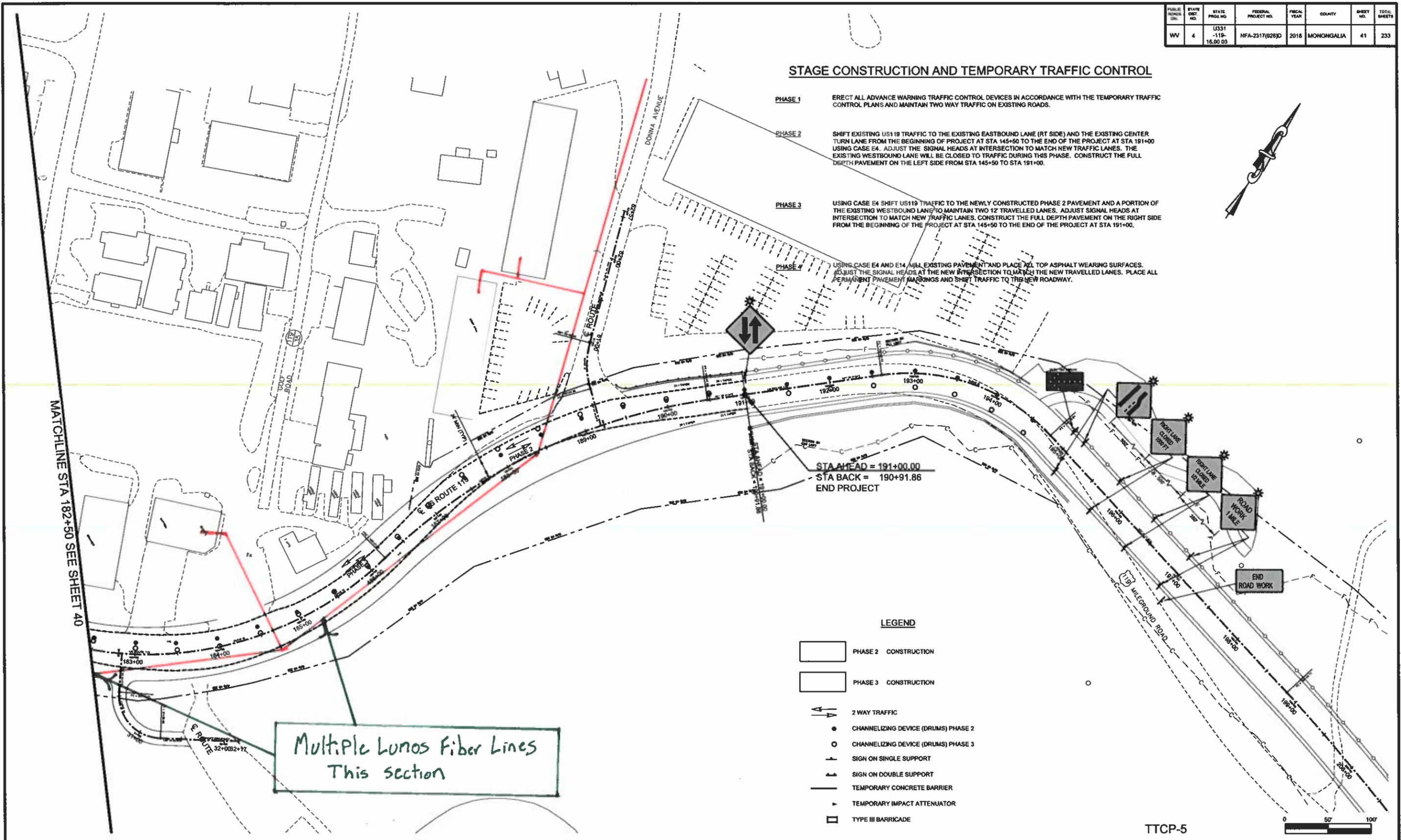
SHEET NO.
40
 SEP 18



PUBLIC WORKS DIST.	STATE DIST. NO.	STATE PROJ. NO.	FEDERAL PROJECT NO.	FISCAL YEAR	COUNTY	SHEET NO.	TOTAL SHEETS
WW	4	1331-119-16.00 03	NFA-2317(028)D	2018	MONONGALIA	41	233

STAGE CONSTRUCTION AND TEMPORARY TRAFFIC CONTROL

- PHASE 1** ERECT ALL ADVANCE WARNING TRAFFIC CONTROL DEVICES IN ACCORDANCE WITH THE TEMPORARY TRAFFIC CONTROL PLANS AND MAINTAIN TWO WAY TRAFFIC ON EXISTING ROADS.
- PHASE 2** SHIFT EXISTING US119 TRAFFIC TO THE EXISTING EASTBOUND LANE (RT SIDE) AND THE EXISTING CENTER TURN LANE FROM THE BEGINNING OF PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00 USING CASE E4. ADJUST THE SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. THE EXISTING WESTBOUND LANE WILL BE CLOSED TO TRAFFIC DURING THIS PHASE. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE LEFT SIDE FROM STA 145+50 TO STA 191+00.
- PHASE 3** USING CASE E4 SHIFT US119 TRAFFIC TO THE NEWLY CONSTRUCTED PHASE 2 PAVEMENT AND A PORTION OF THE EXISTING WESTBOUND LANE TO MAINTAIN TWO 12' TRAVELLED LANES. ADJUST SIGNAL HEADS AT INTERSECTION TO MATCH NEW TRAFFIC LANES. CONSTRUCT THE FULL DEPTH PAVEMENT ON THE RIGHT SIDE FROM THE BEGINNING OF THE PROJECT AT STA 145+50 TO THE END OF THE PROJECT AT STA 191+00.
- PHASE 4** USING CASE E4 AND E14 WITH EXISTING PAVEMENT AND PLACE ALL TOP ASPHALT WEARING SURFACES. ADJUST THE SIGNAL HEADS AT THE NEW INTERSECTION TO MATCH THE NEW TRAVELLED LANES. PLACE ALL PERMANENT PAVEMENT MARKINGS AND SHIFT TRAFFIC TO THE NEW ROADWAY.



STA AHEAD = 191+00.00
 STA BACK = 190+91.86
 END PROJECT

LEGEND

- PHASE 2 CONSTRUCTION
- PHASE 3 CONSTRUCTION
- 2 WAY TRAFFIC
- CHANNELIZING DEVICE (DRUMS) PHASE 2
- CHANNELIZING DEVICE (DRUMS) PHASE 3
- SIGN ON SINGLE SUPPORT
- SIGN ON DOUBLE SUPPORT
- TEMPORARY CONCRETE BARRIER
- TEMPORARY IMPACT ATTENUATOR
- TYPE III BARRICADE

Multiple Lunos Fiber Lines
This section

MATCHLINE STA 182+50 SEE SHEET 40

NO.	REVISION	BY	DATE

Aerial 740'

Buried 0'

Page 24 of 55

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
 MILEGROUND - AIRPORT ROAD
 MONONGALIA COUNTY, WEST VIRGINIA

TEMPORARY TRAFFIC CONTROL PLAN

SHEET NO.
41
 SEP 18

TTCP-5



**AN ORDINANCE AUTHORIZING AN EASEMENT TO CITYNET AT THE
MORGANTOWN MUNICIPAL AIRPORT**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached easement agreement, which is incorporated by reference into this Ordinance, together with any ancillary documents necessary to the easement.

This ordinance is effective upon adoption.

First Reading: _____
Mayor

Second Reading: _____

Adopted: Clerk

Filed:

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this ____ day of _____, 2020, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, GRANTOR, and CITYNET, LLC, a West Virginia limited liability company duly authorized to conduct business in the state of West Virginia, party of the second part, GRANTEE.

WITNESSETH: That for and in consideration of the payment of **Two Thousand Two Hundred Seventy-eight dollars and eighty cents (\$2,278.80)**, cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration hereinafter detailed, GRANTOR does now hereby grant and convey unto the GRANTEE, its successors and/or assigns, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, operating, maintaining, and removing the following:

- (1) approximately _____ **feet** (____) of subsurface 4-inch high-density polyethylene conduit housing fiber optic cable,
- (2) A single aboveground pole, not to exceed **39** feet in height, in the location identified in the FAA 1A Survey Certification and subject to all conditions in the Determination of No Hazard to Air Navigation included in **Exhibit 1** to this Agreement, or as authorized by application approved by GRANTOR and under FAA form 7460-1 and in adherence to the Grant Assurances required under Federal Aviation order 5190.6b, or the successor forms or orders thereto.
- (3) Related facilities that are necessary and appurtenant to the facilities identified in the foregoing paragraphs (1) and (2) such as conductor, transformers, anchors, guys, and appurtenances related to the facilities, provided that such facilities are placed underground or are authorized by a Determination of No Hazard to Air Navigation issued by FAA.

in and upon the part of the property of Grantor described herein and lying and being within the Sixth Ward of the City of Morgantown, Monongalia County, West Virginia., and shown on Tax Map 32A, Parcel 1, being a part of the property conveyed to The City of Morgantown in a deed of record with the Office of the Clerk of Monongalia County at Deed Book 364, page 469 (the "Property").

The right-of-way and easement shall encompass the following area (the "Easement Area"):

15' Permanent Utility Easement

Beginning at an existing Mon Power utility pole bearing number H3-379 which bears, North 21 degrees 54 minutes 50 seconds West, a distance of 16.63 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469);
Thence, through said N/F City of Morgantown (Parcel 1) for thirteen (13) lines, North 35 degrees 41 minutes 45 seconds East, a distance of 19.96 feet to a proposed utility pole;
Thence, North 65 degrees 28 minutes 50 seconds East, a distance of 16.73 feet to a point;
Thence, North 52 degrees 57 minutes 17 seconds East, a distance of 12.70 feet to a point;
Thence, North 41 degrees 14 minutes 39 seconds East, a distance of 10.95 feet to a point;
Thence, North 22 degrees 10 minutes 30 seconds East, a distance of 27.34 feet to a point;
Thence, North 04 degrees 06 minutes 16 seconds East, a distance of 227.72 feet to a point;
Thence, North 08 degrees 22 minutes 49 seconds East, a distance of 107.99 feet to a point;

Thence, North 09 degrees 12 minutes 03 seconds East, a distance of 58.40 feet to a point;
Thence, North 19 degrees 33 minutes 32 seconds East, a distance of 7.50 feet to a point;
Thence, North 19 degrees 32 minutes 38 seconds East, passing through a Proposed Underground Electric pull box at a distance of 7.50 feet for a total distance 19.96 feet to a point, said proposed permanent utility easement width for this call is 15.00 feet left and 7.50 feet right for a total width of 22.50 feet;

Thence, North 19 degrees 31 minutes 44 seconds East, a distance of 90.61 feet to a point;
Thence, North 22 degrees 45 minutes 27 seconds East, a distance of 99.73 feet to a point;
Thence, North 28 degrees 49 minutes 41 seconds East, a distance of 8.43 feet to a point on the CL of a Proposed 10' Permanent Utility Easement;

Thence, leaving said CL of Proposed 10' Permanent Utility Easement and continuing through said N/F City of Morgantown (Parcel 1) for six (6) lines, North 28 degrees 52 minutes 23 seconds East, a distance of 88.04 feet to a point;

Thence, North 32 degrees 02 minutes 40 seconds East, a distance of 28.45 feet to a point;

Thence, North 42 degrees 34 minutes 25 seconds East, a distance of 17.62 feet to a point;

Thence, North 51 degrees 03 minutes 10 seconds East, a distance of 15.04 feet to a point;

Thence, North 58 degrees 15 minutes 53 seconds East, a distance of 23.33 feet to a point;

Thence, North 59 degrees 45 minutes 20 seconds East, a distance of 320.22 to the Point of Terminus.

The Permanent Utility Easement shall be 15.00 feet in width, 7.50 feet on either side of the above-described centerline unless otherwise noted having a total area of 0.42 acres more or less, as shown on an exhibit and made a part of this description.

10' Permanent Utility Easement

Beginning at a point on a Proposed 15' Permanent Utility Easement which bears, North 14 degrees 06 minutes 06 seconds East, a distance of 698.39 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469);

Thence, leaving said Proposed 15' Permanent Utility Easement and through said N/F City of Morgantown (Parcel 1), South 61 degrees 07 minutes 51 seconds East, a distance of 70.37 feet to the Point of Terminus.

The Permanent Utility Easement shall be 10.00 feet in width, 5.00 feet on either side of the above-described centerline having a total area of 629 square feet more or less, as shown on a exhibit and made a part of this description.

The location of said rights-of-way and easements are more particularly shown upon the drawing and description attached as **Exhibit 1** to this Agreement. There is also granted such reasonable temporary easements for construction and burial that may be needed by the GRANTEE, which temporary easements shall not interfere with airport operations and shall extend no further than thirty (30) feet on either side of the Easement Area

For the consideration aforesaid, GRANTOR does now also hereby grant and convey unto the GRANTEE, its contractors, licensees, lessees, sublessees, successors and/or assigns, the right of ingress, egress, and regress to and from the Easement Area for the purposes described in this Agreement and subject to the conditions of this Agreement.

The facility(ies) and/or structure(s) shall be constructed, maintained, and repaired at GRANTEE's sole cost and expense.

The rights granted in this Agreement, and all entry upon the Easement Area and any work to construct, install, maintain, and/or repair the facility(ies) and/or structure(s) (the “Work”), shall be subject to the following conditions:

(a) all Work shall be performed by GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, as expeditiously as possible in accordance with good construction practices and so as to minimize interference with the use of the GRANTOR’s property;

(b) any surface or subsurface damage to paved areas or other improvements in the GRANTOR’s property caused in whole or in part by GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, in connection with the Work shall be promptly repaired by Grantee to a condition equal to that existing before any such Work or actions were undertaken, or as directed by the City Engineer; and

(c) Whenever entry onto GRANTOR’s property is required for construction, maintenance, or repairs, GRANTEE, or its contractors, licensees, lessees, sublessees, successors and/or assigns, shall obtain approval from an authorized representative of GRANTOR prior to entry, and shall conduct such entry only at such times as permitted by Grantor, provided that GRANTOR shall exercise its best efforts to ensure prompt approval of entry and approval shall not be unreasonably withheld;

(d) GRANTOR will not be responsible for repair or replacement of any item or material placed in the property pursuant to this Agreement, or of any item relying upon materials or items placed in the property;

(e) In the event the property or work of GRANTEE would compromise the safety of life or property upon or adjacent to GRANTOR’s property, at the direction of the City Engineer, GRANTEE shall promptly repair the condition compromising safety and restore the surface or subsurface damage to GRANTOR’s property to a condition equal to that existing before any such Work or actions were undertaken.

(f) GRANTOR retains the right to fill, excavate, erect structures upon, and otherwise alter the ground and elevation thereof above GRANTEE’s facilities placed pursuant to this easement and right-of-way agreement, and GRANTOR shall not be responsible for any costs incurred by GRANTEE as a result of such activities. Each and every obligation of GRANTEE to repair or restore property shall include the duty to restore the property to the elevation, contour, and condition of the property as it existed immediately prior to GRANTEE’s Work, regardless of whether those conditions were the conditions in existence on the date of this Agreement;

(g) GRANTEE will place, replace, repair, maintain, and otherwise access all facilities authorized by this right-of-way and easement agreement by directional boring and will not perform excavation to access such facilities, subject only to the following exceptions:

(1) placement of the aboveground pole and placement or repair of lines or wires that may be attached thereto;

(2) upon prior written approval of GRANTOR to access facilities by excavation or other means.

(h) If requested by GRANTOR, GRANTEE shall relocate said facilities to a mutually agreeable location on GRANTOR’s lands, at GRANTEE’s expense, when determined necessary by GRANTOR in connection with maintenance or improvements to GRANTOR’s property. If GRANTOR requires that relocation will occur outside the Easement Area, the parties will enter into a separate agreement providing for dedication of the new easement area and abandonment of the easement where facilities will no longer be located.

(i) GRANTEE shall name GRANTOR as an additional insured on its insurance policy covering the Work and shall provide evidence of the same upon demand by Grantor. GRANTEE and its successor and assigns do hereby agree to defend, indemnify, hold harmless, and release the City from any and all claims, demands, lawsuits, or liability in any way related to the use of the right-of-way and easement granted in this Agreement, including without limitation the conduct of the Work and the function of any structure(s) placed in the easement area, except for claims based only upon the negligence of GRANTOR, others acting on GRANTOR's behalf, or causes outside of the control of Grantee.

(j) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s) for a period of 6 months, the easement to GRANTEE and its successors and assigns shall terminate, and no additional or other use of the easement area will be permitted; provided, however, that the defense and indemnity obligations of GRANTEE and its successors and assigns shall survive the termination of the easement.

This right-of-way and easement is subject to all exceptions, reservations, conditions, restrictions, easements, protective and restrictive covenants, and rights-of-way of record in the Office of the Clerk of Monongalia County, West Virginia or capable of observation affecting the Property. This right-of-way and easement is subject to all rules and regulations of, and obligations to, the Federal Aviation Administration, including without limiting the generality of the foregoing the "Master Agreement on Terms and Conditions of Accepting Airport Improvement Program Grants" issued by the Federal Aviation Administration, as it may be amended, revised, renamed, or restated.

This Agreement shall be binding upon the parties and their respective successors and/or assigns. The rights of way and easements granted herein shall be appurtenant to and run with the land thereby benefited and burdened.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

DECLARATION OF CONSIDERATION

Under the penalties of fine and imprisonment as provided by law, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities, agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

WITNESS the following signature and seal:

THE CITY OF MORGANTOWN, West Virginia,
a municipal corporation

By: _____
Emily Muzzarelli, P.E.
Its: City Manager

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

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that Emily Muzzarelli, The City Manager of City of Morgantown, West Virginia, a municipal corporation, whose name is signed to the foregoing agreement, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as the free act and deed of said corporation, upon authority duly granted.

Given under my hand this ____ day of _____, 2020.

My commission expires: _____.

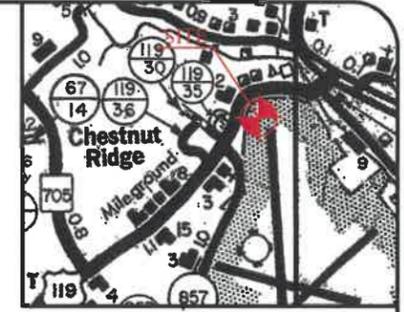
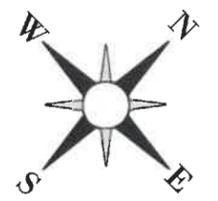
{SEAL}

Notary Public

Prepared without title examination on behalf of Grantor by Ryan Simonton, Kay Casto & Chaney, PLLC, 1085 Van Voorhis Rd., Suite 100, Morgantown, WV 26505.

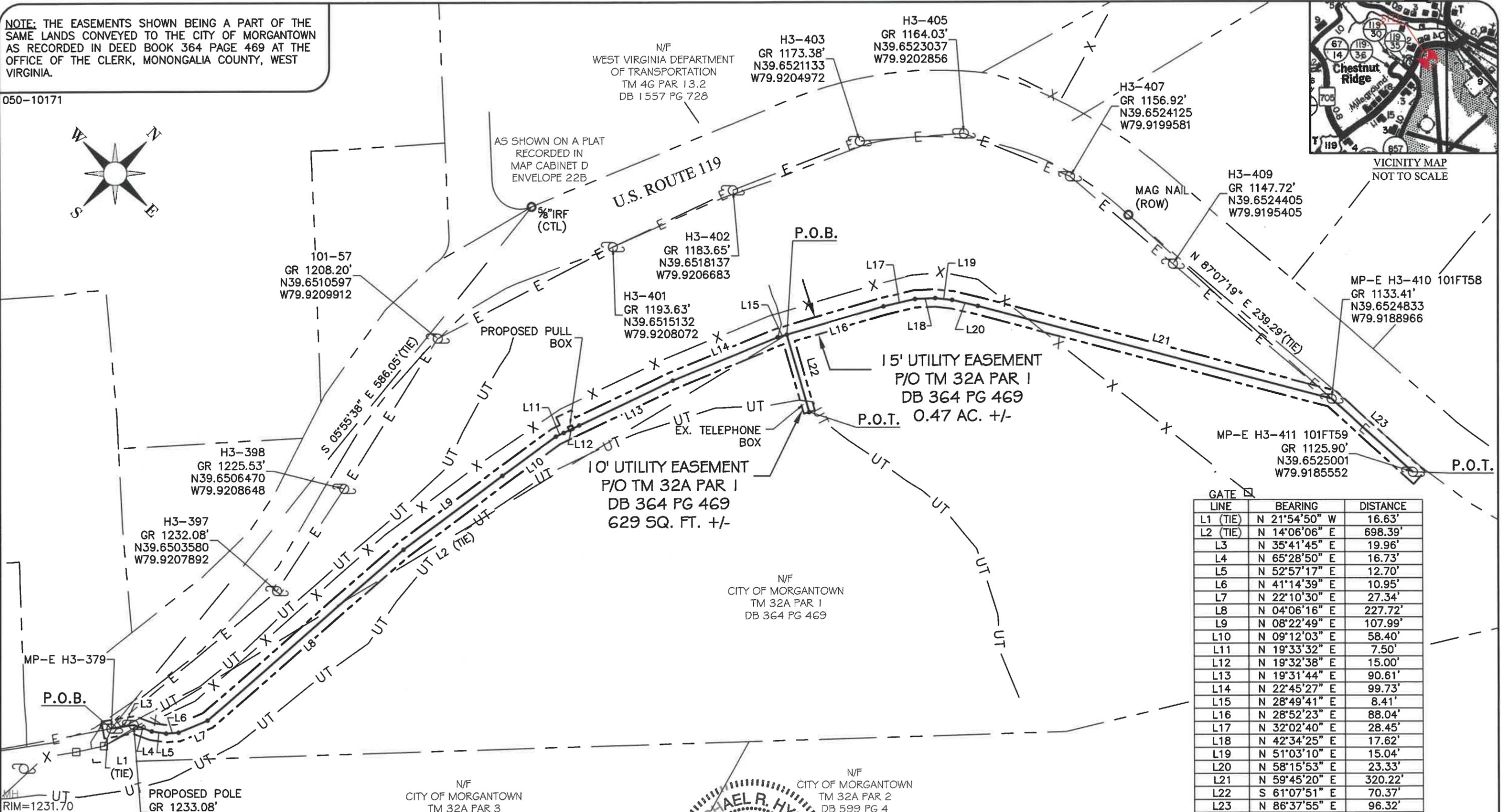
PLOT DATE/TIME: 5/20/2019 10:19am
 CAD FILE: R:\050-10171\CITYNET MORGANTOWN MUNICIPAL AIRPORT SURVEY\CITYNET MORGANTOWN MUNICIPAL AIRPORT.dwg

NOTE: THE EASEMENTS SHOWN BEING A PART OF THE SAME LANDS CONVEYED TO THE CITY OF MORGANTOWN AS RECORDED IN DEED BOOK 364 PAGE 469 AT THE OFFICE OF THE CLERK, MONONGALIA COUNTY, WEST VIRGINIA.

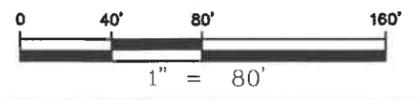


VICINITY MAP NOT TO SCALE

050-10171



LINE	BEARING	DISTANCE
L1 (TIE)	N 21°54'50" W	16.63'
L2 (TIE)	N 14°06'06" E	698.39'
L3	N 35°41'45" E	19.96'
L4	N 65°28'50" E	16.73'
L5	N 52°57'17" E	12.70'
L6	N 41°14'39" E	10.95'
L7	N 22°10'30" E	27.34'
L8	N 04°06'16" E	227.72'
L9	N 08°22'49" E	107.99'
L10	N 09°12'03" E	58.40'
L11	N 19°33'32" E	7.50'
L12	N 19°32'38" E	15.00'
L13	N 19°31'44" E	90.61'
L14	N 22°45'27" E	99.73'
L15	N 28°49'41" E	8.41'
L16	N 28°52'23" E	88.04'
L17	N 32°02'40" E	28.45'
L18	N 42°34'25" E	17.62'
L19	N 51°03'10" E	15.04'
L20	N 58°15'53" E	23.33'
L21	N 59°45'20" E	320.22'
L22	S 61°07'51" E	70.37'
L23	N 86°37'55" E	96.32'



REFERENCE
 PROPERTY BOUNDARY BASED FROM TAX MAPS AND/OR RECORDED DEED INFORMATION.

GENERAL NOTE
 THIS EXHIBIT DOES NOT REPRESENT A BOUNDARY SURVEY AND IS INTENDED FOR UTILITY RIGHT OF WAY PURPOSES ONLY.



LEGEND/ABBREVIATIONS

— UT —	= UNDERGROUND TELEPHONE
— E —	= OVERHEAD ELECTRIC
- - - -	= PROPOSED EASEMENT LINE
— — — —	= PROPOSED CENTERLINE
•	= POINT
⊙	= UTILITY POLE
⊠	= GATE POST

SURVEY FOR CITYNET, LLC
 SHOWING PROPOSED UTILITY EASEMENTS OF THE
 6TH WARD CORP. WEST VIRGINIA
 MONONGALIA COUNTY MAY 2019

THRASHER THE THRASHER GROUP, INC.
 600 WHITE OAKS BLVD.
 BRIDGEPORT, WV 26330
 PHONE 304-624-4108
 www.thrashergroup.com

DESCRIPTION OF EASEMENTS
showing
PROPOSED PERMANENT UTILITY EASEMENTS
for
CITYNET, LLC

A CERTAIN EASEMENT SITUATE ALONG UNITED STATES ROUTE 119, MORGANTOWN 6TH WARD DISTRICT, CITY OF MORGANTOWN, MONONGALIA COUNTY, WEST VIRGINIA, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

15' Permanent Utility Easement

Beginning at an existing Mon Power utility pole bearing number H3-379 which bears, North 21 degrees 54 minutes 50 seconds West, a distance of 16.63 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469) said utility pole also bears, South 05 degrees 55 minutes 38 seconds East, a distance of 586.05 feet from a 5/8" iron rebar with cap (CTL) found at a corner to RDR Properties, LLC (Tax Map 4G Parcel 13 Deed Book 1286 Page 130) as shown on a plat recorded in Map Cabinet D, Envelope 22B;

Thence, through said N/F City of Morgantown (Parcel 1) for thirteen (13) lines, North 35 degrees 41 minutes 45 seconds East, a distance of 19.96 feet to a proposed utility pole;

Thence, North 65 degrees 28 minutes 50 seconds East, a distance of 16.73 feet to a point;

Thence, North 52 degrees 57 minutes 17 seconds East, a distance of 12.70 feet to a point;

Thence, North 41 degrees 14 minutes 39 seconds East, a distance of 10.95 feet to a point;

Thence, North 22 degrees 10 minutes 30 seconds East, a distance of 27.34 feet to a point;

Thence, North 04 degrees 06 minutes 16 seconds East, a distance of 227.72 feet to a point;

Thence, North 08 degrees 22 minutes 49 seconds East, a distance of 107.99 feet to a point;

Thence, North 09 degrees 12 minutes 03 seconds East, a distance of 58.40 feet to a point;

Thence, North 19 degrees 33 minutes 32 seconds East, a distance of 7.50 feet to a point;

Thence, North 19 degrees 32 minutes 38 seconds East, passing through a Proposed Underground Electric pull box at a distance of 7.50 feet for a total distance 19.96 feet to a point, said proposed permanent utility easement width for this call is 15.00 feet left and 7.50 feet right for a total width of 22.50 feet;

Thence, North 19 degrees 31 minutes 44 seconds East, a distance of 90.61 feet to a point;

Thence, North 22 degrees 45 minutes 27 seconds East, a distance of 99.73 feet to a point;

Thence, North 28 degrees 49 minutes 41 seconds East, a distance of 8.43 feet to a point on the CL of a Proposed 10' Permanent Utility Easement;

Thence, leaving said CL of Proposed 10' Permanent Utility Easement and continuing through said N/F City of Morgantown (Parcel 1) for six (6) lines, North 28 degrees 52 minutes 23 seconds East, a distance of 88.04 feet to a point;

Thence, North 32 degrees 02 minutes 40 seconds East, a distance of 28.45 feet to a point;

Thence, North 42 degrees 34 minutes 25 seconds East, a distance of 17.62 feet to a point;

Thence, North 51 degrees 03 minutes 10 seconds East, a distance of 15.04 feet to a point;

Thence, North 58 degrees 15 minutes 53 seconds East, a distance of 23.33 feet to a point;

Thence, North 59 degrees 45 minutes 20 seconds East, a distance of 320.22 to a point which bears, North 87 degrees 07 minutes 19 seconds East, a distance of 239.29 feet from a mag nail found on the southeasterly right-of-way line of United States Route 119;

Thence, North 86 degrees 37 minutes 55 seconds East, a distance of 96.32 to the Point of Terminus at a an existing Mon Power utility pole bearing number H3-411.

The Permanent Utility Easement shall be 15.00 feet in width, 7.50 feet on either side of the above-described centerline unless otherwise noted having a total area of 0.47 acres more or less, as shown on an exhibit and made a part of this description.

10' Permanent Utility Easement

Beginning at a point on a Proposed 15' Permanent Utility Easement which bears, North 14 degrees 06 minutes 06 seconds East, a distance of 698.39 feet from a gate post found in the lands of N/F City of Morgantown (Tax Map 32A Parcel 1 Deed Book 364 Page 469);

Thence, leaving said Proposed 15' Permanent Utility Easement and through said N/F City of Morgantown (Parcel 1), South 61 degrees 07 minutes 51 seconds East, a distance of 70.37 feet to the Point of Terminus.

The Permanent Utility Easement shall be 10.00 feet in width, 5.00 feet on either side of the above-described centerline having a total area of 629 square feet more or less, as shown on an exhibit and made a part of this description.

AN ORDINANCE AUTHORIZING ACCEPTANCE OF AN EASEMENT IN FOURTH WARD AND SEVENTH WARD DISTRICTS

The City of Morgantown hereby ordains that the City Manager is authorized to accept, record, and take all other actions necessary with respect to the receipt and use of the attached easement agreement, which is incorporated by reference into this Ordinance, together with any ancillary documents necessary to the easement.

This ordinance is effective upon adoption.

First Reading: _____
Mayor

Second Reading: _____

Adopted: Clerk

Filed:

This instrument was prepared by:

Ryan Simonton
The City of Morgantown, West Virginia
389 Spruce Street Morgantown, West Virginia 26505

EASEMENT DECLARATION

This Declaration is made and entered into this the ___ day of _____, 2019, by JOSHUA P. FERSHEE and KENDRA J.H. FERSHEE, husband and wife ("Grantors"), in favor of and for the benefit of THE CITY OF MORGANTOWN, West Virginia, a municipal corporation ("City").

For and in consideration of the amount of Ten Dollars (\$10.00), other good and valuable consideration, the receipt, sufficiency, and adequacy of all of which are acknowledged by Grantor, and with the intent of being legally bound by and obligated under, in accordance with, and pursuant to this Declaration, Grantor declares, covenants, and agrees in favor of and for the benefit of City as follows:

Grantor grants, conveys, and transfers to City and creates, dedicates, and establishes in favor of and for the benefit of City, in, on, over, upon, under, through, and across the below-described parcel, perpetual easements and rights-of-way for the purposes of building, installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, rebuilding, reinstalling, reconstructing, re-improving, and re-extending a public way for pedestrian and nonmotorized travel and recreation, and the establishment or maintenance of undeveloped open or vegetated space, with related appurtenances including utilities, and otherwise generally developing and improving the parcel for the foregoing purposes, including, without limitation, as rights appurtenant, material, essential, and integral to such easements and rights-of-way and such purposes, the rights to use and enjoy the parcel to (a) access the parcel by way of other easements, rights-of-way, and properties of City, (b) travel and traverse the parcel with persons, equipment, materials, and supplies, and (c) locate, set, stage, and operate equipment and machinery on and/or from the parcel while City shall be using or enjoying the parcel for the purposes set forth, contained, and provided for in this Declaration.

The parcel dedicated by this Declaration is more specifically described as that certain property described in the Legal Description and Plat attached hereto as **Exhibit 1** (the "Easement Area").

The Declaration of Easement shall be subject to the following conditions:

- (a) Grantee shall not construct any building, pole, tower, or other structure upon the Easement Area, excepting such signs or maps as are commonly used in conjunction with trails and open space.
- (b) Grantor retains for itself, its successors, and assigns the right to light and air serving the residence existing on Parcel ID 15 15003700000000, described in a deed to Grantors recorded at Deed Book 1462 page 522 in the Office of the Clerk of the County Commission of Monongalia County. For purposes of this Easement Declaration, the right to light and air shall mean the following: All the land, property, and space, at and above a horizontal plane at an elevation of _____ feet above the Easement Area, the horizontal limits of which are the planes formed by projecting vertically upward and downward from the surface of the earth the boundaries of the Easement Area.
- (c) All trees, stumps, brush, and other debris cleared for the purposes set forth herein shall become the property and responsibility of Grantee and Grantee shall appropriately dispose of same.

- (d) Grantee shall have the right to post such signs, maps, and installations as are deemed necessary and suitable to identify the Easement Area and provide notice of its appropriate public use.
- (e) Grantee agrees to take reasonable steps to assist Grantors, their successors, and assigns in correcting any conditions which are detrimental to Grantors resulting from such use.
- (f) Grantee shall include the Easement Area as property covered under its applicable policies of insurance. Grantor and Grantee agree that Grantee shall have the right and responsibility to maintain the Easement Area in a condition suitable for public use or to restrict public access to areas not suitable for public use.

The benefits, rights, burdens, obligations, covenants and restrictions set forth in this Declaration shall inure to the benefit of and be binding upon the heirs, devisees, legatees, personal representatives, agents, employees, contractors, tenants, invitees, licensees, successors and/or assigns of each party herein, and are intended to and shall run with the land.

In the event that any one or more of the provisions set forth, contained, or provided for in this Declaration, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions set forth, contained, and provided for in this Declaration shall remain of full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this Declaration shall be severable.

Declaration of Consideration or Value

In accordance with the provisions of Article 22 of Chapter 11 of the West Virginia Code, Grantor declares that the transfer made and effected by this Declaration is exempt from the applicable excise taxes on the basis that City is a political subdivision of the State of West Virginia.

Witness the following signatures:

Kendra J.H. Fershee, Grantor

Joshua P. Fershee, Grantor

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to wit:

I, _____, a Notary Public in and for the County and State aforesaid do certify that _____, who signed the foregoing writing bearing date the ____ day of _____ 2019, as Grantor, has this day in my said County and State before me acknowledged the said writing to be the act and deed of said individual.

Given under my hand and notarial seal this ____ day of _____ 2019.

My commission expires _____.

Notary Public

AN ORDINANCE AMENDING SECTION 1329.02 AND TABLE 1331.05.01 OF THE CITY OF MORGANTOWN PLANNING AND ZONING CODE AS THEY RELATE TO ELECTRIC VEHICLE CHARGING STATIONS.

The City of Morgantown hereby ordains Sections 1329.02 and Table 1331.05.01 of the Planning and Zoning Code are amended as follows (new matter underlined):

ARTICLE 1329
Definitions

1329.02 DEFINITION OF TERMS

EV CHARGING STATION, PRIVATE – A parking space that is served by electric vehicle charging station equipment that has the primary purpose of transferring electric energy (by conductive or inductive means) to a battery or other energy source in an electric vehicle. These accessory uses may be provided to a specific dwelling unit, townhouse dwelling structure, multi-family dwelling structure, nonresidential structure, or business tenant and shall be considered a parking space for the purpose of determining or meeting minimum parking requirements.

EV CHARGING STATION, PUBLIC – A parking space that is served by electric vehicle charging station equipment that has the primary purpose of transferring electric energy (by conductive or inductive means) to a battery or other energy source in an electric vehicle. These accessory uses are provided to the general public and shall not be included in determining or meeting minimum parking requirements.

Table 1331.05.01 Permitted Land Uses

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
<u>EV Charging Station, Private</u>	A	A	A	A	A	A	A	A	A	A	A	
<u>EV Charging Station, Public</u>			A	A	A	A	A	A	A	A	A	

This ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF CERTAIN PARCELS OF REAL ESTATE IN THE SEVENTH WARD OF THE CITY OF MORGANTOWN FROM OI, OFFICE AND INSTITUTIONAL DISTRICT TO B-2, SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WERE FULLY SET FORTH HEREIN.

Properties included in this ordinance are identified as Parcel 76.1, Tax Map 6, Morgantown Seventh Ward Tax District and part of Parcel 258, Tax Map 11, Seventh Ward Tax District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning designation for Parcel 76.1, Tax Map 6, Morgantown Seventh Ward Tax District of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein is reclassified from OI, Office and Institutional District to B-2, Service Business District.
2. That the zoning designation for that portion of Parcel 258, Tax Map 11, Seventh Ward Tax District of the Monongalia County tax assessment as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same were fully set forth herein are reclassified from OI, Office and Institutional District to B-2, Service Business District.
3. That the Official Zoning Map be accordingly changed to show said zoning classifications.

This Ordinance shall be effective from the date of adoption and the Official Zoning Map shall be duly noted with the effective date of adoption.

FIRST READING:

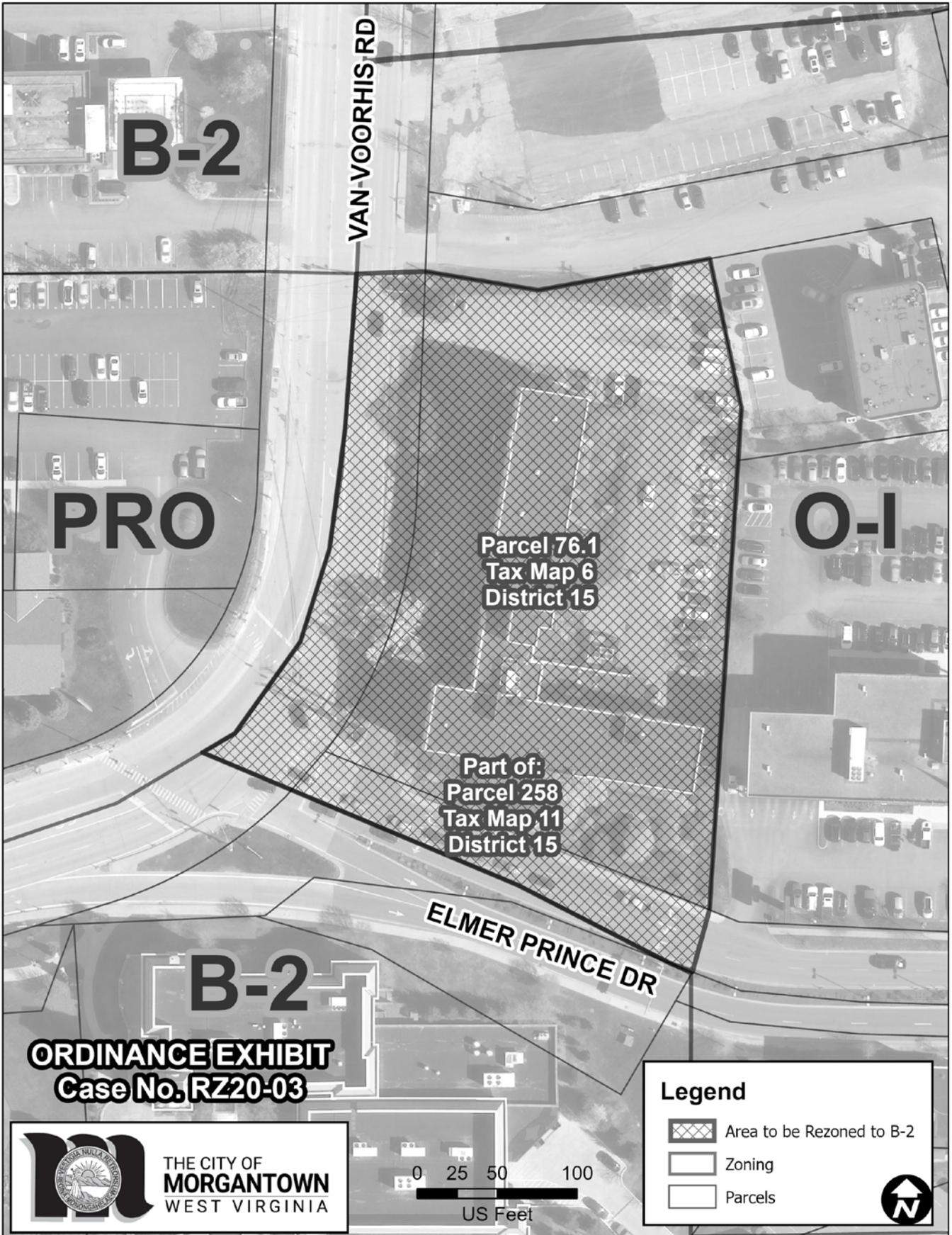
Mayor

ADOPTED:

FILED:

RECORDED:

City Clerk





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 June 2, 2020

Information:

A. Response to Encampment Situation in Lower Greenmont

There has been significant attention to the City's ongoing response to and interaction with an encampment along Pennsylvania Avenue near Deckers Creek. There have been accusations that the actions taken by City staff are harassment towards individuals experiencing homelessness. I want to publicly say that these accusations are false.

City Council was provided with details surrounding Code Enforcement and Police responses at the site. All these responses and visits to the site were a direct response to a call for dispatch, a citizen complaint, or part of a regular patrol. Contrary to what was reported, only one citation was given, and the citation had nothing to do with the people present at the site.

The City is working with the WV Coalition to End Homelessness, property owner, and other social service agencies to help people staying at the encampment. With that being said, the City has standards for property maintenance that state exterior property and premises shall be maintained in a clean, safe, and sanitary condition.

B. City Council's Upcoming Strategic Planning Workshop

The Novak Consulting Group will be running a Strategic Planning Workshop for City Council on June 19th and 20th. It is vital that this workshop be conducted in person, however, the City is making accommodations to allow for social distancing and other measures for protecting public health during the COVID-19 pandemic, including making masks available.

The Strategic Planning Workshop will be open to the public to attend with prior registration so that City staff can plan precautions. The public will also be required to adhere to social distancing requirements and are encouraged to wear masks while they attend.

Information for this workshop will be forthcoming.

C. Reminder of Rescheduled Election Date – June 9, 2020

Due to the Governor’s previous “Stay at Home” orders which were put in place to promote public health, West Virginia’s primary election day was moved from May 12 to June 9. City of Morgantown offices will be closed Tuesday, June 9, 2020 in observance of election day. We urge all citizens to participate in election day.

More information can be found at <https://sos.wv.gov/about/Pages/Covid-19.aspx>.

D. City’s COVID-19 Response Update

At Tuesday’s meeting I will provide a status update on the City’s response to COVID-19.

New Business:

A. Schedule Hearing on Application for Nuisance Abatement Declaration Against Problem Property Owner – 625 Pennsylvania Avenue, 324 Dewey Street, and 619 Brockway Avenue

Attached to this report you will find three separate memorandums from Police Chief Ed Preston recommending declaring a Public Nuisance pursuant to Morgantown City Code 1149.03. Each document is descriptive in detailing the complaints and police reports that have been filed associated with each of the three addresses. None of the properties are rentals – they are recorded as vacant structures with the Code Enforcement Department.

Council voted at the March 3, 2020 meeting to hold a special meeting for a Public Hearing for these properties, but this was later cancelled due to the COVID-19 Pandemic. Now that courts are reopening, Council can choose to move forward with the Public Hearing.

I am presenting to you for consideration, a motion to reschedule and conduct a public hearing at the next City Council meeting (June 16) to order a nuisance abatement. The code requires that the city provide 10 days-notice to the property owner. The City Attorney is also recommending that the city file a subsequent petition in Circuit Court for mandamus to compel the owner to comply, and allow the city to take enforcement action if compliance is not made.

City staff recommend a motion to approve setting the hearing for June 16 and preparation of a resolution to declare these properties as a Public Nuisance.

B. 8th Street Pedestrian Project & Blue Curb Removal

In the attached memo from City Engineer Damien Davis, staff is looking to provide safety and pedestrian upgrades along 8th Street. There is utility work

related to the replacement of a gas line for most of the roadway. As a follow up to the utility project, the City is working with the Campus Neighborhoods Revitalization Corporation to design and install a sidewalk along 8th Street.

City is recommending that six (6) blue curb on-street parking spaces be eliminated as part of the improvements. If council is in agreement with the removal of the on street parking, City staff will notify the property owners and prepare for a pedestrian project along 8th Street.

Emily Muzzarelli, PE
Interim City Manager, Morgantown, WV



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.
- 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 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.



Morgantown Police Department

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(304) 284-7522
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To: Paul Brake, City Manager

From: Ed Preston, Chief of Police

Copies: Emily Muzzarelli, Assistant City Manager
Ryan Simonton, City Attorney
Mark Caravazos, 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.



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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.