

Ordinance No. 2022-__

AN ORDINANCE AUTHORIZING A DECLARATION OF EASEMENT FOR UTILITY PURPOSES AT THE CAPERTON TRAIL PROPERTY

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached "Right-of-Way and Easement Agreement" declaring an easement for utility purposes on and over a portion of the real estate commonly known as the Caperton Trail and more particularly described therein.

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this ____ day of _____, 2021, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, Grantor, and THE CITY OF MORGANTOWN, West Virginia, acting by and through the MORGANTOWN UTILITY BOARD, a public corporation of The City of Morgantown, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), 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, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing approximately **45 linear feet, more or less, of 15-inch gravity sewer line; 490 linear feet, more or less, of 8-inch force main sewer line; and a 10-foot diameter, 17-foot deep Wet Well** (the “Facilities”) within a portion of Grantor’s real estate described as the rail-trail property adjacent to Parcels 19 and 20 of Map 49, First Ward District and Parcel 1 of Map 50, First Ward District, being a part of Parcel 134 of Map 28, First Ward District, located in Morgantown, Monongalia County, West Virginia, and more particularly described in that certain deed executed by and between the West Virginia State Rail Authority, as Grantor, and The City of Morgantown, as grantee, as of April 22, 1998, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia at Deed Book 1161, page 375 (the “Real Estate”). The location of said right-of-way and easement is more particularly shown upon the drawing attached as **Exhibit 1** to this Agreement (the “Easement Area”). The Easement Area shall be a centerline easement twenty (20) feet in width. For the consideration aforesaid, Grantor does now also hereby grant and convey unto the Grantee, the right of ingress, egress, and regress to and from the Easement Area, subject to the terms and conditions of this agreement. The right of way and easement granted herein are subject to the following conditions:

- (a) all work shall be performed by Grantee 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) The Facilities shall be constructed in such a manner that they do not create a hazard to users of the public rail trail. The Facilities shall at all times remain underground with appropriate covering and shall not create an obstruction that may cause trail users to trip or fall; provided that the Wet Well covering may remain aboveground no more than 12 inches from the surface. Facilities shall be constructed and maintained in accordance with the standards adopted by the American Railway Engineering and Maintenance-of-Way Association;
- (c) Grantee shall repair Grantor’s property to a condition equal to that existing prior to installation of the Facilities, (“Property Restoration Obligations”) subject to approval by the City Manager. Grantee’s duty to repair includes, without limiting the generality of the foregoing, the duty to replace and repave any portion of the paved trail impacted by installation of the Facilities, the scope of which shall be determined by the City Manager. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep the Easement Area at all times in the same condition as existed on the date of entry of this

Agreement. If Grantee shall fail to maintain or repair the Premises as required by this Agreement, Grantor shall have the right, but not the obligation, to perform such maintenance and repair at the sole cost and expense of Grantee, and all costs of such maintenance, replacement, or repair shall be due and payable to Grantor by Grantee on demand. Any surface or subsurface damage to Grantor's property caused by Grantee, or its contractors, licensees, agents, successors and/or assigns, in connection with the Facilities shall be promptly repaired by Grantee to a condition equal to that existing before installation of any such Facilities or actions were undertaken, or as directed by the City Manager; and

- (d) Whenever entry onto Grantor's property is required for construction, maintenance, or repairs, Grantee, or its contractors, licensees, agents, 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, except in cases of emergency requiring immediate maintenance to avoid harm to life or property, in which case Grantee shall provide written notice as soon as reasonably possible;
- (e) 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, regardless of the cause requiring such repair or replacement, including Grantor's own operations; and
- (f) 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 easement granted in this Agreement, including without limitation the installation, maintenance, repair, and/or removal of the Facilities, the function of any structure(s) placed in the easement area, and the failure to maintain the easement area, except for claims based only upon the gross negligence or willful misconduct of Grantor. In order to secure this obligation, Grantee shall name Grantor as an additional insured on its insurance policy covering the Facilities and shall provide evidence of the same upon demand by Grantor.
- (g) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s), this Right of Way and Easement Agreement 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 and Grantee's Property Restoration Obligations shall survive the termination of this Agreement.

Grantor reserves and retains for itself, its successors, and assigns all rights which it may possess in the surface or aboveground areas of the Real Estate, and the right of way and easement area to the extent necessary to maintain its property without interfering with Grantee's use and enjoyment of its right of way and easement, together with any and all other rights not expressly conveyed herein. The Grantor does not warrant title to the rights granted or that the same are free and clear of liens and encumbrances. Grantee takes title to the easement solely at its own risk.

This conveyance is subject to all exceptions, reservations, easements, rights of way, conditions, covenants or restrictions as contained in prior deeds or other instruments of record or that are capable of observation. Without limiting the generality of the foregoing, this right-of-way and easement is subject to the conditions of Grantor's title to the Real Estate including the

Easement Area, including the provisions of the West Virginia Rails to Trails Program, *W. Va. Code* § 5B-1A-1 *et seq.*, and the West Virginia Railroad Maintenance Authority Act, *W. Va. Code* § 29-18-1 *et seq.*, as they may be amended. The interests and rights granted to Grantee in this Agreement shall terminate and revert to Grantor in the event that Grantee's actions or inactions cause or could cause the reversion of Grantor's title in the real estate including the Easement Area, or any of it. Grantor retains the right, in its sole and absolute discretion, to: (1) determine whether Grantee's exercise of its rights under this Agreement have caused or could cause the reversion of Grantor's title in the real estate that is the subject of this Agreement; and (2) terminate this Right of Way and Easement Agreement upon such determination.

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.

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: _____
A. Kim Haws
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 A. Kim Haws, 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 _____, 2021.

My commission expires: _____.

{SEAL}

Notary Public

Morgantown Utility Board

By:

Name:

Title:

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

I _____, a notary public of said county, do certify that _____ as the _____ of _____ who signed the writing hereto annexed, bearing date as of the ___ day of _____, 20___, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this _____ day of _____, 20___

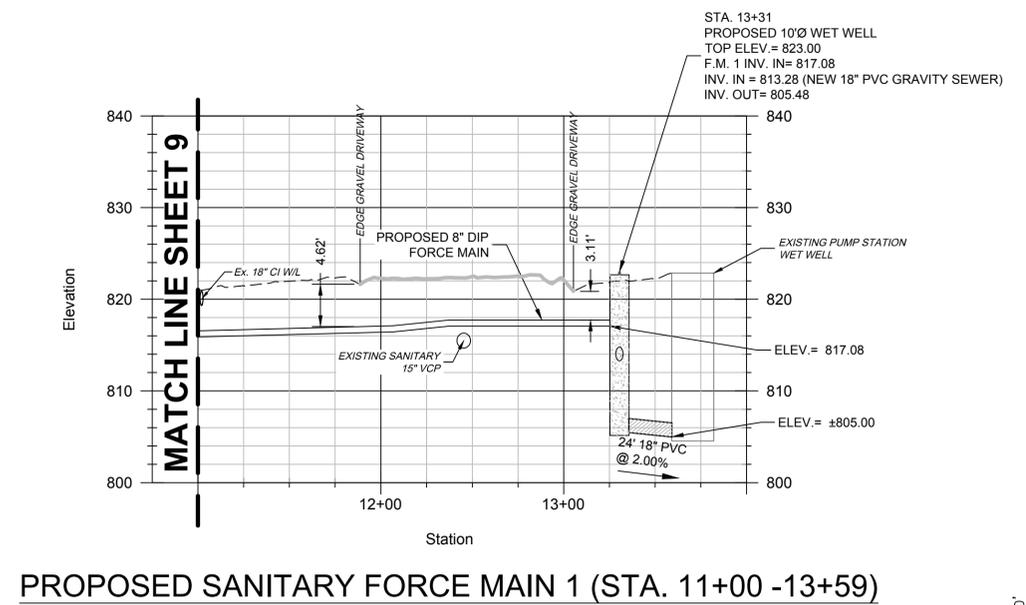
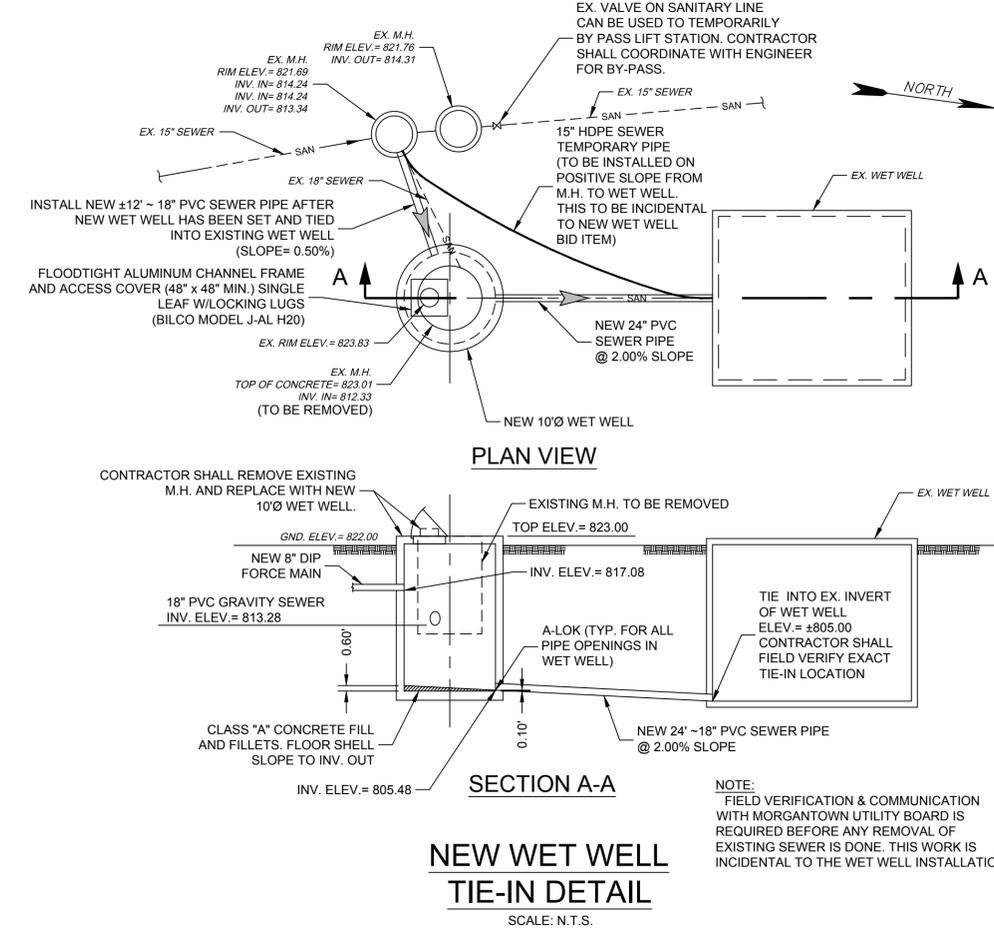
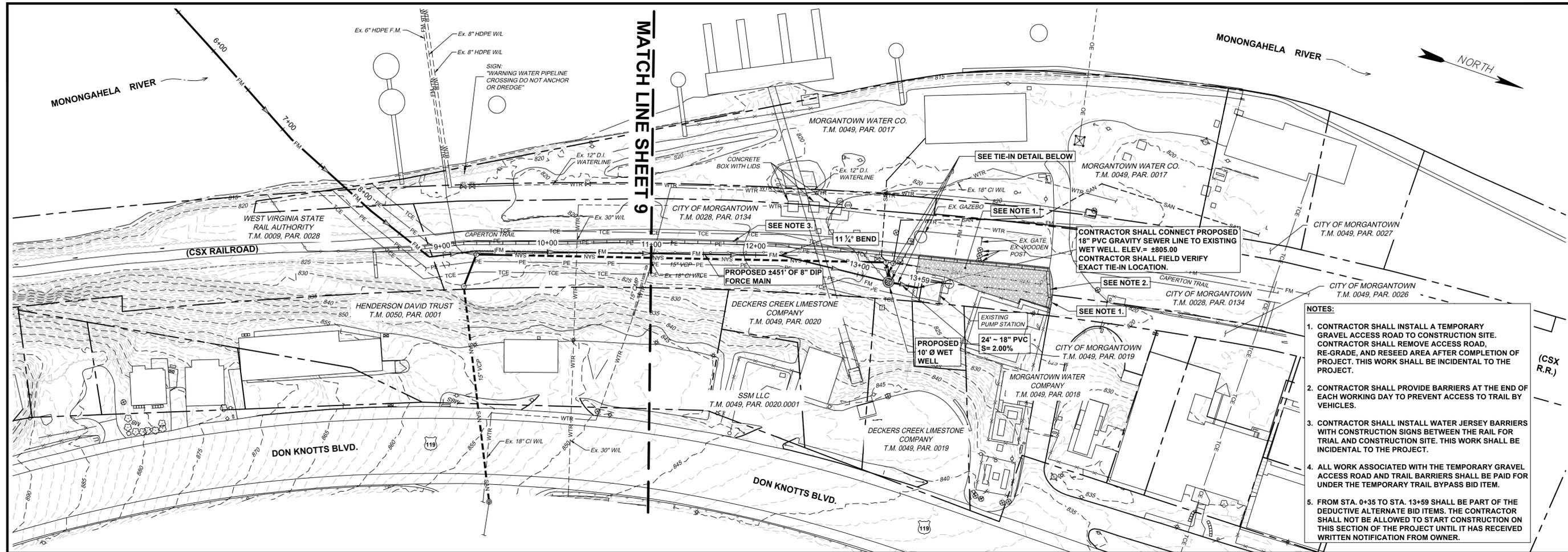
My commission expires: _____.

Notary Public

(NOTARIAL SEAL)

Attachments: Exhibit A – Easement Area

Prepared without title examination on behalf of Grantor by Ryan Simonton, KAY CASTO & CHANEY, PLLC, 150 Clay Street, Suite 100, Morgantown, WV 26501.



PLANS PREPARED FOR:	MORGANTOWN UTILITY BOARD	278 GREENBARI RD	MORGANTOWN, WEST VIRGINIA 26801
GRAPHIC SCALE	0 25' 50' 100'		
VERTICAL SCALE:	1" = 10'		
HORIZONTAL SCALE:	1" = 50'		
NO.	DATE	REVISION	BY

MOUNTAIN TOP BEVERAGE SEWER
PLAN & PROFILE SHEET
PROJECT NUMBER 1021010
DATE 10/26/2021
SHEET NUMBER 10

Filed by: kcm
 User: p1021010_mtd_mountain top beverage sewer project/cad/plan set02_design/1021010_plan_and_profile_sheet_10.dwg

Ordinance No. 2022-__

AN ORDINANCE AUTHORIZING A DECLARATION OF EASEMENT FOR UTILITY PURPOSES AT THE DECKERS CREEK TRAIL PROPERTY

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached "Right-of-Way and Easement Agreement" declaring an easement for utility purposes on and over a portion of the real estate commonly known as the Deckers Creek Trail and more particularly described therein.

This ordinance shall be effective upon adoption.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this ____ day of _____, 2022, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, Grantor, and THE CITY OF MORGANTOWN, West Virginia, acting by and through the MORGANTOWN UTILITY BOARD, a public corporation of The City of Morgantown, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), 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, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing approximately **a storm water line; two Type G inlets with pedestrian safe grate; a concrete headwall, and two deposits of rip-rap stone** as depicted on Exhibit A (the “Facilities”) within a portion of Grantor’s real estate described as a portion of the rail-trail property, a part of Parcel 137 of Map 28, at Parcel ID 09 28013700000000, First Ward District, located in Morgantown, Monongalia County, West Virginia, which adjoins Parcel ID 13 29006100000000 (13-29-61) owned by O-Max Coal Co, Inc., and more particularly described in that certain deed executed by and between the West Virginia State Rail Authority, as Grantor, and The City of Morgantown, as grantee, as of April 22, 1998, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia at Deed Book 1161, page 375 (the “Real Estate”). The location of said right-of-way and easement is more particularly shown upon the drawing attached as Exhibit A to this Agreement (the “Easement Area”). The Easement Area shall be a centerline easement twenty (20) feet in width. For the consideration aforesaid, Grantor does now also hereby grant and convey unto the Grantee, the right of ingress, egress, and regress to and from the Easement Area, subject to the terms and conditions of this agreement. The right of way and easement granted herein are subject to the following conditions:

- (a) all work shall be performed by Grantee 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) The Facilities shall be constructed in such a manner that they do not create a hazard to users of the public rail trail. The Facilities shall at all times remain underground with appropriate covering and shall not create an obstruction that may cause trail users to trip or fall; provided that the concrete headwall and two deposits of rip-rap stone may remain aboveground in such a manner and with such markings or identifications as are designed to avoid any hazard to users of the public rail trail. Facilities shall be constructed and maintained in accordance with the standards adopted by the American Railway Engineering and Maintenance-of-Way Association;
- (c) Grantee shall repair Grantor’s property to a condition equal to that existing prior to installation of the Facilities, (“Property Restoration Obligations”) subject to approval by the City Manager. Grantee’s duty to repair includes, without limiting the generality of the foregoing, the duty to replace and repave any portion of the paved trail impacted by installation of the Facilities, the scope of which shall be determined by the City Manager. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep

the Easement Area at all times in the same condition as existed on the date of entry of this Agreement. If Grantee shall fail to maintain or repair the Premises as required by this Agreement, Grantor shall have the right, but not the obligation, to perform such maintenance and repair at the sole cost and expense of Grantee, and all costs of such maintenance, replacement, or repair shall be due and payable to Grantor by Grantee on demand. Any surface or subsurface damage to Grantor's property caused by Grantee, or its contractors, licensees, agents, successors and/or assigns, in connection with the Facilities shall be promptly repaired by Grantee to a condition equal to that existing before installation of any such Facilities or actions were undertaken, or as directed by the City Manager; and

- (d) Whenever entry onto Grantor's property is required for construction, maintenance, or repairs, Grantee, or its contractors, licensees, agents, 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, except in cases of emergency requiring immediate maintenance to avoid harm to life or property, in which case Grantee shall provide written notice as soon as reasonably possible;
- (e) 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, regardless of the cause requiring such repair or replacement, including Grantor's own operations; and
- (f) 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 easement granted in this Agreement, including without limitation the installation, maintenance, repair, and/or removal of the Facilities, the function of any structure(s) placed in the easement area, and the failure to maintain the easement area, except for claims based only upon the gross negligence or willful misconduct of Grantor. In order to secure this obligation, Grantee shall name Grantor as an additional insured on its insurance policy covering the Facilities and shall provide evidence of the same upon demand by Grantor.
- (g) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s), this Right of Way and Easement Agreement 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 and Grantee's Property Restoration Obligations shall survive the termination of this Agreement.

Grantor reserves and retains for itself, its successors, and assigns all rights which it may possess in the surface or aboveground areas of the Real Estate, and the right of way and easement area to the extent necessary to maintain its property without interfering with Grantee's use and enjoyment of its right of way and easement, together with any and all other rights not expressly conveyed herein. The Grantor does not warrant title to the rights granted or that the same are free and clear of liens and encumbrances. Grantee takes title to the easement solely at its own risk.

This conveyance is subject to all exceptions, reservations, easements, rights of way, conditions, covenants or restrictions as contained in prior deeds or other instruments of record or that are capable of observation. Without limiting the generality of the foregoing, this right-of-way

and easement is subject to the conditions of Grantor's title to the Real Estate including the Easement Area, including the provisions of the West Virginia Rails to Trails Program, *W. Va. Code* § 5B-1A-1 *et seq.*, and the West Virginia Railroad Maintenance Authority Act, *W. Va. Code* § 29-18-1 *et seq.*, as they may be amended. The interests and rights granted to Grantee in this Agreement shall terminate and revert to Grantor in the event that Grantee's actions or inactions cause or could cause the reversion of Grantor's title in the real estate including the Easement Area, or any of it. Grantor retains the right, in its sole and absolute discretion, to: (1) determine whether Grantee's exercise of its rights under this Agreement have caused or could cause the reversion of Grantor's title in the real estate that is the subject of this Agreement; and (2) terminate this Right of Way and Easement Agreement upon such determination.

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.

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.

[SIGNATURE PAGE FOLLOWS]

WITNESS the following signature and seal:

THE CITY OF MORGANTOWN, West Virginia,
a municipal corporation

By: _____
A. Kim Haws
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 A. Kim Haws, 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 _____, 2022.

My commission expires: _____.

{SEAL}

Notary Public

Morgantown Utility Board

By:

Name:

Title:

STATE OF WEST VIRGINIA,
COUNTY OF _____, to-wit:

I _____, a notary public of said county, do certify that _____ as the _____ of _____ who signed the writing hereto annexed, bearing date as of the ___ day of _____, 20___, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this _____ day of _____, 20___

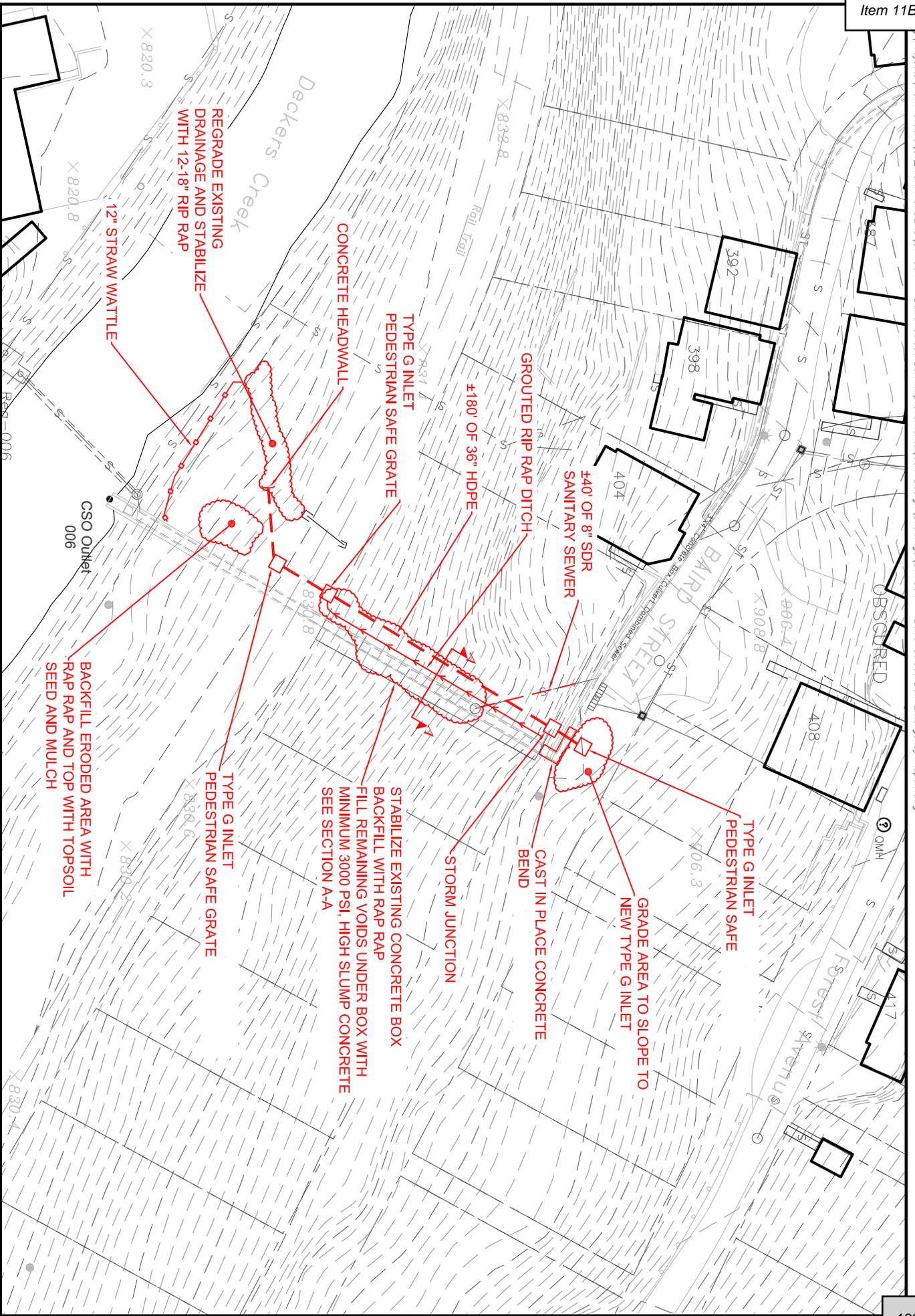
My commission expires: _____.

Notary Public

(NOTARIAL SEAL)

Attachments: Exhibit A – Easement Area

Prepared without title examination on behalf of Grantor by Ryan Simonton, KAY CASTO & CHANEY, PLLC, 150 Clay Street, Suite 100, Morgantown, WV 26501.



DESIGN BY: Kenneth R. Hocker	DATE: 12/1/2021	REVISION:	DATE:
CHECKED BY: Kenneth R. Hocker	DATE: 12/1/2021		
APPROVED BY:	DATE:		
SCALE: 1" = 50'			

MORGANTOWN • UTILITY • BOARD
 278 Owenby Road • Post Office Box 852 • Morgantown, WV 26507-0852 • 304-292-8443

DRAWING TITLE: BAIRD STREET COMBINED SEWER BOX EMERGENCY REPAIR	PROJECT NUMBER: ST-504	DRAWING NUMBER: SHT. 1 OF 2
---	---------------------------	--------------------------------