

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING THE EXECUTION OF AN INTER-GOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY AND THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA, OUTLINING THE TERMS AND CONDITIONS OF THE CITY'S PURCHASE OF PROPERTY KNOWN AS THE WOODBURN ELEMENTARY SCHOOL.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the Intergovernmental Agreement hereto attached and to proceed with the acquisition of the Woodburn Elementary School property on behalf of the City of Morgantown, as set forth in the Intergovernmental Agreement.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, dated this ___ day of May, 2013, by and between THE CITY OF MORGANTOWN (CITY) and THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA (BOARD).

WHEREAS, W. Va. Code § 8-23-3 authorizes public agencies to enter into written agreements with one another for joint or cooperative action; and

WHEREAS, in the sound judgment of the BOARD, the needs of the community require the use of the property known as Woodburn Elementary School, which is not needed for school purposes, located at 918 Fortney Street, Morgantown, West Virginia 26505, for charitable, economic development and/or community use; and

WHEREAS, the BOARD has determined that the CITY is an organization well suited to meet charitable, economic development and community needs, and that CITY's mission to meet charitable, economic development and community needs will be enhanced through the use and acquisition of the hereinafter-described property.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE: The purpose of this Agreement is to facilitate the charitable, economic development and community use through the transfer of the real property known as Woodburn Elementary School (the Property") from the BOARD to the CITY. BOARD hereby agrees to sell to CITY and CITY hereby agrees to purchase from BOARD, for the Purchase Price and upon the terms and conditions specified herein all of those certain lots or parcels of real estate which are located, situate and being in Fifth Ward, Morgan District, City of Morgantown, Monongalia County, West Virginia, collectively known and identified as the "Woodburn Elementary School", being all of Tax Map 25, Parcels 525 and 362, together with all buildings, structures, fixtures, and other improvements thereon and all appurtenances pertaining thereto (the "Property"), as more particularly bound and described in the following deeds of record in the Office of the Clerk of the County Commission of Monongalia County:

(i) **Deed Book 104, Page 180**, dated July 14, 1909, recorded August 12, 1909, from Warren G. Smith and Sarah J. Smith, husband and wife, to The Board of Education of Morgantown School District, conveying a small part dedicated as and for public streets;

(ii) **Deed Book 184, page 346**, dated November 22, 1922, recoded November 29, 1922, from William A. Tucker and Rebecca P. Tucker, husband and wife, Ulysses J. Courtney and Mary J. Courtney, husband and wife, to the Board of Education of Morgantown School District, conveying Lots Nos. 3, 4, 5, 6 and 7 in Block No. 1 and Lots Nos. 2, 3 and 4 in Block No. 2 in the Smith, Courtney, Tucker Addition.

(iii) **Deed Book 185, page 237**, dated October 17, 1922, recorded January 11, 1923, from Walter W. Hammond, Leah Ruth Hammond, and Isa May Reeder and W. P. Reeder, husband and wife, to the Board of Education of Morgantown School District, conveying their undivided one-fourth interests in Lots Nos. 1, 5, 6, and 7 in Block No. 2 in the Smith, Courtney and Tucker Addition;

(iv) **Deed Book 185, page 240**, dated January 11, 1923, recorded 11, 1923, from William S. John, Special Commissioner for Mary Alice Hammond, to the Board of Education, Morgantown School District, conveying an undivided one-fourth interest of Mary Alice Hammond, infant, in Lots Nos. 1, 5, 6, and 7 in Block No. 2 in the Smith, Courtney and Tucker Addition;

(v) **Deed Book 187, page 364**, dated March 24, 1923, recorded April 11, 1923, from James M. Shanks and M. Belle Shanks, husband and wife, to the Board of Education of Morgantown School District, conveying all of Lots Nos. 1, 2, 3, 4, and 5 in the Woodburn Addition;

(vi) **Deed Book 188, page 199**, dated December 26, 1922, recorded May 4, 1923, from B. T. Gibson and May Gibson, husband and wife, and J. C. Gibson and Lula Gibson, husband and wife, (the said B. T. Gibson and J. C. Gibson partners doing business as the Gibson Lumber Company), to the Board of Education of Morgantown School District, conveying all of Lots 1 and 2 in Block No. 1 of the Smith, Courtney and Tucker addition to East Morgantown.

2. DURATION: The term of this agreement shall be from July 1, 2013, to July 1, 2014, unless terminated on an earlier date, as hereinafter provided. This agreement shall be automatically renewed for succeeding fiscal years until the manner of financing is complete, unless a party hereto provides written notice prior to June 30 of the then current fiscal year to the remaining party of an intent not to renew for any additional period.

3. ADMINISTRATION: The CITY shall be responsible for the overall coordination and administration of the project.

4. MANNER OF FINANCING: The cost of the project is estimated to be the total purchase price (the "Purchase Price") for the Property of Four Hundred Ninety Thousand Dollars (\$490,000.00), payable in cash or other immediately available funds, as follows:

(i) Beginning on July 1, 2014, and on or before July 1 of each calendar year thereafter for six (6) successive calendar years, CITY shall pay BOARD seven (7) installments of Seventy Thousand Dollars and No Cents (\$70,000.00) each. Said installments shall be applied to the unpaid balance of the Purchase Price only.

(ii) CITY will add the BOARD as an additional insured for liability purposes for claims incurred during the Financing Period.

(iii) In the event CITY fails to make a payment as described above, or shall otherwise default in any way as described in this agreement, BOARD shall notify CITY, in writing at the address listed below in NOTICE, of such default. CITY shall have 10 days to cure any default. In the event CITY fails to cure its default, the Property shall automatically revert to BOARD and CITY shall execute a deed for the PROPERTY to BOARD. All monies paid to BOARD shall remain the sole property of the BOARD.

5. FREE OF ENCUMBRANCES: BOARD hereby warrants, represents and covenants that BOARD is and will be at the time of the Closing, the lawful owner of full marketable fee simple title to the Property and that the Property will be conveyed to CITY at the Closing free and clear of any and all liens and leases, but subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record.

6. SUBSEQUENT SALE OF ALL OR PART OF PROPERTY: (a) CITY acknowledges that the conveyance of the Property to CITY is made pursuant to W. Va. Code Section 18-5-7b. As such, if the CITY or its assigns ceases to use the Property for charitable, economic development or other community use within 5 years of the Closing, as defined below, the Property shall revert to the BOARD. The BOARD acknowledges that all or a portion of the Property may be transferred or sold in connection with the development of housing for low and reduced income purchasers, through such entities qualified to provide services under the provisions of the Internal Revenue Service under the provisions of 26 United State Code section 501(c)(3) through (8) inclusive, (19) or (23). To the extent all or a portion of the property is sold for such purposes, the BOARD agrees that such transfer will not trigger a reverter of the property.

(b) After the 5 year period stated in Paragraph 6(a) above, during the following period of 5 years, CITY hereby warrants and agrees that if CITY sells all of the Property or any portion thereof to an entity that does not possess non-profit, tax-exempt status, such tax status having been granted by the Internal Revenue Service under the provisions of 26 United State Code section 501(c)(3) through (8) inclusive, (19) or (23), CITY shall pay to BOARD fifty percent (50%) of all gross proceeds generated from said sales in excess of the Purchase Price of \$490,000.00. This paragraph shall be binding on the CITY's successors and assigns, and shall be considered a covenant running with the land.

The provisions of this Paragraph 6 shall survive the Closing.

7. CLOSING: The Closing shall occur on or before July 1, 2013, (the "Closing Date") unless CITY and BOARD otherwise agree. At the Closing, BOARD shall deliver to CITY the following items, which items shall be in form and substance reasonably satisfactory to CITY: (i) a properly executed and acknowledged special warranty deed in recordable form conveying marketable title to the Property to CITY subject to all easements, rights of way, building restriction lines, covenants, conditions and restrictions of record; (ii) an owner's affidavit as to mechanic's liens in ALTA standard form; and (iii) such other documents as are required to be

delivered by BOARD to CITY on or before the Closing pursuant to the terms of this Agreement or as are reasonably necessary or appropriate to the consummation of this transaction.

In the event the Closing occurs prior to July 1, 2013, CITY agrees that BOARD may need until June 30, 2013, to remove all of its personal property from the Property. BOARD shall have the right to enter the Property at such times as necessary after the Closing and on or before June 30, 2013, to remove said property.

8. CLOSING COSTS:

(i) BOARD shall pay (a) for the preparation of the deed of conveyance and any other documents necessary to convey the Property to CITY, and (b) for BOARD's legal fees.

(ii) CITY shall pay (a) for examination of title, environmental inspection reports, soil tests, structural inspections, due diligence and feasibility inspections and studies, and any other inspections or tests CITY desires, (b) for the cost of recording all documents, except for releases of liens, and (c) for CITY's legal fees.

9. INSPECTION PERIOD: Commencing on the execution date of this Agreement, CITY shall have thirty (30) days (the "Inspection Period") to perform due diligence and to determine the sufficiency of BOARD's title to the Property.

10. TITLE REVIEW:

(i) CITY shall have until the expiration of the Inspection Period to examine title to the Property and obtain, examine and review a commitment from a title insurance company to issue an owner's title insurance policy, in the amount of the Purchase Price, showing title to the Property as being good, record, and marketable and indefeasibly vested in BOARD, subject only to permitted title exceptions (the "Commitment").

(ii) In the event CITY fails to notify BOARD of any adverse title exceptions prior to the expiration of the Inspection Period, CITY shall be conclusively deemed to have approved the title to the Property as set forth in the Commitment, any and all exceptions, items and matters referenced in the Commitment shall be conclusively deemed to be Permitted Title Exceptions.

(iii) In the event CITY notifies BOARD of an adverse title exception prior to the expiration of the Inspection Period, BOARD shall have ten (10) days to cure any such adverse title exception. In the event BOARD notifies CITY that BOARD is unable to cure, or declines to cure any such adverse title exception, CITY shall have five (5) days from the receipt of said notice to notify BOARD of its intent to: (a) proceed with the transaction contemplated hereby without a reduction in Purchase Price; or (b) terminate this Agreement. Upon such a termination, CITY shall (a) return to BOARD all due diligence and feasibility reports; and (b) correct and repair any and all damage to the Property caused by CITY's due diligence and feasibility inspections and studies.

(iv) By the written mutual consent of the Parties, the Inspection Period may be extended to cure any adverse title exceptions raised under this Section.

11. AS-IS PURCHASE AND SALE: CITY shall accept the Property in its current and present condition, AS-IS, with all defects and faults and without warranty or representation except as is otherwise set forth herein. CITY acknowledges that all liability for hazards associated with the Property, known or unknown, are assumed by the CITY. BOARD shall inform CITY upon executing of this agreement of all known or suspected hazards associated with the Property.

12. POSSESSION: CITY shall be entitled to exclusive possession of the Property at Closing. In the event of a Closing prior to July 1, 2013, CITY acknowledges that BOARD may need until June 30, 2013, to remove all of its personal property from the Property. BOARD shall have the right to enter the Property at such times as necessary after the Closing and on or before June 30, 2013, to remove said property.

13. ADJUSTMENTS: Ad valorem real estate and personal property taxes on the Property for the current calendar year and any other charges related to the Property shall be paid and prorated at the Closing, effective as of the Closing Date.

14. COMMISSIONS: CITY and BOARD represent that they have dealt with no real estate broker or agent in connection with this transaction, and that there is no such broker or agent involved in this transaction who would be entitled to any commission or fee. CITY hereby agrees to indemnify and hold harmless BOARD from any and all claims for brokerage commissions or fees due any broker or agent allegedly representing the CITY or BOARD or claiming to be entitled to any such commission or fee arising out of this transaction.

15. CITY'S DEFAULT: If CITY defaults in performing any of CITY's obligations under this Agreement for any reason other than BOARD's default or a permitted termination hereof by CITY, then the contract shall be ruled void.

16. BOARD'S DEFAULT: If BOARD defaults in performing any of BOARD's obligations under this Agreement for any reason other than CITY's default or a permitted termination hereof, then CITY may terminate this Agreement, subject to CITY's fulfillment of its obligations to: (a) return to BOARD all due diligence reports; and (b) correct and repair any and all damage to the Property caused by CITY's due diligence and feasibility inspections and studies.

17. ENTIRE AGREEMENT/GOVERNING LAW: This Agreement, together with all Exhibits hereto, constitutes the entire agreement of the parties hereto and cannot be amended or varied without the express written agreement of the parties, provided, that Paragraph 4 and Paragraph 6 shall survive the closing and be binding upon all parties hereto, their successors and assigns. This Agreement shall be governed and construed according to the laws of the State of West Virginia.

18. SUCCESSORS: This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns wherever the context so requires or admits.

one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. SURVIVAL: Each and every representation, warranty and covenant of CITY and BOARD set forth in this Agreement, to the extent the same has not been nor cannot be fully satisfied or performed at or before the date of Closing, shall survive Closing and continue in full force and effect, and bind CITY or BOARD, as applicable.

26. ASSIGNMENT: At any time prior to Closing, BOARD may assign all its rights, title and interest in this Agreement. CITY shall not have the right to assign this Agreement.

27. RULE OF CONSTRUCTION: The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

28. HEADINGS: The captions or headings used in this Agreement are for convenience of reference only and shall not be considered in interpreting this Agreement.

29. AMENDMENTS: This agreement may be amended or modified by written addendum thereto, executed by each party.

THE BOARD OF EDUCATION OF THE COUNTY OF
MONONGALIA,
a West Virginia statutory corporation

By: _____
Barbara Parsons, its President

THE CITY OF MORGANTOWN,
a West Virginia political subdivision

By: _____
Its: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the President of **THE BOARD OF EDUCATION OF COUNTY OF MONONGALIA**, a West Virginia statutory corporation, on behalf of said statutory corporation under authority duly granted.

My Commission Expires: _____

Notary Public

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, as _____ for **THE CITY OF MORGANTOWN**, a West Virginia political subdivision, on behalf of said political subdivision under authority duly granted.

My Commission Expires: _____

Notary Public

APPROVED AS TO FORM BY
THE ATTORNEY GENERAL

By _____

Date: _____