



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
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AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
October 2, 2012
7:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL BY CITY CLERK**
3. **PLEDGE TO THE FLAG**
4. **APPROVAL OF MINUTES:** Regular Meeting, September 18, 2012
5. **CORRESPONDENCE**
6. **UNFINISHED BUSINESS:**
 - A. **BOARDS AND COMMISSIONS**
7. **SPECIAL COMMITTEE REPORTS**
8. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, THE MORGANTOWN BUILDING COMMISSION, AND THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING ITS OWNERSHIP INTERESTS IN SPECIFICALLY IDENTIFIED REALTY LOCATED IN THE AREA COMMONLY KNOWN AS THE "STADIUM LOOP" TO THE WVU BOARD OF GOVERNORS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ALL OTHER RELATED DOCUMENTS NECESSARY FOR THE REALTY TRANSFER TO OCCUR.**

- B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SEVEN PARCELS OF REAL ESTATE IN THE THIRD AND FIFTH WARDS OF THE CITY OF MORGANTOWN FROM PUD, PLANNED UNIT DEVELOPMENT DISTRICT TO R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT; B-2, SERVICE BUSINESS DISTRICT; AND, B-4, GENERAL BUSINESS DISTRICT BY AMENDING ARTICLE 1331.02 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 WAS FULLY SET FOR THE THEREIN.**
- C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SIX PARCELS OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE- FAMILY RESIDENTIAL DISTRICT TO (R-2) SINGLE- AND TWO FAMILY RESIDENTIAL 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 WAS FULLY SET FORTH HEREIN.**
- D. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND THE STATE OF WEST VIRGINIA, LESSEE, WHEREBY THE STATE OF WEST VIRGINIA LEASES REAL ESTATE FOR USE BY HE DEPARTMENT OF HEALTH AND HUMAN RESOURCES AT THE MORGANTOWN MUNICIPAL AIRPORT.**
- E. Consideration of **APPROVAL** of **A RESOLUTION AUTHORIZING THE EXECUTION OF A WEST VIRGINIA DIVISION OF CULTURE AND HISTORY CULTURAL FACILITIES GRANT, FUNDS FOR USE FOR THE METROPOLITAN THEATRE.**
9. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

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

NEW BUSINESS:

1. **Alternative Retiree Health Coverage Program**
2. **Civic Promotions Contribution to Morgantown International Festival**

11. **REPORT FROM CITY CLERK**

12. **REPORT FROM CITY ATTORNEY**

13. **REPORT FROM COUNCIL MEMBERS**

14. **EXECUTIVE SESSION: Pursuant to WV State Code Section 6-9A-4(b)(2)(A) in order to discuss personnel matters.**

15. **ADJOURNMENT**

If you need an accommodation contact us at 284-7439

REGULAR MEETING SEPTEMBER 18, 2012:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, September 18, 2012 at 7:00 P.M.

PRESENT: City Manager Terrence Moore, Deputy City Manager Jeff Mikorski, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jim Manilla and Council Members: Ron Bane, Wes Nugent, Jenny Selin, Marti Shamberger, Bill Byrne, and Linda Herbst.

APPROVAL OF MINUTES: The minutes of the Regular Meeting of September 4, 2012 were approved as printed.

CORRESPONDENCE: Mayor Manilla presented a Retirement Proclamation to Jay Bolyard for his years of service on the Fire Department, followed by an announcement of the Farmer's Market Place Pavilion grand opening on 9/22 at 8am.

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 1139.061, 1139.12, 1139.13, 1139.14, 1139.15, 1139.16, AND 1139.17 OF ITS HEALTH AND SANITATION CODE, AND REPEALING SECTION 1139.11 OF ITS HEALTH AND SANITATION CODE, AS THE SAME APPLY TO SOLID WASTE COLLECTION.

There being no appearances or objections, Mayor Manilla declared the public portion closed.

PUBLIC HEARING – AN ORDINANCE BY THE CITY OF MORGANTOWN ESTABLISHING REPRODUCTION FEES, AS THE SAME APPLY TO FREEDOM OF INFORMATION ACT AND OTHER REQUESTS FOR PRODUCTION OF DOCUMENTS.

There being no appearances or objections, Mayor Manilla declared the public portion closed.

PUBLIC HEARING – AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND THE UNITED STATES OF AMERICA, LESSEE, AS THE SAME PERTAINS TO THE MORGANTOWN AIRPORT; MORE SPECIFICALLY THE FEDERAL GOVERNMENT'S INTENT TO LEASE SPACE SO AS TO OPERATE AN AIR TRAFFIC CONTROL MANAGEMENT OFFICE.

There being no appearances or objections, Mayor Manilla declared the public portion closed.

UNFINISHED BUSINESS:

AN ORDINANCE AMENDING SECTIONS OF THE HEALTH AND SANITATION CODE AS IT PERTAINS TO SOLID WASTE COLLECTION: The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTIONS 1139.061, 1139.12, 1139.13, 1139.14, 1139.15, 1139.16, AND 1139.17 OF ITS HEALTH AND SANITATION CODE, AND REPEALING SECTION 1139.11 OF ITS HEALTH AND SANITATION CODE, AS THE SAME APPLY TO SOLID WASTE COLLECTION.

Motion by Byrne, second by Shamberger to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE PROVIDING FOR REPRODUCTION FEES ASSOCIATED WITH THE FULFILLMENT OF FOIA AND OTHER REQUESTS FOR DOCUMENTS: The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN ESTABLISHING REPRODUCTION FEES, AS THE SAME APPLY TO FREEDOM OF INFORMATION ACT AND OTHER REQUESTS FOR PRODUCTION OF DOCUMENTS.

Motion by Shamberger, second by Selin to adopt the above entitled Ordinance. Motion carried 7-0.

AN ORDINANCE APPROVING A LEASE AGREEMENT WITH THE U.S. FEDERAL GOVERNMENT FOR OFFICE SPACE TO OPERATE AN AIR TRAFFIC CONTROL MANAGEMENT OFFICE: The below entitled Ordinance was presented for second reading:

AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND THE UNITED STATES OF AMERICA, LESSEE, AS THE SAME PERTAINS TO THE MORGANTOWN AIRPORT; MORE SPECIFICALLY THE FEDERAL GOVERNMENT'S INTENT TO LEASE SPACE SO AS TO OPERATE AN AIR TRAFFIC CONTROL MANAGEMENT OFFICE.

Motion by Byrne, second by Shamberger to adopt the above entitled Ordinance. Motion carried 7-0.

BOARDS AND COMMISSIONS: Matthew Held was appointed to the Museum Commission. Steven McBride and Michael Hasenmyer were appointed to the Urban Landscape Commission.

SPECIAL COMMITTEE REPORTS: Councilor Byrne reported on a presentation that the Sister Cities Commission will make to residents of the Village at Heritage Point about the upcoming trip to Guanajuato, Mexico.

PUBLIC PORTION:

Joe Panico, 507 Beechurst Ave, offered positive feedback about the efficiency of City Administration, and stated his appreciation for the professionalism of City Employees.

There being no appearances, Mayor Manilla declared the public portion closed.

CITY MANAGER'S REPORT:

INFORMATION:

1. Auditor Selection

Mr. Moore offered to Council an update regarding the selection of the Auditing firm, Tetrick & Bartlett.

2. Square at Falling Run

Mr. Moore gave a brief explanation of the current status and upcoming considerations. After discussion, the rules were suspended to allow further comments from Mr. Randy Zudak, WVU Associate VP of Facilities and Services.

NEW BUSINESS:

1. Specific Budget Adjustment for Goodwill City Contribution

After explanation from Mr. Moore, and Council's discussion, motion by Nugent, second by Selin to approve the budget adjustment. Motion carried 7-0.

The rules were then suspended to allow commentary from Randy Jones, the WVU SGA Liaison.

REPORT FROM CITY CLERK: No Report.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBERS: (*Roll Reversal*)

Councilor Herbst: Councilor Herbst announced the Suncrest Neighborhood Association will host an open-mic with local candidates running in the upcoming election; and announced an animal adoption event over the weekend.

Councilor Byrne: Councilor Byrne reminded Council that he awaits an update on how the Sunnyside TIF and other related initiatives will be handled in the program's absence of a director. Mayor Manilla and Mr. Moore replied that progress is being made, and a report will be given soon. Councilor Byrne reiterated the importance due to the time constraints related to the TIF and associated funds which are at risk of being lost. He reported on recent newspaper articles related to downtown nightlife problems and violence. He urged that the City Manager should bring together stakeholders to find solutions to these problems. Councilor Byrne asked for consensus to direct the Manager as such.

Councilor Shamberger: Councilor Shamberger announced that she and Councilor Selin recently attended an SGA meeting in order to participate in the problem solving process for downtown. She then commended the Urban Landscape department for their work on the flower baskets. She also thanked Mr. Moore and Chief Preston for addressing a problem with vagrants behind the Met Theatre. She reported on the recent meeting of the Woodburn Association of Neighbors, who give their thanks for tree trimming in the area. She reminded neighbors to pick up trash or litter when they see it, and to report anything suspicious to the proper authorities.

Councilor Selin: Councilor Selin echoed Councilor Shamberger's comments about the SGA meeting. She mentioned that students should be busy and engaged to ensure safety for all. She announced the Southpark Picnic where the MHS band performed. She mentioned the second chance adoption event, and announced Parking Day, where local artists design mini parks in metered parking spaces, and encouraged all to attend.

Councilor Nugent: Councilor Nugent announced the Wiles Hill-Highland Park neighborhood association meeting. He commended Officer Bennett's work in downtown patrols for keeping the area safe during the day. He also gave appreciation for the completion of the Farmer's Market

Place. Finally he cautioned against Council Members editorializing on current news with regard to downtown violence.

Councilor Bane:

Councilor Bane congratulated Mayor Manilla on his recent wedding. He commented on the need for tolerance in Morgantown in light of recent world events and the impending presidential election. He urged citizens to be constructive, and also to vote in the upcoming election.

Mayor Manilla:

Mayor Manilla stated that WVU and the City have joined the International Town and Gown Association to improve relations and solve problems common to college towns. He announced the arrival of ITGA representative Kim Griffo on October 3rd and a series of tours, events and meetings that will take place during that visit. He expressed hopes that this step forward will foster good relationships. He then announced that the Sunnyside TIF will be administered and money will not be lost. Councilor Byrne interjected with information regarding past precedent in the execution and preparation of TIF projects.

EXECUTIVE SESSION: Motion by Nugent, second by Bane, Council moved by unanimous consent to enter into executive session pursuant to WV State Code section 6-9A-4(b)(2)(A) in order to discuss personnel matters with City Council Members and the City Manager present, at 7:40 p.m. Executive session ended at 10:09 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 10:10 p.m.

City Clerk

Mayor

*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

jsabatelli@cityofmorgantown.org

MEMO

DATE: 9/27/2012

TO: Terrence Moore, ICMA-CM
City Manager

FROM: Joseph R. Sabatelli, CPA 
Finance Director

RE: Retiree Health Insurance

The personnel committee, Deputy City Manager Jeff Mikorski, Human Resources Manager Debra Smyth and myself, have been working with the City's health insurance broker Commercial Insurance regarding Medicare eligible retirees. Greg Carpenter of Commercial Insurance will be on hand at the October 2nd City Council meeting to give a presentation regarding a recommended change to the current structure of the retirement plan for these eligible retirees. As a personnel committee, we recommend the approval of moving these retirees to a Medicare Advantage plan through Humana and that their current premiums of \$52.17 for individuals remain the same. The Medicare Advantage plan calls for a \$64 per member per month premium and allows the employer to offset up to 20% of this premium, which the current rate does. The offset would only be allowed for those employees eligible to receive health coverage allowable under the City's current medical plan, thus all employees hired after January 1, 2011 will not be eligible for the offset. The recommendation is contingent upon adequate "in-network" coverage consisting of regularly used providers, which will not be available for review until Monday. Changes to these types of plans require at least a 60 day notice and unfortunately due to timing reasons, we were unable to present this at the most recent Committee of the Whole meeting and cannot wait until the upcoming meeting. Council must vote on this change and therefore, may vote upon this after the presentation by Mr. Carpenter or table until the October 16th meeting for approval. This recommendation will have a positive impact on the City's cash payouts of the Life and Health Fund and is expected to reduce costs of the approximately 50 retirees covered.

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

BUILDING COMMISSION:

Anna Marlene Savino's term expires on October 4th, and she wishes to continue serving for another 5 year term. Council can vote on this re-appointment on October 2nd.

HISTORIC LANDMARKS COMMISSION:

Shannon Tinnell Chair of this Commission term expires on 11/15/12. Councilor Herbst is checking to see if she wishes to continue to serve. Appointment by Council. At least 2 mem. Inter. In Historic Preservation-1 Council Rep.

HUMAN RIGHTS COMMISSION:

Council will interview candidates at a Special Meeting on October 2nd. Appointed by City Council, resident of the City. To serve 2 year terms the first year. Then terms of first seven two year and three will serve one year. Thereafter terms will be staggered two year terms.

MORGANTOWN UTILITY BOARD:

Chair J.T. Straface term expires on 11/4/12. He, along with Board Members wishes the continuance of his service. Attached is the letter of recommendation from MUB, Council may re-appoint Mr. Straface on October 2nd. Residents to serve at large. 5 year residency required.

URBAN LANDSCAPE COMMISSION:

Chamber of Commerce representative seat is still vacant and Chair is working with Chamber on replacement. Nominated by CM, from each ward, 13 members with staggered terms, 1 councilmember, and non-ward members must represent specific category.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.**

****Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

****Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, the City Clerk will check with Council before scheduling a Special Meeting.***

9/27/2012

September 19, 2012

Mr. Terrence Moore, City Manager
City of Morgantown
389 Spruce Street
Morgantown, WV 26505

Dear Terrence:

I provide this letter on behalf of the members of the Board for the Morgantown Utility Board.

The term of Board Chairman J.T. Straface will expire on November 1, 2012. Mr. Straface has served on the Board for several years and desires to continue his service. He has a strong background in business management and personnel relations and has provided significant guidance to the Board in these areas.

In its official meeting of September 11, 2012, members of the Morgantown Utility Board voted unanimously to request that City Council re-appoint Mr. Straface to another term on the Utility Board.

We respectfully request that you please place the re-appointment of J.T. Straface to the Morgantown Utility Board on the next meeting agenda of City Council.

Thanks for your help.

Yours very truly,

MORGANTOWN UTILITY BOARD



Timothy L. Ball, P.E.
General Manager

TLB/bar

cc: MUB Board of Directors

AN ORDINANCE BY THE CITY OF MORGANTOWN APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, THE MORGANTOWN BUILDING COMMISSION, AND THE WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, AS THE SAME APPLIES TO THE CITY OF MORGANTOWN TRANSFERRING ITS OWNERSHIP INTERESTS IN SPECIFICALLY IDENTIFIED REALTY LOCATED IN THE AREA COMMONLY KNOWN AS THE "STADIUM LOOP" TO THE WVU BOARD OF GOVERNORS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ALL OTHER RELATED DOCUMENTS NECESSARY FOR THE REALTY TRANSFER TO OCCUR.

The City of Morgantown hereby ordains that it authorizes its City Manager to not only execute the attached agreement by and on behalf of the City of Morgantown, but also, to execute related documents necessary for the realty transfer to occur.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SEVEN PARCELS OF REAL ESTATE IN THE THIRD AND FIFTH WARDS OF THE CITY OF MORGANTOWN FROM PUD, PLANNED UNIT DEVELOPMENT DISTRICT TO R-2, SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT; B-2, SERVICE BUSINESS DISTRICT; AND, B-4, GENERAL BUSINESS DISTRICT BY AMENDING ARTICLE 1331.02 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 WAS FULLY SET FORTH THEREIN.

WHEREAS, the City of Morgantown enacted Ordinance 08-48 on December 2, 2008 to amend the Official Zoning Map of the City of Morgantown for the "Westminster House Planned Unit Development (PUD) Outline Plan".

WHEREAS, Ordinance 08-48 provided for the zoning reclassification of Parcels 247, 248, 249, 260, and 262 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District from the B-4, General Business District to the PUD, Planned Unit Development District.

WHEREAS, Ordinance 08-48 provided for the zoning reclassification of Parcels 263 and 270 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District from the R-2, Single- and Two-Family Residential District and the B-2, Service Business District to the PUD, Planned Unit Development District.

WHEREAS, Article 1357.03 (D) of the City's Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division not more than eighteen (18) months following City Council approval of the PUD Outline Plan. Said Article provides that the Planning Commission may extend the time for application for approval of the PUD Development Plan for good cause, consistent with the purposes of the Zoning Ordinance OR initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.

WHEREAS, on November 12, 2009, the Planning Commission extended the original PUD Development Plan application deadline from June 3, 2010 to December 3, 2010.

WHEREAS, on February 10, 2011, the Planning Commission again extended the PUD Development Plan application deadline from December 3, 2010 to October 31, 2011.

WHEREAS, on October 13, 2011, the Planning Commission again extended the PUD Development Plan application deadline from October 31, 2011 to December 31, 2011.

WHEREAS, on December 8, 2011, the Planning Commission again extended the PUD Development Plan application deadline from December 31, 2011 to June 30, 2012.

WHEREAS, the Planning Division duly notified Westminster House, Inc. by means of a certified letter dated July 25, 2012 that:

1. Article 1357.03 "Procedure for Approval of Planned Unit Development" of the Planning and Zoning Code provides that a PUD Development Plan must be submitted to the Planning Division no later than eighteen (18) months following City Council approval of the Outline Plan. City Council enacted Ordinance 08-48 establishing "Westminster House" PUD, Planned Unit Development District on December 2, 2008, which established an expiration deadline of June 3, 2010.
2. The Planning Commission approved four (4) PUD Outline Plan Amendments, each extending the deadline to submit the PUD Development Plan respectively.
3. The effective deadline to submit the PUD Development Plan to the Planning Division was June 30, 2012.
4. Article 1357.03(D)(4)(c) requires the Planning Division to report to the Planning Commission on Planned Unit Developments with time limits that have expired and notify the original applicants of same and that the Morgantown Planning Commission may extend the PUD Development Plan submission deadline for good cause, consistent with the purposes of the Zoning Ordinance.
5. The Planning Division is to report the subject expiration to the Planning Commission with a recommendation to determine whether to consider extending the deadline or initiate action to amend the Official Zoning Map so as to rescind the Planned Unit Development designation.
6. The Planning Division advised the Planning Commission that Westminster House, Inc. did not wish to pursue an additional PUD Development Plan submission deadline extension and that the developer intends to pursue a development program that will fall within the standards of the zoning districts for which the subject property was classified prior to City Council's enactment of Ordinance 08-48 on December 2, 2008.

WHEREAS, the Morgantown Planning Commission held a public hearing on August 23, 2012 and voted unanimously to initiate action to amend the Official Zoning Map so as to rescind the "Westminster House" PUD, Planned Unit Development District designation.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MORGANTOWN:

1. That the zoning reclassification enacted by Ordinance 08-48 on December 2, 2008 is hereby rescinded;
2. That Parcels 247, 248, 249, 260, and 262 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District 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 was fully set forth herein are reclassified from the PUD, Planned Unit Development District to the B-4, General District;

3. That Parcels 263 and 270 of Monongalia County Tax Map 26 (2006 tax assessment), Morgantown Corporation District 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 was fully set forth herein are reclassified from the PUD, Planned Unit Development District to the R-2, Single- and Two-Family Residential District and the B-2, Service Business District as demarcated on the Official Zoning Map of the City of Morgantown in effect on December 2, 2008; and,
4. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

FIRST READING:

Mayor

ADOPTED:

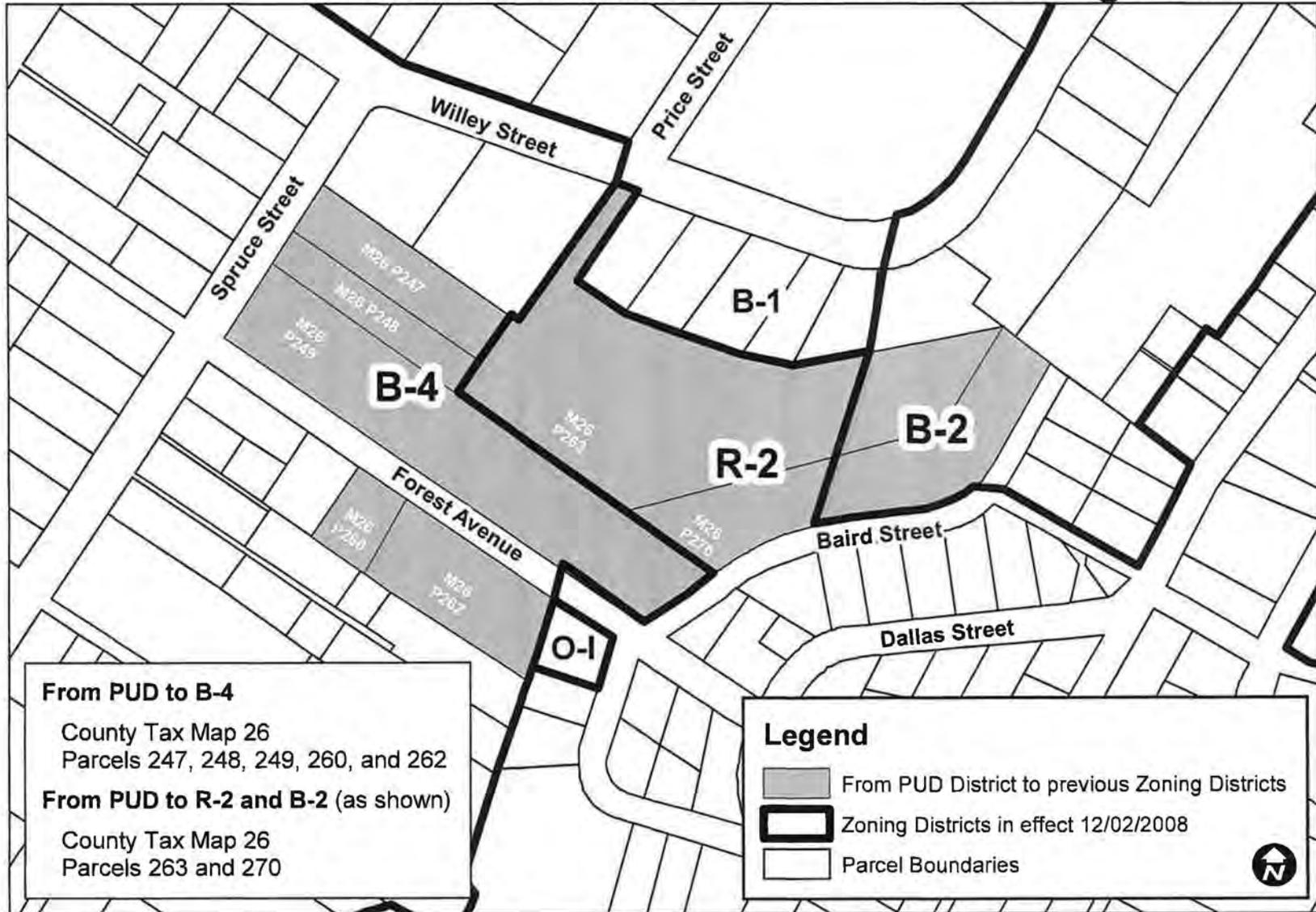
FILED:

RECORDED:

City Clerk

ORDINANCE EXHIBIT

RZ08-05 / Westminster House PUD / Rescinding PUD



ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF SIX PARCELS OF REAL ESTATE IN THE FIFTH WARD OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE- FAMILY RESIDENTIAL DISTRICT TO (R-2) SINGLE- AND TWO FAMILY RESIDENTIAL 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 WAS FULLY SET FORTH HEREIN.

Property included in this consideration is identified in the Monongalia County Assessor's records as Parcels 121, 123, 124, 125, 125.1, and 126 of County Tax Map 29; Morgantown Corporation District.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the zoning classification for 121, 123, 124, 125, 125.1, and 126 of County Tax Map 29 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 was fully set forth herein is reclassified from (R-1A) Single-Family Residential District to (R-2) Single- and Two-Family Residential District.
2. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from the date of adoption.

FIRST READING:

Mayor

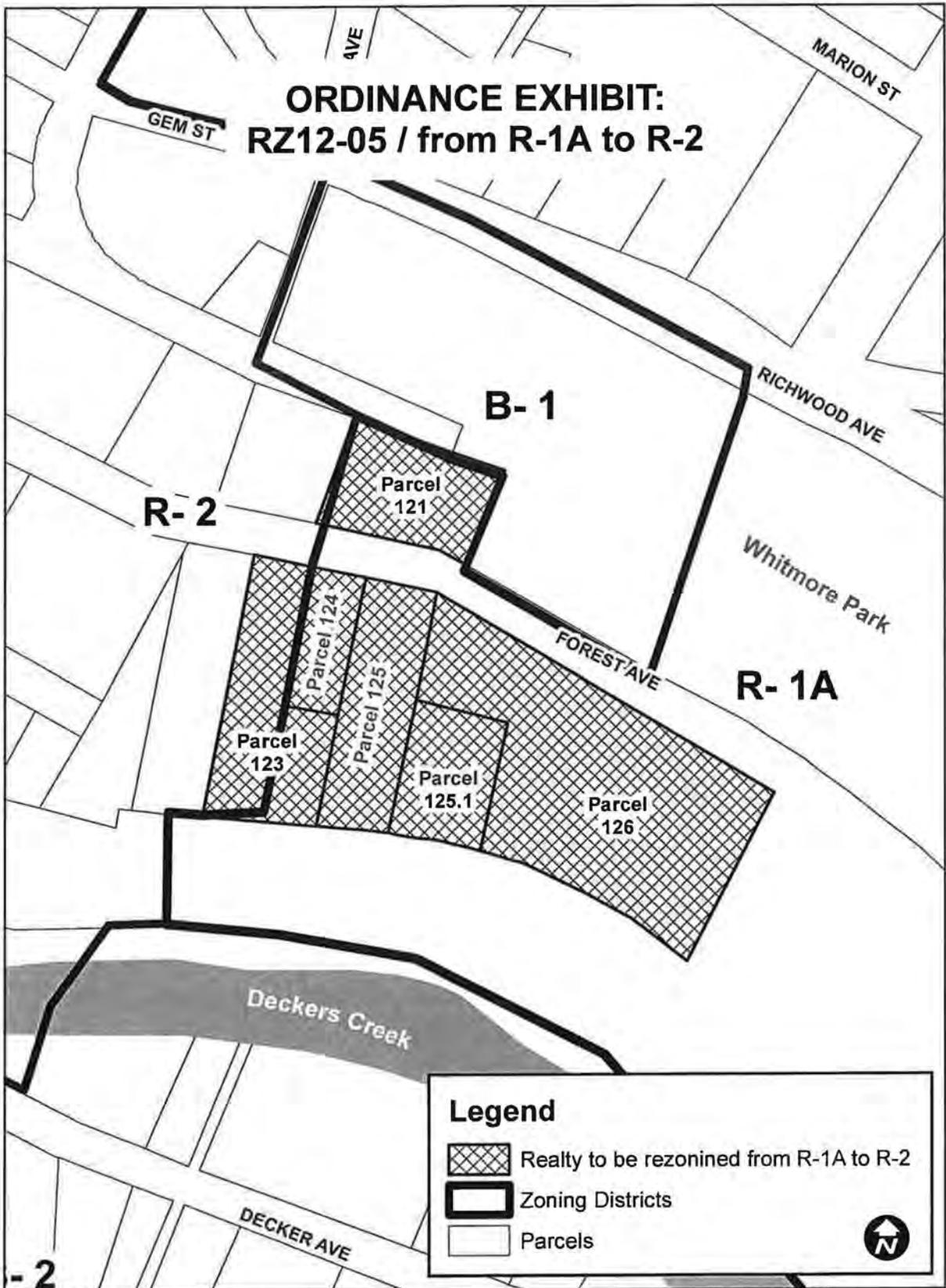
ADOPTED:

FILED:

RECORDED:

City Clerk

**ORDINANCE EXHIBIT:
RZ12-05 / from R-1A to R-2**



AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND THE STATE OF WEST VIRGINIA, LESSEE, WHEREBY THE STATE OF WEST VIRGINIA LEASES REAL ESTATE FOR USE BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AT THE MORGANTOWN MUNICIPAL AIRPORT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the lease agreement hereto attached by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

CONTRACT OF LEASE

THIS CONTRACT OF LEASE, made **September 17, 2012**, by and between **CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as "Lessor," and the **STATE OF WEST VIRGINIA**, by the Department of Administration, Real Estate Division, hereinafter referred to as "Lessee".

WHEREAS, pursuant to provisions of Chapter 5A, Article 10, Code of West Virginia, as amended, a Chief Executive Officer of the **DEPARTMENT OF HEALTH AND HUMAN RESOURCES** certifies that the space herein leased is necessary for the proper function of this department, and that satisfactory space is not available in other buildings now owned or leased by the State; and

WHEREAS, the Secretary of the Department of Administration, by executing this lease, hereby leases the premises for use by the **DEPARTMENT OF HEALTH AND HUMAN RESOURCES**, hereinafter referred to as "Tenant".

NOW THEREFORE, THIS CONTRACT OF LEASE WITNESSETH:

That for and in consideration of the full and complete performance of the covenants, terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee, for use by the Tenant, the following described Premises:

Office space consisting of 4,575 square feet, more or less, along with 10 parking spaces and the surface land including the tower, and dish attached to existing water tower within the site plan, located at 190 Hart Field Road, in the City of Morgantown, Monongalia County, West Virginia, (hereinafter referred to as the "Premises") and as depicted in the floor plans/drawings attached hereto and collectively referred to as Exhibit "A-1" and Exhibit "A-2." Tenant's use of the tower shall be subject to the conditions set forth in Exhibit "B" hereto attached.

The parties hereto covenant and bind themselves as follows:

(1) USE

Tenant shall use the Premises for the northern operations of the emergency communications system, general office purposes and a call center in compliance with all applicable federal, state and local laws, codes, rules and regulations ("Laws").

(2) TERM AND NOTICES

The term of this Contract of Lease, subject to the provisions hereof, shall commence on **October 1, 2012**, and end at midnight on **September 30, 2022**. This Contract of Lease shall be considered renewed for each ensuing fiscal year during the term of the Contract of Lease unless it is canceled by the Lessee before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

To the Lessee

Department of Administration
Real Estate Division
900 Pennsylvania Ave., Suite 500
Charleston, West Virginia 25302

To the Lessor

City of Morgantown
Office of City Manager
389 Spruce Street
Morgantown, WV 26505

(3) PREPARATION OF PREMISES

(a) Lessor's Work. On or before the Commencement Date Lessor, at its sole cost, shall complete the preparation of the Premises for the occupancy needs of the Tenant. Lessor shall deliver the Premises to Tenant in satisfaction of all the following conditions: Lessor's Work and the Premises are substantially complete in accordance with this Lease; the Premises satisfies all applicable building codes then in effect relating to Landlord's Work; the Premises is in suitable condition for occupancy with the receipt of a valid certificate of occupancy, or its equivalent, if applicable, allowing Tenant to conduct its business at the Premises; upon receipt of an approval letter from the State Fire Marshall, if applicable; and upon acceptance of the Premises in writing by the Lessee. Tenant must accept or reject the Premises, in writing, within ten (10) days of Tenant's receipt of a valid certificate of occupancy. If Lessor does not receive any written notice from Tenant regarding its acceptance or rejection of the Premises within ten (10) days of its receipt of a valid certificate of occupancy, then the Premises shall be deemed accepted by Tenant. In the event the date on which Lessor delivers the Premises to Tenant after the Commencement Date, said delivery of the Premises under this Section shall have no effect on the definition of Commencement Date and shall not change the Term as specified under Section 2 above. All of Landlord's Work will be in compliance with Fire Marshall Regulations, Americans with Disabilities Act of 1990, and all other building codes and industry standards as required by local, State and Federal codes and the authority having jurisdiction. The contractor and any sub-contractors shall pay the higher of the U.S. Department of Labor minimum wage rates or the West Virginia Department of Labor wage rates as established for the County in which the work is being performed pursuant to West Virginia Code § 21-5A-1, et seq.

(b) Tenant's Work. Tenant, at its sole cost, shall have the right to complete the tenant improvements which are expressly identified in Exhibit "B", attached hereto and made a part hereof by this reference, as being Tenant's responsibility, if any ("Tenant's Work"). Lessor hereby consents to Tenant performing Tenant's Work.

(4) RENT

The Lessee covenants that the Tenant shall pay unto the Lessor as rent for the premises herein leased, the sum of **FIVE THOUSAND, THREE HUNDRED, THIRTY-SEVEN and 50/100 DOLLARS (\$5,337.50) PER MONTH (\$14.00 annual per square foot rate)** payable upon receipt of invoice from Lessor to the Tenant and payable on the first day of every month for the preceding month during the term of this Contract of lease. Tenant shall also pay Lessor a prorated rent for any fractional or partial month if the Commencement Date falls on any other day than the first day of the calendar month as described in Section 2 above.

(5) UTILITIES AND OTHER RELATED SERVICES

(a) Lessor. Lessor shall furnish and timely pay when due and payable, at no additional cost to the Lessee or Tenant, the following utilities and services to or for the benefit of the Premises:

- (i) Electricity, gas, water and sewer service.
- (ii) Snow and ice removal from the parking areas, drives, sidewalks and other Common Areas.
- (iii) Janitorial service.
- (iv) To the extent not included in the janitorial service, garbage removal from the real property, including the Premises, building, and Common Areas.
- (v) Window washing services for the exterior windows of the building at least twice annually.

- (vi) Heating, ventilation and air conditioning ("HVAC") service sufficient to maintain a temperature range at all times in the Premises between 68° F and 76° F. Tenant, at its expense, and with the prior written consent of the Lessor, which consent shall not be unreasonably withheld, may install such supplemental air-conditioning units within the Premises as Tenant deems necessary, provided that such supplemental units do not interfere with or affect the HVAC system serving the Premises and building.
- (vii) If the Premises are on the second floor of the building or higher, Lessor shall furnish elevator service to such floor, with elevator location most convenient to the Premises.

(b) Tenant. Tenant, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and services to or for the benefit of the Premises:

- (i) Tenant shall have the right to install a key card access system or any other security system for the Premises, using such security services provider as Tenant may choose in its sole discretion. Tenant, at its sole discretion, can elect to remove said system at any time, provided that Tenant, at its sole expense, shall repair any damage resulting from such removal.
- (ii) Janitorial Supplies.

(c) Interruption. If any utilities or services are interrupted for reasons within Lessor's control and as a result, Tenant's use of the Premises is interrupted for three (3) consecutive business days, Tenant's obligation to pay Rent shall equitably abate commencing upon the fourth (4th) business day and continuing until such time as the interruption ceases. In the event Tenant's ingress to or egress from the Premises is interfered with such that Tenant is unable to conduct its business at the Premises for a period in excess of three (3) consecutive business days, Tenant's Rent shall equitably abate commencing upon the fourth (4th) business day and continuing until such time as the interference ceases.

(6) MAINTENANCE

(a) Lessor. Lessor shall maintain and promptly make all necessary repairs and replacements to the Premises, building, and Common Areas, including without limitation, the foundation, structure, exterior walls, exterior windows, exterior doors, roof, ceilings, gutters, downspouts, plumbing, paint, carpet, electrical, light fixtures and bulbs, HVAC and associated filters and other building systems, parking areas, driveways, sidewalks and landscaping.

(b) Tenant. Tenant, at its sole expense, shall maintain its personal property, equipment, and trade fixtures within the interior of the Premises.

(c) Compliance with Laws. Lessor represents and warrants to Tenant that throughout the Term of this Lease, the Premises, building and Common Areas are and shall remain in compliance with all applicable Laws, including, but not limited to, the Americans with Disabilities Act of 1990. Tenant shall use and maintain the Premises in compliance with all applicable Laws during the Term hereof, excluding those items that are the responsibility of Lessor hereunder.

(7) DEFAULT

(a) Tenant's Default. In the event Lessee or Tenant defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty (60) days after Lessee's receipt of written notice, the Lessor may terminate the Lease upon providing ten (10) days written notice of termination to Lessee.

(b) Lessor Default. If Lessor fails to perform any of its obligations under this Lease, and said failure shall continue for a period of twenty (20) days after receipt of written notice of default from Lessee (provided such default can be cured within twenty (20) days and if not, then within a reasonable time thereafter, provided Lessor commenced such cure within twenty (20) days and thereafter diligently pursues such cure to completion), Tenant shall have the right to take such remedial action or complete such maintenance or repairs as may be necessary to place the Premises in good, safe and sanitary condition. In the event Tenant exercises its right to take remedial action, Lessor shall promptly reimburse the costs incurred by Tenant in curing such default upon receipt of an invoice from Lessee, which shall be accompanied by reasonable supporting documentation. If Lessor fails to reimburse Tenant within thirty (30) days after receipt of Lessee's invoice, Tenant, in addition to all other available rights and remedies, shall have the right to deduct such unpaid amount from the next installment(s) of Rent due to Lessor until reimbursed in full.

(c) General. In all instances of default, the non-defaulting party shall use reasonable efforts to mitigate its damages. All rights and remedies of Lessor, Lessee, and Tenant enumerated herein shall be cumulative and shall not be construed to exclude any other rights or remedies available under this Lease, at law or in equity. No waiver of any right or remedy by a party on one occasion shall constitute a waiver of the same right or remedy on future occasions. In the event of an emergency, the cure periods set forth in Sections 16(a) and 16(b) shall be shortened to a period of time reasonable under the circumstances. An emergency situation is a condition which threatens the Premises or building with the probability of imminent substantial damage or destruction or which creates an imminent risk of personal injury.

(8) EQUIPMENT AND TRADE FIXTURES

Tenant, at its sole expense, shall be entitled to install such equipment and trade fixtures in the Premises as it deems necessary or appropriate for the conduct of its business. Such equipment and trade fixtures shall remain the personal property of Tenant and may be removed by Tenant on or before the expiration or termination of this Lease, provided that Tenant, at its sole expense, shall immediately repair any damage resulting from such removal. Tenant, upon prior notice to Lessor, shall be entitled to make such alterations and improvements to the Premises as Tenant deems necessary or advisable for its business so long as such alterations and improvements are nonstructural in nature, do not affect the building systems, do not affect the exterior of the building or any Common Areas, and are made in compliance with all applicable Laws. Lessor shall not charge any supervisory fees in connection with any such alterations and improvements by Tenant. Tenant shall not permit any mechanic's liens to be filed in connection with such work. Within thirty (30) days after Tenant receives written notice of the filing of any such mechanic's lien, Tenant shall cause such lien to be released or discharged. Tenant shall not be required to remove any equipment or trade fixtures by or for Tenant in compliance with the terms of this lease. In the event that the Tenant desires to remove any said equipment or trade fixtures, Tenant shall, at its sole expense, on or before the expiration or termination of this Lease, immediately repair any damage resulting from such removal.

This paragraph shall apply to Tenant's key card access system or any security system for the Premises as set forth in Section 5(b)(i).

(9) INSURANCE

Throughout the Term, Tenant shall maintain and timely provide payment for, at its sole cost and expense, commercial general liability insurance naming the Lessor as an additional insured with coverage

limits of at least \$1,000,000.00 for liability resulting from injury or death, and from damage to property, occurring in or about the Premises, building and Common Areas. In addition, Lessor shall keep the Premises, building and Common Areas insured against fire, windstorm, and other casualty, under an all risk policy of insurance, written in standard form, in the full replacement value thereof.

(10) TAXES AND ASSESSMENTS

The lessor shall timely pay for all real estate taxes, other taxes and assessments levied on the subject Premises, the building, or the Common Areas, or the underlying real property during the term of this lease.

(11) TRANSFER OR ASSIGNMENT OF LEASE

The Lessee agrees not to transfer or assign this lease, or sublet the subject premises without the written consent of the Lessor except, however, the Lessee may, at its option, reassign this lease and the space leased herein to another State agency other than the tenant named herein, with all other terms and conditions remaining the same throughout the remainder of the term of the lease.

(12) DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Tenant would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

(13) PROVISIONS FOR IMMEDIATE TERMINATION

It is further agreed by and between the parties hereto that this lease shall be considered canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefore, or should otherwise act to impair this lease or cause it to be canceled [see West Virginia Code § (5A-10-5(c)(2)], or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery.

(14) CANCELLATION OF LEASE

It is further agreed by and between the parties hereto that the Department of Administration, as Lessee, shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to the last day of the succeeding month [see West Virginia Code §5A-10-5(c)(1)].

(15) ACCESS TO PREMISES

Upon reasonable prior notice to Tenant, Lessor and its representatives shall have the right to enter the Premises at all reasonable times during regular business hours to inspect the same, to maintain and repair the Premises and the building, to post such reasonable notices as Lessor may desire to protect its rights, and during the ninety (90) days immediately preceding the expiration of the Term (provided Lessee has not exercised any available renewal options), to exhibit the Premises to prospective tenants, and to place upon the doors or in the windows of the Premises ordinary "for rent" or "for lease" signs.

Notwithstanding the foregoing, Lessor shall have the right to enter the Premises at any time in response to an emergency situation. An emergency situation is a condition which threatens the Premises or building with the probability of imminent substantial damage or destruction or which creates an imminent risk of personal injury.

(16) STRUCTURAL OR OTHER CHANGES TO PREMISES

In the event the Tenant requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are approved by the Secretary of the Department of Administration, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this lease to arrive at a fair rental value, if warranted.

(17) SUBORDINATION AND NONDISTURBANCE

(a) Subordination and Nondisturbance. Lessor shall have the right to place upon the building and underlying real property any mortgages which Lessor or its lender(s) deem advisable. Such mortgages shall have priority over this Lease and Lessee's and Tenant's rights hereunder. At Lessor's request, Lessee shall execute any and all instruments, the form of which must conform to the State of West Virginia's Constitution and laws, necessary to subordinate this Lease to any such mortgages, provided that each such mortgagee executes a non-disturbance agreement which provides that so long as Tenant is not in default of this Lease, Lessee's and Tenant's right to possession of the Premises and other rights under this Lease, including, without limitation, any options to renew, rights of first refusal, and right to terminate, shall not be affected or disturbed by the mortgagee in the exercise of any of its rights or remedies against Lessor, nor shall Lessee or Tenant be named as a party defendant to any foreclosure of the lien or mortgage. Furthermore, Lessee shall, within thirty (30) days after receipt of a request therefore, execute and deliver to Lessor an estoppel certificate setting forth the name of both Lessee and Tenant, the date of this Lease, a description of the Premises and the Rent payable therefore, certifying that this Lease is in full force and effect, and certifying that Lessor is not in default of this Lease or specifically enumerating any outstanding events of default by Lessor.

(b) Attornment. In the event that Lessor's mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in its mortgage, Lessee agrees to attorn to such transferee as its new Lessor via an agreement in conformance with the State of West Virginia's Constitution and laws, and this Lease shall continue in full force and effect as a direct lease between Lessee and such transferee, upon all of the terms and conditions contained herein.

(18) SUITABILITY OF PREMISES

Lessor warrants the premises to be suitable for use as a State facility and for the conduct of Tenant's business, and that it will hold harmless the State of West Virginia, its officers, agents or employees for any loss or damage to the leased premises, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in an office facility.

(a) Fire and Health Hazards. The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Tenant, its agents, employees or servants which any public authority may order corrected or removed during the Term of this lease. Upon refusal or neglect of Lessor to comply with any such order, the Tenant may comply therewith and deduct the costs from monthly rentals payable thereafter to the Lessor until the Tenant is fully reimbursed therefore.

(b) Environmental. Lessor represents and warrants to Lessee and Tenant that there are no hazardous or unsafe substances in, on or under the Premises, building or Common Areas or the underlying real property, and agrees to indemnify, defend and hold harmless Lessee and Tenant, its affiliates, and their respective officers, agents and employees, against any and all claims, damages, costs, liabilities and expenses, including attorneys' fees, resulting from a breach of Lessor's representations and warranties or from the presence of any hazardous or unsafe substances in, on or under the Premises, building, Common Areas or the underlying real property, as of the Commencement Date.

(19) PARKING

At no additional cost, Tenant shall be entitled to the use of at least ten (10) unreserved parking spaces as depicted in the attached Exhibit "A-1 and A-2" for its agents, employees, invitees and customers. Tenant shall be entitled to park its vehicles overnight.

(20) ROOFTOP ACCESS

INTENTIONALLY LEFT BLANK

(21) OPTION TO RENEW

INTENTIONALLY LEFT BLANK

(22) MISCELLANEOUS

(a) Holding Over. Tenant shall have the right to hold over for up to three (3) months after the expiration of the Term upon the same terms and conditions, including Rent, as were applicable during the just expired Term. If Tenant shall continue in possession of the Premises beyond said three (3) month holdover period, such continued possession shall be considered an extension of this Lease from month to month until terminated by either party as of the end of any calendar month on not less than thirty (30) days prior written notice, and during such month to month tenancy, all terms and conditions of this Lease shall remain in full force and effect.

(b) Quiet Enjoyment. The Lessor covenants that at the Effective Date of this Lease, Lessor was seized of said Premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever and that upon payment of the rentals as herein set forth, Lessor will warrant and defend the title of Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; that the Tenant shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Premises.

(c) Rules and Regulations. Lessor shall have the right to prescribe reasonable nondiscriminatory rules and regulations pertaining to the orderly use, entry, care, cleanliness, operation, and management of the Premises, building, and Common Areas and for the preservation of any property therein and the comfort, quiet and convenience of other occupants in the building or using the Common Areas. Tenant agrees to comply with such rules and regulations, as set forth in Exhibit "C" attached hereto, if applicable, and incorporated herein by this reference; provided, however, that such rules and regulations shall not contradict or abrogate any right or privilege herein granted to Tenant.

(d) Force Majeure. If either party shall be delayed in the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of such party, then performance of such act shall be extended for a period equivalent to the period of such delay.

(e) Authority. Lessor hereby represents and warrants that it owns the building and underlying real property in fee simple. Each party represents and warrants that it is fully authorized to execute this Lease without obtaining the consent of any third party.

(g) Modification. This Lease shall not be amended or modified in any respect except by a writing which is duly executed by all parties.

(h) Construction. The language used in this Lease was mutually negotiated by the parties and shall not be construed for or against either party. The headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, modifying or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant, and condition hereof.

(i) Surrender. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises in substantially the same condition as existed at the Commencement Date, or the Rent Commencement Date if a delay in delivery of the Premises occurs under Section 4(a), ordinary wear and tear and damage by casualty excepted. Tenant shall not be required to remove any equipment, trade fixtures, alterations and/or improvements installed by or for Tenant in compliance with the terms of this Lease.

(j) Severability. If any provision of this Lease is rendered void or invalid by the decision of any court or by the enactment of any Law, such provision will be deemed to have never been included herein and the remainder of the Lease shall continue in full force and effect.

(k) Entire Agreement. This Lease constitutes the entire understanding between the parties. Any representation, obligation, term or condition not contained herein is not binding on the parties.

(l) Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and which taken together, shall constitute one and the same Lease.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

**[Affix Corporate Seal Here,
If Applicable]**

**CITY OF MORGANTOWN, a municipal corporation,
LESSOR**

By _____
Terrence Moore, City Manager



STATE OF WEST VIRGINIA,

COUNTY OF _____:

Before me, a notary public in and for said County and State, personally appeared the above-named, **Terrence Moore**, on behalf of **City of Morgantown, a municipal corporation** and he acknowledged the signing of the foregoing lease to be his voluntary act and deed, for individually and/or the capacity specified, for the uses and purposes therein mentioned.

Sworn to before me and subscribed in my presence at _____ this _____ day of _____, 2012.

My commission will expire on: _____.

[SEAL]

NOTARY PUBLIC



STATE OF WEST VIRGINIA, LESSEE

By Carolyn L. Thomas, Operations Manager of the Department of Administration, Real Estate Division, for and on behalf of the Department of Health and Human Resources

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA:

Before me, a notary public in and for said County and State, personally appeared the above-named, **Carolyn L. Thomas, Operations Manager/Charles D. Lawrence, Jr., Executive Director**, West Virginia Department of Administration, Real Estate Division, on behalf of **Department of Health and Human Resources**, an agency of the State of West Virginia, and he/she acknowledged the signing of the foregoing lease to be his voluntary act and deed for and as the act and deed of said **Department of Health and Human Resources**, for the uses and purposes therein mentioned.

Sworn to before me and subscribed in my presence at Charleston, West Virginia this ____ day of _____, 2012.

My commission will expire on: _____.

[SEAL]

NOTARY PUBLIC

ACKNOWLEDGED BY: DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AS TENANT

By:

Greg Nicholson 9/17/12
Greg Nicholson, Chief of Operations

Approved as to form this ____ day of _____, 2012. Darrell V. McGraw, Jr., Attorney General

By _____, Deputy Attorney General

RED\Admin\LeaseContractsHHR-216 MM

EXHIBIT "A-2" PREMISES

Mead & Hunt
 Mead & Hunt, Inc.
 4201 West Road
 West Virginia
 phone: 606-272-6500
 www.mh.com

NOT FOR CONSTRUCTION
 DATE: 08/11/11
 BY: [Signature]
 PROJECT: [Signature]
 DRAWING NO: [Signature]
 SHEET NO: [Signature]
 OVERALL PLAN

WVA / NORP MEDCOM Renovation
 West Virginia Dept. of Health and Human Resources
 150 HART FIELD ROAD
 MORGANTOWN, WV 26505

G-101

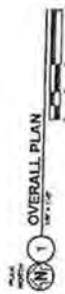
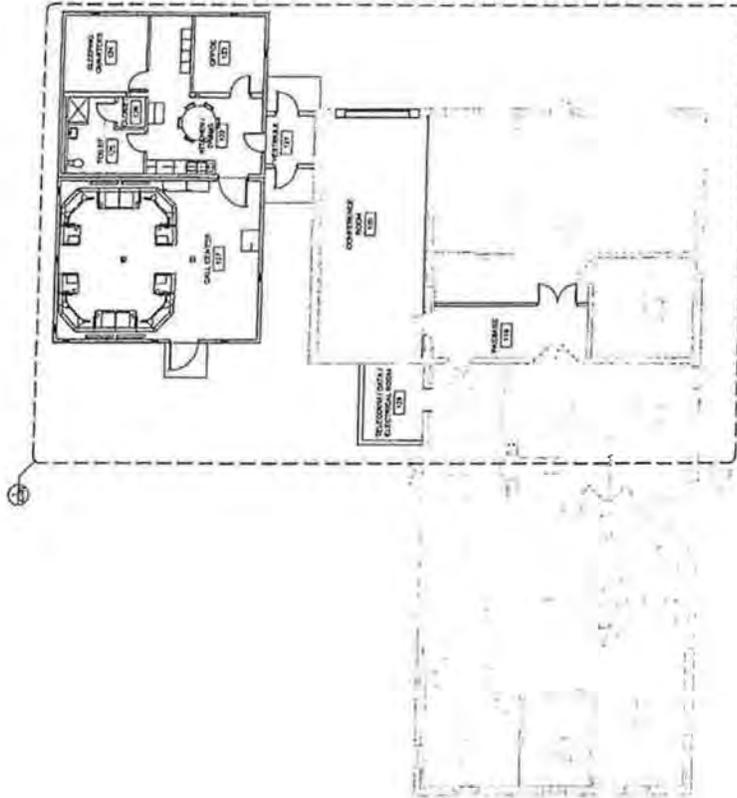


EXHIBIT "B"
TENANT'S WORK

Tenant may contract with a furniture provider for the installation of modular furniture and employ the services of the Governor's Office of Technology or other qualified company for the installation of all voice/data cabling in the Premises.

At Tenant's sole expense, Tenant shall have the right to install a 30' x 48' prefabricated concrete modular building on a poured 12" floor slab. The proposed location is as depicted on Exhibit "A-1 and A-2." Tenant, at its sole expense, shall maintain the building and remove it as well as the poured floor slab at the termination of this lease or any time prior to lease termination, provided that Tenant, at its sole expense, shall repair any damage resulting from such removal and shall return the site to its condition prior to the building installation.

With the prior written consent of the Morgantown Utility Board (MUB) and at Tenant's sole expense, Lessor extends permission for Tenant to install communications equipment on the water tower within the Premises. It is mutually understood by the parties herein that the Tenant will acquire and submit to the MUB a report from a structural engineer of tenant's choice showing how the communications equipment will be attached to the tower and that it will be structurally safe for the communications equipment and the water tower.

EXHIBIT "C"
RULES AND REGULATIONS

The Tenant hereby agrees as follows:

That the facilities and space hereby leased shall be maintained and left in a neat and clean condition and the Tenant shall conduct his business in such a manner as not to interfere with the normal operations of the airport.

That personnel performing services for the Tenant shall be neat, clean, and courteous, and the Tenant shall not permit its agents, servants or employees so engaged to conduct business in a loud, boisterous, offensive or objectionable manner.

That the Tenant shall abide by and be subject to all reasonable airport policies, rules and regulations, which are now, or may from time to time be promulgated by the Lessor, concerning management, operation or use of the airport.

That the Tenant will not on the grounds of race, color, national origin, sex, handicap, religion, or age discriminate, or permit discrimination, against any person or group of persons in any manner prohibited by part 21 of the Regulations of the Office of the Secretary of Transportation and Title XI of the Civil Rights Act of 1964.

RESOLUTION

WHEREAS, the City of Morgantown submitted the necessary application to obtain \$126,500.00 for the Metropolitan Theater from the West Virginia Division of Culture and History for a Cultural Facilities Grant; and

WHEREAS, The City of Morgantown's grant application has been approved for funding which requires a match of \$126,500; and

WHEREAS, Private donations will be secured through Your Community Foundation fundraising efforts and work with organizations supporting the revitalization of the Metropolitan Theater to equal the local match required to complete the project; and

WHEREAS, the grant funds will be used by the City of Morgantown to replace the existing hemp/sandbag rigging system with a safer and easier to operate modern automated hoist rigging system; and

WHEREAS, Morgantown City Council is of the opinion this grant will benefit the City of Morgantown and the performers of the Metropolitan Theater, and therefore agrees to administer the grant contract.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 2nd day of October, 2012, that the City agrees to the conditions of the contract and authorizes the City Manager to execute of the grant contract.

Mayor

City Clerk



The Culture Center
1900 Kanawha Blvd., E.
Charleston, WV 25305-0300

Randall Reid-Smith, Commissioner

Phone 304.558.0220 • www.wvculture.org
Fax 304.558.2779 • TDD 304.558.3562

EEO/AA Employer

September 20, 2012

Jeff Mikorski
City of Morgantown
389 Spruce St
Morgantown, WV 26505

Dear Mr. Mikorski:

The West Virginia Commission on the Arts approved Grant AH13-7181 in the amount of \$126,500.00 to City of Morgantown for the purpose of assisting with a FY13 Cultural Facilities and Capital Resource grant project, based upon information contained in your application.

Enclosed is an agreement stipulating the terms and conditions of the grant and invoice(s) in the total amount of \$126,500.00. **Please sign the contract, have it notarized and return it along with the signed invoice(s) within two weeks.** Processing time for the contract is approximately three months from the time we receive it from you.

Please become familiar with the required assurances included with the materials accompanying this grant.

Credit will be given in all publicity, printed materials, programs or press releases by using the accompanying logo on all printed notices. In (newspaper) articles, please state "This program is presented with financial assistance from the West Virginia Division of Culture and History, and the National Endowment for the Arts, with approval from the West Virginia Commission on the Arts".

We are happy to have assisted you with this project. If we can be of further assistance, please let us know.

Sincerely,

Jeff Pierson, Director of Arts
Arts Section

CONTRACT for Arts Grant Funding

This Agreement made this the ____ day of _____, 20____, by and between **City of Morgantown** and the STATE OF WEST VIRGINIA, on behalf of the Division of Culture and History.

WITNESSETH THAT, WHEREAS, the State of West Virginia has received funds for the purpose of assisting organizations and individuals in conducting activities for the development of the arts in West Virginia, and

WHEREAS, the Division of Culture and History of the State of West Virginia is expressly authorized by Article 1, Chapter 29 of the Code of West Virginia, 1931, as amended, to participate in the Federal grant program of the National Endowment Foundation on the Arts and Humanities Act of 1965, and to make grants to organizations and individuals whose objects and purposes are the encouragement and development of the arts, and

WHEREAS, **City of Morgantown** made application to the Arts Section, and

WHEREAS, the WV Commission on the Arts, by mail ballot, approved Grant **AH13-7181** in the amount of **\$126,500.00** to **City of Morgantown** for the purpose of assisting with a **FY13 Cultural Facilities and Capital Resource grant project**.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. The Division of Culture and History hereby agrees to pay **City of Morgantown** the sum of One Hundred Twenty-Six Thousand Five Hundred and 00/100 toward the total cost of **\$253000** for said project

(a) To be eligible for payment of the grant, **City of Morgantown** shall submit an invoice describing the project and showing the total amount of the grant.

2. **City of Morgantown** agrees to carry out said Arts program(s) as described in application **AH13-7181** as follows:

(a) That it will furnish its share of the total cost of the program.

(b) That it will disburse such funds only for an authorized purpose in connection with said Arts program.

(c) That it will maintain accurate records for a period of at least four (4) years in accordance with generally accepted accounting principles and procedures, so as to reflect all receipts and allowable expenditures in connection with said Arts program.

(d) That it will furnish to the Division of Culture and History a completed final report no later than thirty (30) days from the completion of the project.

(e) That it will refund to the Division of Culture and History of the State of West Virginia any expenditures determined to be made for an ineligible purpose.

(f) That unspent grant funds shall be returned within thirty (30) days after the final report is filed.

(g) That all such receipts and disbursements shall be subject to audit at the expense of **City of Morgantown** and such receipts shall be subject to audit by the proper State and Federal authority.

(h) That (1) it will conform to labor standards established by the U.S. Department of Labor if professional performers and related or supporting professional personnel are employed on projects or productions which are financed in whole or in part by grant without subsequent deduction or rebate on any account, and (2) no part of any project or production which is financed in whole or part under Section 5 of the National Endowment Foundation on the Arts and the Humanities Act of 1965 will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production, including particularly, no work which is prohibited for safety or sanitary reasons by any of the contracts with labor organizations.

(i) That arts program(s) must be executed within the dates projected on grant application.

(j) That notification will be made to the Director of the Arts Section of any change in the projects or budgets described in the grant application. These changes must be approved in writing from the Director of the Arts Section prior to the change being made.

(k) That it agrees to publicize the project and credit will be given in any publicity, printed material, programs or press releases as follows: "This program is being presented with financial assistance from the West Virginia Division of Culture and History and the National Endowment for the Arts, with approval from the WV Commission on the Arts."

(l) That it hereby agrees to comply with regulatory guidelines which prohibit any unlawful discrimination and that it will comply with standard policies and regulations which insure that all persons have easy access to the services and program(s) supported with these funds. The regulations governing these responsibilities are: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and Age Discrimination Act of 1975; and shall insert a similar provision in all subcontract for activities covered by the contract. (Information about these regulations may be obtained by contacting the Division of Culture and History.)

- 13. It is the understanding of all parties to this contract that the Division of Culture and History, by joining in this contract, does not pledge or promise to pledge the assets of the State of West Virginia, nor does it promise to pay any part of the contract sum provided for in this agreement from monies of the Treasury of the State of West Virginia except such monies as shall be appropriated by the West Virginia Legislature specifically for this purpose and except such monies as shall be granted and paid to the State for this project by the National Endowment for the Arts, and such monies as shall be paid to the State by foundations, individuals, or by any other source.
- 14. WHEREAS Under penalty of law for false swearing (WV Code §61-5-3), applicant certifies that by signing this grant agreement, all related parties have filed all reports for state grants received as required under WV Code §14-4-14 (SAGA)

IN WITNESS WHEREOF, **City of Morgantown** and the Division of Culture and History have caused this instrument to be executed by their duly authorized representatives.

The Division of Culture and History

ORGANIZATION: CITY OF MORGANTOWN



 Randall Reid-Smith, Commissioner

STATE OF WEST VIRGINIA
 COUNTY OF _____ TO-WIT

I, _____, a Notary Public in and for said County and State, do certify that _____, whose name is signed to the writing hereto annexed, bearing the date the _____ day of _____, 20_____ has this day acknowledged the same before me in my said County, to be his act and deed.

Given under my hand this _____ day of _____ 20_____

My commission expires _____

 Notary Public

West Virginia Division of Culture and History

Arts Section
 The Cultural Center
 1900 Kanawha Boulevard, East
 Charleston WV 25305-0300
 304/558-0240 telephone 304/558-3562 TDD
 304/558-2779 fax