



Office of the City Clerk

The City of Morgantown

Linda L. Little, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
cityclerk@morgantown.com

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
April 17, 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 April 3, 2012
5. **CORRESPONDENCE**
6. **PUBLIC HEARING:**
 - A. **PUBLIC HEARING of AN ORDINANCE AUTHORIZING THE REFUNDING OF THE MORGANTOWN BUILDING COMMISSION'S MUNICIPAL BUILDING LEASE REVENUE REFUNDING BONDS, SERIES 2003; AUTHORIZING THE CONTINUED LEASING OF THE MORGANTOWN PUBLIC SAFETY BUILDING BY THE COMMISSION TO THE CITY OF MORGANTOWN; APPROVING THE SALE, ISSUANCE AND DELIVERY OF LEASE REVENUE REFUNDING BONDS, SERIES 2012 BY THE MORGANTOWN BUILDING COMMISSION TO PROVIDE FUNDS TO FINANCE A PORTION OF THE COSTS OF SUCH REFUNDING AND RELATED COSTS AND EXPENSES.**
 - B. **PUBLIC HEARING of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE MONONGALIA COUNTY PLANNING COMMISSION (LESSEE) AND THE MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION (LESSEE) REGARDING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.**

- C. PUBLIC HEARING of AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 509.02 OF ITS GENERAL OFFENSES CODE AND REPLACING IT WITH A NEW SECTION 509.02, AS THE SAME APPLIES TO AGGRESSIVE SOLICITATION.
- D. PUBLIC HEARING of AN ORDINANCE TERMINATING A LEASE AGREEMENT AND AUTHORIZING A NEW LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND WEST VIRGINIA BOTANIC GARDEN, INC., LESSEE.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.15 TO ITS ADMINISTRATIVE CODE, CREATING A FINANCIAL STABILIZATION FUND. (FIRST READING: FEBRUARY 7, 2012; POSTPONED ON FEBRUARY 21, 2012 & APRIL 3, 2012)
- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AUTHORIZING THE REFUNDING OF THE MORGANTOWN BUILDING COMMISSION'S MUNICIPAL BUILDING LEASE REVENUE REFUNDING BONDS, SERIES 2003; AUTHORIZING THE CONTINUED LEASING OF THE MORGANTOWN PUBLIC SAFETY BUILDING BY THE COMMISSION TO THE CITY OF MORGANTOWN; APPROVING THE SALE, ISSUANCE AND DELIVERY OF LEASE REVENUE REFUNDING BONDS, SERIES 2012 BY THE MORGANTOWN BUILDING COMMISSION TO PROVIDE FUNDS TO FINANCE A PORTION OF THE COSTS OF SUCH REFUNDING AND RELATED COSTS AND EXPENSES. (FIRST READING: MARCH 20, 2012)
- C. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE MONONGALIA COUNTY PLANNING COMMISSION (LESSEE) AND THE MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION (LESSEE) REGARDING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT. (FIRST READING: APRIL 3, 2012)

- D. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 509.02 OF ITS GENERAL OFFENSES CODE AND REPLACING IT WITH A NEW SECTION 509.02, AS THE SAME APPLIES TO AGGRESSIVE SOLICITATION. (FIRST READING: APRIL 3, 2012)**

- E. Consideration of **APPROVAL** of **SECOND READING (ADOPTION)** of **AN ORDINANCE TERMINATING A LEASE AGREEMENT AND AUTHORIZING A NEW LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND WEST VIRGINIA BOTANIC GARDEN, INC., LESSEE. (FIRST READING: APRIL 3, 2012)**

- F. **BOARDS AND COMMISSIONS**

- 8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY CITY COUNCIL AND ADOPTED BY RESOLUTION**

- 9. **SPECIAL COMMITTEE REPORTS**

- 10. **NEW BUSINESS:**
 - A. Consideration of **APPROVAL** of **THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2012 IN ACCORDANCE WITH CHAPTER 11, ARTICLE 8 OF THE WEST VIRGINIA CODE.**

 - B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 121.04 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE ORDER OF PROCEDURE FOR COUNCIL MEETINGS; MORE PARTICULARLY, THE LOCATION OF THE "PUBLIC PORTION" UPON THE CITY COUNCIL MEETING AGENDA.**

- 11. **CITY MANAGER'S REPORT:**
 - NEW BUSINESS:**
 - 1. **Bid Call 2012-04 2012 Street Paving Project**

2. Request from Renaissance Morgantown: Riverfront Re-development Photography Exhibit.
12. REPORT FROM CITY CLERK
13. REPORT FROM CITY ATTORNEY
14. REPORT FROM COUNCIL MEMBERS
15. ADJOURNMENT

If you need an accommodation contact us at 284-7439

REGULAR MEETING APRIL 3, 2012:

The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers on Tuesday, April 3, 2012 at 7:00 P.M.

PRESENT: City Manager Terrence Moore, City Clerk Linda Little, City Attorney Steve Fanok, Deputy City Manager Jeff Mikorski, 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 on March 20, 2012 were approved as printed.

CORRESPONDENCE: Mayor Manilla presented a proclamation for Fair Housing Month. Dave Shriver, Auditor from Tetrick & Bartlett explained to Council the results of the FY2010-2011 audit and reported that the City of Morgantown is in compliance with Government Auditing Standards.

PUBLIC HEARING: AN ORDINANCE CREATING A FINANCIAL STABILIZATION FUND:

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

UNFINISHED BUSINESS:

AN ORDINANCE CREATING A FINANCIAL STABILIZATION FUND: The below entitled Ordinance was presented for second reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.15 TO ITS ADMINISTRATIVE CODE, CREATING A FINANCIAL STABILIZATION FUND.

Motion by Byrne, second by Shamberger, to adopt the above entitled Ordinance. Following a brief discussion, and concurrence from the City Manager, motion by Nugent, Second by Selin to amend the Ordinance language to reflect that the fund shall be set up and maintained with separate financial records, along with additional language stating that in the event of a shortage in any funds from which employees are paid that Council shall immediately be notified of the reason for and extent of such a shortage with a plan to address any such occurrence.

After discussion, the rules were suspended to allow explanation from Finance Director JR Sabatelli. Discussion continued. Councilor Nugent amended his above motion, to postpone the Ordinance until April 17th, second by Shamberger. Motion Carried 7-0. Mr. Moore assured that the Ordinance will include the discussed language at that time.

BOARDS AND COMMISSIONS: No appointments.

PUBLIC PORTION:

George Logennecker, Executive Director of the WV Botanic Garden, announced the Garden's upcoming centennial celebration event.

Evan Dove, WVU SGA Liaison, 37 Shady Grove, thanked Council members for attending the most recent SGA meeting, and invited them to continue participating with the Student Government Association.

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

NEW BUSINESS:

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH MONONGALIA COUNTY COMMISSION AND TRANSPORTATION PLANNING ORGANIZATION: The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE MONONGALIA COUNTY PLANNING COMMISSION (LESSEE) AND THE MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION (LESSEE) REGARDING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

Motion by Bane, second by Selin to pass the above entitled Ordinance to second reading. Following clarification by the City Manager, motion carried 7-0.

AN ORDINANCE REPEALING 509.02 AND REPLACING NEW 509.02 AS THE SAME APPLIES TO AGGRESSIVE SOLICITATION: The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 509.02 OF ITS GENERAL OFFENSES CODE AND REPLACING IT WITH A NEW SECTION 509.02, AS THE SAME APPLIES TO AGGRESSIVE SOLICITATION.

Motion by Bane, second by Shamberger to pass the above entitled Ordinance to second reading. Following explanation from the City Attorney and discussion by Council, motion carried 7-0.

AN ORDINANCE FOR ZONING RECLASSIFICATION IN THE THIRD WARD FROM (R-3 TO (B-2): The below entitled Ordinance was presented for first reading:

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF TWO PARCELS OF REAL ESTATE IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (R-3) MULTI-FAMILY RESIDENTIAL DISTRICT TO(B-2) SERVICE BUSINESS DISTRICT BY AMENDING ARTICLE 1331 OF THE PLANNING AND ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

Motion by Nugent, second by Selin to pass the above entitled Ordinance to second reading. After discussion, motion carried 7-0.

AN ORDINANCE TERMINATING AND AUTHORIZING A NEW LEASE AGREEMENT WITH WV BOTANIC GARDEN: The below entitled Ordinance was presented for first reading:

AN ORDINANCE TERMINATING A LEASE AGREEMENT AND AUTHORIZING A NEW LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND WEST VIRGINIA BOTANIC GARDEN, INC., LESSEE.

Motion by Byrne, second by Bane to pass the above entitled Ordinance to second reading. Following clarification by the City Manager and discussion by Council, the rules were suspended to allow further explanation from MUB Director Tim Ball. Motion carried 7-0.

CONSIDERATION OF APPROVAL OF A RESOLUTION ADOPTING THE UPDATED REGIONALIZED REGION 6 PCD MULTIJURISDICTIONAL HAZARD MITIGATION PLAN:

The above stated Resolution was presented for approval:

Motion by Bane, second by Nugent to pass the above entitled Resolution to second reading. Following clarification by the City Manager, motion carried 7-0.

CHANGES TO ORDER OF PROCEDURE FOR REGULAR MEETINGS OF CITY COUNCIL: The topic was presented for discussion of Council:

Mr. Moore facilitated the discussion of this item by asking Council to decide upon the recommended order of procedure so that an Ordinance can be prepared to effect the change.

Councilor Herbst explained that Council can more effectively respond to citizens that appear at the Public Portion, if the Public Portion were placed on the agenda after items of New Business. Mr. Fanok explained the reasoning and atmosphere in 1991 which contributed to the change of order being initiated. Discussion continued, followed by a consensus of Council to direct the writing of an Ordinance which moves the Public Portion directly before New Business.

Motion by Nugent, second by Bane to suspended the rules in order to allow discussion regarding protocols governing personnel files. Councilor Nugent stated that he understands Council supervises 3 appointed employees, the City Clerk, City Manager, and Municipal Court Judge. Councilor Bane suggested that official documents should have a majority approval among Council before being placed in personnel files. Councilor Shamberger noted that commendations and awards could be placed in files without consensus Council. Councilor Byrne inquired if there is such a policy regarding the removal of documents from personnel files. City Attorney Steve Fanok stated that an employee can include any documents they wish in their own personnel file without Council's approval.

The City Manager then clarified that the point person to submit documents for inclusion in personnel files should be the Mayor, as Chair Person. He requested that Council address the issue further at the April 24th Committee of the Whole Meeting. Council concurred by acclamation. The City Manager then directed that the Manager's Office and Clerk's Office will organize information regarding such protocols in order to move the discussion forward at that time.

SPECIAL COMMITTEE REPORTS: No Reports.

CITY MANAGER'S REPORT:

Information:

1. Alcohol Beverage Commission Club Floor Plan Request for Extension.

After discussion, City Manager Terrence Moore and City Attorney Steve Fanok explained the approval process for extensions.

REPORT FROM CITY CLERK: No Report.

REPORT FROM CITY ATTORNEY: No Report.

REPORT FROM COUNCIL MEMBER (Roll Reversal):

Councilor Herbst:

Councilor Herbst reported on the Pittsburgh Ballet rehearsal at the Creative Art Center. She also spoke her concerns over vehicle parking on both sides of residential streets, where

emergency vehicle traffic would be constricted. Mr. Moore responded that he will contact the appropriate City staff and the Traffic Commission regarding the issue, in addition to meeting with Councilor Herbst to gather further information.

Councilor Byrne:

Councilor Byrne reported that he will be meeting with Delegates from the City of Xuzhou, China who are visiting the WVU School of Engineering to discuss Mining Technology. He recounted that a meeting with the Leadership Team, WVU, and the City was well attended. Mutual community projects and events were discussed, and Councilor Byrne announced that the next meeting will take place in October.

Councilor Shamberger:

Councilor Shamberger reported on a meeting with WVU, Property Owners, and the Fire Chief, stating that the culture of burning can be changed if all parties work together. She also noted that she attended the Crossroads meeting and commented on how interesting the community planning process is. She encouraged all Councilmembers attend the next meeting. Councilor Shamberger thanked the City Manager, City Engineer, Planning and Code departments for taking care of some issues in the 5th ward. She commended those who appeared on behalf of the Fair Housing initiative. Councilor Shamberger stated that she, too, attended the WVU meeting and reported on the upcoming Woodburn Re-Use Committee meeting.

Councilor Selin:

Councilor Selin reported that she attended the Designing the Divide Conference in March. She then reminded everyone about the upcoming Chocolate Lovers Day event and Film Festival at the Met Theatre. She mentioned the WVU meeting and commended the City Manager and Mr. Jay Cole for their input.

Councilor Nugent:

Councilor Nugent reported on the upcoming meeting of the Main Street Morgantown Economic Restructuring Committee. He encouraged everyone to attend the Titanic exhibit at the Morgantown History Museum in April. Councilor Nugent also announced the Neighborhood Chili Cook-off at the Rosenbaum Family House. He commented on the WVU meeting and thanked Liaison Evan Dove for keeping City Council connected with the Student Government Association.

Councilor Bane:

Councilor Bane thanked Chief Preston, Chief Caravasos and the WVU Student Life Dean for the successful meeting regarding the events of St. Patrick's Day. He then noted that lacrosse season has started, and encouraged our community members to support high school athletics.

Mayor Manilla:

Mayor Manilla inquired about abandoned cars parked in the right of way, and Mr. Moore replied that such a vehicle would be considered abandoned if it is not licensed, nor operational. Mr. Fanok, added that there is an ordinance in place to address abandoned vehicles. He recalled that an vehicle meeting the

above criteria is considered abandoned after being left for 48 hours, at such time the Police can take action. Mr. Fanok, also commented that junk vehicles come under a different section of the code which also authorizes Police to take action. Mayor Manilla concluded by thanking WVU SGA Liaison Evan Dove for all his hard work.

EXECUTIVE SESSION: Motion by Nugent, second by Bane, carried by unanimous consent, to enter into an executive session pursuant to West Virginia Code Section 6-9A-4(b) (9) as it pertains to matters involving or affecting the purchase, sale or lease of property, with Council Members, City Attorney, Deputy City Manager and City Manager present; at 8:39 p.m. Executive Session adjourned at 9:19 p.m.

ADJOURNMENT: There being no further items of business or discussion, the meeting adjourned by unanimous consent at 9:20 p.m.

.....
City Clerk

.....
Mayor

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

Memo

City of Morgantown

Department of Public Works and Engineering

To: Terrence Moore, City Manager
From: Terry Hough, Director
Subject: Bid Call 2012-04 2012 Street Paving Project
Date: April 11, 2012

Bids were opened April 11, 2012 at 2:00 p.m. for the 2012 Street Paving Project. The results are as follows:

Parrotta Paving	\$152,114.60
Dodd General Contractors Corp.	\$178,545.18
Mountaineer Contractors, Inc.	\$206,722.00

Given the above, I recommend that the bid be awarded to Parrotta Paving for a total of \$152,114.60 for the placement of asphalt for the 2012 Street paving project.

If you have any questions or wish to discuss this issue, please contact me.

**Renaissance Morgantown:
Riverfront Re-development in Photographs (1998-2002)**



October 1998



September 2011

March 29, 2012

Terrance Moore, City Manager
389 Spruce St.
Morgantown, WV 26505

Dear Terrance,

As per our conversation earlier this afternoon, I am sending this letter to request early release of funds appropriated by City Council in the 2012 budget to support high definition scanning, printing, framing, advertising and mounting an exhibit of photographs which document the redevelopment of Morgantown's riverfront between 1998 and 2002. As you have explained, these funds would not normally be available for release until July 1, 2012.

July 1 is problematical for us (Main Street Morgantown and me) in that the photo exhibit is set to open on June 29. All preparation for the exhibit must be completed well before that date. Thanks to support from WVU, the Morgantown History Museum, and several other sponsors, we are well underway with our preparations. With City funds we will be able to meet our deadline for the exhibition.

Thank you and Council in advance for considering our request.

Respectfully,

Terri Cutright

Executive Director

Main Street Morgantown

Frank Scafella

Project Manager

Riverfront Show

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

LIBRARY BOARD OF DIRECTORS:

Vacancy: Seeking 1 qualified applicant to fill unexpired 5 year term. Must be resident of the City- appointed by Mayor, confirmed by Council to serve at large.

METROPOLITAN THEATRE COMMISSION:

Re-Appointment: All members' 2 year terms expire in April, awaiting responses on which members wish to continue serving.

*SISTER CITIES COMMISSION:

***Re-Appointment:** George Lies, Elizabeth Finklea, Rosalyn Becker and Peggy Meyers-Smith. Each 1-3 year staggered term expires in May 2012, and Commissioners wish to continue serving.

***Vacancy:** John Gaddis has submitted an application to fill the non-ward-specific vacancy of a 2 year term- appointed by Council.

TRAFFIC COMMISSION:

Vacancy: Seeking 1 qualified applicant to fill unexpired 3 year term. Must be resident of **Fifth Ward**- appointed by Council.

URBAN LANDSCAPE COMMISSION:

Vacancy: Seeking 1 qualified applicant to fill unexpired 2 year term of position of **Urban Forester** - 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.***

4/10/2012



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Request was successfully completed.

Request #26505 : Volunteer for City Boards and Commissions

[Return](#)

What is your work telephone number?
3044700358

Are you a Morgantown resident?
Yes

If Yes, how many years have you lived in the City of Morgantown?
14.5

In which City Ward do you live?
Second

Who is your employer?
GADDIS Group (GADDIS Consulting Group LLC)

What type of business are you employed in?
IT Consulting

What is your job description?
President/CEO

Do you have any professional certifications or licenses?
Holds a BS in Computer Science, in 1989 from Alabama A&M University. As a senior software engineer he has experience with several languages including HTML, XHTML, DHTML, Java Script, VB Script, Active Server Pages (ASP), PHP, MySQL, MS SQL, Visual Basic, and Ada. 20+ years of project management experience directing and coordinating design and implementation teams. Continuing Education: • Ewing Marion Kauffman Foundation FastTrac® program, 2004 • Certificate in Federal Acquisition Management, 2007 Fairmont State University - Pierpoint Community and Technical College

Do you have any pertinent special interests?
Chinese culture; economic development; social media; public relations; former city councilman; neighborhood advocate; policy and planning;

On which commission(s) are you interested in serving?
Parking Authority; Planning Commission; Sister Cities Commission

Staff Activities [Add New](#) [Sort](#)

The status of the request was changed from Active to Completed.
by [Bethany Sypolt](#) on 4/10/2012 at 8:22 AM

Public Activities [Add New](#) [Sort](#)

Request was successfully submitted.
by [Citizen](#) on 4/9/2012 at 4:09 PM

Attachments [Add New](#)

Status Completed

Priority Normal

Received
4/9/2012 at 4:09 PM

Source of Request
Anon Online by Anonymous

Assigned To:
Bethany Sypolt

Associated To:
Anonymous [Reassociate](#)

Est. Completion
4/19/2012

Actual Completion
4/10/2012

[Print](#) [Reactivate](#)

Citizen Information
John Gaddis
308 OVERDALE STREET
MORGANTOWN, WV 265016136
3044700358
jgaddis@gaddisconsulting.com
Preferred Response Method: E-Mail

Communication

Select Communication Template
Standard

[Print Letter](#)

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AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING SECTION 129.15 TO ITS ADMINISTRATIVE CODE, CREATING A FINANCIAL STABILIZATION FUND.

The City of Morgantown hereby ordains that a new Section 129.15 is added to its Administrative Code, which reads as follows:

129.15 FINANCIAL STABILIZATION FUND.

There is hereby created a Financial Stabilization Fund of which a separate set of financial accounts will be maintained with the City's accounting system. The Financial Stabilization Fund may receive appropriations, gifts, and grants from any other funds made available. This account may be funded over a period of years up to the maximum level allowable by the State Code of the State of West Virginia Section 8-37-3 or its amendments and successors. These funds may be used to cover the General Fund's operating short falls and any other purpose City Council considers appropriate. Cash and investments maintained in this fund may not be removed without majority approval by City Council with the following exceptions: the Finance Director may utilize this fund (1) for emergency purposes such as natural or man-made disasters in the event cash is not available to meet obligations for continued operations, or (2) to meet payroll obligations if a cash shortage exists in any fund where employees are paid. As soon as reasonably possible report will be provided to City Council as to the reason for utilizing these funds, the total amount utilized, and any corrective actions that may be necessary.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

**ORDINANCE OF
THE CITY OF MORGANTOWN**

AN ORDINANCE APPROVING THE CURRENT REFUNDING OF THE MORGANTOWN BUILDING COMMISSION'S MUNICIPAL BUILDING LEASE REVENUE REFUNDING BONDS, SERIES 2003, THE AUTHORIZATION, SALE AND ISSUANCE OF MUNICIPAL BUILDING LEASE REVENUE REFUNDING BONDS, SERIES 2012, OF THE MORGANTOWN BUILDING COMMISSION FOR SUCH PURPOSE, AND THE CONTINUED LEASING OF THE MORGANTOWN PUBLIC SAFETY BUILDING BY THE COMMISSION TO THE CITY OF MORGANTOWN; PRESCRIBING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT AND LEASE, A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT AND OTHER INSTRUMENTS AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE TERMS AND SECURITY OF SUCH BONDS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, pursuant to the authority of Chapter 8, Article 33, of the Code of West Virginia, 1931, as amended (the "Act"), The City of Morgantown (the "City" or the "Lessee") enacted an ordinance on August 16, 1988, creating the Morgantown Building Commission (the "Issuer"), a public corporation with perpetual existence and a municipal building commission within the meaning of the Act;

WHEREAS, the Issuer has heretofore obtained title to certain real estate, situate lying and being in The City of Morgantown, Monongalia County, West Virginia (the "Site"), and has acquired and constructed thereon a municipal public safety building complex housing various administrative offices of the City, including, but not limited to, a municipal court, fire department, police station, jail cells and an integral motor vehicle parking facility, and has acquired and installed certain fixtures, equipment, furnishings and other personal property within such building (collectively, the "Project") (such real estate, the Project, and all additions, improvements and additional facilities thereto, of every kind and nature located at the Site, now or hereafter acquired or constructed thereon, herein called the "Facilities");

WHEREAS, the Issuer has leased the Facilities to the City pursuant to an Agreement and Lease dated as of December 15, 1988 and, in order to pay the costs of acquisition and construction of the Facilities, has issued and sold its Municipal Building Lease Revenue Bonds, Series 1988, dated December 15, 1988, in the aggregate principal amount of \$8,470,000 (the "Series 1988 Bonds"). Such bonds were refunded through the issuance by the Issuer of its Municipal Building Commission Lease Revenue Refunding Bonds, Series 1993, dated February 15, 1993, in the aggregate principal amount of \$9,490,000 (the "Series 1993 Bonds").

The Series 1993 Bonds were refunded through the issuance by the Issuer of its Municipal Building Commission Lease Revenue Refunding Bonds, Series 2003, dated May 1, 2003 in the original aggregate principal amount of \$7,725,000 (the "Series 2003 Bonds"). The Series 2003 Bonds were issued under and pursuant to an Indenture and Deed of Trust dated as of May 1, 2003, by and between the Issuer and The Huntington National Bank), as trustee thereunder (the "Series 2003 Indenture"), and the Facilities have been leased by the Issuer to the City pursuant to an agreement and lease dated as of May 1, 2003 ("the Prior Lease");

WHEREAS, the Series 2003 Bonds were issued pursuant to an ordinance of the Issuer enacted April 15, 2003, and approved in all respects by an ordinance enacted by the City Council of the City on April 15, 2003 (the "Prior Ordinance");

WHEREAS, the Series 2003 Bonds are redeemable in whole at any time, following the giving of requisite notice of such redemption;

WHEREAS, the City has been advised by Crews & Associates, Inc., that due to favorable market conditions, interest cost savings may be realized from the current refunding of the Series 2003 Bonds through the issuance by the Issuer of refunding bonds;

WHEREAS, under the provisions of Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (the "Refunding Act"), the Issuer is authorized and empowered to issue refunding revenue bonds to refund, pay or discharge all or any part of the outstanding Series 2003 Bonds;

WHEREAS, the Issuer and the City Council of the City have jointly determined and the City Council of the City hereby determines that it would therefore be beneficial for the Issuer, the City and its residents to currently refund the Series 2003 Bonds and to redeem the Series 2003 Bonds in full as soon as practicable following such refunding, in the manner set forth herein, with proceeds of the issuance of a series of bonds to be designated "Morgantown Building Commission Municipal Building Lease Revenue Refunding Bonds, Series 2012" (the "Bonds"), in the maximum aggregate principal amount of \$5,000,000, at interest rates not exceeding 6.0%, and with final maturity to be no later than January 1, 2019, and other moneys of the Issuer, such Bonds to be payable from the Lease Rentals derived from the Facilities and secured by the Trust Estate (as such terms are defined in the hereinafter described Indenture), and containing such other terms and provisions as are hereinafter provided;

WHEREAS, the City now desires to authorize and approve the refunding of the Series 2003 Bonds as aforesaid, and to provide for the financing thereof through the issuance by the Issuer of the Bonds as hereinafter provided;

WHEREAS, the Issuer will continue to lease the Facilities to the City pursuant to a new Agreement and Lease, replacing the Prior Lease, and the Bonds will be secured pursuant to a new Indenture and Deed of Trust, replacing the Prior Indenture;

WHEREAS, the City does hereby find and determine that (i) the refunding of the Series 2003 Bonds and the financing of the cost thereof by the issuance, sale and delivery by the Issuer of the Bonds, (ii) the continued leasing of the Facilities by the Issuer to the City pursuant to the Lease and (iii) all other things contemplated by or contained in the Lease and the Indenture are for a public purpose of the City and the Issuer and are necessary, proper and appropriate to accomplish the public purposes of the Act and the Refunding Act;

WHEREAS, there have been presented to this meeting drafts of the following documents to be executed or approved by the City in connection with the issuance and sale of the Bonds and the refunding of the Series 2003 Bonds and incorporated by reference as a part hereof in substantially the forms presented to this meeting:

(1) The proposed form of an Agreement and Lease (the "Lease"), by and between the Issuer, as lessor, and the City, as lessee, pursuant to which the City shall agree to pay as rentals (but only from the sources set forth therein) certain amounts deemed by the Issuer to be at least sufficient to pay the principal of, premium, if any, and interest on the Bonds and other amounts payable thereunder;

(2) The proposed form of an Indenture and Deed of Trust (the "Indenture"), by and between the Issuer and trustee thereunder (the "Trustee"), pursuant to which the Bonds will be issued;

(3) The proposed form of the Bonds as set forth in the Indenture;
and

WHEREAS, the Mayor is authorized to approve the following documents to be executed or approved by the City in connection with the issuance and sale of the Bonds and the refunding of the Series 2003 Bonds:

(1) The proposed form of a Bond Purchase Agreement (the "Bond Purchase Agreement") to be dated the date of sale of the Bonds (the "Sale Date"), by Crews & Associates, Inc., of Charleston, West Virginia, as the original purchaser of the Bonds (the "Original Purchaser"), to be accepted by the Issuer and approved by the City, pursuant to which the Bonds are proposed to be purchased; and

(2) The proposed form of an Official Statement to be dated the Sale Date (the "Official Statement") of the Issuer and the City.

WHEREAS, it appears that each of the instruments referred to above is in appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, the refunding of the Series 2003 Bonds by the Issuer and the continued leasing of the Project by the Issuer to the City will benefit the inhabitants of the

City and will promote the general welfare of the citizens and residents of the City and is for a public purpose of the Issuer under the Act; and

WHEREAS, the City desires to take all steps necessary to permit the Issuer to proceed with issuance of the Bonds and the timely refunding of the Series 2003 Bonds;

NOW, THEREFORE, THE CITY OF MORGANTOWN HEREBY ORDAINS:

Section 1. Definitions. All capitalized terms used in this Ordinance and not otherwise defined shall have the meanings set forth in the Indenture.

Section 2. Pursuant to the Indenture and the Act, this Ordinance is enacted and the City hereby approves the issuance and delivery of the Bonds by the Issuer in the maximum aggregate principal amount of \$5,000,000, at interest rates not to exceed 6.00% and with final maturity no later than January 1, 2019, and with such terms as are set forth in the Indenture and hereby further approves enactment of the ordinance of the Issuer and all such other actions of the Issuer as may be deemed necessary or advisable in authorizing the issuance of the Bonds and refunding of the Series 2003 Bonds.

Section 3. The Lease, pursuant to which the City will agree to pay (but only from the sources specified therein) as rental payments, amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds and other amounts payable thereunder, substantially in the form submitted to this meeting, shall be and the same is hereby approved in all respects. The Mayor and City Manager shall execute, acknowledge as necessary and deliver the Lease with such changes, insertions and omissions as may be approved by the Mayor and City Manager, and the City Clerk is hereby authorized and directed to affix the seal of the City thereto and to attest the seal. The execution of the Lease by the Mayor and City Manager shall be conclusive evidence of any approval required by this Section.

Section 4. The Indenture, substantially in the form submitted to this meeting, shall be and the same is hereby approved in all respects.

Section 5. The Bond Purchase Agreement shall be approved by the Mayor. The Mayor and City Manager shall execute and deliver the approval of the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor and City Manager, such execution to be conclusive evidence of any approval required by this Section.

Section 6. The Official Statement to be substantially in the form of the Preliminary Official Statement described below (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor and City Manager) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor and City Manager shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved by the Mayor and City Manager. The execution of the Official Statement by the Mayor and City Manager shall be

conclusive evidence of any approval required by this Section. The distribution by the Original Purchaser of the Preliminary Official Statement (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12) substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the City relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor and the City Manager is hereby approved.

Section 7. The City hereby approves the appointment and designation by the Issuer of WesBanco Bank, Inc., Wheeling, West Virginia for the purpose of serving as Trustee, Registrar, and Paying Agent under the Indenture.

Section 8. All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Lease shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and by the Indenture and the Lease shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Lease shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity and neither the councilmembers of the City nor any officer or employee thereof shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 9. The City and all subordinate entities (including the Issuer) do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 2012 and the City hereby approves the designation by the Issuer of the Bonds as "qualified tax-exempt obligations", as defined in Section 265 (b) of the Internal Revenue Code of 1986, as amended.

Section 10. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby designated as bond counsel to the City in connection with the issuance of the Bonds.

Section 11. The refunding of the Series 2003 Bonds and the execution, delivery and due performance of the Bonds, the Indenture, the Lease, the Bond Purchase Contract and the Official Statement are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the refunding of the Series 2003 Bonds, the financing thereof and the leasing of the same, and it is hereby ordered that the Mayor, City Manager, City Clerk and other councilmembers and officers of the City execute and deliver such other documents, certificates, agreements and instruments

and take such other action as may be required or desirable to carry out the purposes of this Ordinance, the Bonds and the aforesaid instruments.

Section 12. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed, provided, however, that until all Series 2003 Bonds are paid or defeased in accordance with the Prior Indenture, the ordinance approving issuance of the Series 2003 Bonds shall remain in full force and effect.

[Remainder of Page Intentionally Blank]

Section 13. This Ordinance shall become effective following public hearing.

Passed on First Reading: _____, 2012

Passed on Second Reading
and Effective Following
Public Hearing Held on: _____, 2012

By: _____
Mayor

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AND CORRECT AS TO FORM:

By: _____
City Solicitor

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of The City of Morgantown, does hereby certify that the foregoing Ordinance was duly enacted by the Council of The City of Morgantown on _____, 2012, a quorum being present and acting throughout, and is a true, correct and complete copy thereof as witness my hand and the seal of The City of Morgantown this _____, 2012.

[SEAL]

By : _____
City Clerk

627470/00002

EXHIBIT A
form of
Agreement of Lease

EXHIBIT B
form of
Indenture and Deed of Trust,

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING A LEASE AGREEMENT BETWEEN IT, AS LESSOR, AND THE MONONGALIA COUNTY PLANNING COMMISSION (LESSEE) AND THE MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION (LESSEE) REGARDING OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached lease agreement 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:

LEASE AGREEMENT

THIS AGREEMENT, made this first day of April, 2012, by and between **THE CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as the "CITY",

AND

THE MONONGALIA COUNTY PLANNING COMMISSION, a commission and office organized and existing under and by virtue of the Monongalia County Commission, hereinafter referred to as "MCPC",

AND

THE MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION, an organization and office organized and existing under and by virtue of the member units of local government, hereinafter referred to as "MPO".

WITNESSETH, THAT WHEREAS, the "CITY" owns, controls, and operates the Morgantown Municipal Airport, hereinafter referred to as "AIRPORT"; and,

WHEREAS, the "MCPC" is engaged in the business of providing planning related services within the unincorporated areas of Monongalia County on behalf of the Monongalia County Commission; and,

WHEREAS, the "MPO" is engaged in the business of providing transportation planning related services within Monongalia County on behalf of its member units of local government; and,

WHEREAS, the "CITY" desires to lease and grant certain premises and facilities on said "AIRPORT" and the "MCPC" and the "MPO" desire to lease and obtain certain premises and facilities on said "AIRPORT", together within certain rights, licenses, and privileges thereon.

ARTICLE I PREMISES

- 1.1 The "CITY" hereby grants the "MCPC" and the "MPO" the right to lease office space on the ground floor of the Main Terminal Building for conducting business.

ARTICLE II CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

- 1.1 The "MCPC" and the "MPO" shall not, without prior written consent of the "CITY", make any permanent improvements to the assigned area such as the demolition of existing walls, the construction of new permanent walls, the installation of electrical outlets or lighting, or any modifications to the heating/air conditioning systems.
- 1.2 The "MCPC" and the "MPO" may place furniture, property, and equipment into the assigned area as is necessary for the conduct of their operations. Installed equipment that requires electrical or natural gas power shall be subject to the conditions outlined in ARTICLE VI, paragraph 6.1 of this Agreement. The "MCPC" and the "MPO" shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the "CITY" or restored to their original condition after such removal.

ARTICLE III TERM OF AGREEMENT

- 1.1 The "MCPC" and the "MPO" shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term commencing April 1, 2012, and terminating June 30, 2014, for the monthly fee provided in ARTICLE IV, paragraph 4.1 of this Agreement and renewed annually, unless sooner terminated as provided herein.

- 1.2 It is the mutual intent of the parties that this Agreement shall remain in effect for the full term, renewed annually, subject to each party's right on breach.

ARTICLE IV RENTAL FEES

- 1.1 The "MCPC" agrees to pay \$700 and the "MPO" agrees to pay \$700 for a total of \$1,400 monthly rental fee to the "CITY" for office space comprised of approximately 1,600 square feet (see Attachment 1). Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.
- (a) Failure to remit payment as to the prescribed time will result in an additional charge of 1.5% per month of all unpaid rents and fees.
 - (b) All sums due hereunder shall be paid by check payable to the City of Morgantown and mailed to the "Morgantown Municipal Airport, Attn: Management Office, 100 Hart Field Road, Morgantown, WV 26505" unless otherwise directed in writing by the "CITY".

ARTICLE V MAINTENANCE OF PREMISES

- 1.1 The "CITY" agrees to provide, at its expense, the "MCPC" and the "MPO" with basic custodial services for the corridor outside the assigned area. These services are limited to sweeping, mopping, and dusting of the corridor as needed. Further, the "CITY" agrees to provide, at its expense, the "MCPC" and the "MPO" the removal of reasonable garbage placed in the corridor as coordinated and scheduled by the Airport Director or its/his representative.
- 1.2 The "CITY" agrees to maintain, at its expense, the basic infrastructures of the terminal building to include the basic structure, heating/air conditioning systems, plumbing systems, electrical systems, and elevator provided however, such maintenance necessitated by the negligence of the "MCPC" and the "MPO", their employees or agents, or by willful destruction, shall be at the expense of the "MCPC" and the "MPO".
- 1.3 The Airport Director or its/his duly appointed representatives, on behalf of the "CITY" shall have the right to enter the assigned area to,
- (a) Inspect the assigned area at reasonable intervals during the "MCPC" and the "MPO" regular business hours, or at any time in case of an emergency, to determine if the "MCPC" and the "MPO" are in compliance with the terms and conditions of this Agreement. The "CITY" may, at its discretion, require the "MCPC" and the "MPO" to effect any required maintenance or repairs at the cost of the "MCPC" and the "MPO"; and,
 - (b) Perform any and all things that the "MCPC" and the "MPO" are obligated to, and has failed to do, after providing the "MCPC" and the "MPO" with ten (10) days written notice to act, including maintenance, repairs, and replacement to the assigned area. The costs of all labor, materials, and overhead charges required for the performance of such work will be paid by the "MCPC" and the "MPO" to the "CITY" within thirty (30) days following receipt of invoice for said charges by "MCPC" and the "MPO".

ARTICLE VI UTILITIES

- 1.1 The "CITY" shall pay all electric current, water, and natural gas that enters the assigned area via presently installed underground utility lines and pipes, to the Terminal Building, and operated by local utility companies. The "MCPC" and the "MPO" shall be expected to exercise all practical economy and failure to do so will constitute unsatisfactory operations. The "CITY" shall have the right to insist upon and institute practices, which it deems necessary, that the "MCPC" and the "MPO" shall be expected to implement, to ensure no misuse or abuse of this privilege.
- 1.2 Should the "MCPC" and the "MPO" require any additional utility service other than that provided for above (such as telephone or internet lines), the "MCPC" and the "MPO" agree to bear all costs associated with installing such utility service.

ARTICLE VII GENERAL PROVISIONS

- 1.1 The "MCPC" and the "MPO" here covenant and agree:
- (a) That the facilities and space hereby assigned and leased shall be maintained and left in a neat and clean condition and the "MCPC" and the "MPO" shall conduct their business in such a manner as not to interfere with the normal operations of the Airport.
 - (b) That personnel performing services for the "MCPC" and the "MPO" shall be neat, clean, and courteous, and the "MCPC" and the "MPO" shall not permit their agents, servants, or employees so engaged to conduct business in a loud, boisterous, offensive, or objectionable manner.
 - (c) That the "MCPC" and the "MPO" shall abide by and be subject to all reasonable Airport Rules and Regulations that are now, or may from time to time be, promulgated by the "CITY", concerning management, operation, or use of the "AIRPORT".
 - (d) That the "MCPC" and the "MPO" will not on the grounds of race, color, national origin, sex, disability, 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.

ARTICLE VIII INDEMNIFICATION AND INSURANCE

- 1.1 The "MCPC" and the "MPO" shall protect, defend, indemnify, and hold the "CITY" and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, courts costs, and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or "MCPC" and the "MPO" use or occupancy of the leased premises, or the acts or omissions of the "MCPC" and the "MPO" officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur, unless such injury, death, loss, or damage is caused by the negligence of the "CITY" or its employees, agents, officers, or representatives. The "CITY" shall give the "MCPC" and the "MPO" reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.
- 1.2 Without limiting its liability as aforesaid, the "MCPC" and the "MPO" shall carry insurance in the following amounts during the term hereof, naming the "CITY" as co-insured:

<u>Public Liability</u>	Bodily Injury	\$500,000 per occurrence
	Property Damage.....	\$50,000 per occurrence
- 1.3 The "MCPC" and the "MPO" shall provide the "CITY" with certification of insurance through the term of this agreement, evidencing such coverage to be in force.
- 1.4 The "CITY" agrees to notify the "MCPC" and the "MPO" in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the "CITY" has knowledge, and to cooperate with the "MCPC" and the "MPO" in the investigation and defense thereof.

ARTICLE IX CANCELLATION/TERMINATION

- 1.1 It is understood and agreed by the parties hereto that this agreement shall be renewed annually for the two-year three-month period provided herein and that the agreement may be terminated by any party, for any reason, by a party giving the other parties sixty (60) days advanced written notice. It is further understood and agreed by and between the parties hereto the following provisions will result in cancellation of this agreement:
 - (a) In the event the "MCPC" and the "MPO" shall make default in any of the provisions of this agreement, and said default shall continue for a period of thirty (30) days, then and in that event, this agreement may be canceled and held for naught by the "CITY", and the "MCPC" and the "MPO" shall immediately surrender possession of the assigned area.
 - (b) A national emergency results in the Airport being substantially occupied by the United States Government so as to materially interfere with the "MCPC" and the "MPO" operations.
 - (c) In the event the Airport, or a material portion thereof, is destroyed by fire or other cause, resulting in material interference with the "MCPC" and the "MPO" operations.

- (d) In the event that either the "MCPC" or the "MPO" fail to renew, terminate, or cancel this agreement, the remaining lessee shall have the right and the "CITY" shall be obligated to renegotiate the terms of this Lease Agreement for the remainder of the period provided herein for the agreed monthly rental rate of \$625 for the entire originally assigned area.
- 1.1 Upon termination or cancellation of this Agreement, the "MCPC" and the "MPO" shall remain liable for any rental fee and/or custodial fee payments, if any, then due, and the "MCPC" and the "MPO" shall immediately surrender possession of the assigned area.

ARTICLE X MISCELLANEOUS PROVISIONS

- 1.1 Any notice or other communication to the parties hereunder shall be deemed validly given, served, or delivered upon deposit in the United States Mail, registered and with proper postage and registration fee paid, addressed as follows:

The "CITY" -- OFFICE OF THE AIRPORT DIRECTOR
 Morgantown Municipal Airport
 100 Hart Field Road
 Morgantown, WV 26505

The "MCPC" -- MONONGALIA COUNTY PLANNING COMMISSION
 82 Hart Field Road, Suite 105
 Morgantown, WV 26505

**The "MPO" -- THE MORGANTOWN/MONONGALIA COUNTY
 TRANSPORTATION PLANNING ORGANIZATION**
 82 Hart Field Road, Suite 105
 Morgantown, WV 26505

Or other address as may be designated by any party, in writing, from time to time.

- 1.2 To the extent not prohibited by law, the "CITY" shall attempt to protect the rights and privileges granted to the "MCPC" and the "MPO" under this and similar agreements.
- 1.3 The failure of the "CITY" to insist, in any one or more instance, upon the strict performance by the "MCPC" and the "MPO" of any of the provisions, terms, covenants, reservations, conditions, or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same shall remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressed in writing.
- 1.4 If any term, clause, or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or state government agency, such invalidation or determination shall not affect the validity and enforceability of the remaining portions of the Lease Agreement; and, to this end, the terms, clauses, and provisions of this Lease Agreement are hereby agreed to be severable.
- 1.5 Both parties hereto acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements, or warranties, except such as are expressed herein, and that no amendment or modification of the Lease

Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within the amended Lease Agreement in the same manner as the execution of this Lease Agreement.

1.6 This Lease Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia.

1.7 The "MCPC" and the "MPO" shall not assign, transfer, or sublease this Lease Agreement, by process or operation of law or in any other manner whatsoever, or sublet any portion of the leased premises or permit any portion of the leased premises to be occupied or used by anyone other than the "MCPC" and the "MPO", without the prior, written consent of the "CITY", which said consent may be withheld at the sole discretion of the "CITY".

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officer and their respective seals to be hereunder affixed, the day and year first above written.

CITY OF MORGANTOWN

BY: _____
Terrence R. Moore, City Manager

In the presence of:

City Clerk

MONONGALIA COUNTY PLANNING COMMISSION

BY: _____
Bader Giggenbach, President

In the presence of:

Secretary

MORGANTOWN-MONONGALIA COUNTY TRANSPORTATION PLANNING ORGANIZATION

BY: _____
J. William B. Austin, Executive Director

In the presence of:

Secretary

AN ORDINANCE BY THE CITY OF MORGANTOWN REPEALING SECTION 509.02 OF ITS GENERAL OFFENSES CODE AND REPLACING IT WITH A NEW SECTION 509.02, AS THE SAME APPLIES TO AGGRESSIVE SOLICITATION.

The City of Morgantown hereby ordains that Section 509.02 of its General Offenses Code is repealed in its entirety and replaced with a new section 509.02 which reads as follows:

509.02 AGGRESSIVE SOLICITATION.

A. Legislative Purpose.

- (1) City Council finds that the increase in aggressive solicitation throughout the City has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access and enjoyment of public places, but also to an enhanced sense of fear, intimidation and disorder.
- (2) City Council is enacting this City Code Section pursuant to the City's plenary power and authority as set forth in sections 8-12-5 (13), 8-12-5 (23), and 8-12-5 (44) of the West Virginia Code. This law is timely and appropriate because current laws and City regulations are insufficient to address the aforementioned aggressive solicitation problem.
- (3) This City Code Section is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Rather, its goal is to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the City.

B. Definitions.

For purposes of this City Code Section:

- (1) "Solicit" means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.
- (2) "Aggressive manner" means and includes:
 - (a) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent, or
 - (b) Following the person being solicited, if that conduct is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonable likely to intimidate the person being solicited into responding affirmatively to the solicitation, or
 - (c) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:

- (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation, or
 - (d) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation, or
 - (e) Intentionally or recklessly using obscene or abusive language or gestures:
 - (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation, or
 - (f) Approaching the person being solicited in a manner that: (i) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (3) "Automated teller machine" means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.
- (4) "Public area" means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public.

C. Prohibited Acts.

It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:

- (1) In an aggressive manner in a public area;
- (2) Within fifteen (15) feet of any entrance or exit of any bank or within fifteen (15) feet of any automated teller machine abutting a public right-of-way during the hours of operation of such bank or automated teller machine.
- (3) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property.

D. Construction and Severability.

- (1) Severability is intended throughout and within the provisions of this City Code section. If any sub-section, sentence, clause, or phrase of this City Code Section

is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this City Code Section.

- (2) This City Code Section is not intended to prohibit any demand for payment for services rendered or goods delivered.
- (3) This City Code Section is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The City Code Section should be held inapplicable in any such cases where its application would be unconstitutional under the Constitution of the State of West Virginia or the Constitution of the United States of America.

E. Penalty.

Any person, firm or corporation violating any provision of this City Code Section shall be fined not less than fifty dollars nor more than five hundred dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

AN ORDINANCE TERMINATING A LEASE AGREEMENT AND AUTHORIZING A NEW LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN, LESSOR, AND WEST VIRGINIA BOTANIC GARDEN, INC., LESSEE.

WHEREAS, by ordinance dated May 18, 1999, the City of Morgantown authorized the execution of a lease agreement by and between the City and West Virginia Botanic Garden, Inc.;

WHEREAS, the parties thereto are in agreement that the 1999 lease agreement should be terminated and a new lease agreement entered into by the parties;

NOW, THEREFORE, the City of Morgantown hereby ordains that the 1999 lease agreement between it and the West Virginia Botanic Garden, Inc., is terminated; and the City Manager is authorized to execute the new lease agreement, hereto attached, by and on behalf of the City of Morgantown.

This Ordinance shall become effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED:

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between THE CITY OF MORGANTOWN, hereinafter referred to as "LESSOR", and WEST VIRGINIA BOTANIC GARDEN, INC., hereinafter referred to as "LESSEE" and the MORGANTOWN UTILITY BOARD (third party beneficiary), hereinafter referred to as "MUB".

ARTICLE I TERM

The term of this Lease Agreement shall be for a period of twenty-five (25) years, commencing upon _____, 2012 and ending _____, 2037.

ARTICLE II LEASED PREMISES

LESSOR hereby leases to LESSEE, and LESSEE hereby leases from LESSOR, a parcel of realty consisting of 82 acres, more or less, and known as the Tibbs Run realty. A plat of the realty is attached hereto and marked Exhibit #1.

ARTICLE III CONSIDERATION

As consideration of the leased premises LESSEE agrees to pay LESSOR one dollar (\$1.00) per year beginning with the execution of this Lease Agreement and continuing on the first day of each successive year that the lease is in effect.

ARTICLE IV OPERATIONS

LESSEE agrees to do the following:

1. Provide to and maintain with MUB its current Articles of Incorporation, the names and addresses of its Directors and Officers, annual financial statements, and minutes of all proceedings of its Members, Board of Directors and Committees having any of the authority of the Board of Directors. These documents may be supplied to LESSOR and MUB via electronic means.
2. Allow MUB and/or its designated representative access for inspection purposes to all books and records maintained by LESSEE.
3. LESSEE shall not create, re-create and/or allow any areas of water impoundment to be changed without inspection/permitting from/by or as required by an appropriate state or federal agency.

4. LESSEE shall not diminish the value of the parcel in any fashion, including, but not limited to, the harvest or felling of any trees or the harvest of other natural resources located thereon, without the express and written permission of LESSOR and MUB, except that dead and other hazardous trees may be removed by LESSEE at any time, and those trees which must be removed to accommodate any improvements pursuant to Article VII below may be removed by LESSEE at any time. Any value of such trees removed in accordance with these allowed exceptions may be enjoyed by LESSEE.
5. The time allowed for completion of any agreed to projects to be conducted by LESSEE shall commence upon issuance of all necessary approvals and permits. LESSEE shall endeavor to apply for all such necessary permits and approvals in a timely manner.
6. LESSEE shall be financially responsible for all costs associated with the LESSEE'S development and operation of the leased area undertaken during the term of this lease.
7. LESSEE shall be responsible for paying any real or personal property taxes which may be assessed and due against the leased realty during LESSEE'S possession of same under this lease agreement.
8. LESSEE shall be responsible for reasonable general housekeeping and maintenance of leased area to the satisfaction of LESSOR and MUB.
9. LESSEE shall keep the population of herbivores to a level which is consistent with the primary objectives of a botanic garden by whatever appropriate and legal means are available.

ARTICLE V
TIBBS RUN DAM

The Parties acknowledge that the existing Tibbs Run Dam (the dam) does not conform to the current requirements of the West Virginia Division of Environmental Protection (DEP). The Parties further acknowledge that the non-conforming status of the dam must be properly resolved as soon as possible, and therefore that the dam should be breached in accordance with DEP requirements, and thereby made permanently inactive so that it will no longer be subject to further regulation by the DEP.

As their commitment to properly resolving the non-conforming status of the dam, the Parties agree to the following:

1. MUB will design improvements to accomplish the breaching of the dam, and will present the plans thereof for the review and approval of LESSEE and City (LESSOR).
2. Upon approval of the proposed plans by all of the Parties, which shall not be unreasonably withheld, MUB will submit same to the DEP for formal approval.
3. Upon approval of the plans by DEP, MUB will construct such improvements, using its

- choice of any combination of its own forces and/or hired contractor(s).
4. MUB will accomplish substantial completion of the work by September 30, 2013, or earlier if so required by DEP.
 5. The estimated cost of the work is stipulated to be \$150,000. The cost includes planning, design, construction, labor, equipment, materials, overheads, surveys, borings, special investigations, inspection, rights-of-way, legal services, permits, and any other item or service necessary to accomplish satisfactory completion of the work.
 - a. Upon completion of the work, and as part thereof, MUB will grade all disturbed areas to their intended final elevation, and shall provide an eight (8) inch thick layer of compacted crushed stone to serve as a base for the portion of the existing trail that was disturbed and reconstructed by the project.
 - b. Upon completion of the work, and beyond the scope thereof, LESSEE shall perform all seeding, replanting, and re-vegetation of any area disturbed by the project. LESSEE'S work shall be at its own expense, and shall be in addition to that cost described in item 6 below.
 6. The cost of the work will be shared among the Parties, as follows:
 - a. LESSEE will contribute \$40,000 to MUB in five (5) annual installments of \$8,000 each. Such payments will be due on July 1 of each year, with the first being due July 1, 2013.
 - b. The City (LESSOR) will contribute \$60,000 to MUB, in three (3) installments of \$20,000 each. Such payments will be due on July 1 of each year, with the first being due July 1, 2013.
 - c. MUB will bear the balance of the cost, regardless of any variance between the estimated cost and the final actual cost.
 7. In the event that DEP requires the work to be done earlier than contemplated herein, MUB will proceed pursuant to such requirement, but the payments by LESSEE and the City (LESSOR) shall remain due as scheduled and as described in item 6 above.
 8. Nonpayment by LESSEE of any part of any annual payment due under this agreement shall be considered a violation of the terms of this Lease, subject to the default and termination provisions contained within Article XV of this agreement.

ARTICLE VI ANNUAL REPORT

Within sixty (60) days after the end of each calendar year, LESSEE shall submit to LESSOR a detailed, written report describing the past year's operations/activities. The foregoing report may

be supplied to LESSOR via electronic means.

ARTICLE VII
CONSTRUCTION AND IMPROVEMENT ACTIVITIES

Prior to beginning any project requiring grading, or earth removal, or stream or pond modification, or construction of a building, LESSEE will present detailed plans for the same to the LESSOR and MUB for review and comment. Work on any such project will not commence until such time as the LESSOR and MUB approves said plans. All construction shall conform to all applicable statutes, building codes, and the Americans with Disabilities Act. Upon completion of any such construction, LESSEE must provide evidence to satisfaction of LESSOR and MUB, by certified written statement, and any other means or devices deemed necessary by LESSOR and MUB, that no liens exist on any of the construction and improvements made and that all contractors and subcontractors have been paid all amounts due and owing to them. Tree plantings and other minor horticultural activities by LESSEE will not require permission from the other parties to this Agreement.

It is agreed and understood that construction upon and any improvements to the leased realty shall become the property of the LESSOR upon termination of this Lease Agreement, free and clear of any liens or encumbrances whatsoever; provided, however, that any equipment, signs and other personal property of LESSEE not permanently affixed to the leased premises shall remain the property of LESSEE and shall so remain unless the LESSEE shall fail, following the termination of this Lease Agreement and following thirty (30) days written notice, to remove such personal property, in which event, at the option of LESSOR, title to same shall vest in LESSOR, at no cost to LESSOR.

ARTICLE VIII
UTILITIES

LESSEE shall be responsible for contracting with utility companies for required services. LESSEE shall be responsible for all related charges.

ARTICLE IX
MAINTENANCE

Except as otherwise provided in Article V, LESSEE shall be responsible, at its sole expense, for the reasonable maintenance of the leased premises.

ARTICLE X
RIGHT TO ENTER

LESSOR and its duly authorized representatives, which shall include MUB, shall have the right to enter and inspect the leased premises at any time to determine whether LESSEE has complied with and is complying with the provisions of this Lease Agreement. LESSEE will provide LESSOR and MUB with keys to all locked gates on the realty provided that the LESSOR and

MUB will not make copies and give them to any agency or individual not having official business on the property.

ARTICLE XI INSURANCE

LESSEE shall procure and maintain during the term of this Lease Agreement, at its sole expense, insurance coverage in the following amounts, with the LESSOR and MUB as additional insured. A Certificate of Insurance or a copy of the insurance policies involved shall be furnished to LESSOR and MUB.

- A. Comprehensive Public Liability and Property, including, but not limited to, personal injury, protecting LESSOR and MUB against any and all liability by reason of LESSEE'S conduct incident to the use of the leased premises or resulting from any accident occurring on or about the leased realty, caused by or arising out of any wrongful act or omission of LESSEE, in the minimum amount of two million dollars (\$2,000,000.00)

- B. Building Fire and Extended Coverage Insurance on the leased premises and on all construction and improvement requirements erected by LESSEE in the amount of one hundred percent (100%) of the full insurable value as from time to time determined by a competent appraiser. Said insurance coverage will provide that any such loss shall be payable jointly to LESSOR and LESSEE, and LESSEE shall have the right, if done within thirty (30) days of receipt thereof, to use the proceeds of any such loss to repair or replace the damage or destroyed structure; otherwise, the entire proceeds of such policy shall be the property of LESSOR. Should LESSEE wish to exercise the right to repair or replace said damage or destroyed structure; it will notify LESSOR of such intentions immediately upon receipt of such loss proceeds, receive approval from LESSOR regarding LESSEE'S plans regarding such work, and jointly work with LESSOR in arrangement of and payment of repair or replacement activities.

- C. Excess liability insurance coverage, with a limit of liability no less than two million dollars (\$2,000,000.00), each occurrence of bodily injury and/or property damage combined and two million dollars (\$2,000,000.00) aggregate (where applicable) in excess of the limits of primary coverage described above.

ARTICLE XII INDEMNIFICATION

LESSEE shall protect, defend, indemnify and hold LESSOR and the members of Morgantown City Council and the Morgantown Utility Board, and the members thereof, their officers, agents, representatives and employees completely harmless from and against any judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney

fees, court costs and expert fees), of any nature whatsoever arising out of or incidental to this Lease Agreement, or LESSEE'S use or occupancy of the leased premises, or the acts of omissions of invitees, regardless of where the injury, death, loss or damage may occur, unless such injury, death, loss or damage is caused by the negligence of LESSOR or MUB or their employees, agents, officers, or representatives. LESSOR shall give LESSEE reasonable notice of any such claims or actions. The provision of this Article shall survive the expiration or earlier termination of this Lease Agreement.

ARTICLE XIII ASSIGNMENT AND SUBLEASING

LESSEE shall not assign, transfer or sublease this Lease Agreement, by process or operation of law or in any other manner whatsoever, or subject any portion of the leased premises or permit any portion of the leased premises to be occupied or used by anyone other than LESSEE, without the prior, written consent of LESSOR and MUB, which said consent may be withheld in the sole direction of the LESSOR.

In the event LESSOR and MUB consent to any assignment, transfer subleasing or subletting on the part of LESSEE of any rights or privileges or subletting on the part of LESSEE of any rights or privileges granted in this Lease Agreement, LESSEE shall continue to be primarily liable for the faithful performance of all terms, covenants and conditions on the part of LESSEE herein contained.

ARTICLE XIV NONDISCRIMINATION

Notwithstanding any other or inconsistent provisions of this Lease Agreement, during the performance of this Lease Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this Lease Agreement, does hereby agree that:

- A. No person on the grounds of race, color, religion, sex, handicap or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination in the use of the leased premises.
- B. In the construction of and any improvement on, over or under the leased premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex, handicap or national origin shall be excluded from participation in or denied the benefits of, such activities or otherwise be subject to discrimination.

ARTICLE XV DEFAULT AND TERMINATION

This Lease Agreement shall be subject to termination by LESSOR should any one or more of the following conditions of default occur:

- A. If LESSEE shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LESSEE'S part to be performed and observed and if LESSEE fails to commence corrective actions or measures within 30 days after receipt of written notice from LESSOR, to LESSEE.
- B. If LESSEE shall abandon all or any substantial part of the lease premises or shall discontinue any or all of its operations.
- C. LESSEE files a voluntary or involuntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of LESSEE and such receivership is not vacated within thirty (30) days after appointment of such receiver.
- D. The occurrence of any act which operates to deprive the LESSEE permanently of the rights, powers and privileges necessary for the proper conduct and operation of its business granted herein.
- E. If the estate hereby created shall be taken by execution or by the other process of law.
- F. If LESSEE shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States of America, State of West Virginia, and the LESSOR.

In the event any condition of default shall occur, LESSOR then, or at any time thereafter, which such breach is continuing, shall have the right, at its election, to terminate this Lease Agreement by giving at least thirty (30) days written notice to LESSEE at which time LESSEE will then quit and surrender the leased premises to LESSOR.

The failure of LESSOR to insist, in any one or more instance, upon the strict performance by the LESSEE of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, and no waiver of the conditions or stipulation hereof shall be deemed to have been made in any instance unless expressly in writing.

Upon the expiration or other termination of this Lease Agreement, LESSEE'S rights to use the leased premises facilities, right, services and privileges herein leased shall cease, and LESSEE shall forthwith upon such expiration or termination surrender the same.

ARTICLE XVI GENERAL PROVISIONS

If any term, clause or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or prevent financial or other assistance to the LESSOR by any federal or state government agency, such invalidation or determination shall not affect the validity and enforceability of the remaining

portions of Lease Agreement; and, to this end, the terms, clauses and provisions of this Lease Agreement are hereby agreed to be severable.

The parties hereto acknowledge and agree that this document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of this lease shall be valid or binding unless expressed in writing and executed by the parties hereto within an amending lease in the same manner as the execution of this lease.

This agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia.

Any notice or other communication to the LESSOR or the LESSEE pursuant hereto shall be deemed validly given, served or delivered upon deposit in the United States Mail, certified and with proper postage and certification fee prepaid, addressed as follows:

TO LESSOR: City of Morgantown
City Manager's Office
389 Spruce Street
Morgantown, WV 26505

TO MUB: Morgantown Utility Board
General Manager
P.O. Box 852
Morgantown, WV 26508

TO LESSEE: West Virginia Botanic Garden, Inc.
714 Venture Drive
PMB #121
Morgantown, WV 26508

or to such other address as the addressee may designate by written notice to the other parties, delivered in accordance with the provisions of this paragraph.

Any communication which is sent via electronic means, as specifically permitted by this Agreement shall be sent to the following addresses:

To: Lessor: citymanager@morgantown.org

To: MUB: mubmail@mub.org

or to such other email address as may be subsequently designated by LESSOR or MUB.

This Lease Agreement shall be executed in duplicate copies, either of which may be considered an original copy.

THE CITY OF MORGANTOWN
A West Virginia municipal corporation;
LESSOR

WEST VIRGINIA BOTANIC GARDEN, INC.
a West Virginia non-profit corporation;
LESSEE

BY: _____

BY: _____

ITS: _____

ITS: _____

THE MORGANTOWN UTILITY BOARD,
Third Party Beneficiary

BY: _____

ITS: _____

City of Morgantown

Finance Department

389 Spruce Street

Morgantown, WV 26505

Phone (304) 284-7407/Fax 7418

dwhite@cityofmorgantown.org

MEMO

DATE: April 13, 2012

TO: Linda Little, City Clerk

FROM: J.R. Sabatelli, Finance Director 

RE: Agenda Item

Please include on the agenda for April 17, 2012 under New Business:

Consideration of the APPROVAL OF THE RATES OF LEVY LAID BY THE CITY OF MORGANTOWN AND APPROVED BY THE STATE AUDITOR FOR THE FISCAL YEAR BEGINNING JULY 1, 2012 IN ACCORDANCE WITH CHAPTER 11 ARTICLE 8 OF THE WEST VIRGINIA CODE.

Attached are the *Notice of Approval of the Levy Estimate (Budget)* and the *Levy Order and Rate Sheet* to be included in the Council packets.

After approval, please sign the *Levy Order and Rate Sheet* and return to me for submission to the State Auditor's Office.

Thank you.

**MUNICIPALITY OF MORGANTOWN, WEST VIRGINIA
LEVY ORDER AND RATE SHEET
2012 - 2013**

The following is a true copy from the record of orders entered by this entity on the 17 day of
April, 2012

SIGNATURE: _____

Municipal Clerk or Recorder

Current Year	Column E	Levy	Taxes
Class I	Certificate of Valuation	Rate/\$100	Levied
Class II	Assessed Value for Tax Purposes		
Personal Property	\$ <u> 0</u>	<u>12.500</u>	\$ <u> 0</u>
Public Utility	<u> 0</u>		<u> 0</u>
Total Class I	\$ <u> 0</u>		\$ <u> 0</u>
Real Estate	\$ <u> 347,210,760</u>	<u>25.000</u>	\$ <u> 868,027</u>
Personal Property	<u> 1,680,712</u>		<u> 4,202</u>
Total Class II	\$ <u> 348,891,472</u>		\$ <u> 872,229</u>
Real Estate	\$ <u> 475,220,260</u>	<u>50.000</u>	\$ <u> 2,376,101</u>
Personal Property	<u> 158,636,902</u>		<u> 793,185</u>
Public Utility	<u> 40,493,457</u>		<u> 202,467</u>
Total Class IV	\$ <u> 674,350,619</u>		\$ <u> 3,371,753</u>
Total Value & Projected Revenue	\$ <u> 1,023,242,091</u>		\$ <u> 4,243,982</u>
Less Delinquencies, Exonerations & Uncollectable Ta		<u>8.50%</u>	<u> 360,738</u>
Less Tax Discounts		<u>1.00%</u>	<u> 38,832</u>
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)			<u> 453,011</u>
Total Projected Property Tax Collection			<u> 3,391,401</u>
Less Assessor Valuation Fund (Subtracted from regular current expense taxes levied only)		<u>2.00%</u>	<u> 67,828</u>
Net Amount to be Raised by Levy of Property Taxes For Budget Purposes			\$ <u> 3,323,573</u>

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 121.04 OF ITS ADMINISTRATIVE CODE, AS THE SAME APPLIES TO THE ORDER OF PROCEDURE FOR COUNCIL MEETINGS; MORE PARTICULARLY, THE LOCATION OF THE "PUBLIC PORTION" UPON THE CITY COUNCIL MEETING AGENDA.

The City of Morgantown hereby ordains that Section 121.04 of the City of Morgantown Administrative Code is amended as follows (new matter underlined, deleted matter struck through):

121.04 ORDER OF PROCEDURE.

The order of procedure for regular meetings of Council shall be as follows:

- (a) Call Council to order - Mayor.
- (b) Roll call by City Clerk.
- (c) Pledge to the Flag.
- (d) Approval of Minutes.
- (e) Correspondence.
- (f) Unfinished business.
- ~~(g) Public portion which shall be subject to rules established by Council and adpted by resolution.~~
- ~~(f)~~ (g) Special committee reports.
- ~~(f)~~ (h) New business.
- (i) Public portion which shall be subject to rules established by Council and adopted by Resolution.
- (j) City Manager's report.
- (k) Report from City Clerk
- ~~(f)~~ (l) Report from City Attorney
- (m) Report from Council members.
- (n) Adjournment.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

MAYOR

ADOPTED:

FILED:

CITY CLERK

RECORDED: