

DRAFT

## AGREEMENT

**THIS AGREEMENT** (“Agreement”) is made this March 30, 2012, (“Effective Date”) by and between the West Virginia University Board of Governors on behalf of West Virginia University (“WVU”), and the City of Morgantown (“City”).

**WHEREAS**, the City intends to establish a gum cleanup program for some of the City’s sidewalks, including those located adjacent to High Street (the “Program”); such Program will provide an intangible benefit to the faculty, staff, and students of WVU who live, work, and learn in the City;

**WHEREAS**, through this Agreement, WVU will support the Program by granting to the City temporary possession, custody and use of WVU’s special piece of equipment that is used to remove chewing gum from sidewalks known as a ‘gumbuster’ (the “Equipment”).

**THEREFORE**, in furtherance of the above-referenced goals and objectives, WVU and the City agree to the following:

1. **Publicity**. Issue a jointly approved press release to publicize the execution of this Agreement.
2. **Termination**.
  - a. Unless terminated pursuant to Section 2(b), this Agreement shall terminate upon mutual agreement by the parties.
  - b. Either party shall have the right to cancel this Agreement, without further obligation.
3. **Transportation and Return of Equipment**.
  - a. City shall be responsible for transporting the Equipment from WVU to locations where the City intends to use the Equipment.
  - b. Upon the expiration or termination of this Agreement as provided herein, or earlier at the direction of WVU, City shall return and surrender the Equipment to WVU.
4. **Use of Equipment**.
  - a. Prior to the City’s use of the Equipment, the City and WVU will agree upon dates of use; such dates shall not interfere with WVU’s planned use of the Equipment.

- b. City's rights of possession, custody and use of the Equipment shall commence on the date of pick up and shall end upon its return delivery to WVU. City shall not sublet, part with possession, of the Equipment, nor allow the Equipment or any part thereof to be used by anyone except the City and its employees, contractors and agents, without the prior written consent of WVU.
  - c. City shall cause the Equipment to be used by such personnel in accordance with instructions which WVU shall provide to City. City shall not modify or change the Equipment without City's prior written consent.
  - d. City agrees that the Equipment is to be used solely for the Program and in its intended manner, and is not to be used for any other purpose unless agreed to by WVU. City agrees not to disassemble, modify, or service the Equipment in any way.
5. Ownership of Equipment; License.
- a. The Equipment is solely owned by WVU. During the term of this Agreement, full and complete title to the Equipment shall remain with WVU, subject to City's rights hereunder. City's rights hereunder are solely temporary possession, custody, and use of the Equipment as City for the Program, in accordance with the terms of this Agreement.
  - b. City shall not sell, lease, borrow against, pledge, or otherwise create a legal or equitable security interest in the Equipment other than the security interest of WVU created hereunder.
  - c. WVU hereby grants to City a limited, non-exclusive, non-transferable license to use the Equipment in accordance with, and during the term of, this Agreement.
6. Warranties; Disclaimer of Warranties. Except as expressly stated herein, the equipment is provided "as is." WVU makes no other warranties or representations, whether statutory, express or implied (including any warranties of merchantability and fitness for a particular purpose or arising out of any course of dealing or usage of trade). Any description of the equipment (including, but not limited to manufacturer's instructions, if any) is for reference purposes only and is not intended to be construed as a warranty relating to condition or completeness. WVU specifically disclaims any warranty relating to the condition or completeness of the equipment.
7. Limitation of Liability.
- a. Neither WVU, nor the employees or agents of WVU shall be liable to the city in contract, tort (including negligence and strict liability) or otherwise

DRAFT

for loss resulting from use of the equipment, cost of repair or clean-up costs associated with damages caused by city's use of the equipment, claims of any third party, or any special, incidental, indirect, or consequential loss or damage whatsoever.

- b. City's liability to WVU for loss, damage, or destruction of the equipment shall be limited to the replacement value of the equipment.
- 8. Amendment or Extension. This Agreement may be amended or extended by written modification of the parties.
- 9. Governing Law. The laws of the State of West Virginia shall govern the interpretation and enforcement of the Agreement.
- 10. Entire Agreement. This Agreement represents the entire agreement between the parties. This Agreement may not be changed orally, but only by a written document agreed to and executed signed by WVU and the City.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as the date of the signatures of their duly authorized representatives.

West Virginia University Board of  
Governors on behalf of West Virginia  
University

City of Morgantown

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its: