



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the City Clerk

Agenda
Morgantown City Council
Regular Meeting
September 7, 2021
7:00 p.m.

1. **Call to order:**

2. **Roll Call:**

3. **Pledge to the Flag:**

4. **Approval of Minutes:** August 24, 2021, Special Meeting minutes; August 24, 2021, Regular Meeting minutes; August 31, 2021, Special Meeting minutes; August 31, 2021, Committee of the Whole Meeting minutes.

5. **Correspondence:**

- A. Constitution Week Proclamation
- B. Suicide Prevention Month Proclamation
- C. Hunger Action Month Proclamation

6. **Public Hearings:**

A. **An Ordinance approving an Easement to Mon Power**

7. **Unfinished Business:**

A. Consideration of **Approval of (Second Reading) of An Ordinance approving an Easement to Mon Power (First reading 08/24/2021)**

B. Boards & Commissions:

8. **Public Portion which shall be subject to rules established by council and adopted by Resolution:**

9. **Special Committee Reports:**

A. Police Review & Advisory Board – *Mayor Selin, ex officio*

B. Special Committee on Unsheltered Homelessness – *Members; Mayor Selin, Deputy Mayor Trumble, and Councilor Vega, Councilor Harshbarger, and Councilor Butcher.*

10. **Consent Agenda:** *Reminder: Matters on the Consent Agenda are voted on collectively without any*

debate. If any member objects, an item is removed and considered under New Business.

11. New Business:

- A. Consideration of Approval of (First Reading) of An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC**
- B. Consideration of Approval of (First Reading) of An Ordinance amending article 1751 of the Housing Code**
- C. Consideration of Approval of a Resolution authorizing application for Governor’s Highway Safety Program Grant**
- D. Consideration of Acceptance of a Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Morgantown High School**
- E. Consideration of Acceptance of a Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at South Middle School**
- F. Consideration of Acceptance of a Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Mountaineer Middle School**
- G. Consideration of Acceptance of a Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Suncrest Middle School**
- H. Consideration of Approval of the 2022 City Council Meeting Calendar**
- I. Consideration of Approval of a Vacant Structure Exemption Request for 301 East Brockway Avenue.**
- J. Consideration of Approval of Trick-or-Treat on Sunday, October 31, 2021, 6pm – 8pm**
- K. Consideration of Approval of Authorization of Acceptance of FAA Grant 3-54-0015-047-2021**
- L. Consideration of Approval to Purchase of SCBA Fill Station for South High Street Fire Station**
- M. Consideration of Settlement and Release Agreement among Daniel A. Nagowski, Daniel L. Nagowski, the Daniel A. Nagowski Revocable Inter Vivos Trust, and The City of Morgantown**

12. City Manager’s Report:

13. Report from City Clerk:

14. Report from City Attorney:

15. Report from Council Members:

16. Adjournment:

***For accommodations, please contact us at 304-288-7072.**

City of Morgantown

SPECIAL MEETING

August 24, 2021

Special Meeting August 24, 2021: The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, August 24, 2021, at 6:01 p.m.

PRESENT: Mayor Jenny Selin, Deputy Mayor Danielle Trumble, Council Members Joe Abu-Ghannam, Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Kawecki, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:02 p.m.

Ward & Boundary Commission

6:00 p.m. – Cindy O’Brien

6:20 p.m. – Sarah Barbes

Health & Wellness Commission

6:40 p.m. – Lynn Castro

ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Vega, to adjourn the meeting. Time: 7:04 p.m.

City Clerk

Mayor

City of Morgantown
389 Spruce Street, Morgantown, WV 26505

MINUTES
REGULAR MEETING
August 24, 2021

Regular Meeting: August 24, 2021: The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, August 24, 2021, at 7:11 pm.

Present: City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, City Clerk Christine Wade, Mayor Jenny Selin, Deputy Mayor Danielle Trumble, and Council Members Joe Abu-Ghannam, Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Mayor Selin.

Approval of Minutes: Motion by Councilor Kawecki, second by Councilor Harshbarger, to approve August 10, 2021, Special Meeting minutes and August 10, 2021, Regular Meeting minutes. Motion carried 7-0.

Correspondence: None

Public Hearing: An Ordinance setting forth the rates, fees, and charges for service to customers of the Waterworks System serving the City of Morgantown

Mayor Selin declared this Public Hearing open.

Logan Shamberger, 138 Putnam Street, spoke in opposition.

Shawn Commodore spoke in opposition.

There being no other appearances, Mayor Selin declared the Public Hearing closed.

Public Hearing: An Ordinance setting forth the rates, fees, and charges for service to customers of the Sewerage System serving the City of Morgantown

Mayor Selin declared this Public Hearing open.

Shawn Commodore spoke in opposition.

There being no other appearances, Mayor Selin declared the Public Hearing closed.

Public Hearing: An Ordinance amending 929, Sections 929.05 and 929.06 of the Morgantown City Code, as the same apply to Stormwater Management Rates and Fees

Mayor Selin declared this Public Hearing open.

There being no appearances, Mayor Selin declared the Public Hearing closed.

Public Hearing: An Ordinance amending the FY 2021-2022 Annual Budget of the General Fund

Mayor Selin declared this Public Hearing open.

There being no appearances, Mayor Selin declared the Public Hearing closed.

Unfinished Business:

An Ordinance setting forth the rates, fees, and charges for service to customers of the Waterworks System serving the

City of Morgantown

City of Morgantown: The below entitled Ordinance was presented for second reading.

An Ordinance setting forth the rates, fees, and charges for service to customers of the Waterworks System serving the City of Morgantown

City Manager Kim Haws explained. Mike McNulty, General Manager of Morgantown Utility Board explained. After discussion, motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled. After further discussion, motion by Deputy Mayor Trumble, second by Councilor Butcher, to amend the original motion to remove the new language related to additional fees with reconnecting and additional return check charges. Motion on the first amendment carried 4-3 with Councilor Kawecki, Councilor Harshbarger and Mayor Selin voting no. After additional discussion, motion by Councilor Butcher, second by Councilor Vega, to remove any incremental rate increases beyond our initial rate increase this year (2024-2026). Motion on the second amendment failed 3-4 with Councilor Abu-Ghannam, Councilor Kawecki, Councilor Harshbarger, and Mayor Selin voting no. Motion on original motion carried 5-2, with Councilor Vega and Councilor Butcher voting no.

An Ordinance setting forth the rates, fees, and charges for service to customers of the Sewerage System serving the City of Morgantown: The below entitled Ordinance was presented for second reading.

An Ordinance setting forth the rates, fees, and charges for service to customers of the Sewerage System serving the City of Morgantown

City Manager Kim Haws explained. General Manager Mike McNulty of Morgantown Utility Board explained. After discussion, motion by Councilor Kawecki, second by Councilor Harshbarger, to approve the above-entitled Ordinance. After further discussion, motion by Deputy Mayor Trumble, second by Councilor Abu-Ghannam, to amend the original motion to remove the new language related to additional fees with reconnecting and additional return check charges. Motion on the amendment carried 4-3 with Councilor Kawecki, Councilor Harshbarger, and Mayor Selin voting no. Motion on the original motion carried 5-2 with Councilor Vega and Councilor Butcher voting no.

An Ordinance amending article 929, Sections 929.05 and 929.06 of the Morgantown City Code, as the same apply to Stormwater Management Rates and Fees: The below entitled Ordinance was presented for second reading.

An Ordinance amending article 929, Sections 929.05 and 929.06 of the Morgantown City Code, as the same apply to Stormwater Management Rates and Fees

City Manager Kim Haws explained. General Manager Mike McNulty of Morgantown Utility Board explained. After discussion, motion by Councilor Harshbarger, second by Councilor Kawecki, to approve the above-entitled Ordinance. Motion carried 5-2 with Councilor Vega, and Councilor Butcher voting no.

An Ordinance amending the FY 2021-2022 Annual Budget of the General Fund: The below entitled Ordinance was presented for second reading.

An Ordinance amending the FY 2021-2022 Annual Budget of the City of Morgantown as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance as the same applied to the General Fund

City Manager Kim Haws explained. Finance Director Kevin Tennant explained. Motion by Deputy Mayor Trumble, second by Councilor Vega, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

Boards & Commissions:

Motion by Councilor Kawecki, second by Deputy Mayor Trumble, to reappoint, by consensus, Cindy O'Brien to the Ward & Boundary Commission for the 2nd Ward.

Motion by Councilor Abu-Ghannam, second by Councilor Kawecki, to reappoint, by consensus, Sarah Barnes to the Ward & Boundary Commission for the 1st Ward.

Motion by Councilor Vega, second by Councilor Kawecki, to appoint, by consensus, Lynn Castro to the Health & Wellness Commission.

City of Morgantown

Public Portion:

Mayor Selin declared the Public Portion open.

Tom Bloom, 1021 Ashton Drive, invited council to a Wednesday work session with the County Commission. He requested that they contact him to setup a Wednesday work session beginning at 6:00 pm in the next 4 weeks.

Logan Shamberger, 138 Putnam Street, thanked council for holding the August 18, 2021, ARPA meeting for community members to provide input on how those funds will be utilized.

There being no other individuals to speak, Mayor Selin declared the public portion closed.

Special Committee Reports:

Civilian Police Review & Advisory Board – Mayor Selin shared that a small group is currently meeting to modify the application to serve on this board to meet the qualifications this board requires for membership.

Special Committee on Unsheltered Homelessness – Members: Mayor Selin, Councilor Harshbarger. Deputy Mayor Trumble, Councilor Vega, and Councilor Butcher all shared that they would like to be members of this Special Committee. Mayor Selin shared that the next scheduled meeting is August 26, 2021, at 2:00 p.m. via Webex.

Consent Agenda: None

New Business:

Consideration of Approval of a Resolution supporting the City of Morgantown seeking approval for a Utility Box Mural in Morgantown: The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. Motion by Councilor Harshbarger, second by Councilor Vega, to approve the above-entitled Resolution. After discussion, motion carried 7-0.

Consideration of Acceptance of Morgantown Grant from Federal Aviation Administration at the Morgantown Municipal Airport

City Manager Kim Haws explained. After discussion, motion by Councilor Butcher, second by Councilor Harshbarger, to approve the above-entitled Grant Application from the Federal Aviation Administration at the Morgantown Municipal Airport. Motion carried 7-0.

Consideration of Approval of a Resolution authorizing an application for the WVDEP covered electronic Devices Grant

City Manager Kim Haws explained. After discussion, motion by Councilor Kawecki, second by Councilor Vega, to approve the above entitled Resolution. Motion carried 7-0.

Consideration of Approval of (First Reading) of An Ordinance approving an Easement to Mon Power: The below entitled Ordinance was presented for first reading.

An Ordinance approving an Easement to Mon Power

City Manager Haws explained. Assistant City Manager Emily Muzzarelli explained. After discussion, motion by Councilor Harshbarger, second by Councilor Kawecki, to approve the above-entitled Ordinance to second reading. Motion carried 7-0.

Consideration of Approval of a Resolution amending the 2021-2022 budget revision for the Morgantown Capital Escrow Fund: The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. Finance Director Kevin Tennant explained. After discussion, motion by Councilor Butcher, second by Councilor Harshbarger, to approve the above-entitled Resolution. Motion carried 7-0.

City Manager's Report: shared his appreciation of employee involvement in the City of Morgantown employee picnic and stated

City of Morgantown

that he intends to hold an employee picnic annually. He also shared that the new city website will be live this Thursday. He shared that the hybrid meeting option is still being investigated. Lastly, he spoke on the upcoming City Council Orientation which is coming up this Wednesday.

Report from City Clerk: shared directions for folks to locate Boards and Commissions on the city's website and how to apply. She also shared that the Morgantown Police Civil Service Commission will be holding their Entry-level Police Officer written exam and physical agility test on October 16, 2021.

Report from City Attorney: shared that the Atlantic Broadband application for cable franchise he mentioned at the last meeting is complete and on file in the City Clerk's Office. Notices as required by law are being published with the newspaper and delivered to the Public Service Commission. The ordinance for councils' consideration is scheduled to be on the August Committee of the Whole. The representatives of the company will appear at the second reading and the public hearing on the proposed ordinance as required by the Public Service Commission rules. He shared that he received a request about whether the city could use the Home Rule Program to address alcohol licensing issues particularly in the downtown with respect to business locations that happen to be located near religious establishments and how that interacts with ABCA rules on where a license can be granted. For information, he shared that Morgantown is a participant in the West Virginia Home Rule Program. At a basic level the program allows the city to establish authorities that it otherwise might be restricted from enacting by state law by preparing a plan amendment and going to a state appointed board and asking for approval of that plan amendment. He shared that when council is working on legislation if they run up against an issue where the city doesn't have authority or doesn't have clear authority to pursue the enactment they are looking at often the Home Rule plan is an amendment. He also stated that it is never too early to start considering what council will discuss with legislators for the upcoming state legislative session that begins in January. As information, our city's legislators usually come and meet with council in the fall to discuss city priorities.

Report from Council Members:

Councilor Butcher: spoke of COVID and how folks should now respond as numbers rise. He also encouraged vaccination and keeping our community and vulnerable populations safe. He also spoke of how COVID may change the look of our future meetings.

Councilor Harshbarger: share that it was great to see the FDA remove the test status of the Pfizer drug. He appreciates the leadership of healthcare organizations making it a condition of employment knowing that this decision is not going to be popular for some. He shared that is like the flu shot for many organizations where five six years ago it became a condition of employment. He shared that we need to be diligent and get past this. Street paving will be happening in South Hills in the Sixth Ward tomorrow through Thursday and residents are very excited about it. He shared that it was enjoyable to meet last Wednesday at the ARPA event with the public to receive ideas and take notes.

Deputy Mayor Trumble: shared her appreciation of the city employee picnic stating that she enjoyed meeting the staff and their families. She looks forward to the city council orientation and appreciates the work that is still being done on hybrid meetings. Fifth Ward is still in need of a Traffic Commissioner. If anyone has an interest in Morgantown traffic, please apply online via the city's website. She appreciated the involvement at the first ARPA meeting and reminded everyone that the next meeting is September 1, 2021, at 7pm at the Marilla Center. Deputy Mayor stated that the Morgantown cleanup group, in collaboration with Main Street Morgantown and Morgantown Rotary have planned a downtown clean-up day on Wednesday, September 29, 2021, from 6-8pm. More information will be coming regarding this event.

Councilor Vega: welcomed students back to Morgantown and reminded students of being thoughtful and respectful of their neighbors. She also reminded folks of their speed while traveling. Lastly on the third Wednesday of each month there is a Wiles Hill Neighborhood Association meeting if folks would like to attend. She shared her appreciation of community involvement at the August 18, 2021, ARPA meeting and shared that if folks could not attend or cannot attend the next meeting to please reach out to her.

Councilor Kawecki: shared his appreciation of the city employee picnic and the involvement in the August 18, 2021, ARPA meeting. There will be a South Park Neighborhood Association meeting tomorrow at Eaton Park at 7pm. Greenmont meets Monday at 7pm on Green Street. The MPO Policy Board has been invited to participate with the County Commission discussions with the DOH on Thursday, September 2, 2021, from 8am to 10am. The City Council has also been invited.

Councilor Abu-Ghannam: reminded folks to vaccinate and take their part in protecting their community. He participated in the Arborist meeting this past week sharing that it was very interesting and informative. He will be running the First Ward meeting on Monday at Jack Roberts Park at 7pm and everyone is invited. He spoke about job readiness opportunities at the Adult Learning Center which are free for those who would like to partake and receive help on items such as resume building and interviewing.

City of Morgantown

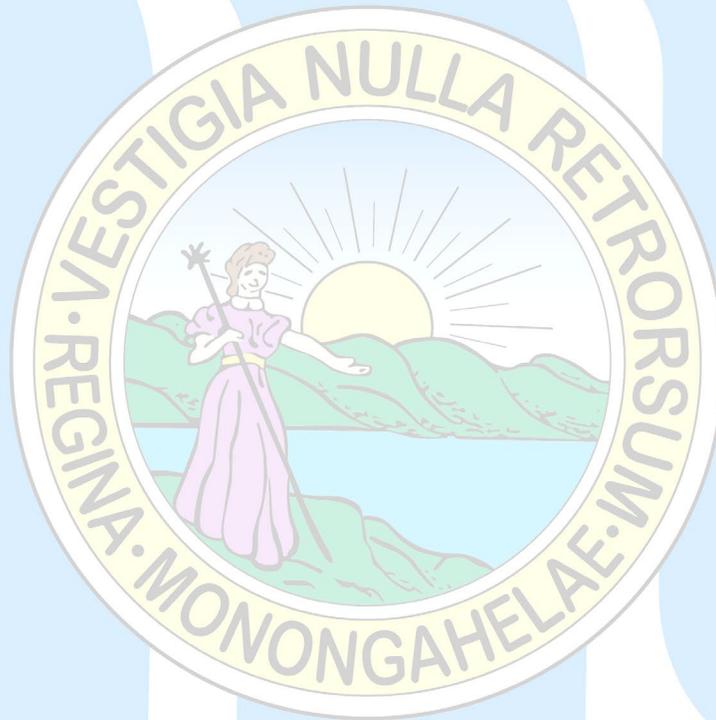
Mayor Selin: shared her appreciation of the city employee picnic and looks forward to doing that again. She also shared her appreciation of the August 18, 2021, ARPA meeting involvement by the community and staff. Also, she appreciates the discussions held during the meeting this evening. She reminded everyone of the next meeting on September 1, 2021, and stated that it is a great time to hear what people have to say.

Executive Session: Pursuant to West Virginia Code §6-9A-4(2)(B)(12) to discuss potential or pending litigation. Motion by Councilor Kawecki, second by Deputy Mayor Trumble, to go into executive session. Motion carried by acclamation. Present: City Council, City Manager, City Attorney. Time: 9:18 p.m.

ADJOURNMENT: There being no further business, motion by Councilor Kawecki, second by Councilor Abu-Ghannam, to adjourn the meeting. Time: 10:15 p.m.

City Clerk

Mayor



City of Morgantown

SPECIAL MEETING August 31, 2021

Special Meeting August 31, 2021: The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, August 31, 2021, at 6:16 p.m.

PRESENT: Mayor Jenny Selin, Deputy Mayor Danielle Trumble, Council Members Joe Abu-Ghannam, Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Councilor Kawecki, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:17 p.m.

BOPARC Commission

6:20 p.m. – Ash Orr

Human Rights Commission

6:40 p.m. – Rosalynn Lauderback

Building Commission

7:00 p.m. - Marlene Savino

ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Kawecki, to adjourn the meeting. Time: 7:12 p.m.

City Clerk

Mayor

City of Morgantown

MINUTES COMMITTEE OF THE WHOLE MEETING August 31, 2021

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held in City Council Chambers on Tuesday, August 31, 2021, at 7:23 p.m.

PRESENT: City Manager Kim Haws, Assistant City Manager Emily Muzzarelli, City Attorney Ryan Simonton, Mayor Jenny Selin, Deputy Mayor Danielle Trumble, and Council Members Bill Kawecki, Ixya Vega, Dave Harshbarger, and Brian Butcher.

The meeting was called to order by Deputy Mayor Trumble.

PRESENTATIONS:

1. Morgantown Human Rights Commission – Prohibiting Conversion Therapy
Ash Orr, Human Rights Commission Chair presented to council.
2. Morgantown Public Library Annual Report – Director Sarah Palfrey
Sarah Palfrey gave an annual report on the Morgantown Public Library.
3. Housing Code Ordinance – Fire Marshal Captain Ken Tennant and Chief Building Officer Amy Fairman
Director of Development Services Rickie Yeager gave an overview on sections of the Housing Code that have been considered for amendment. Morgantown Fire Department Captain Ken Tennant and Chief Building Officer Amy Fairman answered questions.

PUBLIC PORTION:

Deputy Mayor Trumble opened the public portion and asked if there was anyone wishing to speak.

Below are those that spoke in favor of the Conversion Therapy:

- | | |
|--|--|
| - Paul Liller, 416 Morgan Street | - Jason Bennett, 82 Mayfield Road |
| - Logan Shamberger, 138 Putnam Street | - Eve Faulkes, 49 Maple Avenue |
| - Samantha Coggins, 293 Willey Street | - Marly Ynigues, 109 Sabraton Avenue |
| - Amy Root, 804 Grand Street | - Zac Morton, 586 Sleepy Hollow Road |
| - Marshal Allen Sherry, 213 Morgan Point | - Rosalyn Lauderback, 417 Grand Street |
| - Dan David, 224 Wilson Avenue | - Mollie Kennedy, 424 Grant Street |
| - Daniel Walker, 26 Addison Circle | - Alisa Clements, 182 Vincent Avenue |
| - Judith Wilkinson, Waterfront Place | |

There being no one else wishing to speak, Deputy Mayor Trumble closed the Public Portion.

ITEMS FOR DISCUSSION:

1. Ordinance – Housing Code – Article 1751

After discussion, this item was moved to the September 7, 2021, Regular Meeting Agenda.

2. Ordinance granting Cable Television Franchise to Atlantic Broadband (PENN), LLC.

City of Morgantown

After discussion, this item was moved to the September 7, 2021, Regular Meeting Agenda.

3. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Morgantown High School
4. Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at South Middle School

After discussion, this item was moved to the September 7, 2021, Regular Meeting Agenda.

5. Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Mountaineer Middle School

After discussion, this item was moved to the September 7, 2021, Regular Meeting Agenda.

6. Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Suncrest Middle School

After discussion, this item was moved to the September 7, 2021, Regular Meeting Agenda.

ADJOURNMENT:

There being no further business, motion by Councilor Vega, second by Mayor Selin, to adjourn the meeting.
Time: 9:49 p.m.

City Clerk

Mayor



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the Mayor

PROCLAMATION

- Whereas,** The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and
- Whereas,** September 17, 2021, marks the two hundred and thirty-fourth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention; and
- Whereas,** it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and
- Whereas,** Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council, do hereby proclaim the week of September 17 - 23, 2021, as

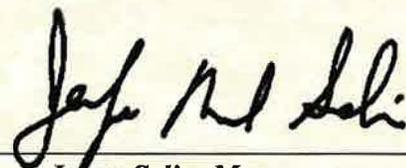
Constitution Week

And ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

In Witness Whereof, I have hereunto set my hand and caused the Seal of Morgantown, WV to be affixed this 7th day of September, 2021.

Seal:





Jenny Selin, Mayor



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the Mayor

PROCLAMATION

- Whereas,** suicide remains the 10th leading cause of death in the United States and the 2nd leading cause of death among individuals between the ages of 10 to 34; and
- Whereas,** in the United States over 47,000 people died by suicide in 2019 (Centers for Disease Control); and
- Whereas,** suicide rates have increased 30% over the last two decades, with suicide rates finally decreasing 2.1% between 2018 and 2019; and
- Whereas,** it is estimated that in 2019, there were 1.38 million suicide attempts, and the 11th leading cause of death in WV with 330 people who have died (Centers for Disease Control); and
- Whereas,** over 90% of the people who die by suicide have a diagnosable and treatable mental health condition, although often that condition is not recognized or treated: and
- Whereas,** organizations such as the American Foundation for Suicide Prevention are dedicated to saving lives and bringing hope to those affected by suicide, through research, education, advocacy, and resources for those who have lost someone to suicide or who struggle, and urge that we:

1. Recognize suicide as a preventable national and state public health problem and declare suicide prevention to be a priority.
2. Acknowledge that no single suicide prevention program or effort will be appropriate for all populations or communities.
3. Address the disparity in access to mental healthcare for underrepresented groups, and advocate for ending these disparities.
4. Fund new suicide research to support culturally informed and evidence-based mental health care and services.
5. Encourage initiatives based on the goals contained in the National Strategy for Suicide Prevention and the **2021 WV Suicide Prevention Plan**.
6. Promote awareness that there is no single cause for suicide, and that suicide most often occurs when stressors exceed the coping abilities of someone struggling with a mental health condition.
7. Develop and implement strategies to improve and increase access to quality mental health, substance abuse, and suicide prevention services and programs.

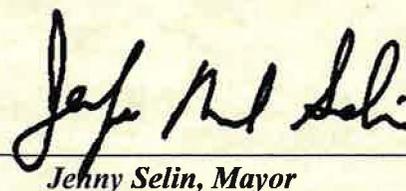
Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 7th day of September, do hereby designate September 5-11, 2021, as

National Suicide Prevention Week

in the City of Morgantown.

Seal:





Jenny Selin, Mayor



The City of Morgantown

389 Spruce Street
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
www.morgantownwv.gov

Office of the Mayor

PROCLAMATION

- Whereas,** hunger and poverty are issues of vital concern in West Virginia where over 14% of people struggle with hunger and one in every five children do not know where their next meal will come from; and
- Whereas,** the state of West Virginia is committed to taking steps to combat hunger in every part of our community and to provide additional resources that those in West Virginia need; and
- Whereas,** the state of West Virginia is committed to working with Mountaineer Food Bank a member of the Feeding America® nationwide network of food banks, in educating people about the role and importance of food banks in addressing hunger and raising awareness of the need to devote more resources and attention to hunger issues; and
- Whereas,** more than 250,000 individuals in West Virginia rely on food provided by the members of the Mountaineer Food Bank and Facing Hunger Foodbank annually; and
- Whereas,** the coronavirus pandemic has had devastating health and economic impacts across the country, and it is projected that 71,686 more people could face hunger in West Virginia in the wake of the pandemic this year; and
- Whereas,** the members of Mountaineer Food Bank distributed more than 29 million pounds of food to 48 counties in 2020 through its network of food pantries, soup kitchens, shelters, and other community organizations; and
- Whereas,** the month of September has been designated “Hunger Action Month” in order to bring attention to food insecurity in our communities and to engage the public in action – including volunteer shifts, social media shares, and donations – to end hunger one helping at a time; and
- Whereas,** food banks across the country, including the members of Mountaineer Food Bank and Facing Hunger Foodbank– will have numerous ways to take action throughout the month of September to bring awareness and help end hunger in their local community.

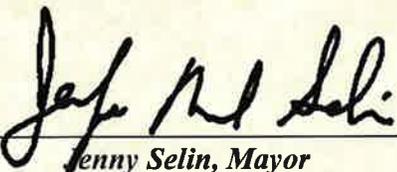
Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council on this 7th day of September, do hereby recognize September 2021, as

Hunger Action Month

in Morgantown, West Virginia, and I call this observance to the attention of our citizens.

Seal:





Jenny Selin, Mayor

**AN ORDINANCE AUTHORIZING AN EASEMENT TO
MONONGAHELA POWER COMPANY IN
THIRD WARD DISTRICT, TAX MAP 26A, PARCELS 112, 113, AND 114**

The City of Morgantown hereby ordains that the City Manager is authorized to execute an easement with Monongahela Power Company in the form attached to this ordinance, providing for an underground utility line easement, and such additional or ancillary documents necessary and convenient to accomplish the project described within the easement.

Adopted this ____ day of September, 2021.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

FOR VALUABLE CONSIDERATION RECEIVED, City of Morgantown
_____, a municipal corporation,

(hereinafter called "Grantor") hereby grants and conveys unto Monongahela Power Company, an Ohio corporation, its successors and assigns, (hereinafter called "Grantee") a perpetual easement over, upon, in and through lands of the Grantor located in MONONGALIA County, Third Ward District/Township, State of WEST VIRGINIA, at the address Fayette St and Alley Way Parcels 112-114 of Tax Map 26A, containing _____ acres, more or less, acquired by the Grantor by, and described in, that certain deed recorded in Volume 185, 417,599 at Page 415,309,705 of the Deed Records of said County, together with the continuing right of reasonable access thereto or any portion thereof over said lands, as required for the construction, burial, operation, maintenance, repair, alteration, reconstruction and removal, from time to time, of electric distribution lines and additions thereto, including all wires, transformers, pedestals, vaults, conduit and other fixtures, equipment and appurtenances (and, where required, all poles, anchors, guy wires and other supporting structures) used in connection therewith (all hereinafter collectively called "facilities"), which easement shall be located having a centerline, at ground surface elevation, as shown on drawing marked "Exhibit A," attached hereto as a part hereof, or on any necessary revisions thereof (the area so required for said easement being hereinafter called the "premises"). The easement shall be 10 feet in width, with 5 feet on each side of the centerline.

The Grantor and its successors in ownership of the premises shall not, and shall not permit others to, plant any trees or erect or place any buildings or other structures on said premises, nor alter the surface elevation of said premises from the elevation existing upon completion of construction and/or burial of facilities hereunder, nor use said premises for any purpose which may be inconsistent with the exercise by the Grantee of its rights hereunder or which may endanger or interfere with said facilities.

The Grantee shall at all times have the right to clear, control, cut, trim and remove trees, limbs, shrubs, brush and growths from said premises or which in its opinion may interfere with the exercise of its rights hereunder or endanger said facilities. The Grantee shall pay for all other damage sustained by the Grantor or its said successors resulting from the construction, burial, operation, maintenance, repair, alteration, reconstruction or removal of said facilities by the Grantee and not caused or contributed to by the Grantor or its said successors or by the agents or invitees of any of them.

The Grantor, for itself, its successors and assigns, covenants that it is the true and lawful owner of said lands and has full right and power to grant and convey said easement as herein provided. The undersigned hereby declares that the total consideration paid for the property transferred hereby is, to the best of his knowledge and belief, \$1.00.

IN WITNESS WHEREOF, the Grantor has executed this instrument this _____ day of _____ (MONTH/YEAR).

ATTEST:

(GRANTOR)

(SECRETARY) By _____
(VICE PRESIDENT)

STATE OF _____ }
COUNTY OF _____ } SS:

I, _____, a Notary Public in and for said County, hereby certify that _____ of _____, who signed the foregoing instrument, has this day before me acknowledged the same to be the free act and deed of said corporation.

Given under my hand this _____ day of _____ (MONTH/YEAR).
My Commission Expires _____

(NOTARY PUBLIC)

TITLE SOURCE

DISTRIBUTION LINE EASEMENT

COUNTY CLERKS
Please Use This Space

Grantor acquired by:

Deed From _____

Will Of _____

Inherited From _____

All _____ Part _____

Remarks _____

Name _____

Title _____

District _____

County _____

Date _____

WBS Element/Internal Order _____

Remarks _____

Boards & Commissions

Council Representation

<u>Board/Commission</u>	<u>Council Member serving</u>	<u>Council Interest</u>
Board of Parks & Recreation Commission (BOPARC)	Mayor Selin & Deputy Mayor Trumble	
Cultural Arts Commission	Butcher	
Health & Wellness Commission	Vega	
Historic Landmarks Commission	Kawecki	Vega
Housing Advisory Commission	Kawecki	
Parking Authority	Butcher	
Planning Commission	Deputy Mayor Trumble	
Sister Cities Commission	Vega	
Traffic Commission	Harshbarger	Deputy Mayor Trumble and Vega
Tree Board Commission	Abu-Ghhannam	
Urban Landscape Commission	Deputy Mayor Trumble	
Woodburn School Redevelopment Commission	Deputy Mayor Trumble	

Council Representation NOT Required but appreciated AD-HOC

Bicycle Board		
Civilian Police Review & Advisory Board	Butcher	
Human Rights Commission	Butcher	
Metropolitan Planning Org Policy Board MPO	Mayor Selin, Kawecki, Harshbarger	
Monongalia County Development Authority (MCDA)	City Manager Haws	
Morgantown Green Team		
Pedestrian Safety Board	Deputy Mayor Trumble	
Sunnyside Up	Mayor Selin (ex-officio)	

**AN ORDINANCE GRANTING A CABLE FRANCHISE TO
ATLANTIC BROADBAND (PENN), LLC**

The City of Morgantown, in accordance with and pursuant to Chapter 24D, Article 1 of the West Virginia Code, entitled the “Cable Televisions Systems Act,” and as the local franchising authority thereunder, hereby ordains that the City Manager is authorized to enter into the attached “Cable Franchise Agreement Between City of Morgantown and Atlantic Broadband (Penn), LLC” and to execute such additional or associated documents as necessary and convenient to provide for the granting of a franchise to Atlantic Broadband (Penn), LLC to provide cable television service within the City of Morgantown.

Adopted this ____ day of September, 2021.

FIRST READING: _____

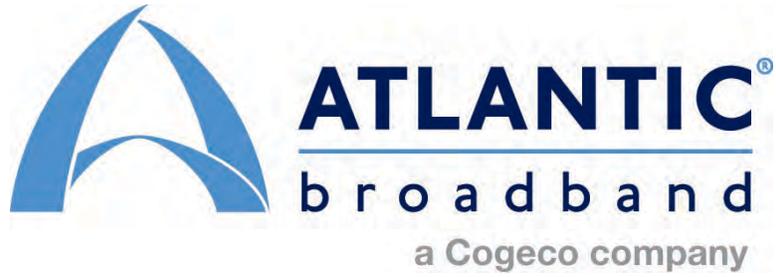
Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____



CABLE FRANCHISE AGREEMENT

BETWEEN

CITY OF MORGANTOWN

AND

ATLANTIC BROADBAND (PENN), LLC

TABLE OF CONTENTS

	Page
SECTION 1	DEFINITIONS.....2
SECTION 2	GRANT OF FRANCHISE.....5
2.1	GRANT OF AUTHORITY5
2.2	TERM OF FRANCHISE.....5
2.2	COMPETITIVE EQUITY5
2.4	FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS.....6
SECTION 3	SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE6
3.1	TECHNICAL REQUIREMENTS6
3.2	AREA TO BE SERVED6
3.3	CABLE SYSTEM SPECIFICATIONS7
3.4	SYSTEM TESTS7
3.5	EMERGENCY ALERT SYSTEM8
3.6	RATE DISCRIMINATION8
3.7	SERVICES FOR SUBSCRIBERS WITH DISABILITIES8
3.8	SERVICE TO MULTIPLE DWELLING UNITS ("MDU'S").....8
3.9	REPAIRS AND RESTORATION9
3.10	SERVICE AREA MAPS.....10
3.11	DISCONNECTION AND RELOCATION10
3.12	EMERGENCY REMOVAL OF EQUIPMENT10
3.13	TREE TRIMMING11
3.14	CHANNEL CAPACITY11
3.15	BROADCAST CHANNELS11
3.16	SIGNAL SCRAMBLING11
3.17	CONTINUITY OF SERVICE.....11
3.18	PARENTAL CONTROL CAPABILITY12
SECTION 4	SUBSCRIBER SERVICE STANDARDS14
4.1	CUSTOMER SERVICE HOURS AND TELEPHONE AVAILABILITY.....14
4.2	INSTALLATIONS AND SERVICE CALLS.....14
4.3	NOTICES13
4.4	BILLING14
4.5	SUBSCRIBER COMPLAINT PROCEDURES14
4.6	DISCONNECTION.....15

	4.7	SERVICE INTERRUPTIONS	15
	4.8	PRIVACY	15
SECTION 5		REGULATION BY THE CITY	16
	5.1	RIGHT TO INSPECT	16
	5.2	RIGHT TO CONDUCT COMPLIANCE REVIEW	17
	5.3	RESERVED AUTHORITY	17
	5.4	POLICE POWERS.....	17
	5.5	NO LIMITATION ON TAXING OR FEE AUTHORITY.....	17
	5.6	PERMITS	17
	5.7	REPORTING.....	18
SECTION 6		COMPENSATION TO THE CITY	18
	6.1	FRANCHISE FEES	18
	6.2	QUARTERLY PAYMENTS	19
	6.3	QUARTERLY REPORTS	19
	6.4	FRANCHISE FEE REVIEW	19
	6.5	BUNDLED SERVICES	20
SECTION 7		FREE SERVICES TO THE COMMUNITY	20
	7.1	FREE SERVICES TO COMMUNITY FACILITIES.....	20
	7.2	EDUCATIONAL AND GOVERNMENTAL CHANNEL	21
SECTION 8		ENFORCEMENT, INSURANCE AND INDEMNIFICATION	22
	8.1	VIOLATIONS AND OPPORTUNITY TO CURE	22
	8.2	LIQUIDATED DAMAGES.....	23
	8.3	REVOCAION	23
	8.4	INSURANCE	24
	8.5	INDEMNIFICATION	25
SECTION 9		MISCELLANEOUS	25
	9.1	FORCE MAJEURE.....	25
	9.2	REMOVAL OF SYSTEM	25
	9.3	NOTICES	26
	9.4	EQUAL EMPLOYMENT OPPORTUNITY.....	27
	9.5	CAPTIONS	27
	9.6	GOVERNING LAW; VENUE	27
	9.7	TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL.....	27
	9.8	ENTIRE AGREEMENT	28

9.9	SEVERABILITY	28
9.10	NO WAIVER OF RIGHTS.....	28
9.11	CHANGE OF LAW	28
9.12	COMPLIANCE WITH LAWS	28
9.13	THIRD PARTY BENEFICIARIES	29
9.14	APPLICABILITY OF AGREEMENT	29

CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the _____ day of _____, 2021 by and between the City of Morgantown, Monongalia County, West Virginia (hereinafter referred to as the “City”) and Atlantic Broadband (Penn), LLC (hereinafter referred to as “Atlantic Broadband”).

WHEREAS, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and West Virginia Code 24D-1-1 et seq., the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City’s municipal boundaries; and

WHEREAS, Atlantic Broadband has requested that the City grant Atlantic Broadband a franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-ways for use by the City’s residents; and

WHEREAS, the aforesaid Public Rights-of-Way used by Atlantic Broadband are public properties acquired and/or owned and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Atlantic Broadband’s use of the City’s public rights-of-way as provided by federal law, obtain the use of educational and governmental channels, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

WHEREAS, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by granting Atlantic Broadband a franchise according to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Atlantic Broadband agree as follows:

SECTION 1 **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity – Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Atlantic Broadband.

(b) Basic Service – The service tier that includes at least the retransmission of local broadcast television signals and any Educational and Governmental (“EG”) access channel.

(c) Cable Act – Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service – The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System – means any facility within the City consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of the West Virginia Code, except to the extent that those facilities provide video programming directly to subscribers.

(f) Channel – Means a time or frequency slot or technical equivalent on the Cable System, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.

(g) Complaint – Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Atlantic Broadband’s business or the operation of its Cable System.

(h) Communications Act – The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(i) Drop – The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(j) Emergency – A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable System to be unusable and result in loss of the services provided.

(k) FCC – Federal Communications Commission.

(l) Force Majeure – Acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or the State (as defined herein) or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; pandemics; landslides; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of material or equipment.

(m) Franchise – The right granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(n) Franchise Fee – The fee that Atlantic Broadband remits to the City pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(o) Gross Revenues – All revenue received directly or indirectly by Atlantic Broadband or its Affiliated Entities arising from, attributable to, or in any way derived from the operation of Atlantic Broadband's Cable System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any Cable Service tier other than Basic Service (fees charged to Subscribers for any internet or phone/voice services shall not be included);
- (3) fees charged for premium Cable Services;
- (4) fees for all digital video tiers;
- (5) fees for video-on-demand;
- (6) fees charged to Subscribers for any optional, per-channel or per-program Cable Services;
- (7) revenue from the provision of any other Cable Services;
- (8) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (9) fees for changing any level of Cable Service programming;
- (10) fees for service calls related to Cable Services;
- (11) inside wire maintenance fees related to Cable Services;
- (12) service plan protection fees related to Cable Services;
- (13) convenience fees related to Cable Services;
- (14) early termination fees related to Cable Services;
- (15) fees for Leased Access Channels;

- (16) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (17) rental or sales of any and all equipment used to provide Cable Services, including converters and remote control devices;
- (18) any and all locally-derived advertising revenues less agency fees;
- (19) revenues or commissions from locally-derived home shopping channels;
- (20) revenue from interactive television services to the extent deemed “Cable Services” under applicable law;
- (21) fees for any and all music services;
- (22) broadcast retransmission fees;
- (23) regional sports programming fees;
- (24) late payment fees for Cable Services;
- (25) billing and collection fees solely for Cable Services;
- (26) NSF check charges; and

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes or fees on services furnished by Atlantic Broadband and imposed directly upon any Subscriber or user by the City, State, federal or other governmental unit including franchise fees. In the event of any dispute over the classification of revenue, the City and Atlantic Broadband agree that reference should be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”).

(p) HD – High-definition format.

(q) Leased Access or Commercial Access Channel – Any channel on Atlantic Broadband’s Cable System designated for use by any entity that is unaffiliated with Atlantic Broadband pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(r) Multiple Dwelling Units or MDUs – Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for two (2) or more households.

(s) Normal Business Hours – Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, “Normal Business Hours” must include some evening hours at least one night per week and/or some weekend hours.

(t) Normal Operating Conditions – Business conditions within Atlantic Broadband’s service department which are within the control of Atlantic Broadband. Those conditions that are not within the control of Atlantic Broadband include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(u) Outlet – An interior receptacle that connects a television set to the Cable System.

(v) Educational and Governmental (PEG) Channel – An access channel that consists of local public, educational and/or governmental programming.

(w) Programming – Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(x) Public Rights-of-Way – The surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel and shall include other similar easements or rights-of way as shall be now held or hereafter held by the City which shall, within their proper use and meaning, entitle Atlantic Broadband to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(y) Service Interruption – The loss of picture or sound on one or more Channels.

(z) State – The State of West Virginia.

(aa) Subscriber – A person or entity who contracts with Atlantic Broadband for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

SECTION 2 **GRANT OF FRANCHISE**

2.1 GRANT OF AUTHORITY

Pursuant to the Cable Act, the regulations of the FCC and West Virginia. Code 24D-1-1 et seq., the City hereby grants a non-exclusive and revocable franchise to Atlantic Broadband. Subject to the terms and conditions contained herein, the City hereby grants to Atlantic Broadband the right to own, construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other equipment as is necessary and appropriate to the operation of the Cable System in the Public Rights-of-Way, including property over which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

2.2 TERM OF FRANCHISE

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement. For purposes of this Agreement, the term “Effective Date” is sixty (60) days following the full execution of this Agreement by the City and Atlantic Broadband.

2.3 COMPETITIVE EQUITY

(a) Atlantic Broadband acknowledges and agrees that the City reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the City.

(b) The franchise granted to Atlantic Broadband is non-exclusive; however, if the City grants a subsequent Franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Atlantic Broadband, then Atlantic Broadband may request an amendment to this Agreement to provide Atlantic Broadband with competitive equity. If the City agrees with Atlantic Broadband that, when taken as a whole upon consideration of all of its material obligations, the subsequent Franchise is more favorable or less burdensome, then the City and Atlantic Broadband shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Atlantic Broadband with such competitive equity.

(c) In the event an application for a new Franchise for Cable Service is submitted to the City proposing to serve Subscribers within the City, then the City shall notify Atlantic Broadband in writing of the submission of the application.

2.4 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and local laws and regulations. This Franchise is further subject to all applicable ordinances and resolutions of the City. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE

3.1 TECHNICAL REQUIREMENT

(a) Atlantic Broadband shall operate, maintain, construct, and extend the Cable System so as to offer one-way and two-way Cable Services for all programming services throughout all parts of the City where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with FCC and applicable State standards, unless otherwise preempted by Federal law. The Cable System shall meet any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of West Virginia and the generally applicable laws, ordinances and construction standards of the City.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

3.2 AREA TO BE SERVED

(a) Atlantic Broadband shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Atlantic Broadband is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Atlantic Broadband shall use commercially reasonable efforts (considering build out costs, geographical and geological conditions, and business conditions) to complete the initial build by 18 – 24 months after the Franchise is approved. Atlantic Broadband shall extend the Cable System into all areas within the City where there is a minimum of thirty (30) dwelling units per linear mile of aerial cable and thirty (30) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Atlantic Broadband shall complete said extensions within three (3) months of written notification to Atlantic Broadband by the City that an area has met the minimum density standard set forth herein (weather, environmental and/or other Force Majeure conditions permitting). Atlantic Broadband's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty five (125) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit further than one hundred twenty five (125) feet aerial distance from the main distribution line, Atlantic Broadband shall extend the Cable Service at a rate not to exceed the actual cost of installation.

(c) The City has the right to require Atlantic Broadband to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Atlantic Broadband shall be underground in those areas of the City where the wires and/or equipment of similarly situated entities (i.e. telephone and electric utilities) are underground; provided, however, that such underground locations are capable of accommodating Atlantic Broadband's facilities without technical degradation of the Cable System's signal quality. Atlantic Broadband shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals, provided that placing facilities underground does not preclude the use of ground-mounted appurtenances; provided, however, that Atlantic Broadband shall not place any fixtures or equipment in such a way as to interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures or equipment, or such as will interfere with the usual travel on and use of public streets, alleys, ways and places, including any and all requirements for the safe use of the same by pedestrians and automobiles and provisions for access under the Americans with Disabilities Act.

3.3 CABLE SYSTEM SPECIFICATIONS

(a) Atlantic Broadband has designed, and shall construct and maintain a Cable System to meet digital television standards with addressable technology capable of making available video channels received for digital and/or analog transmission and shall allocate a sufficient portion of said bandwidth to deliver two-way Cable Services.

(b) Atlantic Broadband reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, provided that no alteration, adjustment, modification, rebuild, upgrade, redesign or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System as set forth in Section 3.1.

3.4 SYSTEM TESTS

(a) Atlantic Broadband shall conduct proof of performance and other system tests as set forth below. Atlantic Broadband shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City within thirty (30) days of a written request from the City; provided, however, that Atlantic Broadband shall not be required to submit such reports more than one (1) time in any calendar year.

(b) Atlantic Broadband shall perform the following tests on its Cable System:

(1) All tests required by the FCC; and

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement or in response to Subscriber complaints.

(c) If requested by reasonably prior written notice by the City, tests may be witnessed by its representatives.

3.5 EMERGENCY ALERT SYSTEM

Atlantic Broadband shall comply with the Emergency Alert System requirements of the FCC.

3.6 RATE DISCRIMINATION

All Atlantic Broadband residential Subscriber rates and charges shall be published and shall not discriminate among persons in the City under similar circumstances and conditions. Atlantic Broadband shall establish similar rates and charges for all residential Subscribers receiving similar services, regardless of race, color, religion, age, sex, marital status, income or economic status, national origin, sexual orientation, physical or mental disability, or geographic location within the City. Nothing in this Section shall be construed to prohibit:

(a) The temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or

(b) The offering of reasonable discounts to senior citizens.

3.7 SERVICES FOR SUBSCRIBERS WITH DISABILITIES

Atlantic Broadband shall work cooperatively with any services that allow hearing-impaired Subscribers to contact Atlantic Broadband by telephone.

3.8 SERVICE TO MULTIPLE DWELLING UNITS (“MDUs”)

Atlantic Broadband and the City hereby acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Atlantic Broadband, which negotiations shall be conducted in accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations and the applicable state law.

3.9 REPAIRS AND RESTORATION

(a) Prior to any work in the Public Rights-of-Way, Atlantic Broadband shall apply to the City for all applicable required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit, except for emergency repairs, without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. In the event Atlantic Broadband or any agent, including contractors or subcontractors must make emergency repairs, prior to receiving a permit from the City, Atlantic Broadband must apply for all applicable permits within five (5) business days of such emergency activities.

(b) Whenever Atlantic Broadband or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Atlantic Broadband to comply within the time specified and the City having notified Atlantic Broadband in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Atlantic Broadband upon demand by the City.

(c) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Atlantic Broadband shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days, weather permitting.

(d) Atlantic Broadband's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Atlantic Broadband shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(e) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Atlantic Broadband personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(f) Whenever Atlantic Broadband or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the West Virginia One Call System prior to any such disturbance. Atlantic Broadband shall adhere to any additional undergrounding requirements which the State may establish in the future. Atlantic Broadband shall adhere to all requirements of the West Virginia Underground utility Line Protection Act.

(g) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair in accordance with customary industry standards and practices.

3.10 SERVICE AREA MAPS

Upon written request and within sixty (60) days of such written request, but not more than once annually, Atlantic Broadband shall provide to the City for its exclusive, non-commercial use and shall maintain at its local offices, a complete set of Atlantic Broadband service area strand maps of the City on which shall be shown those areas in which its facilities exist and the location of all streets. Such strand maps are expressly understood by the City to be Atlantic Broadband's proprietary and confidential information. The strand maps shall be provided to the City in hardcopy or, if requested and available, in an electronic format acceptable to Atlantic Broadband and the City, provided that the City shall not retain such electronic or hard copies of the strand maps. The strand maps shall also designate where the cable wires and other equipment are aerial and where they are underground.

3.11 DISCONNECTION AND RELOCATION

(a) Atlantic Broadband shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by

reason of traffic conditions, public safety, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure.

(b) In requiring Atlantic Broadband to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any similarly situated entity.

3.12 EMERGENCY REMOVAL OF EQUIPMENT

(a) If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Atlantic Broadband notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System pursuant to this Section 3.12 the City shall treat Atlantic Broadband the same as, and require no more of Atlantic Broadband than, any other similarly situated entity.

3.13 TREE TRIMMING

(a) Atlantic Broadband, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Atlantic Broadband. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Atlantic Broadband or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(k), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

3.14 CHANNEL CAPACITY

Atlantic Broadband shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

3.15 BROADCAST CHANNELS

To the extent required by federal law, Atlantic Broadband shall provide all Subscribers with Basic Service including, but not limited to, the following: (a) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; (b) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and c) any Public, Educational and Governmental Channel

pursuant to Section 611 of the Cable Act. All such signals shall be delivered to Subscribers in accordance with FCC technical specifications.

3.16 SIGNAL SCRAMBLING

Atlantic Broadband shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

3.17 CONTINUITY OF SERVICE

Subscribers shall continue to receive service from Atlantic Broadband provided their financial and other obligations to Atlantic Broadband are honored. Subject to Force Majeure provisions in Section 9.1, Atlantic Broadband shall use commercially reasonable efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Atlantic Broadband shall use commercially reasonable efforts to interrupt service only during periods of minimum use. When necessary Service Interruptions of more than twenty four (24) hours can be anticipated, Atlantic Broadband shall notify Subscribers in advance of such Service Interruption along with providing Subscribers with a pro-rata credit for the time of such Service Interruption.

3.18 PARENTAL CONTROL CAPABILITY

Atlantic Broadband shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System pursuant to Section 641 of the Cable Act.

SECTION 4 SUBSCRIBER SERVICE STANDARDS

4.1 CUSTOMER SERVICE HOURS AND TELEPHONE AVAILABILITY

(a) Atlantic Broadband shall provide and maintain a toll-free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(b) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(c) If a historical record of Complaints indicates a clear failure to comply, Atlantic Broadband may be required to perform surveys to measure compliance with the telephone answering requirements above. If the City determines, after receiving Complaints itself and/or receiving a record of Complaints made to Atlantic Broadband in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Atlantic Broadband in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City with its results.

4.2 INSTALLATIONS AND SERVICE CALLS

(a) Atlantic Broadband shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Atlantic Broadband shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Atlantic Broadband employee or agent, including any subcontractor, shall prominently display the Atlantic Broadband logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty five (125) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Atlantic Broadband shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Atlantic Broadband may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Atlantic Broadband may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

4.3 NOTICES

(a) Atlantic Broadband shall provide written notice to each Subscriber upon initial subscription, and once per calendar year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;

- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and Subscriber Complaint procedures;
- (7) Atlantic Broadband's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, Atlantic Broadband shall notify Subscribers and the City in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Atlantic Broadband. Atlantic Broadband shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the State or the City on the transaction between Atlantic Broadband and the Subscriber.

(c) In accordance with federal law, Atlantic Broadband shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Atlantic Broadband during the previous twelve (12) months. Such file may be maintained electronically.

4.4 BILLING

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Atlantic Broadband shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Atlantic Broadband.

4.5 SUBSCRIBER COMPLAINT PROCEDURES

Atlantic Broadband agrees to adhere to the provisions of West Virginia Code §24D-1-19 and PSC Rules and Regulations for the Government of Cable Television including Form 2 Cable Franchise Guidelines related to Subscriber Complaints and the Recording of Subscriber Complaints, unless otherwise preempted by Federal law.

4.6 DISCONNECTION

Atlantic Broadband may disconnect or terminate a Subscriber's service for cause:

(a) If at least forty-five (45) days have elapsed from the due date of the bill that Subscriber has failed to pay unless a complaint pursuant to Section 4.5 remains pending; and

(b) If Atlantic Broadband has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Atlantic Broadband regarding the bill;
or

(d) If at any time and without notice, Atlantic Broadband determines in good faith that Subscriber has tampered with or abused Atlantic Broadband's equipment or service or is engaged in theft of Cable Service.

4.7 SERVICE INTERRUPTIONS

Atlantic Broadband shall, upon the request of subscriber, provide for a credit or refund to any subscriber whose service is interrupted for more than 24 hours continuously or more than 24 hours within a thirty day period. Such interrupted service policy shall conform with West Virginia Code §§24D-1-15, 24D-1-16, and all other applicable state law, unless pre-empted by federal law or regulations.

4.8 PRIVACY

(a) Atlantic Broadband shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Atlantic Broadband shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Atlantic Broadband shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Atlantic Broadband nor its designee shall tap, monitor, arrange for the tapping or monitoring of any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber; provided, however, that Atlantic Broadband may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system

integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner consistent with the federal law. To the extent permitted under applicable law, Atlantic Broadband shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Atlantic Broadband. Atlantic Broadband shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Atlantic Broadband nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Atlantic Broadband shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court. Nothing in this Agreement shall be construed to prevent the sale or availability of “non-personalized” or “aggregate data” which is not personalized data as defined in this Agreement.

(e) Upon a request by a Subscriber, Atlantic Broadband shall make available for inspection at a reasonable time and place all personal Subscriber information that Atlantic Broadband maintains regarding said Subscriber. Atlantic Broadband shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Atlantic Broadband shall make its Subscriber list or lists, or any portion thereof, available to any other person or entity, only in conformance with Section 631 of the Cable Act and other applicable law

SECTION 5

REGULATION BY THE CITY

5.1 RIGHT TO INSPECT

The City shall have the option, upon thirty (30) business days’ written notice and during Normal Business Hours, to inspect at Atlantic Broadband’s business office maintained in accordance with the provisions of Section 8.1 in Form No. 2 of the Public Service Commission of West Virginia Rules for the Government of Cable Television 150CSR26, all documents, records and other pertinent information maintained by Atlantic Broadband which directly relates to the terms of this Agreement. To the extent ABB considers certain records, documents, or information, whether electronic or paper, to be confidential or proprietary; such records, documents, or information will be provided to the City pursuant to a confidentiality agreement and, upon the request of a third party to the City for access to such records, documents, the City agrees to provide ABB with notice within 10 days of receipt of such request to permit ABB to seek an Order limiting the access of the third party to such records, documents, or information.

(a) In addition, Atlantic Broadband shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

5.2 RIGHT TO CONDUCT COMPLIANCE REVIEW

The City or its representatives may conduct a full compliance review, including possible public hearings, with respect to whether Atlantic Broadband has complied with any material term of this Agreement so long as it provides Atlantic Broadband with thirty (30) days written notice in advance of the commencement of any such reviews or public hearings. Such full compliance review may be conducted no more frequently than once every two (2) years from the effective date of this Agreement, unless the City has received evidence of specific franchise noncompliance. In the event the City conducts a compliance review it shall, no later than sixty (60) days following such compliance review, provide Atlantic Broadband a written report as to Atlantic Broadband's compliance with the material terms of this Agreement.

5.3 RESERVED AUTHORITY

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way in a non-discriminatory manner.

5.4 POLICE POWERS

Atlantic Broadband's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability, to the extent that such assessment is non-discriminatory and in accordance with applicable law. Such taxes, fees or assessments shall be in addition to Franchise Fees.

5.6 PERMITS

Atlantic Broadband shall apply to the City for all required permits and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the City. Atlantic Broadband shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing

or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Atlantic Broadband shall pay any and all required permit fees.

5.7 REPORTING

In addition to the other reporting requirements contained in this Agreement, Atlantic Broadband shall provide the following reports to the City:

(a) **Subscriber Complaint Reports**

Within thirty (30) days of a written request, Atlantic Broadband shall submit to the City a report showing the number of Complaints, as defined in Section 1(g), that required a work order and/or service call, originating from the City pursuant to a Complaint during the previous 12-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions, subject to Atlantic Broadband's right to exclude any personally identifiable subscriber information.

(b) **Annual Financial Report**

Atlantic Broadband shall submit to the City, no later than thirty (30) days following a written request, but not more frequently than annually, its current financial statement, including a statement of income, balance sheet and a statement of sources and applications of funds which shall be verified by Atlantic Broadband's Chief Financial Officer in accordance with Generally Accepted Accounting Principles.

(c) **Government Reports**

Atlantic Broadband shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Atlantic Broadband has submitted to any federal, state or local regulatory agencies if such documents relate specifically to Atlantic Broadband's Cable System within the City. Atlantic Broadband shall have the right to claim confidential, privileged or proprietary rights to such documents if such documents have been determined to be confidential, privileged or proprietary in accordance with the terms and conditions regarding confidentiality as set forth in applicable law or this Agreement. Atlantic Broadband shall provide copies of such documents no later than thirty (30) days from receipt of such request.

SECTION 6 COMPENSATION TO THE CITY

6.1 FRANCHISE FEES

Atlantic Broadband shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. Atlantic Broadband shall not deduct or otherwise credit against the Franchise Fee any tax, fee or

assessment of general applicability, except as specifically stated in this Section 6.1. The City may amend the Franchise Fee upon written notice to Atlantic Broadband provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Atlantic Broadband's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice and shall not result in the adjustment of any previous paid Franchise Fees.

6.2 QUARTERLY PAYMENTS

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the then-current prime rate, as published by the Wall Street Journal, shall be added to the amount of Franchise Fee revenue due to the City. The interest rate shall be applied as described from the date such Franchise Fee payment was originally due. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement. Upon request and if mutually agreeable, Atlantic Broadband shall deposit the Franchise Fee payments electronically into an account as designated by the City.

6.3 QUARTERLY REPORTS

Each Franchise Fee payment shall be accompanied by a written report containing an accurate statement of Atlantic Broadband's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Atlantic Broadband's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Atlantic Broadband.

6.4 FRANCHISE FEE REVIEW

(a) The City may, from time to time, and upon thirty (30) days advance written notice, inspect and audit Atlantic Broadband's records reasonably related to the sources, amounts and computation of Gross Revenues in order to determine whether Gross Revenues and Franchise Fees have been accurately, computed and paid.

(b) In the event of an alleged over or underpayment, the City shall provide Atlantic Broadband with a written statement indicating the basis for the alleged underpayment. If the franchise fee audit or review reveals that there has been no over- or underpayments, the City shall provide written notice to Atlantic Broadband indicating that no over- or underpayments were found and that the franchise fee review is closed. Atlantic Broadband shall have thirty (30) days from

the receipt of the statement regarding an alleged underpayment to provide the City with any written objection to the results of the review or audit, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the over or underpayment(s), if any, within thirty (30) days of Atlantic Broadband's objection and shall provide Atlantic Broadband with written notice of the determination. If Atlantic Broadband disputes the City's final determination, it may submit the dispute to a mutually agreed upon mediator within thirty (30) days of receiving the City's written notice of determination. In the event that Atlantic Broadband fails to submit the matter to mediation or arbitration within the required time period, the City's final determination shall be binding on Atlantic Broadband. If Atlantic Broadband submits the matter to mediation and an agreement is not reached, either party may bring an action to have the dispute determined by a court of competent jurisdiction.

(c) Any Franchise Fee payment due to the City as a result of the Franchise Fee review shall be paid to the City by Atlantic Broadband within sixty (60) days from the date the City notifies Atlantic Broadband of its final determination, or if the matter is submitted to mediation or litigation, within sixty (60) days from the final disposition of such action. If the audit or Franchise Fee review shows that Franchise Fees have been underpaid, then Atlantic Broadband shall pay the underpaid amount plus monetary fines of ten percent (10%) of the underpayment. If Franchise Fees have been underpaid by five percent (5%) or more, then Atlantic Broadband shall also pay the reasonable cost of the review or audit. If the audit or franchise fee review shows that franchise fees have been overpaid, then Atlantic shall may offset the overpaid amount against future Franchise fee payments until such time as the overpayment has been entirely recouped.

6.5 BUNDLED SERVICES

If Cable Services subject to the Franchise Fee required under this Section 6.5 are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, then the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

SECTION 7 SERVICES TO THE COMMUNITY

7.1 SERVICES TO COMMUNITY FACILITIES

(a) Atlantic Broadband shall provide a cable service drop and Basic Service with any necessary cable box to one outlet at each Public Building listed in Exhibit 1. In accordance with applicable law, Atlantic Broadband will charge the fair market value for each such account, which fair market value shall match the retail rate for the level of service provided. Atlantic Broadband shall notify the City in writing regarding the amount of the monthly service fee for each account based on fair market value. The City shall then notify Atlantic Broadband, within thirty (30) days of receiving the notice from Atlantic Broadband, whether it wishes the amount due each month to be invoiced for payment or deducted from the next franchise fee payment. The City may upgrade the level of cable service received at retail rate for the higher level of service. The City may also

elect in writing not to receive the service, in which case it will not be invoiced and no deduction will be taken from the franchise fee.

(b) In the event the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act is reversed on appeal as to the issue of complimentary cable services as in-kind contributions in a cable franchise and such result becomes final within thirty (30) days of the result becoming final, Atlantic Broadband will discontinue the charge for Basic Service for the Public Building locations listed in Exhibit 1 and provide such service on a complimentary basis. Any additional levels of cable service, outlets, or service locations ordered by the City shall continue to be subject to standard rates.

(c) During the term of the Franchise, the City may change a Public Building location listed in Exhibit A upon 90-days written notice to Atlantic Broadband, provided that the new location is within 125 feet of existing Atlantic Broadband cable distribution plant.

(d) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended, and does not include "home schools" or "cyber schools," or any other educational situation that does not meet the specific criteria set forth herein. During the term of this Agreement, new municipal facilities means: (1) the public school buildings within the City limits, (2) one public library within the City limits, (3) the City Hall (or comparable building), (4) one police facility within the City limits, and (5) one fire facility within the City limits shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as outlined in Exhibit 1.

7.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNEL

(a) Atlantic Broadband shall provide as set forth herein, the use of one (1) dedicated Educational and Governmental ("EG") Access Channel in accordance with Section 611 of the Cable Act. Such EG Channel shall be used for community programming related to educational and/or governmental activities. The City shall have complete control over the content, scheduling, administration and all other programming aspects of the EG Channel, and may delegate such functions, or a portion of such functions, to an appropriate designee. However, Atlantic Broadband may utilize the channel during periods where the channel is not in use by the City. Atlantic Broadband shall not exercise any editorial control over EG Channel programming. Atlantic Broadband shall cablecast the activated EG Channel so that it may be received by all Atlantic Broadband Subscribers in the City. If requested by any neighboring City served by Atlantic Broadband from the same head-end or hub site as that providing service to the City, then the City agrees to cooperate with such neighboring City in the shared use of the EG channel.

(b) The City may request additional EG capacity for non-commercial use, not to exceed three (3) channels. In order to request additional EG capacity, the existing EG Access Channel must be programmed at least eight (8) hours a day with non-repetitive, non-alphanumeric, locally produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The City must provide Atlantic Broadband with written documented evidence the usage meets the threshold requirement. Atlantic Broadband will have one hundred twenty (120)

days unless otherwise mutually agreed upon between Atlantic Broadband and the City to provide the requested capacity. Once the threshold is met and the additional capacity given, the EG channel must maintain the threshold requirement. If the initial EG channel fails to meet the threshold for four (4) consecutive months, the additional EG capacity may be reclaimed by Atlantic Broadband upon sixty (60) calendar days written notice. Under no circumstances shall the City lose the right to the initial EG capacity.

(c) The City and Atlantic Broadband further agree that all costs incurred by Atlantic Broadband for supporting such EG Channel, including any and all equipment may be designated as “costs of franchise requirements” or “external costs” as defined by the FCC and Atlantic Broadband reserves its right to pass these costs through to the Subscribers pursuant to federal law.

(d) Atlantic Broadband shall be responsible for maintaining the Return Line to the video origination points listed in **Exhibit 2** of the EG Channel so long as the City provides Atlantic Broadband with access to such location and access to the EG Channel equipment within such location. Atlantic Broadband shall provide, install and maintain in good working order the equipment and the appropriate technical method approved by Atlantic Broadband necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Atlantic Broadband shall not be liable for any content programmed on the designated PEG Channel. Atlantic Broadband may, with the City's written approval (which will not be unreasonably withheld) and at Atlantic Broadband's expense, interconnect its Cable System with the existing cable operator's cable system(s) in order to cablecast, on a live basis, all EG Access Programming carried by the existing cable operator consistent with this Agreement.

(e) The City or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the EG channel. The City and Atlantic Broadband agree to work cooperatively in implementing the EG channel through such means and in such manner as shall be mutually satisfactory.

(f) In the event the City or its designee does not program any EG Channel, Atlantic Broadband may reclaim the use of this channel from the City. In such an event, if the City subsequently requests the utilization of the EG Channel being programmed by Atlantic Broadband, Atlantic Broadband shall relinquish such use no later than sixty (60) days after receipt of written notification from the City that it requires such channel for educational and/or governmental use noting that the designated channel assignment may be different than the City's original EG Channel though the newly assigned EG Channel will remain on the Basic Service.

SECTION 8

ENFORCEMENT, INSURANCE AND INDEMINIFICATION

8.1 VIOLATIONS AND OPPORTUNITY TO CURE

(a) If the City has reason to believe that Atlantic Broadband violated any provision of this Agreement, it shall notify Atlantic Broadband in writing of the nature of such violation and

the section(s) of this Agreement that it believes has been violated and the details relating thereto. If the City does not notify Atlantic Broadband of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Atlantic Broadband shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Atlantic Broadband must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Atlantic Broadband shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 8.1(b) above, then Atlantic Broadband may request that the City schedule a public hearing to provide Atlantic Broadband with the opportunity to demonstrate that Atlantic Broadband continues to make reasonable steps to cure. Alternatively, the City may conduct a public hearing following written notice to Atlantic Broadband that it intends to impose liquidated damages. If the City determines as a result of such hearing that Atlantic Broadband has not taken reasonable steps to cure the violation, then the City may deem that Atlantic Broadband is liable for liquidated damages and/or any other right or remedy and the City's costs in accordance with Section 8.2.

8.2 LIQUIDATED DAMAGES

(a) Because Atlantic Broadband's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Atlantic Broadband (after affording Atlantic Broadband due process in accordance with Section 8.1(c) above) in the amount of One Hundred Fifty Dollars (\$150.00) per day for each day the violation continues, provided Atlantic Broadband has had an opportunity to cure in accordance with Section 8.1(b). Such damages shall not be a substitute for specific performance by Atlantic Broadband or legal action by the City but shall be in addition to such specific performance or legal action.

(b) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction before, during, or after the assessment of liquidated damages.

8.3 REVOCAATION

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Atlantic Broadband practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Atlantic Broadband repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Atlantic Broadband repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Atlantic Broadband or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Atlantic Broadband shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the City Council after an appropriate public hearing that shall afford Atlantic Broadband due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State. All notice requirements shall be met by providing Atlantic Broadband at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Atlantic Broadband of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Atlantic Broadband.

8.4 INSURANCE

(a) Atlantic Broadband shall obtain and maintain, in full force and effect, at its sole cost and expense, during the Franchise term, the following minimum insurance coverage with an insurance company that is authorized to conduct business in West Virginia and which has an A.M. Best rating (or equivalent) no less than A-minus VII in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) The City, its officials and employees, shall be designated as additional insureds under each of the insurance policies required in this Section 8.5.

(c) Atlantic Broadband shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section 8.5. Atlantic Broadband shall provide the City with at least thirty (30) days prior written notice in the event there is an adverse material change in coverage or the policies are cancelled or not renewed.

(d) Atlantic Broadband shall deliver to the City Certificates of Insurance showing evidence of the required coverage within thirty (30) days of the Effective Date of the Agreement, and on an annual basis.

(e) The limits above may be satisfied with a combination of primary and excess coverage.

8.5 INDEMNIFICATION

Atlantic Broadband shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Atlantic Broadband, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities of Atlantic Broadband. The City shall give Atlantic Broadband written notice of Atlantic Broadband's obligation to indemnify and defend the City within thirty (30) business days of receipt of a claim or action. The obligation to indemnify, defend, save and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the City determines that it is necessary for it to employ separate counsel, in addition to that provided by Atlantic Broadband, the cost for such separate counsel shall be the responsibility of the City. Atlantic Broadband shall not indemnify the City for any claims resulting solely from acts of willful misconduct or negligence on the part of the City.

SECTION 9
MISCELLANEOUS

9.1 FORCE MAJEURE

If for any reason of Force Majeure, Atlantic Broadband is unable in whole or in part to carry out its obligations hereunder, Atlantic Broadband shall not be deemed in violation of this Agreement during the continuance of such inability.

9.2 REMOVAL OF SYSTEM

(a) Upon lawful termination or revocation of this Agreement, Atlantic Broadband shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Atlantic Broadband's cost.

(b) During the term of the Agreement, if Atlantic Broadband decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Atlantic Broadband to remove the property, remove the property itself and charge Atlantic Broadband with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value is paid to Atlantic Broadband.

(c) Notwithstanding the above, Atlantic Broadband shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Atlantic Broadband from providing Cable Services, if the Cable System is actively being used to facilitate any other services provided by Atlantic Broadband not governed by the Cable Act and Atlantic Broadband has made suitable arrangements with the City for the use of the City's Rights of Way for such services.

9.3 NOTICES

Every notice or payment to be served upon or made to the City shall be sent to:

City of Morgantown
389 Spruce Street
Morgantown, WV 26505
Attn: City Manager

The City may specify any change of address in writing to Atlantic Broadband. Every notice to be served upon Atlantic Broadband shall be sent to:

Atlantic Broadband
2 Batterymarch Park
Suite 205
Quincy, MA 02169

With copies to:

Atlantic Broadband
General Counsel
2 Batterymarch Park
Suite 205
Quincy, MA 02169

Atlantic Broadband may specify any changes of address in writing to the City. Each delivery to Atlantic Broadband or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

9.4 EQUAL EMPLOYMENT OPPORTUNITY

Atlantic Broadband is an equal opportunity employer and shall comply with all applicable federal, state, and local laws and regulations regarding equal opportunity employment.

9.5 CAPTIONS

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

9.6 GOVERNING LAW; VENUE

This Agreement shall be governed and construed by and in accordance with the laws of the State. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of West Virginia, Monongalia County, or in the United States District Court for the Northern District of West Virginia.

9.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL

(a) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or

interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld or delayed.

(b) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld or delayed.

(c) Neither Atlantic Broadband nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in the Cable System without the prior written consent of the City, provided that such consent shall not be unreasonably withheld or delayed.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Atlantic Broadband in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Atlantic Broadband.

(e) Atlantic Broadband shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Atlantic Broadband of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement unless such one hundred twenty (120) days shall have elapsed.

9.8 ENTIRE AGREEMENT

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Atlantic Broadband. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein.

9.9 SEVERABILITY

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining

portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

9.10 NO WAIVER OF RIGHTS

No course of dealing between the City and Atlantic Broadband, nor any delay on the part of either party in exercising any rights hereunder, shall operate as a waiver of any such rights of such party or acquiescence in the actions of the other party in contravention of such rights, except to the extent expressly waived by such party.

9.11 CHANGE OF LAW

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Atlantic Broadband may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Atlantic Broadband may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Atlantic Broadband.

9.12 COMPLIANCE WITH LAWS

Atlantic Broadband shall comply with all federal, state and local laws and regulations.

9.13 THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

9.14 APPLICABILITY OF AGREEMENT

All of the provisions in this Agreement shall bind Atlantic Broadband, the City and their respective successors and assigns.

(Signature page to follow)

WITNESS our hands and official seals to this Cable Franchise Agreement.

CITY OF MORGANTOWN

By: _____

Name: _____

Title: _____

Date: _____

ATLANTIC BROADBAND (PENN), LLC

By: _____

Name: Leslie J. Brown

Title: SVP & General Counsel

Date: _____

Exhibit 1

SERVICES TO COMMUNITY FACILITIES

1. Morgantown City Hall, 389 Spruce Street
2. Spruce Center (City Administrative Offices), 430 Spruce Street
3. Morgantown Public Safety Building, 300 Spruce Street
4. Morgantown Public Library, 373 Spruce Street
5. Marilla Center (Park Administrative Offices), 799 E. Brockway Avenue
6. Morgantown High School, 109 Wilson Avenue
7. University High School, 131 Bakers Ridge Road
8. Monongalia County Courthouse (Historic), 243 High Street
9. Monongalia County Justice Center, 75 High Street
10. Monongalia County Senior Center, 5000 Greenbag Rd., Suite A5
11. Monongalia County Emergency Management/Medical Service Center, 74 Vandervort Drive.

Exhibit 2

EG Return Line Origination Locations

Morgantown City Hall

Public Library

Public Safety Building

Morgantown High School

University High School

Monongalia County Court House

Monongalia County Senior Center

Monongalia County Emergency Management Center

AN ORDINANCE AMENDING ARTICLE 1751 - HOUSING CODE

WHEREAS, The City of Morgantown established its Housing Code in 1979 to protect the health and safety of occupants in rental dwelling units; and

WHEREAS, the Housing Code has successfully promoted safe living conditions for residents by providing for regular registration and inspection of rental dwelling units; and

WHEREAS, updates to statewide building and fire codes that are adopted by local action should be included by reference in the Housing Code; and

WHEREAS, inspection by the Fire Marshal for compliance with the Fire Code, which is coordinated with inspections by the Building Official for convenience of property owners and occupants, should be included in the Housing Code;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 1751 is amended as follows:

ARTICLE 1751. - HOUSING CODE

DIVISION 1. - GENERAL PROVISIONS

Sec. 1751.01. - Purpose; scope.

(a) *Purpose.* The purpose of this article is to ensure the health and safety of residents by providing for registration and regular inspection of rental housing to ensure compliance with the Building Code and Fire Code, and to ensure twofold, the first being to establish minimum health and safety standards for rental housing in the City. These standards relate to the condition, maintenance, and occupancy of rental dwellings and are intended to ensure that rental housing is safe, sanitary and suitable. The second purpose of this article is to assure that the Monongalia County Assessor's Office and Sheriff's Tax Office have been notified of the location and all rental housing realty within the City, and that all such rental housing realty is classified as Class IV for tax purposes.

~~An owner-occupied single-family dwelling is specifically excluded unless occupied by more than one roomer.~~

(b) *Scope.* This article applies to all rental dwelling units within the City. An owner-occupied single-family dwelling is not governed by this article unless the dwelling, or a portion of the dwelling, is offered for rent to more than one tenant. ~~specifically excluded unless occupied by more than one roomer.~~

Sec. 1751.02. - Definitions.

The following words shall have the meanings given:

~~For the purpose of interpreting this article, certain words, terms and expressions are herein defined. Words used in the present tense include the future; the singular number included the plural, the plural includes the singular; the word "shall" is always mandatory. The words "dwelling", "dwelling unit", "lodging houses, "rooming unit", "dormitory" and "premises" shall be construed as though they were followed by the words "or any part thereof".~~

~~*Abate* means to end a nuisance, emergency or nonconformance.~~

~~*Approved* means as per the State Building Code.~~

~~*Basement or cellar* means occupancy of dwelling unit below grade. No basement or cellar shall be used as a habitable room or dwelling unit unless the floors are impervious to excessive dampness and there is adequate ventilation and means of egress. Below grade dwelling units shall have either direct access to the outdoors or demonstrable adequate window exit.~~

~~*Dwelling* means any house, building, or mobile home or portion thereof intended to be occupied as the place of habitation of human beings, either permanently or transiently, but excluding hotels, bed and breakfast establishments, and similar businesses catering to travelers. State-licensed health and custodial facilities are excluded.~~

~~*Dwelling unit* means one or more rooms intended to be occupied for living purposes by an individual or group of individuals as a single residence for the individual or group of individuals.~~

- ~~(1) *Apartment* means a room or group of rooms intended to be occupied for living, sleeping, cooking and eating.~~
- ~~(2) *Fraternity house or sorority house* means a building, other than a hotel or motel that is occupied as a dwelling predominantly by members, candidates for membership, employees and guests of the same fraternity or sorority.~~
- ~~(3) *Rooming unit* means a room or group of rooms intended to be occupied for living and sleeping, but not for cooking.~~
- ~~(4) *Dormitory* means a building under single management renting sleeping accommodations to more than 15 persons without individual bathroom or eating facilities.~~
- ~~(5) *Boarding house* means a building under single management renting sleeping accommodations to 15 persons or less without individual bathroom or eating facilities.~~
- ~~(6) *Lodging house* means the same as "boarding house".~~

~~*Emergency* means a condition arising from actual or imminent failure and resulting in a health or safety hazard to occupants or dwelling.~~

~~*Family.* See Section 1329.02 "Family" and "Functional Family Unit" of the Planning and Zoning Code and Section 1511.02, "Code Enforcement" of the Fire Prevention Code.~~

~~*Garbage* means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.~~

~~*Habitable space* means a space in a dwelling for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not habitable space.~~

~~*Hotel* means a building under single management in which more than 15 rooms are rented providing sleeping accommodations for transients with or without meals, having an annual turnover of room occupancy exceeding 300 percent in which the rooms are not directly accessible from an outdoor parking area.~~

~~*Housing Inspector* means the Building Official of the City, the Fire Marshal of the City, and any employee of the City designated by either of them to perform inspections for compliance with this article or the Building Code or Fire Code. ~~Chief Building Inspector, and such other employees, of the City's Building Inspection Department, as have been trained in conducting inspections or parts of inspections.~~~~

Inspection report means a document issued by the Housing Inspector to show that the premises have been inspected, the date and time of such inspection and setting time periods for rectification of deficiencies noted.

~~*Landlord* means the owner of a building including one or more dwelling units.~~

Letter of compliance means a document issued by the Housing Inspector indicating the subject inspection found the premises to be in substantial compliance with this article on the date of inspection and enclosing a copy of the inspection report.

~~*Motel* means an establishment under single management which provides lodging and parking for transients and in which the rooms are so designed to provide accessibility from an outdoor parking area and having an annual turnover of room occupancy exceeding 300 percent.~~

~~*Nonconforming occupancy* means more than three unrelated persons occupying a dwelling unit prior to November 6, 1979, and registered in accordance with the City zoning ordinance.~~

Occupant means any person living, sleeping, cooking or eating in, or having actual possession of a dwelling unit.

Operator means any person, including the owner, who has charge, care or control of a building including one or more rental dwelling units.

Owner means any person who alone, jointly or as tenant in common with others, has legal or equitable title to any dwelling unit with or without accompanying actual possession thereof. For the purposes of this article, "owner" includes an agent of the owner empowered by the owner to act on the conditions or under the circumstances in question.

Owner-occupied single-family dwelling means any townhouse, condominium or detached dwelling that is occupied as a dwelling by the owner. It is one dwelling unit even if no more than two roomers occupy one bedroom of the dwelling.

Person means a natural person, his or her heirs, executors, administrators, or assigns and also a firm, partnership or corporation and its, or their, successors or assigns.

~~*Plumbing* includes the following supplied facilities and equipment: Gas, water and waste pipes, sumps, drains, vents and all supplied facilities and equipment connected to them.~~

Premises means a lot and its buildings and other improvements.

~~Promptly means to perform readily or immediately.~~

Rent means payment of money, goods, labor, service or otherwise for use of a dwelling.

~~Rubbish means any waste material except garbage.~~

~~Story means that part of a building comprised between any floor and the floor or attic next above; the first story of a building is the lowest story having at least one-half of its height of one or more walls above the highest level of adjoining ground.~~

~~Supplied means paid for, furnished, provided by, or under the control of the owner or operator.~~

Tenant means an occupant of a rental dwelling unit who has signed a lease or made a verbal contract exceeding a seven consecutive day commitment.

~~Transient means an individual who rents sleeping, living and sanitary facilities on a daily or weekly basis.~~

Sec. 1751.03. - Applicability.

(a) *Other laws.*

- (1) This article is not intended to abrogate any of the rights and responsibilities normally ascribed to the tenant or the landlord under the laws of West Virginia whether set out by case law or by the West Virginia Code or any other applicable laws.
- (2) The minimum requirements of this article may not be waived, either intentionally or impliedly, by either party to a rental agreement.
- (3) Violation of this article shall constitute a misdemeanor and any person violating the article shall be subject to the penalties stated in this article and provided by law., and fine and punishment shall be in accordance with Section 1701.99 unless otherwise provided in Section 1751.04. ~~Willful and repeated violations with the requirements of this article by the occupants are illegal.~~
- (4) If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

(b) *Other codes and ordinances; regulations.*

- (1) This article is in addition to all housing requirements of other City ordinances, and the law of the State, as the case may be.
- (2) The Building Official shall prepare and maintain any and all forms and regulations necessary and convenient to the administration of this Article. All regulations shall be reduced to writing, signed by the Building Official, dated, and delivered to the City Clerk for retention with the records of the City. The current forms and regulations shall be available to the public from the office of the Building Official. As soon as practicable and convenient, and in no event in more than 30 days after the passage of this article, there shall be filed in the office of the Housing Inspector, and in the office of the City Clerk,

~~an index to all City housing requirements as contained in various codes and ordinances heretofore adopted by the City, and known as "The Quick or Desk Index to Rental Housing Requirements of the City".~~

DIVISION 2. - ENFORCEMENT

Sec. 1751.04. - Illegal conditions; penalty.

- (a) ~~After 90 days from the effective date of this section, i~~It shall be illegal for any owner or operator to rent or offer for rent any dwelling units for use in whole or in part for human habitation ~~unless a written application for a letter of compliance has been filed for such dwelling unit by said owner or operator or~~ without a valid letter of compliance ~~has been issued to said owner or operator for such dwelling unit. Any person who rents or offers for rent a dwelling unit subject to this article prior to filing a written application for a~~ without a valid letter of compliance shall be subject to a mandatory penalty of \$100.00 per month for each month that the unit was illegally occupied subject to a maximum penalty of \$500.00.
- (b) It shall be illegal for any person to occupy or allow any other person to occupy any dwelling unit more than the time period indicated in the ~~Housing Inspector's report~~ letter of compliance for that dwelling unit or building, or after the Housing Inspector finds that vacation of the dwelling unit or building is necessary to protect the health and safety of occupants or the public under this article or the Building Code or Fire Code. ~~before abatement of a nonconformance can reasonably proceed.~~
- (c) ~~It shall be illegal for any person to permit a state of nonconformance to exist, under Sections 1751.06 to 1751.10, after the time set by the Housing Inspector or the Housing Board of Adjustments and Appeals for abating the nonconformance.~~
- (d) ~~Persons in violation under Sections 1751.06 to 1751.10 shall, as a separate offense, be subject to a penalty in accordance with the following schedule:~~
- (1) ~~First conviction of any offense, a fine not less than \$50.00 nor more than \$500.00.~~
 - (2) ~~Second conviction of the same offense, a fine not less than \$100.00 nor more than \$500.00.~~
 - (3) ~~Third conviction of the same offense, a fine not less than \$200.00 nor more than \$500.00.~~
 - (4) ~~Each successive conviction for the same offense shall result in a mandatory fine of \$500.00.~~
 - (5) ~~Persons in violation of any section or subsection shall also be liable to revocation of the letter of compliance.~~
- (e) ~~The Housing Inspector, upon finding an apparent violation of this article, may institute appropriate proceedings as detailed in this article.~~
- (f) ~~Application for a hearing under Section 1751.11 shall stay the effective date of the enforcement of Sections 1751.08 and 1751.09.~~

- ~~(g) Persons in violation of Section 1751.17 shall be subject to a penalty in accordance with the following schedule:~~
- ~~(1) Should the person be cited upon the City's initial discovery of said over occupancy and the person is later convicted of said offense, the fine shall be \$200.00;~~
 - ~~(2) Should the person initially cited under subsection (g)(1) hereof not reduce the occupancy to a number allowed by this article within 20 days of the initial citation, the person shall be cited again for violation of Section 1751.17, and if later convicted of not reducing the occupancy within 20 days, shall be fined \$300.00. Each day after the foregoing 20 days that the dwelling unit remains over occupied, in violation of Section 1751.17, shall be a separate citable offense subject to the fine imposed by this subsection.~~
- ~~(h) No person other than the owner, operator, owner/operator's licensed contractor, or owner/operator's maintenance personnel when performing maintenance or other work upon the structure shall be on the roof, or any portion of a roof, of any structure for any reason. Should owner or operator of a structure desire to convert a roof area so that it may be legally occupied by persons, a building permit from the City shall be required. When applying for the building permit, the owner, operator shall provide to the City a written document, prepared and signed by a structural engineer, stating that the proposed structural modification to the roof will result in the roof area in question meeting both live and dead loads established by the then current State Building Code for a deck or any elevated surface. Engineer or architect signed and sealed construction plans shall be required. All these current State Building Code requirements regarding construction requirements, railing requirements, height requirements, fastening requirements, live and dead load requirements shall be met. A certificate of occupancy for the roof area shall be required before the roof area can be used or occupied. Any person who is on a roof for purposes other than those authorized in this subsection shall be guilty of a misdemeanor and subject to a fine of not less than \$100.00 nor more than \$500.00.~~

Sec. 1751.05. - Application for letter of compliance; filing deadlines; fees.

- (a) Application for a letter of compliance shall be submitted in writing, on forms provided, to the Building Official Housing Inspector and shall contain at least:
- (1) The address or addresses of the dwelling;
 - (2) The number of dwelling units in the dwelling;
 - (3) The name, address and telephone number of:
 - a. The owner;
 - b. The agent, operator, or other person to contact in case of a violation or emergency, who must be a resident of the State of West Virginia with authority to enter the dwelling and correct any violation;
 - e. ~~The person to be notified if a condition of non-conformance is found.~~
 - (4) The tax map and parcel number for the realty;

- (5) For each dwelling unit within the dwelling:
 - a. Whether the application is for an initial or a renewal letter of compliance;
 - b. Number of off-street parking spaces available on site; and
 - c. Dwelling unit identification or number.

(6) A statement that the applicant has notified the Monongalia County Assessor's Office that the realty should be classified as Class IV realty in accordance with state law.

~~(b) All applications, including renewal applications, are to contain the Tax Map and Parcel Number for the realty in question. All applications must also contain a statement by the applicant that he/she has notified the Monongalia County Assessor's Office that the realty has been converted to rental housing, Class IV realty, as required by law.~~

(b) Any applicant who provides false information on the application shall be in violation of this article, and the application containing false information shall be denied, in addition to any other penalty provided by law. If the Building Official determines, after a letter of compliance has been issued, that the application for the letter of compliance contained false information, the Building Official may immediately revoke the letter of compliance by providing written notice to the applicant and by posting the notice at the dwelling. In the event that an applicant provides false information to the City during the application, or renewal application process, upon discovering the same, the City shall revoke the letter of compliance that has been issued until such time as the applicant complies with all requirements of the application. Furthermore, any person who knowingly provides such false information during the application or renewal application process, shall be guilty of a misdemeanor punishable by a fine of not less than \$100.00 and not more than \$500.00.

(c) Complete applications for a letter of compliance shall be filed at least 60 days before a letter of compliance will be needed for occupancy of the dwelling involved in the application. Renewal applications shall be filed at least 30 days before the expiration of the existing letter of compliance.

(d) Upon receiving an application for renewal of the a letter of compliance, the Building Official Housing Inspector shall arrange to reinspect the dwelling unit. will determine whether the application is complete and notify the applicant in writing either that (i) more information is required, or (ii) the application is complete. An application will be deemed complete only when it provides all information required by this article and the forms and regulations of the Building Official and is accompanied by the fee prescribed by the current Fee Schedule published by the City.

~~(e) Fees.~~

~~(1) Application fee for rental housing units, exclusive of owner occupied housing units with roomers, dormitories and boarding and lodging houses shall be \$25.00 per dwelling unit; however, for those single structures containing six or more units, the application fee shall be \$15.00 per dwelling unit.~~

~~(2) Application fee for owner occupied housing units with more than one roomer shall be \$15.00 per sleeping room.~~

- ~~(3) Application fee for boarding or lodging houses or dormitories shall be \$15.00 per sleeping room.~~
- ~~(4) Application fee for hearing before the Housing Board of Adjustments and Appeals shall be \$20.00, with that fee being refunded should either body determine a citation to be baseless.~~
- ~~(5) Charge for missed appointments: \$20.00 unless providing notification at least 24 hours prior to scheduled appointment.~~
- ~~(6) Emergency call out (after normal business hours): \$60.00 for the first two hours; thereafter \$30.00 per hour. A minimum charge of \$60.00 will be due on any emergency call out.~~
- ~~(7) Court appearances: \$75.00 per hour; one hour minimum charge.~~
- ~~(8) Real estate inspections: \$75.00 per hour; one hour minimum charge.~~
- ~~(9) Duplicate copies of letter of compliance to the owner; \$1.00 per copy.~~
- ~~(10) Re inspections: \$25.00 per hour; one hour minimum charge.~~

(Ord. No. 09-52, 11-17-2009)

Sec. 1751.06. - Inspections.

- (a) After receiving a complete application pursuant to Section 1751.05, the Housing Inspector will conduct an inspection of the dwelling; provided that the inspection of a single-family owner-occupied dwelling will be limited to the rented area(s) together with the utilities serving them and the means of accessing them. The inspection shall include individuals certified to inspect the dwelling for compliance with the Building Code and the Fire Code; except that the Fire Marshal shall determine whether the dwelling is subject to the Fire Code, and, if it is not, provide a written waiver of inspection for compliance with the Fire Code. The Housing Inspector shall conduct all inspections during reasonable hours of the day and after presentation of proper identification. The owner may arrange, and the occupant shall have the opportunity, to be present during an inspection. In all cases, if the occupant or owner of a dwelling unit refuses entry to conduct inspection, the Housing Inspector shall not conduct any such inspection without a search warrant. The Housing Inspector shall take the necessary action to obtain such search warrant.
- (b) The Housing Inspector will notify the contact person identified on the application of the scheduled inspection in advance. The Housing Inspector may enter the dwelling to perform an inspection with the permission of any occupant or with the permission of the contact person identified on the application, if the contact person represents that s/he has the authority to grant entry to the dwelling. If the Housing Inspector cannot obtain permission to enter for inspection, the Housing Inspector may apply for a search warrant to conduct the inspection from any judicial officer having jurisdiction to issue such a warrant. The Housing Inspector shall inspect within three years of the effective date of this section, all rental units.
- (c) The Housing Inspector shall promptly attempt to inspect any dwelling at the written request of the owner, or upon receipt of a written complaint from a person with demonstrable interest as an owner, occupant, tenant, or lessee of the dwelling unit, the dwelling, or an abutting

property, with which states the nature of the noncompliance with this article or the Building Code or Fire Code specifically indicated and with includes evidence that the subject matter of the complaint has been reported to the operator in writing and that five working days have since passed without the operator having made an effort to correct the alleged problem. In addition, the Housing Inspector may inspect any dwelling as frequently as necessary to ensure correction of any violation of this article or the Building Code or Fire Code. assure abatement of the noncompliance. The Housing Inspector shall not respond to a second letter or further letter by any person requesting an inspection where he has reason to believe the request is made for harassment and not made in good faith. If after inspection the dwelling unit is found in nonconformance with the requirements of this article, the Housing Inspector shall proceed under Section 1751.08. The fact that a complaint of nonconformance with this article is made by the occupant shall not be used as a ground, cause or basis for termination of the tenancy or reduction of services by the owner. However, at the end of any lease, the owner may change occupants.

(d) The Housing Inspector will prepare a written report of each inspection performed under this article. Each report should document any violation of this article and any order to an owner or operator to correct the violation together with the time period given for correction.

(e) If the Housing Inspector identifies a violation of this article, the Housing Inspector shall notify the contact person for the dwelling in writing and shall post notice of the violation at the property. The written and posted notice may be copies of the inspection report.

(f) If a violation noted in an inspection report is corrected, or if it is determined in accordance with any process established pursuant to the Building Code or the Fire Code that the condition does not constitute a violation, the Housing Inspector shall notify the contact person for the dwelling in writing and shall post notice of the corrected violation at the property. The written and posted notice may be copies of the inspection report if the determination is based on an inspection.

~~(d) — Persons with demonstrable interest are: Owner, occupant, tenant, lessee or other occupant in the same dwelling, owner or occupant of abutting properties.~~

~~(e) — The fact that a complaint of nonconformance with this article is made by the occupant shall not be used as a ground, cause or basis for termination of the tenancy or reduction of services by the owner. However, at the end of any lease, the owner may change occupants.~~

~~(f) — The inspection of any owner-occupied single family dwelling with roomers shall be limited to the utilities and the areas occupied and used by the roomers and to the egress from those areas.~~

~~(g) — The Housing Inspector shall keep confidential all evidence exclusive of the inspection record, which he may discover or obtain in the course of an inspection made pursuant to this article and such evidence shall be considered privileged.~~

~~Sec. 1751.07. - Grant of Letter of compliance; term. expiration.~~

- (a) ~~If after inspections the dwelling is found to conform with the requirements of this article, the Housing Inspector shall issue a letter of compliance within two working days. The Building Official will issue a letter of compliance for each dwelling unit upon a determination that (i) the application is complete; (ii) an inspection has been completed documenting compliance with this article; (iii) the owner and applicant have paid all outstanding fees and penalties due under this article; and (iv) the operator of the dwelling unit has a valid license to do business in the City. If the Building Official determines that any of these conditions is not met, the Building Official shall deny the application and notify the applicant of the reason for denial in writing. The letter of compliance shall be issued within two business days of the Building Official's determination that the required conditions for issuance of the letter of compliance are satisfied.~~
- (b) ~~If dwelling units of a duplex or multiple dwelling are not all in compliance, or if the Housing Inspector determines that occupancy of a dwelling unit will not endanger the occupants despite a violation of this article, the Housing Inspector may, but shall not be required to, issue a temporary letter of compliance for each dwelling unit conforming to the provisions of this article, which shall be valid for 90 days from the date it is issued, or any shorter period stated on the temporary letter of compliance. No more than two consecutive temporary certificates of occupancy may be issued for a dwelling or dwelling unit without the issuance of a letter of compliance. A three-year letter of compliance shall be issued for the completed dwelling after the Housing Inspector finds it in conformance with this article.~~
- (c) ~~A copy of the letter of compliance shall be available for inspection at the office of the Building Official. Inspection Office.~~
- (d) ~~Each letter of compliance for a newly-registered dwelling unit shall be valid for three years from the date it is issued. Each letter of compliance for a previously-registered dwelling unit shall be valid for three years from the date of expiration of the previous letter of compliance, unless the dwelling unit was not rented or offered for rent for a period of more than two years, in which case it shall be treated as a newly-registered dwelling unit for purposes of this paragraph. Letters of compliance issued after the effective date of this section shall expire three years from the date of issuance unless sooner revoked under Section 1751.08. In those cases where a temporary letter of compliance is first issued, a letter of compliance issued thereafter shall expire three years from the date the temporary letter of compliance was issued.~~
- (e) The letter of compliance shall include at least: The information contained in the application, the date of inspection, the name of the Inspector, the date of issue, and date of expiration.
- (f) ~~If there is a change in ownership of a dwelling unit that has been issued a letter of compliance, including a transfer to a third party, a transfer or change of controlling interest in the owner, or a change in name of the owner, the new-owner shall register with the City within 30 days of the change of ownership event upon such forms as designated by the City. The fee for administrative processing of any such change shall be as provided in the current Fee Schedule published by the City. \$5.00.~~
- (g) For multiple dwellings with multiple dwelling units, the Building Official Inspector may, but shall not be required to, issue a letter of compliance for the entire dwelling that includes all the required information and that lists the address for each dwelling unit.

(h) The Building Official may revoke a letter of compliance upon determination that a dwelling unit is in violation of this article. The revocation shall be effective upon delivery to the contact person of record on the application for the dwelling unit, or at a later time stated in the written notice. The Building Official may, but shall not be required to, issue a temporary certificate of occupancy in connection with the revocation notice that allows occupancy of the dwelling unit to continue while the violation is corrected. The temporary certificate of occupancy shall be subject to the conditions for temporary certificates of occupancy pursuant to paragraph (b) of this section.

~~(Ord. No. 13-39, 7-16-2013)~~

~~Sec. 1751.08.— Inspection report; notification; written agreement.~~

- ~~(a) — If after inspection a dwelling unit is found in nonconformance with the requirements of this article, the Housing Inspector shall promptly notify the operator of the reasons for nonconformance, which shall be recorded on the inspection report.~~
- ~~(b) — Nonconformance shall be promptly abated as per time sequence given.~~
- ~~(c) — The operator may, within the time period of notice to correct for conformance, file a petition of appeal as set forth in the State Building Code, during which time Section 1751.04(e) shall be stayed.~~
- ~~(d) — The letter of compliance shall be denied or revoked if:
 - ~~(1) — The owner does not file an appeal petition.~~
 - ~~(2) — The dwelling unit is not in conformance at the end of the period specified by the Inspector.~~~~
- ~~(e) — Upon denial or revocation of the letter of compliance, the Housing Inspector shall notify the owner and the occupants in writing.~~
- ~~(f) — The dwelling unit shall be provided one free inspection by the Housing Inspector to determine whether the noncompliance has been abated. Additional reinspections shall be made at the rate per dwelling unit or sleeping room as per registration fees indicated in Section 1751.05(d)(1) to (10) and charged to the owner or complainant.~~

~~(Ord. No. 08-43, 9-16-2008)~~

~~Secs. 1751.09, 1751.10.— Reserved.~~

~~**Editor's note** — Ord. No. 08-43, adopted Sept. 16, 2008, repealed § 1751.09, which pertained to abatement of occupant noncompliance; and § 1751.10, which pertained to emergency abatement.~~

~~Sec. 1751.11.— Severability.~~

~~The provisions of this article are severable. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other~~

provisions or applications of this article which can be given effect without the invalid provisions or application.

DIVISION 3. - MINIMUM PROPERTY STANDARDS

~~Secs. 1751.12—1751.15.—Reserved.~~

Editor's note—Ord. No. 99-45, adopted Oct. 19, 1999, repealed § 1751.12, which pertained to structures and utilities; § 1751.13, which pertained to electrical; § 1751.14, which pertained to lighting; § 1751.15, which pertained to paint; and § 1751.16, which pertained to fire safety.

Sec. 1751.17. - ~~Maximum occupancy~~ Minimum health and safety standards for occupants.

(a) Maximum occupancy shall be determined by the requirements of the Building Code, Fire Code, and the City zoning ordinance. A structure that does not have required Fire Code protections for the permitted maximum occupancy is in violation of this article. Upon discovery of a violation of this section and an initial citation being issued, the property owner shall, in addition to any other penalty or remedy provided by law, be required to reduce the occupancy level to that established by ordinance of this City within 20 days or be subject to additional citation(s). ~~See Section 1751.04(g) for applicable fines.~~

~~(Ord. No. 00-01, 2-15-2000)~~

~~Sec. 1751.18.—~~

(b) Carbon monoxide detectors.

(a) (1) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical source, with battery back up, shall be installed, maintained, tested, repaired or replaced, if necessary, in accordance with manufacturer's direction as follows:

(+) (A) In the sleeping rooms of any existing one- and two-family dwelling unit, apartment or lodging and rooming house intended to be rented or leased which has fuel-burning heating or cooking sources including, but not limited to, furnace, stove, or hot water heater;

(-) (B) In the sleeping rooms of any existing one- and two-family dwelling unit, apartment or lodging and rooming house that is connected to a garage, storage shed or barn, which has fuel-burning heating or cooking sources, including, but not limited to, a furnace, stove, or hot water heater;

(-) (C) All single station carbon monoxide detectors with a suitable alarm or combination smoke detector and carbon monoxide detectors shall be hardwired into alternating current (AC) electrical source, with battery back-up when installed in newly constructed one- and two-family dwelling units whether owned or intended to be rented or leased, apartment or lodging and rooming houses.

- (b) (2) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.
- (e) (3) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.
- (d) ~~As set forth in Section 29-3-16(k) of the West Virginia Code, any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined \$250.00. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$750.00. For a third and subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$2,000.00.~~
- (e) ~~As set forth in Section 29-3-16(l) of the West Virginia Code, a violation of this section may not be considered by virtue of the violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.~~
- (f) ~~As set forth in Section 29-3-16(m) of the West Virginia Code, a violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.~~

(Ord. No. 13-39, 7-16-2013)

(c) Occupancy of roof areas. No person other than the owner, operator, owner/operator's licensed contractor, or owner/operator's maintenance personnel when performing maintenance or other work upon a dwelling regulated by this article, other than a single-family owner-occupied dwelling, shall be on the roof, or any portion of a roof, of any structure for any reason. Should the owner or operator of a structure desire to convert a roof area so that it may be legally occupied by persons, a building permit from the City shall be required. When applying for the building permit, the owner or operator shall provide to the City a written document, prepared and signed by a structural engineer, stating that the proposed structural modification to the roof will result in the roof area in question meeting both live and dead loads established by the then-current State Building Code for a deck or any elevated surface. Engineer or architect signed and sealed construction plans shall be required. All current State Building Code requirements including but not limited to construction requirements, railing requirements, height requirements, fastening requirements, and live and dead load requirements shall be met. A certificate of occupancy issued pursuant to the Building Code for the roof area shall be required before the roof area can be used or occupied. Any person who is on a roof regulated by this paragraph for purposes other than those authorized in this paragraph shall be guilty of a misdemeanor and subject to a fine of not less than \$100.00 nor more than \$500.00.

Sec. 1751.99. - Penalty. In addition to any other penalty provided in this article, a violation of any provision of this article shall constitute a misdemeanor punishable by a fine of up to \$500.00. Each day a violation continues shall constitute a separate offense.

This ordinance shall be effective as of _____, 2021.

FIRST READING: _____

Mayor

SECOND READING: _____

ADOPTED: _____

City Clerk

FILED: _____

GOVERNOR'S HIGHWAY SAFETY PROGRAM
STATE OF WEST VIRGINIA
DIVISION OF MOTOR VEHICLES

Application - Page 1

DATE APPLICATION RECEIVED (For Highway Safety Use Only)

NAME OF APPLICANT: (Must be a government agency)

City of Morgantown

PROJECT TITLE:

Morgantown Highway Safety Project

F.E.I.N. NUMBER:

556-00-215

FEDERAL FUNDS AWARDED:

\$ 73,000.00

FEDERAL FUNDS REQUESTED:

\$ _____

AUTHORIZED OFFICIAL: (Name, Title, Mailing Address, Zip Code, Phone, Fax & E-mail)

Mr. A. Kim Haws
City Manager
City of Morgantown
430 Spruce Street
Morgantown, Wv 26505
Phone: 304-284-7404
Fax: 304-284-7520
ahaws@morgantownwv.gov

This Section For Highway Safety Use Only

Date Logged In: _____

Conditions & Assurances Signed: _____

Signed Resolution Received: _____

Application Number: _____

Acknowledgement Letter: _____

Copies Distributed To Staff: _____

Application: Approved
Denied

Grant Number: _____

Coordinator Assigned: _____

Special Conditions: Yes
No

Award Letter Dated & Mailed: _____

Process Contract:
To Grantee for Signature: _____
To Commissioner for
Signature: _____
Signed Contract to Grantee: _____

PROJECT DIRECTOR: (Name, Title, Mailing Address, Zip Code, Phone, Fax & E-mail)

Robert Gilmore
Retired Lieutenant
Morgantown Police Department
300 Spruce Street
Morgantown, Wv 26505
Phone: 304-284-7446
Fax: 304-284-7520
rgilmore@morgantownwv.gov

FINANCIAL OFFICER : (Name, Title, Mailing Address, Zip Code, Phone, Fax & E-mail)

Mr. Kevin Tennant
Finance Director
City of Morgantown
289 Spruce Street
Morgantown, Wv 26505
Phone: 304-284-7407
Fax: 304-284-7418
ktennant@morgantownwv.gov

PROJECT OBJECTIVE(S)

Objectives must be specific, recognizable, clearly qualified, time framed, measurable terms of the impact to be achieved. Please use additional pages as necessary (i.e., number 3a, 3b, 3c, etc.)

Through highway safety funds for enforcement and education, this project's goals are:

1. To reduce crashes in Monongalia County by 10% from a 3-year average (2017-2019) of 2,288 to 2,059 by September 30, 2022.
2. To reduce total injuries in Monongalia County by 15% from a 3-year average (2017-2019) of 740 to 629 by September 30, 2022.
3. To reduce fatalities in Monongalia County by 20% from a 3-year average (2017-2019) of 10 to 8 by September 30, 2022.
4. To reduce unrestrained driver fatalities in Monongalia County by 50% from a 3-year average (2017-2019) of 2 to 1 by September 30, 2022.
5. To reduce alcohol-related crashes in Monongalia County by 15% from a 3-year average (2017-2019) of 105 to 89 by September 30, 2022.
6. To reduce alcohol-related injuries in Monongalia County by 15% from a 3-year average (2017-2019) of 69 to 59 by September 30, 2022.
7. To reduce alcohol-related fatalities in Monongalia County by 50% from a 3-year average (2017-2019) of 2 to 1 by September 30, 2022.
8. To reduce pedestrian fatalities in Monongalia County by 100% from a 3-year average (2017-2019) of 1 to 0 by September 30, 2022.
9. To reduce total ejections in Monongalia County by 15% from a 3-year average (2017-2019) of 17 to 14 by September 30, 2022.
10. To reduce fatal ejections in Monongalia County by 50% from a 3-year average (2017-2019) of 2 to 1 by September 30, 2022.
11. To reduce crashes involving drivers 20 and younger in Monongalia County by 10% from a 3-year average (2017-2019) of 591 to 532 by September 30, 2022.
12. To maintain fatalities of drivers 20 and younger in Monongalia County at the 3-year average (2017-2019) of 0 through September 30, 2022.

PROJECT ACTIVITIES

Specific statements of activities that will directly impact the identified problem. Please use additional pages as necessary (i.e., number 3a, 3b, 3c, etc.)

This project will fund enforcement (patrols and checkpoints) and education within the City of Morgantown, with the Morgantown Police Department, to effectively and meaningfully assist this overall project with the goals of reducing roadway crashes, injuries and fatalities in the county.

Activities will include:

Target Red Enforcement patrols:

- Enforcement will be conducted August 1-15, 2022, with locations determined by Morgantown PD using county data. See Special Conditions for additional information.

Speed/Aggressive Driving Enforcement patrols:

- Enforcement should be conducted primarily along the target locations listed below (based on crash data). Enforcement may be worked adjacent or parallel to these segments, but enforcement is preferred along the listed segments. The entirety of these segments falling within the counties listed may be worked; smaller agencies may work these target locations if the road segments fall within their agency's jurisdiction, or if adjacent or parallel roadways to the target locations fall within their jurisdiction. The following 19 roadway segments are in order from most crashes to least within the county.

US 019	CR 067/01	CR 075
US 119	CR 081	CR 045
CR 857	CR 059	CR 073
WV 705	CR 016/01	CR 073/12
CR 067	CR 077	CR 007/22
CR 019/24	CR 055	CR 060
CR 065		

School Bus/Zone Safety Enforcement:

- Enforcement and locations will be determined by Morgantown PD using county data.

Seat Belt enforcement patrols and checkpoints:

- Enforcement should be conducted during the following designated enforcement periods:
 - National CIOT May Mobilization: May 13-30, 2022
 - CIOT October Mini Mobilization: October 8-24, 2021
 - CIOT March Mini Mobilization: March 4-20, 2022
 - CIOT August Mini Mobilization: August 5-21, 2022

Impaired Driving Enforcement patrols and checkpoints:

- Impaired Driving Enforcement patrols and checkpoints should be conducted primarily along the target locations listed below (based on crash data). Enforcement may be worked adjacent or parallel to these segments and the mile markers listed; smaller agencies may work these target locations if the road segments fall within their agency's jurisdiction, or if adjacent or parallel roadways to the target locations fall within their jurisdiction. The 10 roadway segments below are listed from most crashes to least crashes. As can be seen by the roadway segments under the Speed Enforcement section, many of the same roadways are both speed and alcohol-related crash problem areas.

**US 119
US 019
CR 857
CR 067
CR 059**

**CR 081
CR 045
CR 075
CR 077/22
CR 067/01**

- The primary focus should be during the following enforcement periods:
 - National Drive Sober or Get Pulled Over (DSOGPO) Enforcement Periods:
 - December 15, 2021 - January 1, 2022
 - August 17 - September 5, 2022
 - State Mobilizations:
 - Thanksgiving (Nov. 24-28, 2021)
 - West Virginia Day (June 17-20, 2022)
 - Fourth of July weekend (July 1-4, 2022)

Underage Alcohol Consumption/Sales:

- Enforcement and locations will be determined by Morgantown PD using county data and ABCA buy rate data.

Distracted Driving Enforcement patrols:

- Enforcement should be primarily conducted during Distracted Driving Awareness Month in April 2022 but can also be used strategically throughout the grant year.

Funds are also requested for Project Director travel, as the Project Director is required to attend GHSP meetings and trainings, as approved, as part of the grant agreement.

Revised 8/21

GOVERNOR'S HIGHWAY SAFETY PROGRAM

West Virginia Division of Motor Vehicles

STATE OF WEST VIRGINIA

FISCAL SUMMARY

Page 4

SAFE COMMUNITIES 402 Grantee: City of Morgantown Budget Categories: F22-HS-18-402	Estimated Project Costs	Local Funds [Match]	Federal Funds Approved	Highway Safety Account #:
Travel & Conferences Project Director Travel <small>*GHSP meetings and pre-approved training</small>	\$ 1,000.00		\$ 1,000.00	SA22-18-18
Enforcement Target Red Enforcement (August 1-15, 2022) <small>*See Special Conditions</small> Speed Enforcement/Aggressive Driving Year-Round <small>*see Page 3 Project Objectives and Activities for specific roadways to be worked</small> Speed Enforcement Mobilization <small>* Date TBD</small> School Bus Safety Enforcement <small>*To be used during National School Bus Safety Week, October 18-22, 2021, and Back to School in August/September 2022.</small>	\$ 2,000.00 \$ 6,000.00 \$ 2,000.00 \$ 2,000.00		\$ 12,000.00	SE22-21-18 SE22-21-18 SB22-19-18
TOTAL PROJECT COSTS:	\$ 13,000.00			
TOTAL LOCAL FUNDS:		\$ -	\$ -	
TOTAL FEDERAL FUNDS:			\$ 13,000.00	
TOTAL APPROVED PROJECT:			\$ 13,000.00	

GOVERNOR'S HIGHWAY SAFETY PROGRAM

West Virginia Division of Motor Vehicles

STATE OF WEST VIRGINIA

FISCAL SUMMARY

Page 4

OCCUPANT PROTECTION 405b Grantee: City of Morgantown Budget Categories: F22-HS-18-405b	Estimated Project Costs	Local Funds [Match]	Federal Funds Approved	Highway Safety Account #:
Enforcement National CIOT May Mobilization (May 13-30, 2022) October CIOT Mini Mobilization (October 8-24, 202) March CIOT Mini Mobilization (March 4-20, 2022) August CIOT Mini Mobilization (August 5-21, 2022) Seat Belt Checkpoints *Checkpoints during CIOT enforcement, during nighttime hours, starting at 6pm *Must participate in all mini waves and May Mobilization. *Cannot use leftover funds from one wave for another wave without GHSP approval.	\$ 3,000.00 \$ 2,000.00 \$ 2,000.00 \$ 2,000.00 \$ 2,000.00		\$ 11,000.00	HV22-01-18
TOTAL PROJECT COSTS:	\$ 11,000.00			
TOTAL LOCAL FUNDS:		\$ -	\$ -	
TOTAL FEDERAL FUNDS:			\$ 11,000.00	
TOTAL APPROVED PROJECT:			\$ 11,000.00	

GOVERNOR'S HIGHWAY SAFETY PROGRAM

West Virginia Division of Motor Vehicles

STATE OF WEST VIRGINIA

FISCAL SUMMARY

Page 4

IMPAIRED DRIVING 405d Grantee: City of Morgantown Budget Categories: F22-HS-18-405d	Estimated Project Costs	Local Funds [Match]	Federal Funds Approved	Highway Safety Account #:
Enforcement			\$ 29,000.00	HV22-01-18
DUI Enforcement OT <small>*see Page 3 Project Activities for specific roadways to be worked *Enforcement from 8pm to 4am only, unless pre-approved by GHSP *Emphasis on state and national Mobilizations listed below</small>	\$ 5,000.00			
Sobriety Checkpoints <small>*see Page 3 Project Objectives and Activities for specific roadways to be worked *Enforcement from 8pm to 4am only, unless pre-approved by GHSP *Emphasis on state and national Mobilizations listed below</small>	\$ 2,000.00			
Underage Enforcement	\$ 20,000.00			
DRE Enforcement	\$ 2,000.00			
December 15, 2021 - January 1, 2022 - DSOGPO National Enforcement Mobilization				
August 17 - September 5, 2022 - DSOGPO National Enforcement Mobilization				
Thanksgiving (Nov. 24-28, 2021), West Virginia Day (June 17-20, 2022) and the Fourth of July weekend (July 1-4, 2022) - State Mobilizations				
TOTAL PROJECT COSTS:	\$ 29,000.00			
TOTAL LOCAL FUNDS:		\$ -	\$ -	
TOTAL FEDERAL FUNDS:			\$ 29,000.00	
TOTAL APPROVED PROJECT:			\$ 29,000.00	

GOVERNOR'S HIGHWAY SAFETY PROGRAM
West Virginia Division of Motor Vehicles
STATE OF WEST VIRGINIA

FISCAL SUMMARY
Page 4

DISTRACTED DRIVING 405e Grantee: City of Morgantown Budget Categories: F22-HS-18-405e	Estimated Project Costs	Local Funds [Match]	Federal Funds Approved	Highway Safety Account #:
Enforcement			\$ 10,000.00	DD22-01-18
Distracted Driving Yearly Enforcement	\$ 7,000.00			
April Distracted Driving Awareness Month	\$ 3,000.00			
TOTAL PROJECT COSTS:	\$ 10,000.00			
TOTAL LOCAL FUNDS:		\$ -	\$ -	
TOTAL FEDERAL FUNDS:			\$ 10,000.00	
TOTAL APPROVED PROJECT:			\$ 10,000.00	

GOVERNOR'S HIGHWAY SAFETY PROGRAM
West Virginia Division of Motor Vehicles
STATE OF WEST VIRGINIA

FISCAL SUMMARY

Page 4

DIV OF HIGHWAYS-WORK ZONE Grantee: City of Morgantown Budget Categories: F22-HS-18-DOHWZ	Estimated Project Costs	Local Funds [Match]	Federal Funds Approved	Highway Safety Account #:
Enforcement Work Zone Enforcement <small>*pre-approved by GHSP; see Special Conditions</small>	\$ 10,000.00		\$ 10,000.00	WZ22-01-18
TOTAL PROJECT COSTS:	\$ 10,000.00			
TOTAL LOCAL FUNDS:		\$ -	\$ -	
TOTAL FEDERAL FUNDS:			\$ 10,000.00	
TOTAL APPROVED PROJECT:			\$ 10,000.00	

**RESOLUTION APPROVING AGREEMENT WITH THE MONONGLAIA COUNTY BOARD
OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT MORGANTOWN
HIGH SCHOOL**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached “Agreement” providing for a School Resource Officer at Morgantown High School on behalf of the City.

Adopted this 7th day of September, 2021.

Mayor

City Clerk

**RESOLUTION APPROVING AGREEMENT WITH THE MONONGLAIA COUNTY BOARD
OF EDUCATION PROVIDING A SCHOOL RESOURCE OFFICER AT SOUTH MIDDLE
SCHOOL**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached “Agreement” providing for a School Resource Officer at South Middle School on behalf of the City.

Adopted this 7th day of September, 2021.

Mayor

City Clerk

RESOLUTION APPROVING AGREEMENT WITH THE MONONGLAIA COUNTY BOARD OF EDUCATION PROVIDING A PREVENTION RESOURCE OFFICER AT MOUNTAINEER MIDDLE SCHOOL

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached “Agreement” providing for a Prevention Resource Officer at Mountaineer Middle School on behalf of the City.

Adopted this 7th day of September, 2021.

Mayor

City Clerk

AGREEMENT

This Agreement, made and entered into this 7th day of September, 2021, by and between the City of Morgantown, West Virginia (hereafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereafter referred to as "Board").

WITNESSETH:

WHEREAS, the Board has established a Prevention Resources Officer Program (hereafter referred to as "PRO Program"); and

WHEREAS, the Board agrees that the City have one police Officer serve as a Prevention Resources Officer in the Monongalia County School System; and

WHEREAS, the City and the Board understand that the program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which rise to delinquency; and

WHEREAS, the City and the Board realize, the PRO Program is a great benefit to school administration, students and the community as a whole.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION 1: DUTIES AND RESPONSIBILITIES OF CITY

- 1.01** The City will provide one (1) police officer as a Prevention Resource Officer, to the Board for assignment at Mountaineer Middle School.
- 1.02** The PRO will abide by County School Board Policies and Laws, as they relate to the PRO. The PRO will consult and coordinate instructional activities through the Principal. Educational activities conducted by the PRO, which are part of the regular instruction program of the school, will be at the direction of and supervised by the Principal or his/her designated representative. On-site supervision of the daily activities of the PRO will be performed by the Principal. Professional supervision, evaluation and discipline of the PRO will at all times be performed by the Chief of Police of the City, with input from the Principal as may be requested by the Chief.
- 1.03** The PRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as directed and supervised by the Principal.
- 1.04** On-site supervision of the police officer assigned to the PRO Programs will be performed by the Principal. City, through the Chief of Police, will be responsible for the control, direction, and professional supervision of the police officer assigned to the PRO Programs. City's Chief of Police will be granted site access to perform supervisory requirements as necessary.

- 1.05** The City will ensure that the exercise of the law enforcement powers by the PRO is in compliance with the authority granted by the law.
- 1.06** The PRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the PRO to intervene with the normal disciplinary procedures in the school. The PRO will perform the following duties:
- To perform law enforcement functions within the school setting.
 - To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
 - To foster a better understanding of the law enforcement function.
 - To develop a better appreciation of citizens' rights, obligations and responsibilities.
 - To provide information about crime prevention.
 - To provide assistance and support for crime victims identified within the school setting.
 - To promote positive relations between the students and the law enforcement officer.
 - To enhance knowledge of the fundamental concepts and structure of the law.
 - To be familiar with confidentiality requirements.
 - Any records generated by the Officer as part of his/her PRO Program duties shall be considered a school record subject to the Family Educational Rights and Privacy Act and related regulations (34 CFR 99.30 and 99.31).
- 1.07** The PRO will be on duty at the school during regular school hours when students are required to attend and when the required PRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.
- 1.08** The PRO will not be required to attend extracurricular activities which are held beyond his/her regular workday or require the PRO to leave his/her jurisdiction, but the PRO will have the option to attend if they choose to do so.

SECTION 2: DUTIES AND RESPONSIBILITIES OF THE BOARD

- 2.01** The Principal at Mountaineer Middle will be the on-site contact person for the PRO. The Superintendent of the Board will designate the Prevention Resource Officer Coordinator to serve as the county liaison for the program.
- 2.02** A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03** A State Grant was received by the MPD to provide funding for Prevention Resource Officers in the school. The Board will furnish the City funds in the total sum of \$22,000.00 to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as PRO to the schools pursuant to the terms expressed in this Agreement.

- 2.04 In the event that students are not physically in school due to a pandemic, for a period exceeding two weeks, the Board will not be required to furnish funds to the Sheriff's office for the SRO services during the term of that closure.

SECTION 3: TERMS OF AGREEMENT

- 3.01 This Agreement is made for a Ten month term beginning the 16th day of August, 2021 and ending the 17th day of June, 2022.
- 3.02 This Agreement will continue in effect until the expiration of the term described in paragraph 3.01 or until terminated by either of the parties in accordance with the terms listed in Section four (4) below.

SECTION 4: TERMINATION

- 4.01 Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.,

SECTION 5: SEVERABILITY

- 5.01 Should any part of this Agreement be declared invalid by a court of law or administrative body, such decision will not affect the remaining provisions of the Agreement and this Agreement shall be interpreted as if the invalid portion was never a part of this Agreement. If such determination of invalidity will materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

SECTION 6: ASSIGNMENT

- 6.01 No Party to the Agreement will, directly nor indirectly, assign or purport to assign this Agreement or any of the rights or obligations provided in the Agreement in whole or in part to any third party without the prior written consent of the other party.

SECTION 7: NO WAIVER

- 7.01 The failure of either party to exercise any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 8: COMPLETE AGREEMENT

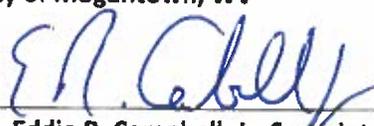
- 8.01 This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understanding of the parties, whether written or oral, concerning the subject matter hereof.

SECTION 9: CHOICE OF LAW

9.01 This Agreement will be governed by and interpreted according to the laws of the State of West Virginia. It will be binding upon and inure to the benefit of the successors of the City and the Board.

SECTION 10: NOTICES

10.01 All notices or other communications required or permitted by the Agreement will be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or personal delivery to the following persons and addresses unless otherwise specified herein:

 _____	 _____
A. Kim Haws City Manager City of Mogantown, WV	Date
 _____	 _____
Dr. Eddie R. Campbell, Jr. Superintendent Monongalia County Board of Education	Date

**RESOLUTION APPROVING AGREEMENT WITH THE MONONGLAIA COUNTY BOARD
OF EDUCATION PROVIDING A PREVENTION RESOURCE OFFICER AT SUNCREST
MIDDLE SCHOOL**

The City of Morgantown hereby resolves that the City Manager is authorized to execute the attached “Agreement” providing for a Prevention Resource Officer at Suncrest Middle School on behalf of the City.

Adopted this 7th day of September, 2021.

Mayor

City Clerk

AGREEMENT

This Agreement, made and entered into this 7th day of September, 2021, by and between the City of Morgantown, West Virginia (hereafter referred to as "City") and the Monongalia County Board of Education, West Virginia (hereafter referred to as "Board").

WITNESSETH:

WHEREAS, the Board has established a Prevention Resources Officer Program (hereafter referred to as "PRO Program"); and

WHEREAS, the Board agrees that the City have one police Officer serve as a Prevention Resources Officer in the Monongalia County School System; and

WHEREAS, the City and the Board understand that the program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which rise to delinquency; and

WHEREAS, the City and the Board realize, the PRO Program is a great benefit to school administration, students and the community as a whole.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION 1: DUTIES AND RESPONSIBILITIES OF CITY

- 1.01** The City will provide one (1) police officer as a Prevention Resource Officer, to the Board for assignment at Suncrest Middle School.
- 1.02** The PRO will abide by County School Board Policies and Laws, as they relate to the PRO. The PRO will consult and coordinate instructional activities through the Principal. Educational activities conducted by the PRO, which are part of the regular instruction program of the school, will be at the direction of and supervised by the Principal or his/her designated representative. On-site supervision of the daily activities of the PRO will be performed by the Principal. Professional supervision, evaluation and discipline of the PRO will at all times be performed by the Chief of Police of the City, with input from the Principal as may be requested by the Chief.
- 1.03** The PRO will provide to students' instruction in various aspects of law enforcement, public safety, and education as directed and supervised by the Principal.
- 1.04** On-site supervision of the police officer assigned to the PRO Programs will be performed by the Principal. City, through the Chief of Police, will be responsible for the control, direction, and professional supervision of the police officer assigned to the PRO Programs. City's Chief of Police will be granted site access to perform supervisory requirements as necessary.

- 1.05** The City will ensure that the exercise of the law enforcement powers by the PRO is in compliance with the authority granted by the law.
- 1.06** The PRO will not function as a school disciplinarian or safety officer. It is not the responsibility of the PRO to intervene with the normal disciplinary procedures in the school. The PRO will perform the following duties:
- To perform law enforcement functions within the school setting.
 - To identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.
 - To foster a better understanding of the law enforcement function.
 - To develop a better appreciation of citizens' rights, obligations and responsibilities.
 - To provide information about crime prevention.
 - To provide assistance and support for crime victims identified within the school setting.
 - To promote positive relations between the students and the law enforcement officer.
 - To enhance knowledge of the fundamental concepts and structure of the law.
 - To be familiar with confidentiality requirements.
 - Any records generated by the Officer as part of his/her PRO Program duties shall be considered a school record subject to the Family Educational Rights and Privacy Act and related regulations (34 CFR 99.30 and 99.31).
- 1.07** The PRO will be on duty at the school during regular school hours when students are required to attend and when the required PRO Training Programs are conducted, unless police department emergency needs or law enforcement requirements prohibit.
- 1.08** The PRO will not be required to attend extracurricular activities which are held beyond his/her regular workday or require the PRO to leave his/her jurisdiction, but the PRO will have the option to attend if they choose to do so.

SECTION 2: DUTIES AND RESPONSIBILITIES OF THE BOARD

- 2.01** The Principal at Mountaineer Middle will be the on-site contact person for the PRO. The Superintendent of the Board will designate the Prevention Resource Officer Coordinator to serve as the county liaison for the program.
- 2.02** A performance review will be performed at the end of the school year by the Principal and submitted in writing to the Police Chief.
- 2.03** A State Grant was received by the MPD to provide funding for Prevention Resource Officers in the school. The Board will furnish the City funds in the total sum of \$22,000.00 to offset the cost of salary and related benefits for the employee of the City, who will provide the contracted service and act as PRO to the schools pursuant to the terms expressed in this Agreement.

- 2.04 In the event that students are not physically in school due to a pandemic, for a period exceeding two weeks, the Board will not be required to furnish funds to the City for the SRO services during the term of that closure.

SECTION 3: TERMS OF AGREEMENT

- 3.01 This Agreement is made for a Ten month term beginning the 16th day of August, 2021 and ending the 17th day of June, 2022.
- 3.02 This Agreement will continue in effect until the expiration of the term described in paragraph 3.01 or until terminated by either of the parties in accordance with the terms listed in Section four (4) below.

SECTION 4: TERMINATION

- 4.01 Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.,

SECTION 5: SEVERABILITY

- 5.01 Should any part of this Agreement be declared invalid by a court of law or administrative body, such decision will not affect the remaining provisions of the Agreement and this Agreement shall be interpreted as if the invalid portion was never a part of this Agreement. If such determination of invalidity will materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

SECTION 6: ASSIGNMENT

- 6.01 No Party to the Agreement will, directly nor indirectly, assign or purport to assign this Agreement or any of the rights or obligations provided in the Agreement in whole or in part to any third party without the prior written consent of the other party.

SECTION 7: NO WAIVER

- 7.01 The failure of either party to exercise any of its rights herein contained will not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 8: COMPLETE AGREEMENT

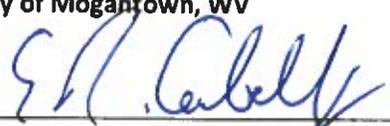
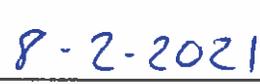
- 8.01 This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understanding of the parties, whether written or oral, concerning the subject matter hereof.

SECTION 9: CHOICE OF LAW

9.01 This Agreement will be governed by and interpreted according to the laws of the State of West Virginia. It will be binding upon and inure to the benefit of the successors of the City and the Board.

SECTION 10: NOTICES

10.01 All notices or other communications required or permitted by the Agreement will be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or personal delivery to the following persons and addresses unless otherwise specified herein:

 _____	 _____
A. Kim Haws City Manager City of Mogantown, WV	Date
 _____	 _____
Dr. Eddie R. Campbell, Jr. Superintendent Monongalia County Board of Education	Date

2022 City Council Meetings

REGULAR	COMMITTEE OF THE WHOLE
January 4, 2022	January 25, 2022
January 18, 2022	
February 1, 2022	February 22, 2022
February 15, 2022	
March 1, 2022	March 29, 2022
March 15, 2022	
April 5, 2022	April 26, 2022
April 19, 2022	
May 3, 2022	May 31, 2022
May 17, 2022	
June 7, 2022	June 28, 2022
June 21, 2022	
July 5, 2022	July 26, 2022
July 19, 2022	
August 2, 2022	August 30, 2022
August 16, 2022	
September 6, 2022	September 27, 2022
September 20, 2022	
October 4, 2022	October 25, 2022
October 18, 2022	
November 1, 2022	November 29, 2022
November 15, 2022	
December 6, 2022	NONE
December 20, 2022	



The City of Morgantown

389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505

Vacant Building Exemption Form

Date Filed: [Date] 6/30/21 Registration Type (circle): NEW Renewal

Today 8/18/21

Property and Structure Information

Address: 301 East Brockway Ave Tax Map/Parcel ID: 30/86

Status (circle all that are true): Vacant Open Secure Exterior Maintained Abandoned

Utilities (circle): Electricity On / Off Water On / Off Gas On / Off

Date Utilities Terminated: Electricity: Water: Gas:

Owner(s) Information (P.O. Boxes are not acceptable.) 103 MARCUS DRIVE, MORGANTOWN,

WV. 26501

If the property is owned by:

- an individual, provide the name and residence of the individual person;
- an estate, please provide the name and business address of the executor;
- a trust, please provide the name and address of all trustees, grantors, and beneficiaries;
- a partnership, the names and residence address of all partners with an interest of 10% or greater;
- a corporation provide the names and residence addresses of all officers and directors of the corporation and attach a copy of the most recent annual franchise tax report filed with the WV Secretary of State;
- any other form of unincorporated association, the names and residence addresses of all principals with an interest of 10% or greater.

Applicant Information

Name: GENE STEPHEN SIEGWARD

Address: 103 MARCUS DRIVE, MORGANTOWN, WV. 26501

Phone: 304-290-1332 Email: gsiegward@gmail.com

Vacancy Notice or Event (attach copy, if applicable): 6/18/19

Date of Notice or Event MAY 29, 2019

Exemption Dates Requested: Begin 6/18/19 End 6/30/22

Reason for Exemption under City Code 1718.07(c) (attach additional sheets if necessary): I HAVE

discussed this with city council last year. STARTING THIS JULY 2021, I BEGAN REPAIRS, PAINTING & NEW ROOF & GUTTERS & DOWN SPOUTS. AS THIS YEAR AND NEXT PROGRESS WILL TRY TO KEEP WORKING ON INTERIOR OF HOUSE.

Internal Use Only:

Date received: _____

Received by: _____

Next Council Meeting: _____

Date Decision Issued: _____

Date Decision Delivered: _____

Delivery Method: _____

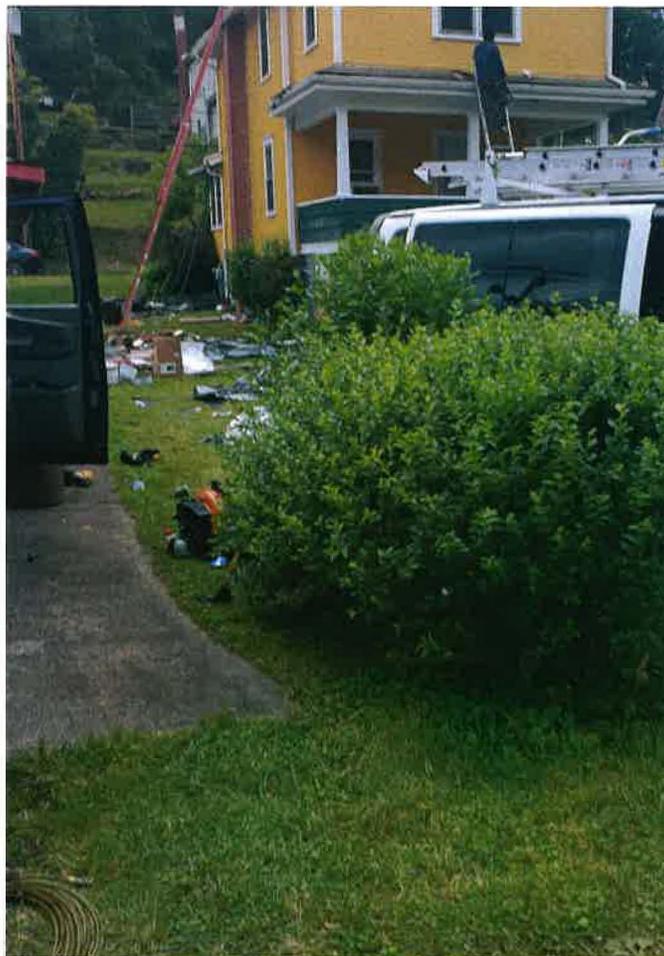
Applicant Certification and Signature:

Gene J. Siegward (print name), the Applicant for this exemption, am a Property Owner of the property subject of this request, and I have authority to control or direct the management or disposition of the property and to file this request. I certify that the statements contained in this request are true to the best of my knowledge after reasonable investigation.

Gene J. Siegward
(Signature)

Note - Property is class 3 property, Not Rental as yet!
All work to be contracted out, for I am handicapped.
this work will take awhile.

Siegwarth



Vacant Structures Code Exemption Procedures

1. **Scope and Application.** This regulation governs the process to apply for exemption from the requirement to register a structure as vacant under the City of Morgantown (“City”) Vacant Structures Code, codified at Article 1718 of the City Code, as it may be amended, supplemented, or replaced. The terms used in this regulation shall have the same meanings as those given in Article 1718 of the City Code unless another definition is specifically supplied by this regulation.
2. **Purpose.** Exemption from registration under the Vacant Structures Code is authorized by City Code Section 1718.07(c) and required as part of any local vacant structures code by *W. Va. Code* § 8-12-16c(b)(2), which provides that “The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinat (*sic*)¹ period of time.”
3. **Application for Exemption.** The owner of a “vacant building,” as defined by *City Code* § 1718.03(b)(i)-(iii), may request exemption from the registration requirements of Article 1718 by filing an application on the form prescribed by the City, which is attached to this regulation as **Appendix A – Exemption Application Form**. The form shall be submitted to the City Manager either by personal delivery to the City Manager’s office during the City business hours or by mail to “The City of Morgantown, c/o City Manager, 389 Spruce Street, Morgantown, WV 26505.”
4. **Determination of completeness.** The City Manager will review all submitted applications to determine whether they are complete. Only a completed application by the owner of the vacant building will be considered for exemption. A representative of the City Manager’s office will take receipt of all applications and indicate the date of receipt. A determination of completeness will be made within five (5) business days, excluding the day of receipt, and notification of the determination will be delivered to the applicant by email. If the application is determined incomplete, the applicant must submit a new completed application in accordance with this regulation. If the application is determined complete, it will be submitted to City Council for determination in accordance with this regulation.
5. **Delivery to City Council.** Upon a determination that the application is complete, the City Manager, or a designee, will submit the application to City Council in writing and request a determination in accordance with any applicable rules of City Council to place the application on the next regular meeting for which notice of the request can be adequately provided in accordance with the law, or at a special meeting called for the purpose of hearing the application. City Council shall determine the date and time of the meeting at which the application will be heard and inform the City Manager. Upon receipt of the determination, the City Manager, or a designee, will inform the applicant by email of the date and time of the hearing and provide the applicant with a copy of this regulation or notice of the manner in which the applicant may review this regulation.

¹ The Morgantown City Code implements this portion of the requirement as a “determinate” period of time, indicating that an exemption will be granted based upon a specific period of time during which the structure cannot be occupied. The term “determinant,” meaning a factor which decisively affects the nature or outcome, appears to be used erroneously in the state law.

6. Documentation or Recommendation submitted to City Council. The applicant may submit any documentation in support of the application – which is not already contained in the application – no later than 5 p.m. on the day two (2) business days prior to the hearing before City Council. The City Manager, or a designee, may, but shall not be required to, submit any recommendation on the application and any supporting material no later than 5 p.m. on the day two (2) business days prior to the hearing before City Council. When submitting material to City Council, the applicant shall deliver the material to the City Manager by email on the same day. When submitting material to City Council, the City Manager or designee shall deliver the material to the applicant by email on the same day. These requirements for submission of documentation apply to all forms of media including written and electronic materials in any form. If any participant in the hearing wishes to present material by electronic means, such as powerpoint or video presentation, the submission of documentation shall include a written request to City Council to permit the electronic presentation.
7. Hearing by City Council. On the date and time set for the hearing, the hearing will proceed as follows:
 - a. Electronic media. Prior to hearing any presentation, City Council will determine whether to permit presentations using electronic media, if a request has been submitted in accordance with this regulation. City Council may elect to permit or decline the use of electronic media in its sole discretion.
 - b. City Manager recommendation. Following a determination on the use of electronic media, if needed, City Council will allow the City Manager or a designee to present a recommendation, if any, on the application. The City Manager shall have five (5) minutes to present the recommendation, and Council may extend the time in its discretion upon request.
 - c. Applicant recommendation. Following the presentation of the City Manager, if any, the applicant or a designee may make a presentation in support of the exemption application. The applicant may make the presentation directly or by third parties – including legal counsel – or by a combination of those methods. The applicant shall have five (5) minutes to make the presentation, and Council may extend the time in its discretion upon request.
 - d. Witness testimony. City Council will not swear witnesses or take witness testimony during the hearing.
 - e. Questioning by City Council. Following the conclusion of the presentations, City Council may ask questions of any person participating in the presentations.
 - f. Standard of Review. City Council will determine whether an applicant has demonstrated (i) good cause, (ii) that the applicant will be unable to occupy the building, (iii) for a certain period of time. For purposes of these rules, good cause supporting the inability to occupy a building means a legal or practical issue that is outside the control of the property owner (as that term is defined in *City Code* § 1718.03(a)) and which would prevent occupancy of the building despite reasonably diligent efforts by the property owner to occupy the building or permit occupancy by another person. Such good cause may include, subject to the discretion of City Council in each individual case, the existence of contested claims to ownership of the property that cannot be resolved by the property owner and do not allow occupancy of the building, including claims made in probate or

other testamentary transfer proceedings; the ongoing renovation of a building necessary to make it fit for occupancy and compliant with law, so long as such renovation is diligently pursued; or the ongoing attempt to sell the building to a new owner, so long as the property is continuously listed for sale, the property owner is actively participating in marketing the property for sale, the property owner is willing to accept purchase offers reasonably approximating the market value of the property, and other occupancy of the property during the marketing period is either not permitted by law or would substantially interfere with the sale of the property. Good cause for exemption does not include disrepair of the property or violations of law at the property, unless the applicant has demonstrated an ongoing renovation identified in the preceding sentence; difficulties in sale or occupancy of the property due to market conditions when an occupant might reasonably be found at current market prices or rates; nor the property owner's absence from the property, even with intent to return, absent additional factors as may be described in the preceding sentence. If the applicant has not established all three elements supporting the exemption to the satisfaction of Council, the application for exemption will be denied. If the applicant has established all three elements supporting the exemption to the satisfaction of Council, the application for exemption will be granted.

- g. Decision on Application. Upon the conclusion of questioning by City Council, if any, the Council may (i) make a decision on the application, (ii) take the matter under advisement for future decision, or (iii) request or allow the participants to submit any additional information that may assist in the decision, including proposed findings and conclusions on the application. The decision by City Council shall be reduced to writing and delivered to the applicant by email. Any decision granting exemption must specify a certain date upon which the exemption expires. The period for which an exemption is granted shall not extend beyond the next annual registration date (July 1st) required by *City Code* § 1718.04. Applicants may seek additional exemptions for a property, when the exemption period has expired or will expire, by submitting a new application in accordance with this regulation.
- h. Application of Open Governmental Proceedings Act. When acting on an application for exemption from the Vacant Structures Code registration requirements, City Council is making an adjudicatory decision in a quasi-judicial or administrative capacity. Accordingly, the proceedings do not constitute a “meeting” within the definition provided by the Open Governmental Proceedings Act. *See W. Va. Code* § 6-9A-2(5)(A). City Council may choose to conduct all or any part of the proceedings in closed session.
- i. Effect on application of Vacant Structures Code. The pendency of an application for exemption does not abrogate the duty of the property owner to comply with the Vacant Structures Code, including any requirement to pay registration fees. A decision by City Council to grant exemption may include a determination to waive or refund registration fees due or paid. An exemption granted by City Council may be used as a defense by the property owner in any pending criminal action for failure to register the vacant building subject of the exemption.

Adopted: _____
(Date)

Mayor

City Clerk



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Eastern Region
West Virginia

176 Airport Circle
Room 101
Beaver, WV 25813

August 26, 2021

Mr. A. Kim Haws
City Manager
430 Spruce Street
Morgantown, WV 26505

Dear Mr. Haws:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. 3-54-0015-047-2021 at Morgantown Municipal-Walter L Bill Hart Field in Morgantown, West Virginia Airport. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi Invoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.

2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Stewart Lewis, (304) 253-0684, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

Matthew Di Giulian
Matthew Di Giulian (Aug 26, 2021 09:54 EDT)

Matthew Di Giulian
Manager, Beckley AFO



U.S. Department
of Transportation
Federal Aviation
Administration

FAA Airport Improvement Program (AIP)

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	August 26, 2021
Airport/Planning Area	Morgantown Municipal-Walter L Bill Hart Field Airport
FY2021 AIP Grant Number	3-54-0015-047-2021
Unique Entity Identifier	177686867
TO:	City of Morgantown
	(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated May 17, 2021, for a grant of Federal funds for a project at or associated with the Morgantown Municipal-Walter L Bill Hart Field Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Morgantown Municipal-Walter L Bill Hart Field Airport (herein called the "Project") consisting of the following:

Extend Runway

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$2,748,187.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning

\$ 2,748,187 airport development or noise program implementation; and,

\$ 0 for land acquisition.

The source of this Grant includes funding from the Small Airport Fund, in accordance with 49 U.S.C. § 47116.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
 - a. Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
 - b. Budget Period:
 1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close Out and Termination
 1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before September 15, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a, land project, if funds are available:

1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debars a contractor, person, or entity.

20. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

21. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
- b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - a. Associated with performance under this Grant; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
- d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.

22. AIP Funded Work Included in a PFC Application. Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.

23. Exhibit "A" Property Map. The Exhibit "A" Property Map dated March 2014, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.

24. Employee Protection from Reprisal.

- a. Prohibition of Reprisals —

1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

SPECIAL CONDITIONS

25. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Matthew Di Giulian

Matthew Di Giulian (Aug 26, 2021 09:54 EDT)

(Signature)

Matthew Di Giulian

(Typed Name)

Manager, Beckley AFO

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated _____

City of Morgantown

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By:

(Typed Name of Sponsor's Authorized Official)

Title:

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR’S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of West Virginia. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor’s official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____
(Signature of Sponsor’s Attorney)

ASSURANCES

AIRPORT SPONSORS

A. General.

- a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
- b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
- c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

- a. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

- b. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

- c. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 – Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 – Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.¹
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport noise compatibility planning.
- g. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- j. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- k. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- m. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- n. 49 CFR Part 20 – New restrictions on lobbying.
- o. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- p. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

- q. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- r. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- s. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- t. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- u. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- v. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- w. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- x. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and

purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
 - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.
- The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:
1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The (**City of Morgantown**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport

development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by

the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects as of May 17, 2021.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

https://www.faa.gov/regulations_policies/advisory_circulars/

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

Application for Federal Assistance SF-424

* 1. Type of Submission:

- Preapplication
 Application
 Changed/Corrected Application

* 2. Type of Application:

- New
 Continuation
 Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

3-54-0015-047-2021

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

City of Morgantown

* b. Employer/Taxpayer Identification Number (EIN/TIN):

55-6000215

* c. Organizational DUNS:

1776868670000

d. Address:

* Street1:

City of Morgantown

Street2:

430 Spruce Street

* City:

Morgantown

County/Parish:

Monongalia

* State:

WV: West Virginia

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

26505-0000

e. Organizational Unit:

Department Name:

City of Morgantown

Division Name:

Morgantown Municipal Airport

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Mr.

* First Name:

A. Kim

Middle Name:

* Last Name:

Haws

Suffix:

Title:

City Manager

Organizational Affiliation:

City of Morgantown

* Telephone Number:

304-225-4213

Fax Number:

304-284-7430

* Email:

khaws@morgantownwv.gov

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

C: City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Federal Aviation Administration

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

*** 12. Funding Opportunity Number:**

N/A

* Title:

N/A

13. Competition Identification Number:

N/A

Title:

N/A

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Extend RW 18-36, Construction Phase 2 (2nd phase of construction excavating approx 331,000 CY of material in the established borrow site and continued of clearing/clearing & grubbing/tree removal)

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="2,473,369.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="274,819.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="2,748,188.00"/>

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

- Yes
- No

If "Yes", provide explanation and attach

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: 

* Date Signed:

PART II - SECTION B

Certification Regarding Lobbying

The declarations made on this page are under the signature of the authorized representative as identified in box 21 of form SF-424, to which this form is attached. The term "Sponsor" refers to the applicant name provided in box 8 of the associated SF-424 form.

The Authorized Representative certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Authorized Representative shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Authorized Representative shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PART II – SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use – The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

Yes. the improvements are within the area designated for aviation land use.

2. Defaults – The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

N/A

3. Possible Disabilities – There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of the Grant Assurances, either by limiting its legal or financial ability or otherwise, except as follows:

N/A

4. Consistency with Local Plans – The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

Yes.

5. Consideration of Local Interest – It has given fair consideration to the interest of communities in or near where the project may be located.

Yes.

6. Consultation with Users – In making a decision to undertake an airport development project under Title 49, United States Code, it has consulted with airport users that will potentially be affected by the project (§ 47105(a)(2)).

Yes.

7. Public Hearings – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

A Public Outreach program is currently underway for this program.

8. Air and Water Quality Standards – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

Environmental permitting including 401/404 permits, NPDES, and SWPPP are currently under review by agencies.

PART II – SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

N/A

10. Land – (a) The sponsor holds the following property interest in the following areas of land, which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

Exhibit A dated March 2014 is on file at the Beckley Airports Field Office.

Additionally, the design includes impacts to adjacent properties for the runway extension/embankment site and the borrow site.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

Yes.

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A". [1]

See attached Exhibit A.

¹ State the character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

PART III – BUDGET INFORMATION – CONSTRUCTION

SECTION A – GENERAL	
1. Assistance Listing Number:	20.106
2. Functional or Other Breakout:	Airport Improvement Program

SECTION B – CALCULATION OF FEDERAL GRANT			
Cost Classification	Latest Approved Amount (Use only for revisions)	Adjustment + or (-) Amount (Use only for revisions)	Total Amount Required
1. Administration expense			\$ 50,000
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			
5. Other Architectural engineering fees			
6. Project inspection fees			324,108
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			2,374,080
12. Equipment			
13. Miscellaneous			
14. Subtotal (Lines 1 through 13)			\$ 2,748,188
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			2,748,188
17. Less: Ineligible Exclusions (Section C, line 23 g.)			
18. Subtotal (Lines 16 through 17)			\$ 2,748,188
19. Federal Share requested of Line 18			2,473,369
20. Grantee share			
21. Other shares			274,819
22. TOTAL PROJECT (Lines 19, 20 & 21)			\$ 2,748,188

SECTION C – EXCLUSIONS	
23. Classification (Description of non-participating work)	Amount Ineligible for Participation
a.	
b.	
c.	
d.	
e.	
f.	
g. Total	

SECTION D – PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE	
24. Grantee Share – Fund Categories	Amount
a. Securities	
b. Mortgages	
c. Appropriations (by Applicant)	
d. Bonds	
e. Tax Levies	
f. Non-Cash	
g. Other (Explain): ARPA	274,819
h. TOTAL - Grantee share	\$ 274,819
25. Other Shares	Amount
a. State	
b. Other	
c. TOTAL - Other Shares	
26. TOTAL NON-FEDERAL FINANCING	\$ 274,819

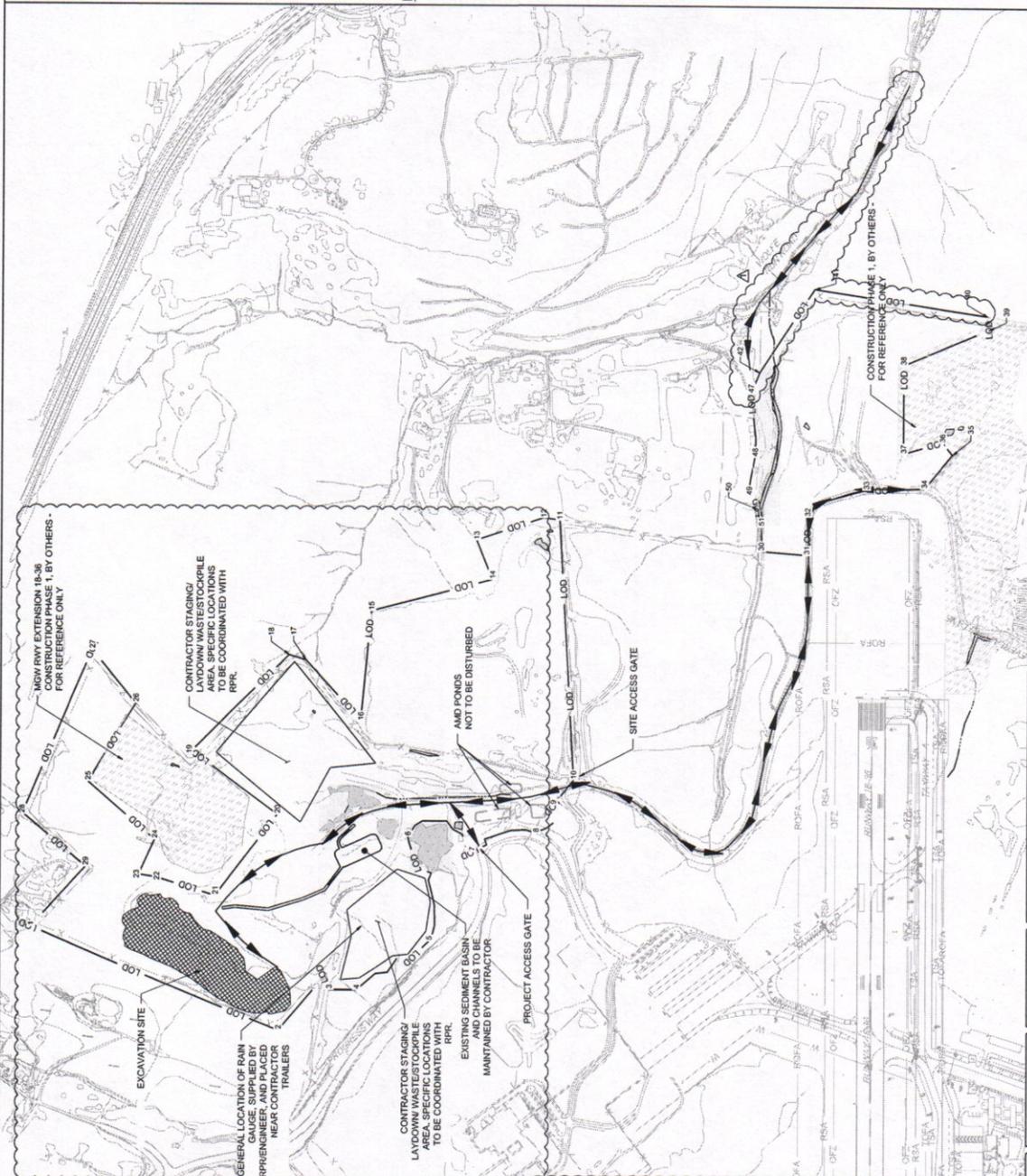
SECTION E – REMARKS
 (Attach sheets if additional space is required)

Exhibit A Airport Property Inventory Map on file with ADO.

PART IV – PROGRAM NARRATIVE
(Suggested Format)

PROJECT: MGW Runway 18-36 Extension Design
AIRPORT: Morgantown Municipal Airport (MGW)
1. Objective: The City of Morgantown is proposing to extend Runway 18-36 by 1,001 feet to the south. This extension will provide an overall runway length of 6,200 feet. The runway extension is proposed to be constructed in multiple construction seasons/phases and will generally consist of: clearing/grubbing/E&S, SWM, environmental & bat habitat mitigation, demolitions of structures, reconstruction of airport access road, embankment construction (material from adjacent borrow site and potentially off-site), runway extension including associated airfield lighting and electrical infrastructure, relocation of existing navigational aids, and the A-GIS associated with the development of approaches.
2. Benefits Anticipated: The runway extension benefits were documented in the Length Justification Study. To summarize, the runway extension at MGW would help to prevent further aviation and economic losses and encourage future growth opportunities. The current length provides a significantly restrictive aviation resource for a broad range of users who want to be able to have the convenience of operating at MGW and creates challenges for encouraging economic growth for the region including the county and State.
3. Approach: (See approved Scope of Work in Final Application) See attached Scopes of Work from MGW's consultant.
4. Geographic Location: All work is located on the airport property or property with agreements in place. See attached project sketch.
5. If Applicable, Provide Additional Information: Construction Ph 1 was bid and is under construction, Phase 2 was bid in 2Q21 with physical construction in 4Q21/1Q22, Ph 3 is anticipated to be designed in summer 2021 and bid in spring 2022 for construction in 3Q22/4Q22.
6. Sponsor's Representative: (include address & telephone number) City of Morgantown, 389 Spruce Street, Morgantown, WV 26505 A. Kim Haws, 304-225-4213

- LEGEND**
- LOD — DESIGN PERMIT LIMIT OF DISTURBANCE
 - ROFA — RUNWAY OBJECT FREE AREA
 - RSA — RUNWAY SAFETY AREA
 - CFZ — OBSTACLE FREE ZONE
 - RPZ — RUNWAY PROTECTION ZONE
 - HAUL ROAD
 - EXISTING FENCE
 - WETLANDS



- NOTES:**
- THIS PROJECT GENERALLY CONSISTS OF THE FOLLOWING:
 - EROSION AND SEDIMENTATION CONTROL
 - TREE REMOVAL, CLEARING AND GRUBBING
 - EXCAVATION OF UNCLASSIFIED, COAL, AND ROCK MATERIALS.

MOV RWY EXTENSION 18-36 FOR REFERENCE ONLY.

CONTRACTOR STAGING/LAYDOWN WASTE/STOCKPILE AREA SPECIFIC LOCATIONS TO BE COORDINATED WITH RPR.

EXCAVATION SITE

CONTRACTOR STAGING/LAYDOWN WASTE/STOCKPILE AREA SPECIFIC LOCATIONS TO BE COORDINATED WITH RPR.

AMID PONDS NOT TO BE DISTURBED

EXISTING SEDIMENT BASIN AND CHANNELS TO BE MAINTAINED BY CONTRACTOR

SITE ACCESS GATE

PROJECT ACCESS GATE

CONSTRUCTION PHASE 1, BY OTHERS FOR REFERENCE ONLY

NOTES:

1. CONTRACTOR SHALL CONTINUALLY PROVIDE ACCESS TO THE PERIMETER ROAD THROUGHOUT CONSTRUCTION.
2. THIS PROJECT IS TO BE COMPLETED IN 4 PHASES OF 90 DAYS EACH. THE CONTRACTOR SHALL ENSURE THE FOLLOWING MILESTONES AND CONSTRUCTION SEQUENCES ARE FOLLOWED:
 - ALL EES CONTROL MEASURES SHALL BE IN PLACE BY DAY 10.
 - TREE REMOVAL, CLEARING, GRUBBING, AND EXCAVATION GREATER SHALL BE FELLED BETWEEN NOVEMBER 15, 2021 AND MARCH 31, 2022. IF THE CONTRACTOR DOES NOT MEET THE MILESTONE OF THE REMOVAL OF THE TREES TO COMPLY WITH THE RESTRICTIONS OF THE ASSOCIATED INDIANA BAT AND THE PROJECT IS DELAYED, THE CONTRACTOR WILL NOT BE ELIGIBLE FOR ANY COSTS TO RECOVER THE SCHEDULE OR ANY COSTS FOR ESCALATION IF THE CONSTRUCTION IS DEFERRED TO THE NEXT SEASON.
3. THE CONTRACTOR SHALL ADHERE TO THE CITY OF MORGANTOWN DAYTIME CONSTRUCTION HOURS, BETWEEN 7:00 AM TO 9:00 PM ON WEEKDAYS AND 9:00 AM TO 9:00 PM ON WEEKENDS, AND ANY OTHER LOCAL NOISE ORDINANCE AS APPLICABLE.
4. THE CONTRACTOR SHALL AVOID DISTURBING ANY WETLANDS WITHIN THE PROJECT WORK AREA UNTIL APPROVAL IS RECEIVED FROM THE RPR TO DISTURB SUCH WETLANDS.
5. THE CONTRACTOR SHALL BE AWARE OF ONGOING CONSTRUCTION ON THE AIRPORT AND ADJACENT TO THE EXCAVATION SITE. CONTRACTOR SHALL COORDINATE WITH THE RPR AND THE AIRPORT AND TAKE MEASURES TO MINIMIZE OR ENTIRELY AVOID ANY IMPACTS TO ONGOING CONSTRUCTION.

SCALE IN FEET
300 150 0

DATE: 182514

PROJECT LAYOUT PLAN

G-003

MARCH 2021

POINT TABLE

POINT #	NORTHINGS	EASTING
1	416089.18	185276.44
2	416178.89	185403.28
3	416133.50	185403.97
4	416195.33	185386.48
5	415975.73	185350.08
6	415201.91	185306.81
7	415595.46	185333.52
8	415208.75	185396.63
9	415440.01	185292.19
10	414885.72	185268.07
11	413476.02	185306.25
12	413475.07	185318.47
13	413647.45	185335.63
14	413649.08	185340.79
15	414100.86	185400.24
16	414724.75	185403.04
17	414427.70	185430.06
18	414410.70	185427.06
19	415030.04	185450.75
20	415203.50	185442.38
21	415795.11	185470.11
22	415752.80	185505.40
23	415727.80	185514.40
24	415522.21	185507.18
25	415289.14	185488.14

POINT TABLE

POINT #	NORTHINGS	EASTING
26	414791.76	185278.95
27	414520.42	185559.45
28	415441.43	185593.76
29	415724.35	185538.76
30	414890.00	185186.01
31	414885.86	185175.41
32	415275.14	185143.62
33	415001.52	185143.62
34	415001.98	185121.58
35	415282.86	185091.50
36	415785.12	185124.16
37	415933.30	185190.31
38	415777.07	185193.39
39	415118.70	185088.14
40	415244.59	185096.40
41	415201.08	1851683.70
42	415201.34	1851684.19
43	415611.17	185176.30
44	415882.42	185208.19
45	415994.48	185207.41
46	415877.65	185208.65
47	415882.91	1851983.23

MORGANTOWN MUNICIPAL AIRPORT
WALTER L. BILL HART FIELD
MORGANTOWN, WEST VIRGINIA

MORGANTOWN MUNICIPAL AIRPORT

REVISION
DATE BY DESCRIPTION
04/19/2021 YCG A ADDENDUM 1

DESIGNED: YOS
DRAWN: JAP
CHECKED: DLF
APPROVED: EMS

Michael Baker International, Inc.
1100 Bankers Building
1100 Bankers Building
1100 Bankers Building

Michael Baker International, Inc.
1100 Bankers Building
1100 Bankers Building
1100 Bankers Building

Michael Baker International, Inc.
1100 Bankers Building
1100 Bankers Building
1100 Bankers Building

Michael Baker International, Inc.
1100 Bankers Building
1100 Bankers Building
1100 Bankers Building

Michael Baker International, Inc.
1100 Bankers Building
1100 Bankers Building
1100 Bankers Building



**FIRE DEPARTMENT
ADMINISTRATIVE OFFICES
BUSINESS PHONE
(304) 284-7480**

The City of Morgantown
West Virginia



**300 SPRUCE STREET
MORGANTOWN, W.V. 26505
FAX: (304) 284-7503**

Date: August 25, 2021

To: Kim Haws-City Manager

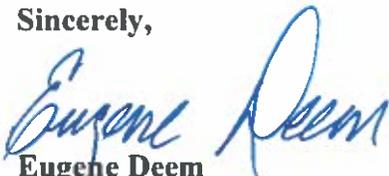
From: Eugene Deem-Fire Chief

Re: Purchase of SCBA Fill Station at South High St Fire Station

The Morgantown Fire Department is requesting authorization to purchase an SCBA fill station for a project that was outlined in the 2021-22 capital budget. The City of Morgantown is part of a membership organization that allows government agencies to make purchases through a Master Interlocal Cooperative Purchasing Agreement with the Houston-Galveston Area Council. Houston Galveston is a national contracting agency which establishes and provided nationally leveraged and competitively solicited purchasing contracts. This project is fully funded in the Capital Budget for 2021-22.

This project would be covered by this agreement. The HGAC Stallion Compressor price with freight and installation will be \$ 50,320.61.

Sincerely,


**Eugene Deem
Chief**



Witmer Public Safety Group

104 Independence Way
 Coatesville, PA 19320
 Phone: (800) 852-6088
 jwolfe@thefirestore.com

Quote ID: 387450
 Date: 07/19/2021
 Sales Person: JAMES WOLFE
 Customer Id: MORFIR1

Bill To:

Morgantown Fire Department
 300 Spruce Street
 Morgantown WV 26505

Phone: (304) 284-7419
 E-Mail: (304) 284-7418

Ship To:

MORGANTOWN FIRE DEPT
 300 Spruce St
 Morgantown WV 26505

HGAC Stallion Compressor Pricing

Quantity	Item ID	Description	Unit	Amount
1	CEN2-101CG2	Stallion Breathing Air Compressor Centaur 2 - 6000 psi, 4 stage compressor *13-scfm @ 6000psi *10-hp drive motor 220/1/60 *Purification to match compressor output -Fully enclosed cabinet for quiet operation -3 ISO 6000psi storage cylinders -Bulk storage cascade air panel *Control valves for each bank *Pressure gauge for each bank *Pressure reducing regulator *6000psi Auxiliary fill on panel -On/Off switch -High Temperature indicator/auto shut down -Low oil indicator/auto shut down -Emergency stop button -Hour meter -Auto condensate drain -Bypass capability: Cylinders can be filled directly off compressor -Capable of filling all storage banks and fill scba cylinders at the same time -2-Position scba filling station with individual scba fill control controls *2 Position containment fill station meets or exceeds current NFPA 1901 *Two stage balanced door designed for ergonomic Scba or Scuba loading *Fill station cabinet UL classified and rated for 5500psi cylinder refills -Sample tap system, simple easy way to take your air test (Stallion exclusive) -Two year bumper to bumper warranty	34,004.32	34,004.32
			0.00	0.00
1	CEN-CO	Stallion Air Centaur CO Monitor	2,597.66	2,597.66
			0.00	0.00
1	6000I3C	Stallion Three ISO 6000 PSI Storage Cylinders	4,829.63	4,829.63
			0.00	0.00

Quotation



Witmer Public Safety Group

104 Independence Way
Coatesville, PA 19320
Phone: (800) 852-6088
jwolfe@thefirestore.com

Quote ID: 387450
Date: 07/19/2021
Sales Person: JAMES WOLFE
Customer Id: MORFIR1

HGAC Stallion Compressor Pricing

Table with 5 columns: Quantity, Item ID, Description, Unit, Amount. Row 1: *The above pricing is with the 3% discounted HGAC pricing, you can order this unit from HGAC and have it shipped to our Abbotstown office and we will deliver this compressor to your location. Freight and installation will be an additional charge. Unit: 0.00, Amount: 0.00

ACCEPTANCE OF QUOTATION

The above prices, specifications, and conditions are satisfactory and are hereby accepted.

Signature: _____

Date: _____

Subtotal: 41,431.61
Freight: 0.00
Tax: 0.00
Total: 41,431.61

Quotation is valid until August 18, 2021



Witmer Public Safety Group

104 Independence Way
 Coatesville, PA 19320
 Phone: (800) 852-6088
 jwolfe@thefirestore.com

Quote ID: 387451
 Date: 07/19/2021
 Sales Person: JAMES WOLFE
 Customer Id: MORFIR1

Bill To:

Morgantown Fire Department
 300 Spruce Street
 Morgantown WV 26505

Phone: (304) 284-7419
 E-Mail: (304) 284-7418

Ship To:

MORGANTOWN FIRE DEPT
 300 Spruce St
 Morgantown WV 26505

BA Compressor Freight & Installation Cost

Quantity	Item ID	Description	Unit	Amount
1		Service Department Labor & Travel To Install The Stallion Centaur Breathing Air Compressor. This Pricing Includes All Labor Cost To Install, Travel and Per Deim Cost	1,975.00	1,975.00
	COMP/IN	The customer will need to have their electrician be present to make the electrical connection to the machine and confirm it has the proper electrical current and breaker required by code.	0.00	0.00
		We will also provide one 2-hour end user training class to go over proper care/operation of your compressor. Time will be determined by the customer	0.00	0.00
1	FREIGHT	Shipping & Handling	985.00	985.00
1		Unpublished Item On HGAC Contract: Stallion Air Automatic Condensate (ACD) Upgrade Package. Package Is An Upgrade From The Standard ACD Offered. Includes: Larger ACD Drain Puck With Silicone Orings, Larger ACD Drain Reservoir Tank Allowing For More Liquid To Be Stored, Monitored ACD Float Level That Will Alarm If The Reservoir Tank Gets Full and Requires Draining.	5,929.00	5,929.00
1		Safety Lab Plus Breathing Air Test NFPA-1500 Grade-D (1-Test)	0.00	0.00
		Test taken by WPSG at the start-up of the compressor, NO CHARGE to the customer. We will return the kit to the air lab and your air test results will be emailed to you.		

ACCEPTANCE OF QUOTATION

The above prices, specifications, and conditions are satisfactory and are hereby accepted.

Signature: _____

Date: _____

Subtotal: 8,889.00

Freight: 0.00

Tax: 0.00

Total: 8,889.00

Quotation is valid until August 18, 2021

Centaur

Stallion Centaur models integrate all components of a cylinder refill system into a single, turn-key package including a compressor, air storage vessel(s), purification system, air management panel and a containment fill station.

Standard features include:

- 6000 psi system- select from 7.5 to 25 horsepower.
- “Bulk” air management panel, with remote fill port / valve
- 2 or 3 position containment fill enclosure
- Purification system matched to compressor output
- Fully enclosed cabinet for quiet operation
- Latching service access doors
- Color touch-screen operator interface for simple, automated operation and monitoring with shut-down alarms and on-screen status messages
- Stallion Sample Tap System (STS) for easy air sample retrieval

Optional features:

- “Cascade” air management panel
- Stallion Auto-Fill system
- ASME or ISO Storage Vessels
- CO Monitor
- Moisture monitor
- Spring Rewind Hose Reel Module (50', 75' or 100')
- Comprehensive electronic interstage monitoring
- Connectivity package (email or text alerts for system status changes or malfunctions)
- Connections for remote storage cylinders

Centaur models are defined by the capacity of the fill station and the number of storage vessels that can be mounted in the cabinet. The Centaur 2 is the smallest of the series and is frequently chosen when space is a consideration. The Centaur 2-4 and Centaur 3 are equal in size, but offer expanded capabilities over the Centaur 2.

Centaur2G2

- 2 Position Fill Station
- Accepts up to 3 ASME or ISO Storage Vessels

Standard Dimensions

83-7/8"W 34-1/8"D x 74-5/8"H



Centaur2-4G2

- 2 Position Fill Station
- Accepts up to 4 ASME or ISO Storage Vessels

Standard Dimensions

93-7/8"W 34-1/8"D 74-5/8"H



Shown with optional Hose Reel

Centaur3G2

- 3 Position Fill Station
- Accepts up to 4 ASME or ISO Storage Vessels

Standard Dimensions

93-7/8"W 34-1/8"D 74-5/8"H



CERTIFICATE OF COMPLIANCE

Certificate Number 20160915-EX27235
Report Reference EX27235-20160915
Issue Date 2016-SEPTEMBER-15

Issued to: STALLION AIR INC
4675 US HWY 64 E.
BUILDING 4
FRANKLINVILLE, NC 27248

This is to certify that representative samples of AUTOMOTIVE FIRE APPARATUS EQUIPMENT
See Addendum.

Have been investigated by UL in accordance with the Standard(s) indicated on this Certificate.

Standard(s) for Safety: Standard for Automotive Fire Apparatus, NFPA 1901-2016.
Additional Information: See the UL Online Certifications Directory at www.ul.com/database for additional information

Only those products bearing the UL Classification Mark should be considered as being covered by UL's Classification and Follow-Up Service.

The UL Classification Mark includes: UL in a circle: with the word "CLASSIFIED"  (as shown); a control number (may be alphanumeric) assigned by UL; a statement to indicate the extent of UL's evaluation of the product; and the product category name (product identity) as indicated in the appropriate UL Directory.

Look for the UL Classification Mark on the product.



William R. Carney, Director, North American Certification Programs
UL LLC

Any information and documentation involving UL Mark services are provided on behalf of UL LLC (UL) or any authorized licensee of UL. For questions, please contact a local UL Customer Service Representative at www.ul.com/contactus



CERTIFICATE OF COMPLIANCE

Certificate Number 20160915-EX27235
Report Reference EX27235-20160915
Issue Date 2016-SEPTEMBER-15

This is to certify that representative samples of the product as specified on this certificate were tested according to the current UL requirements.

Model No./Name	Cylinder Type	Rated Pressure (psi)	No. of Cylinders
SACF2MG2	SCBA	5500	2
SACF2MG2	SCUBA	3000	2
SACF3MG2	SCBA	5500	3
SACF3MG2	SCUBA	3000	3
SACF2G2	SCBA	5500	2
SACF2G2	SCUBA	3000	2
SACF3G2	SCBA	5500	3
SACF3G2	SCUBA	3000	3
CEN2-xxxG2	SCBA	5500	2
CEN2-xxxG2	SCUBA	3000	2
CEN3-xxxG2	SCBA	5500	3
CEN3-xxxG2	SCUBA	3000	3

xxx - Denotes customer specific designations (horsepower, voltage, etc.)

All 2 cylinder models above utilize base unit SACF2MG2.
 All 3 cylinder models above utilize base unit SACF3MG2.



William R. Carney, Director, North American Certification Programs
 UL LLC

Any information and documentation involving UL Mark services are provided on behalf of UL LLC (UL) or any authorized licensee of UL. For questions, please contact a local UL Customer Service Representative at www.ul.com/contactus





Standard Limited Warranty

Unless otherwise specified in writing by an authorized official of Stallion Air, Inc., the following represents the warranty applicable to the equipment described in the accompanying documentation.

Warranted Products

This warranty applies to new equipment (herein called "equipment" or "product"), and accessories received with new equipment, purchased from Stallion Air Incorporated (herein called "Stallion") or authorized agent of Stallion Air, Inc.

Warranty Period

Stallion warrants this product to be free from defects in materials and workmanship for twenty-four (24) months from initial equipment startup, or thirty (30) months from the date of shipment from the Stallion factory, or 500 operating hours, whichever period occurs first.

Materials and/or components replaced under warranty are warranted to be free from defects in materials and workmanship for the remainder of the applicable original warranty period of the original equipment, or ninety (90) days from the date of shipment by Stallion, whichever is the longer period.

Transfer of Warranty

This warranty is made to the original owner of the equipment and is transferrable for the duration of coverage to subsequent owners with prior written approval from Stallion.

Warranty Coverage and Remedies

Stallion's obligation under this warranty is, at its option, to repair or replace any parts determined by Stallion to have become defective during the applicable warranty period at no charge to the customer. Warranty claims made beyond thirty (30) days after the end of the applicable warranty period will not be considered or processed. The remedies set forth in this paragraph are exclusive.

Limitations

Stallion's obligation under this warranty is expressly limited to the conditions as stated above and shall not include duties, taxes or any other charges whatsoever.

IN NO EVENT SHALL STALLION AND ITS VENDORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF REVENUE) WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY AND IRRESPECTIVE OF WHETHER STALLION OR THE VENDOR HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

The above warranties are given by Stallion with respect to this product and its related items in lieu of any other warranties, express or implied. Stallion and its vendors disclaim any implied warranties of merchantability or fitness for a particular purpose or any similar standard imposed by applicable legislation. Stallion's responsibility to repair or replace



defective components and related items is the sole and exclusive remedy provided to the customer for breach of these warranties. Terms of this warranty may not be modified or extended except in writing by an authorized official of Stallion Air, Inc.

Exclusions

This warranty shall not apply to consumable items, perishable items or general maintenance items, including:

- Lubricants
- Filters
- Perishable purification components
- Perishable seal materials and components
- Fuses
- Perishable condensate drain components
- Other normal wear items

The warranty will be considered void if damage to the product was the result of:

- Improper installation
- Improper use
- Connection to an improper power source
- Damage due to abuse
- Damage due to accident
- Tampering
- Improper maintenance
- Failure to provide proper maintenance
- Lifting or moving equipment in ways not approved by Stallion
- Connection to non-authorized or incompatible pneumatic or electrical components
- Operation outside of documented acceptable parameters
- Operating equipment with known deficiencies or damage
- Non-approved product modification
- Removal of, or disabling safety features
- Repair with parts not authorized by Stallion
- Repair by persons not authorized by Stallion

The warranty does not cover damage or operating failures caused by freight handling, electrical power surge, lightning, wind, fire, flood, severe weather, earthquake, insects or animals, or other natural agent.

Applicable Law

Some states, provinces, and countries do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitations on the duration of implied warranties or conditions, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary by state, province, or country.

This warranty shall be governed by and interpreted in accordance with laws of the State of North Carolina applicable to contracts made and to be performed in North Carolina.



Owner Responsibilities

The owner is responsible for proper maintenance of the product(s). This includes routine operation of the equipment as outlined in the accompanying documentation. The owner must ensure that the product is used in a responsible manner, and is not used in ways for which it was not intended. The owner must ensure that the product is not operated outside of rated parameters or capacities.

Stallion Warranty Procedure

If there is a problem with a Stallion system within the warranty period, please follow the steps listed below.

1. Call the authorized Stallion representative responsible for installation and service of the product. If a local Stallion representative is not available, contact Stallion directly at: 336-824-3133
2. Provide the product model, serial number, manufacture date and hour meter reading to the Stallion representative.
3. Provide a contact name and telephone number for the owner or point of contact for the owner. If possible, please provide an email for the primary point of contact. This can expedite claim processing.
4. Be prepared to explain the problem, when it occurred, and the circumstances under which it occurred. This can possibly expedite repair and resolution of the problem.
5. Request a warranty claim form or similar paperwork.

THIS INTERLOCAL CONTRACT ("Contract"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the Houston-Galveston Area Council, hereinafter referred to as "H-GAC," having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and City of Morgantown, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "End User," having its principal place of business at 300 Spruce Street Morgantown, WV 26505.

WITNESSETH

WHEREAS, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

WHEREAS, End User has represented that it is an eligible entity under the Act, that its governing body has authorized this Contract on 07/27/2021 (Date), and that it desires to contract with H-GAC on the terms set forth below;

NOW, THEREFORE, H-GAC and the End User do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state), or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

ARTICLE 2: APPLICABLE LAWS

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Contract.

ARTICLE 3: WHOLE AGREEMENT

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

The period of this Contract shall be for the balance of the fiscal year of the End User, which began 07/01/2021 and ends 06/30/2022. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H-GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

ARTICLE 5: SCOPE OF SERVICES

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H-GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with specifications and contract terms and pricing established by H-GAC. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

ARTICLE 6: PAYMENTS

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC's contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H- GAC contractor.

ARTICLE 7: CHANGES AND AMENDMENTS

This Contract may be amended only by a written amendment executed by both parties, except that any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

ARTICLE 8: TERMINATION PROCEDURES

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC's contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 11: VENUE

Disputes between procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

THIS INSTRUMENT HAS BEEN EXECUTED BY THE PARTIES HERETO AS FOLLOWS:

City of Morgantown
Name of End User (local government, agency, or non-profit corporation)

300 Spruce Street
Mailing Address

Morgantown, WV 26505
City, State ZIP Code

Signature of chief elected or appointed official | Date

A. Kim Haws, City Manager
Typed Name & Title of Signatory

Houston-Galveston Area Council
3555 Timmons Lane, Suite 120, Houston, TX
77027

By: _____
Executive Director

Date: _____



END USER DATA

Please sign and return the Interlocal Contract, along with this completed form, to H-GAC by emailing it to cpcontractfax@h-gac.com or by faxing it to 713-993-2424. The contract may also be mailed to:

H-GAC Cooperative Purchasing Program
P.O. Box 22777, Houston, TX 77227-2777

Name of End User Agency: **City of Morgantown** County Name: **Monongalia**

Mailing Address: **300 Spruce Street Morgantown, WV 26505**

Main Telephone Number: **304-612-1993** FAX Number: **304-284-7503**

Physical Address: **300 Spruce Street Morgantown, WV >26505**

Web Site Address: **plantogether.org**

Official Contact: **Eugene Deem**
Mailing Address: **300 Spruce Street**
Morgantown, WV 26505

Title: **Fire Chief**
Ph No.: **304-284-7481**
FX No.: **304-284-7503**
E-Mail Address: **edeem@morgantownwv.gov**

Authorized Official: **A. Kim Haws**
Mailing Address: **430 Spruce Street**
Morgantown, WV 26505

Title: **City Manager**
Ph No.: **304-284-7404**
FX No.: **304-284-7430**
E-Mail Address: **khaws@morgantownwv.gov**

Authorized Official: **Kevin Tennant**
Mailing Address: **389 Spruce Street**
Morgantown, WV 26505

Title: **Finance Director**
Ph No.: **304-284-7407**
FX No.: **304-284-7503**
E-Mail Address:
kevin.tennant@morgantownwv.gov

COMPLETING AND EXECUTING THE ILC PROCESS

Step 1 (complete)

Thank you for completing this step. A PDF copy of the ILC document will be delivered to the email address entered.

Step 2

Secure a signature by the individual identified as the Authorized Official to contractually bind your entity.

Step 3

Scan and email a copy of the contract to H-GAC at cpcontractfax@h-gac.com, or fax it to 713-993-2424.

The contract may also be mailed to:

H-GAC Cooperative Purchasing Program

PO Box 22777

Houston, TX 77227-2777

If you require an original signed contract, please print, sign, and mail two (2) sets of the ILC documents.

Step 4

H-GAC will execute the contract and return a copy to you electronically.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”) is entered into this ____ day of _____, 2021 by and between Daniel A. Nagowski, Daniel L. Nagowski, and the Daniel A. Nagowski Revocable Inter Vivos Trust (collectively “Nagowskis”), and The City of Morgantown, West Virginia (“City”), upon the following terms and conditions:

1. Recitals.

- a. Nagowskis are the owners of an interest in a parcel of real estate currently assessed on the land books of Monongalia County, West Virginia as Parcel 64 of Map 28A, Third Ward District, in Morgantown, West Virginia (“Parcel 64”).
- b. Nagowskis’ title to Parcel 64 derives from a quitclaim deed executed by CSX Transportation, Inc., in favor of Daniel E. and Rose Mary Nagowski, dated April 30, 1998, and of record in the Office of the Clerk of the Monongalia County Commission at Deed Book 1163, page 116.
- c. City is the owner of certain property comprising a rail trail and public park pursuant to a quitclaim deed executed by the West Virginia State Rail Authority in favor of City dated April 22, 1998 and of record in the Office of the Clerk of the Monongalia County Commission at Deed Book 1161, page 375.
- d. On or about February of 2019, the City began a public improvement project to improve the above-referenced public park and rail trail property in the area of Parcel 64 (the “Project”). A portion of the improvements comprising a portion of a building and sidewalk was constructed on the area covered by Parcel 64, and a

dispute has arisen between the Parties regarding the permissibility of the construction.

- e. On or about November 19, 2020, the City filed a petition seeking acquisition of Parcel 64 by eminent domain (the “Eminent Domain lawsuit”).
 - f. On or about December 3, 2020, Nagowskis filed their “Answer to Verified Petition for Condemnation and Counterclaim” in the Eminent Domain lawsuit (the “Counterclaim”).
 - g. This Agreement is intended to compromise and resolve all differences between the Parties with respect to the above-referenced public improvement project and the occupancy and use of Parcel 64.
2. Terms; Consideration. The Parties agree to compromise and resolve all differences among themselves with respect to the subject matter of this Agreement, including without limiting the generality of the foregoing all claims to Parcel 64, all claims in the Eminent Domain lawsuit, and the Counterclaim, for the following mutually agreeable consideration:
- a. City will pay Nagowskis the total sum of Three Hundred Sixty-Five Thousand Dollars and Zero Cents (\$365,000.00) in consideration of Nagowskis’ agreement to release their claims for damages asserted in the Counterclaim; to release their claims to any and all fees, costs, or expenses associated with the Eminent Domain lawsuit, including without limitation attorney’s fees, surveyor’s fees, accountant’s fees, appraiser’s or realtor’s fees, and fees for any other third party professional; and to assign to the City any and all claims they may have in relation to the Project, including without limitation any claims against the Hazel Ruby McQuain Charitable Trust, Thrasher Engineering, March-Westin, and any and all other

persons or entities participating in the Project in any way, whether by providing funding, professional or other services, or by any other means.

- b. Nagowskis will donate and execute a quitclaim deed substantially in the form of **Exhibit A** transferring to City all of their right, title, and interest in and to Parcel 64 to City. The quitclaim deed will be conditioned upon City's agreement to create at least 2 more parking spaces on or immediately adjacent to the subject parcel or maintain the current improved portion of Parcel 64 open to public use including vehicle parking, subject to limitations or restrictions for events and other occasional purposes, for a minimum period of 20 (twenty) years.
- c. Nagowskis will obtain an appraisal of the property transferred to City by **Exhibit A** and submit a copy of same to City, and Nagowskis shall prepare on their own behalf Internal Revenue Service form 8283, substantially in the form and including the amounts identified on **Exhibit B**. Upon receipt of such appraisal and such partially completed form 8283, City will complete and execute the portions of the form confirming that it has received the appraisal and received the transferred property, consistent with the requirements of such form 8283. Nagowskis and City understand and agree that City is not making any representation, in this Agreement or otherwise, and shall not be obligated to make any representation, with respect to the value of Parcel 64, any consideration paid for Parcel 64, or any claims to tax credits or other benefits Nagowskis may make, now or in the future. Nagowskis accept full responsibility for any and all filings Nagowskis make, or may make, with any taxing authority with respect to this Agreement and to Parcel 64, and Nagowskis agree to defend, indemnify, and hold harmless City and all Releasees

identified in this Agreement against any and all claims, investigations, and/or other actions related to Nagowskis claims to tax credits or other benefits with respect to this Agreement or Parcel 64.

3. Release. Nagowskis agree to accept the sums provided in this Agreement in full and complete settlement of any claims they may have against the City, its officers, employees, agents, contractors, insurers, and assigns (the “Releasees”). In consideration of such sums and property transfers, Nagowskis on behalf of themselves, their officers, employees, agents, insurers, legal representatives, predecessors and successors in interest, and assigns hereby release and forever discharge Releasees from any and all claims, demands, suits, causes of action, damages, costs, and other proceedings related to the public improvement project described in this Agreement (the “Project”). This is a general release of all claims. Nagowskis expressly waive and assume the risk of any and all claims for damages which may exist now or in the future, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, fraud, omission, misrepresentation, concealment, or otherwise, and which, if known, would materially affect the Nagowskis’ decision to enter into this Agreement. Nagowskis further agree that they accept payment of the sums and property transfers specified herein as a complete compromise to matters involving disputed issues of law and fact. Nagowskis assume the risk that the facts or law may be other than they or their counsel may believe, whether their belief is due to any act or omission on the part of Nagowskis or otherwise. It is understood and agreed by Nagowskis that this settlement is a compromise of a doubtful and disputed claim, and the payment set forth herein is not to be construed as an admission of liability on the part of Releasees, by whom liability is expressly denied.

4. Indemnity. In further consideration of the payments and property transfers set forth herein, Nagowskis hereby waive and agree to indemnify and hold harmless Releasees from any and all claims, causes, demands, suits for damages, for indemnity, for contribution, or for loss of services, expenses or compensation, subrogation claims, claims for insurance payments and other benefit payments, indemnity, contribution, attorney fees, or any other expenses which the Nagowskis may now have or may hereafter have or that may be asserted by any person or entity on account of or in any way growing out of any claim asserted by or on behalf of Nagowskis.
5. Attorney Fees and Taxes. It is expressly understood and agreed that each of the Parties will bear its own attorneys' fees and costs arising from the actions of its own counsel in connection with this Agreement, and the matters referred to herein. Nagowskis also represent and acknowledge that they have not received any advice from Releasees or their attorneys concerning any legal and income tax consequences of this Agreement and, instead, they are relying upon their own judgment and/or the advice of counsel concerning the legal consequences of this Agreement.
6. Entire Agreement. In entering into this Agreement, Nagowskis represent that they have relied upon the advice of their attorney, who is the attorney of their own choice, concerning legal effects of this Agreement upon their rights against Releasees; and that the terms of this Agreement are fully understood and voluntarily accepted by Nagowskis. This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it, and shall be binding upon and inure to the benefit of the successors and assigns of each. This Agreement was negotiated at arm's length and entered into freely by the parties with the advice of counsel. In the event an ambiguity exists in any provision of this

Agreement, such ambiguity is not to be construed by reference to any doctrine or statute calling for ambiguities to be constructed against the drafter of the document.

7. Capacity to Execute. Nagowskis represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Agreement and to receive the sums set forth and enter the property transactions described herein; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.
8. Construction; severability. The Parties agree that this Agreement shall be deemed to have been made within the City of Morgantown, Monongalia County, West Virginia and shall be interpreted, construed, and enforced in accordance with the laws of the State of West Virginia without respect to the conflicts of law principles thereof. The Parties further agree that, should one or more paragraphs of this Agreement be ruled unenforceable, then the remainder of this Agreement shall remain in full force and effect and the Agreement shall be modified as though the unenforceable provision were stricken.
9. Counterparts. This Agreement may be executed in multiple counterparts, and delivered by facsimile or other electronic transmission with the same force and effect as an original executed document, all of which together shall be a fully executed original of this Agreement.

Executed this ____ day of _____, 2021 by the Parties as follows:

Nagowskis:

Daniel A. Nagowski

Melissa R. Nagowski

Daniel L. Nagowski

Daniel A. Nagowski Revocable Inter Vivos Trust
By:
Its: Trustee(s)

The City of Morgantown

By: A. Kim Haws
Its: City Manager

DRAFT