



# 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 21, 2021**  
**7:00 p.m.**

This meeting will take place via Zoom at <https://us02web.zoom.us/j/2716139586> using the meeting number 271 613 9586. The public can participate by joining the Zoom meeting linked above or by calling 301-715-8592 and using the meeting ID 271 613 9586. The meeting will be recorded and can be viewed at a later date on the City of Morgantown website. If possible, the city will broadcast the meeting live on Morgantown Channel 15 and live stream it via the City of Morgantown website at <https://morgantownwv.viebit.com/>, however, live broadcasting and streaming of the meeting will be dependent on the completion of the scheduled power outage planned at City Hall. The public is encouraged to join the meeting via Zoom. If members of the public wish to comment on a particular issue or public hearing, they should fill out the public comment sign-up form on our website, prior to the start of the meeting which can be found at: <https://www.morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Morgantown-City-Council-R-157>. Additionally, the public can submit written comments via email to the City Clerk at [cwade@morgantownwv.gov](mailto:cwade@morgantownwv.gov).

1. **Call to order:**
2. **Roll Call:**
3. **Pledge to the Flag:**
4. **Approval of Minutes:** September 7, 2021, Special Meeting minutes; September 7, 2021, Regular Meeting minutes.
5. **Correspondence:**
  - A. Childhood Cancer Awareness Month
6. **Public Hearings:**
  - A. An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC
  - B. An Ordinance amending article 1751 - Housing Code
7. **Unfinished Business:**
  - A. Consideration of Approval of (*Second Reading*) of An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC (*First reading 9/7/2021*)
  - 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.*

- A. Consideration of **Approval of (Second Reading) of An Ordinance amending article 1751 - Housing Code (First reading 9/7/2021)**
- B. Consideration of **Approval of a Resolution supporting the City of Morgantown’s application for a Grant to Commission a Mural at the Woodburn School site**
- C. Consideration to **Approve the open appointment on the Transit Authority Board of Directors to Jeremy Evans, City/County WVU Representative**
- D. Consideration of **Approval of a Salt Bid – Bid Call 2022-01**

11. **New Business:**

- A. Consideration of **Approval of (First reading) of An Ordinance amending the FY 2021-2022 annual budget of the City of Morgantown as shown in the revised budget attached hereto and made a part of this ordinance as the same applies to the General Fund**
- B. Consideration of **Approval of A Resolution amending 2021-2022 Budget Revision to the Capital Escrow Fund**
- C. Consideration of **Approval of the American Rescue Plan Funds (ARPA)**
- D. Consideration of **Approval of a Vacant Structure Exemption Request for 301 East Brockway Avenue. (It is anticipated that this matter may be discussed in executive session as permitted by WV State Code §6-9a-4(b)(12))**
- E. Consideration of **Approval of a Fairs & Festival Permit for the Cupcakerie for the Sweet Life Happy Hour even on October 1, 2021**

12. **City Manager’s Report:**

13. **Report from City Clerk:**

14. **Report from City Attorney:**

15. **Report from Council Members:**

16. **Executive Session:** Pursuant to West Virginia Code §6-9a-4(2)(b)(12) to discuss potential or pending litigation.

17. **Adjournment:**

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

# City of Morgantown

## SPECIAL MEETING September 7, 2021

**Special Meeting September 7, 2021:** The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, September 7, 2021, at 6:03 p.m.

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

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 Butcher, second by Councilor Vega, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:04 p.m.

### **BOPARC Commission**

6:00 p.m. – Jenny Thoma

### **Human Rights Commission**

6:20 p.m. – Carol Heiberger

There was an applicant that was scheduled for an interview at 6:40 p.m. who did not show up.

### **ADJOURNMENT:**

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Harshbarger, to adjourn the meeting. Time: 7:08 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**City of Morgantown**  
389 Spruce Street, Morgantown, WV 26505

**MINUTES**  
**REGULAR MEETING**  
**September 7, 2021**

**Regular Meeting: September 7, 2021:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, September 7, 2021, at 7:16 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, Ixya Vega, Dave Harshbarger, and Brian Butcher. Bill Kawecki was absent.

The meeting was called to order by Mayor Selin.

**Approval of Minutes:** Motion by Councilor Kawecki, second by Councilor Harshbarger, to approve 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. Motion carried 6-0. Councilor Kawecki was absent.

**Correspondence:** Mayor Selin presented the following Proclamations: Constitution Week Proclamation to Rebecca Davis and Carrie Fox; Suicide Prevention Month Proclamation to Kelli Talbott -Morgantown Out of the Darkness Walk Chair, and Erika Gibson – Co-Chair, and Gina Dixon – Volunteer; Hunger Action Month Proclamation to Chad Morrison – CEO Mountaineer Food Bank.

**Public Hearing: An Ordinance approving an Easement to Mon Power**

Mayor Selin declared this Public Hearing open.

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

**Unfinished Business:**

**An Ordinance approving an Easement to Mon Power:** The below entitled Ordinance was presented for second reading.

An Ordinance approving an Easement to Mon Power

City Manager Kim Haws explained. Motion by Deputy Mayor Trumble, second by Councilor Vega, to approve the Easement to Mon Power. Motion carried 6-0. Councilor Kawecki was absent.

**Boards & Commissions:**

Motion by Councilor Harshbarger, second by Deputy Mayor Trumble, to appoint, by consensus, Carol Heiberger to the Transit Authority Board of Directors.

Motion by Councilor Abu-Ghannam, second by Councilor Harshbarger, to appoint, by consensus, Rachel Fetty to the BOPARC Commission.

Motion by Deputy Mayor Trumble, second by Councilor Vega, to appoint, by consensus, Jenny Thoma to the BOPARC Commission.

Motion by Councilor Butcher, second by Councilor Harshbarger, to reappoint, by consensus, Rosalyn Lauderback to the Human Rights Commission.

Motion by Councilor Vega, second by Deputy Mayor Trumble, to reappoint, by consensus, Marlene Savino to the Building Commission.

**Public Portion:**

Mayor Selin declared the Public Portion open.

# City of Morgantown

Logan Riffey, WVU SGA Legislative Affairs, introduced himself to council and the administration.

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 fulfill the qualifications this board requires for membership.

**Special Committee on Unsheltered Homelessness** – Members: Mayor Selin, Deputy Mayor Trumble, Councilor Harshbarger, Councilor Vega, and Councilor Butcher. Deputy Mayor Trumble will be sending a new list of participants for the next meeting. Mayor Selin shared that the next scheduled meeting is scheduled for September 16, 2021, at 2:00 p.m. via Zoom.

**Consent Agenda:** None

## **New Business:**

**Consideration of Approval of (First Reading) of An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC:** The below-entitled Ordinance was presented for first reading.

An Ordinance granting a Cable Franchise to Atlantic Broadband (PENN), LLC

City Manager Kim Haws explained. After discussion, Councilor Butcher recused himself from voting and left the room. City Attorney Ryan Simonton explained. Motion by Councilor Harshbarger, second by Deputy Mayor Trumble, to approve the above-entitled Ordinance to second reading. Motion carried 5-0. Councilor Kawecky was absent.

**Consideration of Approval of (First Reading) of An Ordinance amending article 1751 of the Housing Code:** The below-entitled Ordinance was presented for first reading.

An Ordinance amending article 1751 of the Housing Code

City Manager Kim Haws explained. After discussion, motion by Councilor Harshbarger, second by Deputy Mayor Trumble, to approve the above-entitled Ordinance to second reading. Motion carried 6-0. Councilor Kawecky was absent.

**Consideration of Approval of A Resolution authorizing application for Governor's Highway Safety Program Grant:** The above-entitled Resolution was presented for approval.

City Manager Kim Haws explained. After discussion, motion by Deputy Mayor Trumble, second by Councilor Harshbarger, to approve the above-entitled Resolution. Motion carried 6-0. Councilor Kawecky was absent.

**Consideration of Approval of A Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at Morgantown High School:**

**Consideration of Approval of A Resolution approving agreement with the Monongalia County Board of Education providing a School Resource Officer at South Middle School:**

**Consideration of Approval of A Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Mountaineer Middle School:**

**Consideration of Approval of A Resolution approving agreement with the Monongalia County Board of Education providing a Prevention Resource Officer at Suncrest Middle School:** The above-entitled Resolutions were presented for approval.

City Manager Haws explained. After discussion, motion by Councilor Harshbarger, second by Deputy Mayor Trumble, to approve the above-entitled Resolutions. Motion carried 6-0. Councilor Kawecky was absent.

**Consideration of Approval of the 2022 City Council Meeting Calendar:**

City Manager Haws explained. After discussion, motion by Councilor Vega, second by Councilor Harshbarger, to approve

# City of Morgantown

the 2022 City Council Meeting Calendar. Motion carried 6-0. Councilor Kawecki was absent.

## Consideration of Approval of A Vacant Structure Exemption Request for 301 Brockway Avenue:

After discussion, motion by consensus to table and put item on the September 21, 2021, regular meeting to discuss.

## Consideration of Approval of Trick-or-Treat on Sunday, October 31, 2021, 6pm – 8pm:

City Manager Haws explained. After discussion, motion by Deputy Mayor Trumble, second by Councilor Vega, to approve Trick-or-Treating for Sunday, October 31, 2021, from 6pm – 8pm. Motion carried 6-0. Councilor Kawecki was absent.

## Consideration of Approval of Authorization of acceptance of FAA Grant 3-54-0015-047-2021:

City Manager Haws explained. After discussion, motion by Councilor Butcher, second by Councilor Vega, to approve the acceptance of the FAA Grant 3-54-0015-047-2021. Motion carried 6-0. Councilor Kawecki was absent.

## Consideration of Approval to purchase of SCBA Fill Station for South High Street Fire Station:

City Manager Haws explained. Motion by Councilor Harshbarger, second by Councilor Vega, to approve the purchase of SCBA Fill Station for South High Street Fire Station. Motion carried 6-0. Councilor Kawecki was absent.

## Consideration of Approval 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:

City Manager Haws explained. City Attorney Ryan Simonton explained. Motion by Councilor Harshbarger, second by Councilor Butcher, to approve the Settlement and Release Agreement. Motion carried 6-0. Councilor Kawecki was absent.

**City Manager's Report:** shared that some really good feedback was received from the ARPA public process and that the Administrative Staff has enough information develop a recommendation for City council's consideration. He shared that the Marquee on the Met Theatre is stuck perhaps due to age and the message cannot be changed, so that will need replaced and is something that was not anticipated. As part of the budget process Council approved the exploration of the city entering into an infrastructure Bond Capital Improvement plan for improvement to City administrators' facilities. Particularly City Hall is in deep need of some attention, and they have been working diligently at that and council may see something before them within the next 30 days. BOPARC is also seeking a bond for the ice arena and for some other Capital Improvements in the BOPARC system. One of the things they are looking at is maybe combining those two Bond issues to help save in the issuance cost. Finance Director Kevin Tennant spoke on the fire and police pension program and Assistant City Manager spoke on the GIS program.

**Report from City Clerk:** shared information related to the upcoming Police Entry-level examination to be held on October 16, 2021, and provided instructions for applying. She announced the following Fire Department promotions – Chief Eugene Deem, Captain John Lemley, Lieutenant Ashley Jenkins and Lieutenant Eric Nickelson. Information was provided as to how to apply to a Board or Commission vacancy.

**Report from City Attorney:** shared that the city received one vacant structure exemption request this year. Those registrations are done annually. The exemption requests are required to come to city council. City council adopted rules for the handling of the hearings related to exemption requests. There are some detailed requirements to meet the threshold for receiving an exemption from Council and those portions are voluntary. The standards by which council would grant an exemption are up to council. City Attorney Simonton advised that he received a request about establishing an accessible parking space and after looking at the code he shared that that is a task which can be ordered by council under its powers under Section 305.01 and be handled at any public meeting by one vote. However, over the past several years council has addressed several of those public rights of way management issues by delegating authority to initially hand them to its administrative staff and retaining some notice and review powers for itself so that it can contain information and change things later if it looks like maybe a different decision would be better.

## **Report from Council Members:**

**Deputy Mayor Trumble:** shared that the Fifth Ward is still in need of a Traffic Commissioner and asks if folks are interested to please apply and that the application can be found on the city's website. She has been fielding texts messages, emails, and calls daily about an uptick in crime in the Fifth Ward. She reminds everyone to make sure their vehicle and home doors and windows are locked. She advised that they have had a lot of window-entering. She reminded folks to make sure their light is on overnight, to look out for their neighbors and, if you see something suspicious, please do not hesitate to call 911. The Main Street Morgantown Arts Walk is Saturday, September

# City of Morgantown

11, 2021, from 11am to 4pm. BOPARC is creating a mural. There was one session already, and another on September 21st from 6pm to 8pm, with a \$10 donation folks can come to the art studio in the Wiles Hill Community Building and create their own piece of artwork to go on the mural in South University Park down near the dam. She shared that the Morgantown Cleanup project is hosting a Sharps disposal training on Thursday, September 16th at 6 p.m. They will meet at Hazel Ruby McQueen Park and the disposal training will be facilitated by some members of Health Right. Following the training everyone will be performing a trail clean up in that vicinity.

**Councilor Harshbarger:** thanked MUB for clearing debris from a stream along Dug Hill Road where a Sixth Ward constituent was concerned about flooding. In the Sixth Ward painting has been completed, and the neighbors are very appreciative of the new smooth streets. Regarding the rail trail in Suncrest, they have been waiting for several years to proceed with connecting the end of Collins Ferry Road down to the rail trail. The Mon River Trail Conservancy just received the approval to go ahead with engineering designs to proceed to construction. Construction will begin connecting that piece of their neighborhood down to the rail trail with the formal path.

**Councilor Butcher:** Shared that the Monongalia County school levy for 2022-2027 is set for September 25<sup>th</sup> and he encouraged the community to turn out and vote for the levy. He shared that Early voting will begin this Friday and goes to the 22<sup>nd</sup>. Deadline for an absentee is September 20. He shared that the Battle of Blair Mountain Centennial is currently being celebrated throughout the state among many different organizations. It has been a hundred years since the Battle of Blair Mountain and there are some cool things going on. The WVU library has a bunch of materials on the website and the Project is called Mountaintop. There is music from the era and discussions among people who were around during a time. The Mon Arts Center held an event for it over the weekend and then starting on the 10th all the way into July of next year the Watts Museum will have an exhibit called Drawing the battle lines, which is going to be mostly editorial cartoons from that era.

**Councilor Abu-Ghannam:** urged everybody to go and vote for the school levy as this is one of the reasons that our schools are not only some of the best in the state, but in the country. First Ward's meeting was postponed due to a rainstorm so the meeting has been moved to next Monday at 7pm at the Jack Roberts Park.

**Councilor Vega:** shared that the Third Ward is also looking for a Traffic Commissioner stating that this is the perfect opportunity to get involved. She reminded everyone that we are still living in a global pandemic and to do their part to keep safe. She stated that next week is a very busy week in September. The Sister Cities Commission is having a meeting on Thursday, September 16<sup>th</sup>, and there are many events happening around town. Councilor Vega advised that if folks want to get involved and don't really know where to start on a Board or Commission to come to the Sister Cities Commission. September 13<sup>th</sup> through 15<sup>th</sup> is Small Business Week, support your favorite small businesses in Morgantown. The Wiles Hills Neighborhood Association is meeting on the 15<sup>th</sup> under the Gazebo at the park. Please feel free to come and meet your neighbors. September 15<sup>th</sup> is Central Americans Independence Day and September 16<sup>th</sup> is the Mexican Independence.

**Mayor Selin:** reminded that she would like to see a working group made up of MUB, city staff, and 911 to talk about flooding response. She advised that her neighbors appreciate a discussion due to the recent flooding and the possibility of more flooding, having a coordinated response as it may have more of an impact. She appreciates all the work that everyone's been doing and moving our city forward. We received two grants at \$500,000 each, and that is something to be very glad about. She appreciates our grant writers and everyone at the city who work on these items.

**Councilor Kawecki:** Absent

**ADJOURNMENT:** There being no further business, motion by Deputy Mayor Trumble, second by Councilor Vega, to adjourn the meeting. Time: 9:04 p.m.

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City Clerk

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Mayor



# The City of Morgantown

389 Spruce Street  
Morgantown, West Virginia 26505  
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Office of the Mayor

## PROCLAMATION

- Whereas,** in 2021 childhood cancer remains the number one disease-related killer of our nation's children, and each year cancer kills more children than asthma, juvenile diabetes, cystic fibrosis and pediatric AIDS combined; and
- Whereas,** nationally, forty-six children, between birth and the age of twenty, will be diagnosed with cancer every day, totaling more than 16,850 children per year, and in West Virginia, there are more than seventy children diagnosed annually; children in the Morgantown and surrounding areas are treated locally at WVU Children's Hospital; and
- Whereas,** childhood cancer occurs regularly, randomly and spares no ethnic group, socioeconomic class, or geographic region. Nationally, the incidence of cancer among adolescents and young adults is increasing at a greater rate than any other age group, except those over 65 years; and
- Whereas,** a childhood cancer diagnosis is a family diagnosis and is a tremendous emotional and financial burden for the family and child to bear; the average cost of a stay in a hospital for a child with cancer is \$40,000 per stay; on average, cancer costs almost five times as much as hospitalizations for other pediatric conditions; and
- Whereas,** National Childhood Cancer Awareness Month recognizes the courage and compassion of those children and their families throughout West Virginia and the nation who are currently battling childhood cancer; and
- Whereas,** all children affected by cancer, their families, medical professionals, caregivers, and friends join West Virginia Kids Cancer Crusaders, Inc., to continue the collaborative efforts of a support network, raise awareness and funds for those affected by childhood cancer, and make a positive difference for patients, families, and survivors in the future.

**Now therefore, I, Jenny Selin, Mayor of the City of Morgantown, West Virginia, on behalf of the City Council, do hereby proclaim the month of September, 2021 as**

## National Childhood Cancer Awareness Month

and hereby decrees that the City of Morgantown supports National Childhood Cancer Awareness, and this Resolution of support to be presented to WV Kids Cancer Crusaders for their efforts to publicize the importance to childhood cancer research to help treat and eliminate all childhood cancers.

**Seal:**



**Jenny Selin, Mayor**  
September 21, 2021

**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: \_\_\_\_\_

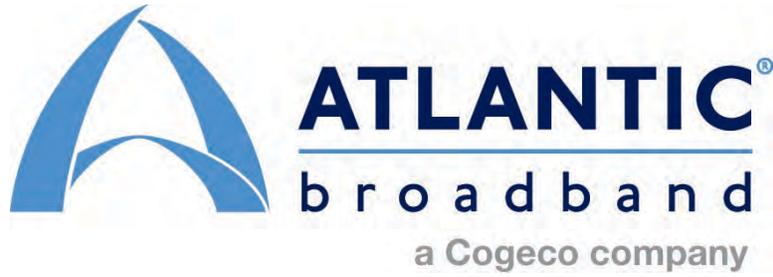
\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_



**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF MORGANTOWN**

**AND**

**ATLANTIC BROADBAND (PENN), LLC**

**TABLE OF CONTENTS**

	<b>Page</b>
SECTION 1	DEFINITIONS.....2
SECTION 2	GRANT OF FRANCHISE.....5
2.1	GRANT OF AUTHORITY .....5
2.2	TERM OF FRANCHISE.....5
2.2	COMPETITIVE EQUITY .....5
2.4	FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS.....6
SECTION 3	SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE .....6
3.1	TECHNICAL REQUIREMENTS .....6
3.2	AREA TO BE SERVED .....6
3.3	CABLE SYSTEM SPECIFICATIONS .....7
3.4	SYSTEM TESTS .....7
3.5	EMERGENCY ALERT SYSTEM .....8
3.6	RATE DISCRIMINATION .....8
3.7	SERVICES FOR SUBSCRIBERS WITH DISABILITIES .....8
3.8	SERVICE TO MULTIPLE DWELLING UNITS ("MDU'S").....8
3.9	REPAIRS AND RESTORATION .....9
3.10	SERVICE AREA MAPS.....10
3.11	DISCONNECTION AND RELOCATION .....10
3.12	EMERGENCY REMOVAL OF EQUIPMENT .....10
3.13	TREE TRIMMING .....11
3.14	CHANNEL CAPACITY .....11
3.15	BROADCAST CHANNELS .....11
3.16	SIGNAL SCRAMBLING .....11
3.17	CONTINUITY OF SERVICE.....11
3.18	PARENTAL CONTROL CAPABILITY .....12
SECTION 4	SUBSCRIBER SERVICE STANDARDS .....14
4.1	CUSTOMER SERVICE HOURS AND TELEPHONE AVAILABILITY.....14
4.2	INSTALLATIONS AND SERVICE CALLS.....14
4.3	NOTICES .....13
4.4	BILLING .....14
4.5	SUBSCRIBER COMPLAINT PROCEDURES .....14
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.~~

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.~~
- (f) (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.

~~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.~~

~~Secs. 1751.09, 1751.10. – Reserved.~~

### DIVISION 3. - MINIMUM PROPERTY STANDARDS

~~Secs. 1751.12 – 1751.15. – Reserved.~~

~~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:

~~(1)~~ (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;

~~(2)~~ (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;

~~(3)~~ (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.

(c) (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.~~

(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 upon adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

FILED: \_\_\_\_\_

**RESOLUTION SUPPORTING THE CITY OF MORGANTOWN’S APPLICATION FOR A GRANT TO COMMISSION A MURAL AT THE WOODBURN SCHOOL SITE**

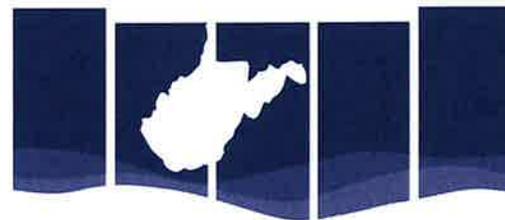
- WHEREAS,** the City of Morgantown wishes to support efforts to develop public art and murals throughout the community and support downtown revitalization and beautification efforts; and
  
- WHEREAS,** the City Council recognizes the importance of arts and culture in economic development, quality of life, tourism development, educational opportunity, and civic involvement; and has identified “Arts and Culture” as a strategic goal of the City; and
  
- WHEREAS,** the City of Morgantown Department of Arts & Cultural Development has partnered with local businesses, nonprofit organizations, groups, and individuals to create opportunities for local artists to create murals and artistic designs contributing to the aesthetics and quality of life; and
  
- WHEREAS,** an application for a grant from the West Virginia Department of Arts, Culture, and History would provide up to \$5,000 and allow the City and Department of Arts & Cultural Development to commission an original mural artwork at the Woodburn School site.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown, this \_\_\_\_ day of \_\_\_\_\_, 2021, that City Council and the Mayor do hereby SUPPORT and ENCOURAGE an application in the form attached to this Resolution be submitted by the Arts & Cultural Development Department to the West Virginia Department of Arts, Culture, and History to seek funding for the placement of mural at Woodburn School, 918 Fortney Street, in Morgantown.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# FY2022 Rural Youth Engagement through Public Art Grant



West Virginia Department of  
**ARTS, CULTURE  
AND HISTORY**

## DEADLINE:

October 1, 2021

## GRANT PERIOD:

January 1, 2022 – June 30, 2022

## CONTENTS:

Instructions, application, and scoring rubric

## PROGRAM CONTACT:

Jenna Green, Cultural Facilities and Capital Resources Coordinator

[Jenna.R.Green@wv.gov](mailto:Jenna.R.Green@wv.gov)

This is a program of the WV Department of Arts, Culture and History in association with the West Virginia Commission on the Arts.

The Culture Center / 1900 Kanawha Boulevard, East / Charleston, WV 25305-0300

P: 304-558-0240 / TDD: 304-558-3562 / F: 304-558-3560 [www.wvculture.org](http://www.wvculture.org)



All publications and application forms are available in alternative formats upon request.  
Jenna Green ADA Coordinator, [jenna.r.green@wv.gov](mailto:jenna.r.green@wv.gov) 304-558-0240 or 304-558-3562  
(TDD)

## **APPLICATION INSTRUCTIONS:**

### **What is the purpose of this grant program?**

- To provide up to \$5,000 in support for visual two- and three-dimensional public art projects in rural areas that engage local youth in the planning and/or implementation of the project.
- Projects must take place in West Virginia communities.
- Projects may be indoors or outdoors but must in a public place and experienced free of charge.

### **Who may apply to this program?**

- Schools
- 501(c)(3) WV youth or arts organizations
- Local governments

### **What are eligible expenses?**

- Artist fees
- Materials
- Equipment purchases or rentals
- Engineering/consulting fees

### **Does this grant require matching funds?**

- Yes. Applicants must provide a 25% match to the total project costs.

### **How will our application be evaluated?**

- A panel consisting of West Virginia Commission on the Arts members and staff will review applications. Funds will be awarded based on available funding, quality of the proposed project, and potential impact on the community.
- A scoring rubric is attached to this application.
- Bonus points will be given to projects that take place in counties designated as at-risk or distressed by the Appalachian Regional Commission. View the county designations here: <https://www.arc.gov/wp-content/uploads/2020/07/CountyEconomicStatusandDistressAreasFY2021WestVirginia.pdf>.

### **How do I apply to this grant program?**

- Complete the application and submit to the WVCA through email.
- Applications must be sent to [Jenna.R.Green@wv.gov](mailto:Jenna.R.Green@wv.gov) by 11:59 p.m. on Friday, October 1, 2021.

### **Submission Instructions**

- Forms are compatible with Microsoft Word.
- Form fields are highlighted in gray; fields will automatically expand.
- Spell Check is not active within the application, so proofread outside of the document.
- Handwritten applications will not be considered.
- Sign the application and submit one digital file containing the application and attachments.

### **Are there reporting requirements for this grant?**

- Yes. Grant recipients must file a final report 30 days after the conclusion of the project, or by July 30, 2022.

## **SUBMISSION CHECKLIST:**

Use the Submission Checklist to finalize your package; the checklist represents an entire application package and the order in which the materials should be packaged.

### **ALL ITEMS ARE REQUIRED**

- PART I Applicant Cover Page
- PART II Certification Statement
- PART III Narrative
- PART IV Expenses
- PART V Statement of Compliance-Americans with Disabilities Act
- Attachment(s): Documentation of Expenses – All project expenses must be documented in this application.

Examples of documentation:

- o Contracts with artists
- o Quotes from vendors
- o Images of products (with price) from vendor websites
- o Estimates from rental companies
- o Conceptual designs of proposed project

### **Submit your completed package to:**

Jenna Green, Cultural Facilities and Capital Resources Coordinator

[Jenna.R.Green@wv.gov](mailto:Jenna.R.Green@wv.gov)

First time applicants are strongly encouraged to submit a draft of application to arts staff for review prior to the October 1 deadline.

# FY2021 Rural Youth Engagement through Public Art Grant

Do not write in this space	
Date received:	_____
Application #:	_____
PRN:	_____

## PART I: APPLICANT COVER PAGE

COMPLETE ALL FIELDS

Applicant's Legal Name: City of Morgantown Arts & Cultural Development Department

Applicant's Mailing Address: 389 Spruce Street

City: Morgantown State: WV

Zip: 26505 County: Monongalia

Website: <https://www.morgantownwv.gov/584/Arts-and-Cultural-Development>

Individual to be contacted with questions about the application. The WVCA/Arts staff will only share information regarding your grant with the Contact Person and signer of the grant.

Name and Title of Contact Person: Vincent E. Kitch - Director

Phone daytime / Phone non-bus hours: 3042847472

E-mail: [vkitch@morgantownwv.gov](mailto:vkitch@morgantownwv.gov)

Federal Employer Identification Number or FEIN: 55-6000215

Data Universal Numbering System or D-U-N-S® Number: 070453519

\*You may request a D-U-N-S Number at <http://fedgov.dnb.com/webform/pages/CCRSearch.jsp>

Code your organization status in the following categories using the attached National Standard Coding Sheet:

Applicant status: 08 Applicant institution: 38 Discipline (number and letter): 05C

Code your project in the following categories using the attached National Standard Coding Sheet:

Type of Activity: 37

Populations benefitted by Distinct Group: G

Arts Education: 02

Populations benefitted by Age: 99

Project Discipline: 05C

Populations benefitted by Race/Ethnicity: G

NEA Primary Strategic Outcome:

Choose the one that best describes the PRIMARY strategic outcome associated with this project award.

- A. **Creation:** The Portfolio of American Art is Expanded
- B. **Engagement:** Americans Throughout the Nation Experience Art
- C. **Learning:** Americans of All Ages Acquire Knowledge or Skills in the Arts
- D. **Livability:** American Communities Are Strengthened Through the Arts
- E. **Understanding:** Public Knowledge and Understanding about the Contributions of the Arts Are Enhanced

Complete this sentence: The grant funds will be used to:select and commission a professional artist to design and implement an original mural artwork at the Woodburn School site engaging the community and youth in the design and implementation process.

## PART II: CERTIFICATION STATEMENT

### READ, SIGN, AND DATE

The person signing the application must have legal authority to obligate the organization and cannot be a recipient of grant funds.

I certify that:

- 1) The information in this application is true and correct to the best of my ability.
- 2) The organization's Board of Directors has approved this project.
- 3) I have the legal authority to obligate the applicant.

Profits made from any project receiving support from the West Virginia Commission on the Arts (WVCA) will be used in support of the arts or artists. I have read and understood the guidelines and will comply with all rules, regulations, laws, terms, and conditions described therein. I agree to allow the WVCA to duplicate any materials submitted with this application for the purposes of selection process, education, and reports to the National Endowment for the Arts.

Name: Vincent E. Kitch

Title: Director Arts & Cultural Development Department

Signature: \_\_\_\_\_ DATE: \_\_\_\_\_

Email Address: vkitch@morgantownwv.gov

## PART III: NARRATIVE

LIMIT RESPONSES TO 1 PAGE PER QUESTION

1. Briefly describe your organization's history, mission, and goals.
2. Provide a description of your project. Explain the who, what, when, where, why, and how.
3. Describe how local youth will be involved in this project.
4. Describe the benefits this project will have on the local community.
5. What health and safety policies will be in place during the creation and implementation of your project?

## PART IV: EXPENSES (Grant Period: January 1, 2022 – June 30, 2022)

- Provide documentation of all expenses as attachments to this application. Documentation may include, but is not limited to:
  - Contracts with artists
  - Quotes from vendors
  - Images of products (with price) from vendor websites
  - Estimates from rental companies
  - Conceptual designs of proposed project
- Organizations can request 75% of the total project expenses, up to \$5,000
- List all project expenses in addition to the grant amount requested for this project.

EXPENSES	COST
Artist fees	\$10,000
Materials	\$
Fabrication	\$
Equipment purchases and/or rentals	\$
Engineering or consulting fees	\$
Other (please explain below)	\$
Other (please explain below)	\$
Other (please explain below)	\$
<b>Total Project Expenses</b>	<b>\$</b>
<b>Grant Request (75% of total project expenses, up to \$5,000)</b>	<b>\$5000</b>

Please describe any expenses listed in "Other."

How will your organization raise the matching funds for this project?  
 City of Morgantown will provide the matching funds.

**PART V: STATEMENT OF COMPLIANCE - AMERICANS WITH DISABILITIES ACT**  
**GRANT APPLICANT MUST READ, SIGN AND DATE**

Applicant/Organization Name: **City of Morgantown Arts & Cultural Development Department**  
Physical Address of Applicant Facility: **389 Spruce Street, Morgantown, WV 26505**

If different from Applicant Facility above, list all location(s) in which the project will take place.  
**Former Woodburn Elementary School, 918 Fortney Street, Morgantown, WV 25505**

The West Virginia Commission on the Arts asks applicants to describe efforts to improve programmatic and physical access in its organization as a means to evaluate the degree to which it is proactively working on these issues. The WVCA is not in the position to determine whether an applicant is in compliance with any state and federal laws governing this subject. A WVCA grant should not be interpreted as an opinion on that organization’s compliance with its legal obligations. Each organization is responsible for complying with all applicable laws, rules, and regulations. **All organizations that are not in full compliance must complete the Transition Plan available at: <http://www.wvculture.org/arts/grants/ADA/ADATransitionPlan.pdf>.**

Contact Jenna Green, Accessibility Coordinator at (304) 558-0240 ext. 725 with any questions.

- APPLICANT PROJECT ONLY TAKES PLACE AT APPLICANT FACILITY LISTED ABOVE AND APPLICANT FACILITY AND PROGRAMMING ARE IN FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. **Applicants who are in full compliance do not need to complete and attach the Transition Plan.**
- APPLICANT PROJECT TAKES PLACE AT APPLICANT FACILITY AND OTHER LOCATIONS LISTED ABOVE; ALL PROJECT FACILITIES AND PRESENTED PROGRAMS IN ASSOCIATION WITH PROJECT ARE IN FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. **Applicant acknowledges that ADA applies to each location in which the project is held. Applicants whose project takes place within another location, even schools, is an equal partner in providing ADA compliance.**
- APPLICANT PROJECT AND/OR FACILITY IN WHICH PROJECT TAKES PLACE IS NOT IN FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA) AND WE HAVE COMPLETED AND ATTACHED THE TRANSITION PLAN.

OFFICIAL WITH AUTHORITY TO CONTRACT FOR THE APPLICANT

Name: **A. Kim Haws**  
Title: **City Manager**  
Phone: **(304) 284-7404**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## NATIONAL STANDARD CODING SHEET

### APPLICANT STATUS

- 01 Individual
- 02 Organization – Nonprofit
- 03 Organization – Profit
- 04 Government – Federal
- 05 Government – State
- 06 Government – Regional
- 07 Government – County
- 08 Government – Municipal
- 09 Government – Tribal
- 99 None of the above

### TYPE OF ACTIVITY

- 01 Acquisition
- 02 Audience Services
- 03 Fellowships
- 04 Artwork Creation
- 05 Concert/Performance/Reading
- 06 Exhibition
- 07 Facility Construction/Maintenance
- 08 Fair/Festival
- 09 Identification/Documentation
- 10 Organization Establishment
- 11 Operating Support
- 12 Arts Instruction
- 13 Marketing
- 14 Professional Support – Admin.
- 15 Professional Support – Artistic
- 16 Recording/Filming/Taping
- 17 Publication
- 18 Repair/Restoration/Conservation
- 19 Research/Planning
- 20 School Residency
- 21 Other Residency
- 22 Seminar/Conference
- 23 Equipment Acquisition
- 24 Distribution of Art
- 25 Apprenticeship
- 26 Re-granting
- 27 Translation
- 28 Writing about Art
- 29 Professional Development/Training
- 30 Student Assessment
- 31 Curriculum Development/Implementation
- 32 Stabilization/Endowment/Challenge
- 33 Building Public Awareness
- 34 Technical Assistance
- 35 Website/Internet Development
- 36 Broadcasting
- 37 Public Art/Percent for Art
- 99 None of the Above

### APPLICANT INSTITUTION

- 01 Individual Artist
- 02 Individual Non-Artist
- 03 Performing Group
- 04 Performing Group - College/University
- 05 Performing Group – Community
- 06 Performing Group – Youth
- 07 Performance Facility
- 08 Art Museum
- 09 Other Museum
- 10 Gallery/Exhibit Space
- 11 Cinema
- 12 Independent Press
- 13 Literary Magazine
- 14 Fair/Festival
- 15 Arts Center
- 16 Arts Council/Agency
- 17 Arts Service Organization

- 18 Union/Professional Association
- 19 School District
- 20 Parent-Teacher Organization
- 21 Elementary School
- 22 Middle School
- 23 Secondary School
- 24 Vocational/Technical School
- 25 Other School
- 26 College/University
- 27 Library
- 28 Historical Society
- 29 Humanities Council
- 30 Foundation
- 31 Corporation
- 32 Community Service Organization
- 33 Correctional Institution
- 34 Health Care Facility
- 35 Religious Organization
- 36 Senior Center
- 37 Parks and Recreation
- 38 Government – Executive
- 39 Government – Judicial
- 40 Government – (House)
- 41 Government – (Senate)
- 42 Media – Periodical
- 43 Media – Daily Newspaper
- 44 Media – Weekly Newspaper
- 45 Media – Radio
- 46 Media – TV
- 47 Cultural Series Organization
- 48 School of the Arts
- 49 Arts Camp/Institute
- 50 Social Service Organization
- 51 Child Care Provider
- 99 None of the Above

### DISCIPLINES (Applicant & Project)

- 01 Dance
  - A. Ballet
  - B. Ethnic/Jazz
  - C. Modern
- 02 Music
  - A. Band
  - B. Chamber
  - C. Choral
  - D. New
  - E. Ethnic
  - F. Jazz
  - G. Popular
  - H. Solo/Recital
  - I. Orchestral
- 03 Opera/Musical Theater
  - A. Opera
  - B. Musical Theater
- 04 Theater
  - A. General
  - B. Mime
  - C. Puppet
  - D. For Young Audiences
  - E. Storytelling
- 05 Visual Arts
  - A. Experimental
  - B. Graphics
  - C. Painting
  - D. Sculpture
- 06 Design Arts
  - A. Architecture
  - B. Fashion
  - C. Graphic

- D. Industrial
- E. Interior
- F. Landscape Architecture
- G. Urban/Metropolitan
- 07 Crafts
  - A. Clay
  - B. Fiber
  - C. Glass
  - D. Leather
  - E. Metal
  - F. Paper
  - G. Plastic
  - H. Wood
  - I. Mixed Media
- 08 Photography
  - A. Media Arts
  - B. Film
  - C. Audio
  - D. Video
  - E. Technology/Experimental
- 09 Media Arts
  - A. Film
  - B. Audio
  - C. Video
  - D. Technology/Experimental
- 10. Literature
  - A. Fiction
  - B. Nonfiction
  - C. Playwriting
  - D. Poetry
- 11. Interdisciplinary
- 12. Folk Life/Traditional Arts
  - A. Folk/Traditional Dance
  - B. Folk/Traditional Music
  - C. Folk/Traditional Crafts & Visual Arts
  - D. Oral Traditions/Storytelling
- 13. Humanities
- 14. Multidisciplinary
- 15. Non-Arts/Non-Humanities

### NEA PRIMARY STRATEGIC OUTCOME

- A. Creation
- B. Engagement
- C. Learning
- D. Livability
- E. Understanding

### ARTS EDUCATION

- 01 50% or more of funded activities are arts education
- 02 Less than 50% of funded activities are arts education
- 99 No arts in education involved in project

### POPULATIONS BENEFITTED BY RACE

- A. Asian
- B. African American
- C. Hispanic/Latino
- D. American Indian/Alaska Native
- E. Native Hawaiian/Pacific Islander
- F. White
- G. No single race made up more than 25%

### POPULATIONS BENEFITTED BY AGE

- 01 Children 0-18 years
- 02 Young Adults 19-24 years
- 03 Adult 65+ years
- 99 None of the above

### POPULATIONS BENEFITTED BY DISTINCT GROUPS

- D Individuals with Disabilities
- I Individuals in Institutions
- P Individuals below the poverty line
- E Individuals with limited English proficiency
- M Military veterans/Active duty personnel
- Y Youth at risk
- G None of the above

## Rural Youth Engagement through Public Art – Scoring Rubric

Applicant: \_\_\_\_\_ Grant #: \_\_\_\_\_ Reviewer: \_\_\_\_\_

Criteria and Comments	Points Possible	Score
<p><b>Quality of proposed project</b> Does the application describe a project that is well thought out and likely to be successful? Is the budget realistic?</p>	0-25	
<p><b>Youth engagement</b> Does the application demonstrate a clear plan for engaging local youth? Are young people involved at most or all stages of the project?</p>	0-25	
<p><b>Potential impact</b> Is this project likely to benefit the community where it is located? Will West Virginia artists be hired? Will West Virginia vendors be used for material purchases or equipment rentals?</p>	0-25	
<p><b>Overall presentation of application</b> Does the application provide clear, complete information with enough detail to understand the full scope of the project? Has the applicant included sufficient documentation to support the request? Is the application free of misspellings and grammatical errors?</p>	0-25	
<b>Points Possible:</b>	100	
<b>BONUS: Preference given to projects that:</b>		
Are in counties designated as at-risk or distressed by the Appalachian Regional Commission	5	
<b>Total Score:</b>		



David Bruffy, CEO, CCTM  
Mountain Line Transit Authority  
420 DuPont Road  
Morgantown, WV 26501

RE: West Virginia University Appointed Board Position  
Date May 6, 2021

Dear David,

Recent organizational changes at West Virginia University (WVU) have resulted in Clement Solomon transitioning away from the university. WVU requests to withdraw Clement Solomon as a member of the Mountain Line Board of Directors and nominate new Director of Transportation, Jeremy Evans to replace him.

Should you have any questions or need additional information, please don't hesitate to contact me.

Sincerely,

Jeremy Evans

Jeremy Evans      304-293-5011  
PO Box 6572 - 26506

[jeremy.evans@mail.wvu.edu](mailto:jeremy.evans@mail.wvu.edu)

# Memo

## City of Morgantown

### Engineering and Public Works Department

**To:** Kim Haws, City Manager

**From:** Damien Davis, Director of Engineering and Public Works

**Subject:** Salt Bid – Bid Call 2022-01

**Date:** September 7, 2021

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Bids were opened at 2:00pm on August 11, 2021. The results are as follows:

Vendor	*Option 1 Unit Price (ton)	**Option 2 Unit Price (ton)	Option 1 ***Total Cost	Option 2 ***Total Cost
<b>Cargill Salt</b>	\$ 95.66	<b>\$ 101.22</b>	\$ 191,320	<b>\$ 202,440</b>
Compass Minerals	\$91.52	No Bid	\$183,040	No Bid
Laurel Aggregates	\$86.15	No Bid	\$172,300	No Bid
Morton Salt	No Bid	No Bid	No Bid	No Bid

\* Option 1: Bulk Rock Salt

\*\* Option 2: Bulk Rock Salt treated with Magnesium Chloride

\*\*\* Total Cost is based on 2,000 tons of Salt

I recommend moving forward with Option 2 and awarding the contract to Cargill Salt for \$202,440 for Treated Salt. Cargill Salt has been the provider of the City's Treated Salt for many years. Salt treated with Magnesium Chloride allows for it to be used at lower temperatures than regular salt. This permits the City to be more affective at clearing the roadways. Also with treated salt less salt is needed in order to maintain the roadway surface.

Currently the City has roughly 1000 tons of salt on hand. An additional 2000 tons will fill our supply and prepare us for the coming winter.

**AN ORDINANCE AMENDING THE FY 2021-2022 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2021-2022 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 03) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

\_\_\_\_\_  
City Clerk

**REQUEST FOR REVISION TO APPROVED BUDGET**

Ora Ash, Deputy State Auditor  
 West Virginia State Auditor's Office  
**200 West Main Street**  
 Clarksburg, WV 26301  
 Phone: 627-2415 ext. 5114  
 Fax: **304-340-5090**  
 Email: **igs@wvsao.gov**

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER  
 Fiscal Year Ending: **2021-2022**  
 Fund: **General**  
 Revision Number: **3**  
 Pages: **1 of 1**

City of Morgantown  
 GOVERNMENT ENTITY

Person To Contact Regarding Request:  
 Name: **Kevin Tennant**  
 Phone: **304-284-7407**  
 Fax: **304-284-7418**  
 Email: **kevin.tennant@morgantownwv.gov**

389 Spruce Street  
 STREET OR PO BOX  
 Morgantown 26508  
 CITY ZIP CODE

**Municipality**  
 Government Type

**REVENUES: (net each acct.)**

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
	#N/A				

**NET INCREASE/(DECREASE) Revenues (ALL PAGES)**

**Explanation for Account # 378, Municipal Specific:**  
**Explanation for Account # 369, Contributions from Other Funds:**

**EXPENDITURES: (net each account category)**

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
569	Local Government Access Channel	202,188	552		202,740
699	Contingencies*	1,490,822		176,654	1,314,168
700	Police Department	8,892,609	171,152		9,063,761
706	Fire Department	6,690,527	4,950		6,695,477
	#N/A				

**NET INCREASE/(DECREASE) Expenditures**

**APPROVED BY THE STATE AUDITOR**

BY: **Deputy State Auditor, Local Government Services Division** Date

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

**RESOLUTION**

*WHEREAS, City Administration has presented to Morgantown City Council a 2021-2022 budget revision for the Morgantown Capital Escrow Fund and has requested that City Council review and approve the same;*

*WHEREAS, the budget revision in question, a copy of which is hereto attached, appear to not only be in proper form, but also, acceptable as to income and expenditures set forth therein;*

*WHEREAS, City Council is of the opinion that it should approve said budget revision.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this \_\_\_\_\_ day of \_\_\_\_\_, 2021, that the 2021-2022 Budget Revision for the Morgantown Capital Escrow Fund Budget hereto attached is approved.*

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*City Clerk*

**CITY OF MORGANTOWN  
CAPITAL ESCROW FUND - REVISION 02  
FY 2021-2022**

<b>REVENUES</b>	<b>BUDGET FY22</b>	<b>PROPOSED REV 02</b>	<b>PROPOSED AMENDED BUDGET</b>	<b>EXPLANATION</b>
Municipal Sales & Use Tax	1,500,000	522,013	2,022,013	Sales tax funds to cover projects not eligible from bond proceeds and to cover upfront bond project costs
Proceeds from Sale of Bonds	5,000,000	200,000	5,200,000	To adjust bonds to latest estimates
Community Development Block Grant	-	200,000	200,000	Use of CDBG for Woodburn School not eligible from bond proceeds. Additional funding was obtained for support of feeding the hungry.
Miscellaneous Prior Year Balance	4,967,405	5,248,982	10,216,387	To carryforward FY21 projects and designated capital funds (i.e. MSF money and construction B&O)
Miscellaneous Sobriety Center	-	30,000	30,000	To carryforward FY21 receipt from WVU Medicine for Sobering Center
Transfer from General Fund	-	75,000	75,000	Transfer of Grant received in the General Fund for Met Roof Project
		<b>6,275,995</b>		
<b>EXPENDITURES</b>	<b>BUDGET FY22</b>	<b>PROPOSED REV 02</b>	<b>PROPOSED AMENDED BUDGET</b>	<b>EXPLANATION OF EXPENDITURES</b>
City Manager	-	14,451	14,451	FY21 carryforward
Engineering	595,225	467,825	1,063,050	FY21 carryforward
Contributions	720,308	238,309	958,617	FY21 carryforward
Code Enforcement	232,160	26,317	258,477	FY21 carryforward
Planning & Zoning	53,000	327,843	380,843	FY21 carryforward
Information Technology	210,800	62,196	272,996	FY21 carryforward
City Hall	2,470,200	1,157,800	3,628,000	Adjust City Hall and PBS to latest bond project plans; 430 Spruce renovations not eligible from bond proceeds
Woodburn	396,112	134,381	530,493	FY21 carryforward; adjust renovations to latest estimate (not eligible from bond proceeds) - roof, HVAC windows; Final payment to BOE
Contingency	967,313	(441,520)	525,793	FY21 carryforward; Final payment to BOE
Police	297,000	21,193	318,193	FY21 carryforward
Fire	1,759,094	482,783	2,241,877	FY21 carryforward; adjust bond projects to latest plan/estimates
Streets	3,038,500	3,133,650	6,172,150	FY21 carryforward; adjust bond projects to latest plan/estimates
Airport	2,779,050	153,177	2,932,227	FY21 carryforward; adjust bond projects to latest plan/estimates
Grant Projects	320,000	117,580	437,580	FY21 carryforward
BOPARC	392,850	127,701	520,551	FY21 carryforward
Arts & Culture	490,000	125,430	615,430	FY21 carryforward
Urban Landscape	195,000	91,676	286,676	FY21 carryforward
Hazel Ruby McQuain Park	285,000	35,203	320,203	FY21 carryforward
		<b>6,275,995</b>		



# **American Rescue Plan Act Action Plan #1**

## Overview

The City of Morgantown is set to receive \$11,243,509 in ARPA funds over the next two years. The city has received the first of two installments in the amount of \$5,621,754.50. A second installment is anticipated in the same amount in the Spring/Summer of 2022. The city has until December 31, 2024, to obligate funds and December 31, 2026, to spend the funds.

The U.S. Treasury Department has limited the use of ARPA funds to the following areas:

- To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
- For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
- To make necessary investments in water, sewer, or broadband infrastructure.

The city also considered the following factors when determining uses for ARPA funds:

- Community feedback
- Ongoing guidance from the U.S. Treasury
- Existing funding/programs

## Community Engagement Process

The city sought community input using an online survey which ran from August 1 through August 21, 2021, and through two public meetings which took place on August 18, 2021, and September 1, 2021, at 7 p.m. at the Marilla Center. The public was also encouraged to submit written comments to the City Manager's office.

Residents, businesses, and community organizations were encouraged to participate in the planning process by one of the various means listed above. The city encouraged the community to focus on recovery goals during the community engagement process. The intended outcome was to determine what specific goals that citizens would like to accomplish with this funding.

The city received 540 responses to its online survey, approximately 30 citizens attended the first public meeting held on August 18, and approximately 20 citizens attended the second public meeting held on September 1, which accounted for about 4,000 ideas for usage of funds. All public comments received during the community engagement process will be made available on the city's website at [morgantownwv.gov/ARPA](https://morgantownwv.gov/ARPA).

Categories rankings based on survey results:

1. Water and Sewer Infrastructure
2. Public Health and Social Services
3. Downtown/Community Investment
4. Strong Vibrant Businesses
5. Emergency Services and Planning
6. Technology

## **Project and Program Process**

The city reviewed input received from the online survey and the August 18 public meeting to develop a draft action plan. Common themes and keywords were used to develop project ideas, which were then grouped by recovery goal and scored by city staff. This was used to develop the draft action plan, which was presented at the September 1 public meeting. Comments received during the second public meeting were taken into consideration and the draft action plan was updated/refined into this final Action Plan #1 (indicating fund allocations for first tranche of funds), which will be presented to City Council for approval on September 21, 2021.

Based on the above considerations, projects that appear to be eligible for use of ARPA funds were be scored from 1 through 4.

1. The highest possible score is a four (4). These projects are quick to implement, have an immediate impact, and are very important.
2. Projects scoring a three (3) can be implemented relatively quickly, but the impact of these projects may take a little longer to feel. They are still very important projects. The projects scoring a 3 can be scaled depending on available funding.
3. Projects scoring a two (2) may take longer to implement or have a less reaching impact than those scoring a 3 or 4. Projects can be easily scaled depending on availability of funds.
4. The lowest score for a project/program that is eligible for ARPA funds is one (1). A project may be given a 1 if use of funds don't appear initially feasible within the allotted timeframes, have less urgency than the other projects, or aren't quite ready to implement. These projects may be more appropriate for the second installment of funds.

Specific projects recommended in Morgantown's American Rescue Plan Act (ARPA) Action Plan #1 are listed on the following pages, organized by Recovery Goal. The projects include which expenditure category is anticipated to be applicable, suggested project funding amount, and a short description of the projects. Projects shown in grey text with no money allocated will be considered for funding with the second tranche of ARPA funds.

## Recovery Goal 1: Strong Vibrant Businesses

**Overview:** Small businesses are a critical piece of the city’s economic vitality and are also one of the industries hit the hardest by the COVID-19 pandemic. This recovery goal is intended to aid new and existing businesses by providing them with tools to recover and lessen the ongoing negative impact from the pandemic.

**Justification:** To respond to the public health emergency or **its negative economic impacts**, including assistance to households, **small businesses**, and nonprofits, or aid to impacted industries such as **tourism, travel, and hospitality**.

<b>STRONG VIBRANT BUSINESSES</b>	<b>\$1,200,000</b>	<b>Score</b>
<b>Small Business Assistance Grants</b> Expenditure Category: 2.9 Small Business Economic Assistance (General)	\$500,000	4
Grants of up to \$10,000 each to small existing and new business owners to help meet their most immediate needs leveraging public-private partnerships. Grants for new businesses will include support services in cooperation with the Small Business Administration.		
<b>City Promotions</b> Expenditure Category: 2.11 Aid to Tourism, Travel, or Hospitality	\$300,000	4
Speed business recovery by supporting and promoting local events, resources, festivals, and more that bring people together through both hosting events and staffing a Marketing and Advertising position.		
<b>Outdoor Dining</b> Expenditure Category: 2.9 Small Business Economic Assistance (General), 2.11 Aid to Tourism, Travel, or Hospitality	\$200,000	4
Funding to support outdoor dining, shopping, parklets, pedlets, trial street closures, and other avenues that allow for businesses to continue to operate in open air spaces.		
<b>Façade and Interior Improvements</b> Expenditure Category: 2.9 Small Business Economic Assistance (General), 2.11 Aid to Tourism, Travel, or Hospitality	\$200,000	3
Grants up to \$20,000, which require 30% matching, to improve building facades and interior improvements to enhance the appearance and vibrancy of the business district.		
<b>Workforce Development</b>	\$0	2
Lower priority. Consider for second tranche of funding.		
<b>Low Interest Loan Program</b>	\$0	2
Lower priority. Consider for second tranche of funding.		

## Recovery Goal 2: Downtown and Neighborhood Investment

**Overview:** Strong neighborhoods and Downtown Morgantown are the heart and soul of the city. This recovery goal is intended to assist city neighborhoods and the downtown area with improved safety, sense of community, and recreation.

**Justification:** To respond to the public health emergency or its negative economic impacts, including **assistance to households**, small businesses, and **nonprofits**, or aid to impacted industries such as **tourism, travel, and hospitality**.

<b>DOWNTOWN AND NEIGHBORHOOD INVESTMENT</b>	<b>\$1,150,000</b>	<b>Score</b>
<b>Eliminating Vacant, Dilapidated Houses &amp; Creating Housing for Homeless, Workforce, and Low-Income Population</b> Expenditure Category: 3.10 Housing Support: Affordable Housing, 3.11 Housing Support: Services for Unhoused Persons	\$600,000	4
This project entails a partnership with the Fairmont Morgantown Housing Authority, WVCEH and other local housing agencies to turn vacant and dilapidated houses in neighborhoods into a housing stock for homeless as well as creating workforce and low-income owner-occupied housing. Partnership includes educational outreach on housing counseling related services.		
<b>Low-Income Home Improvement Support &amp; Education</b> Expenditure Category: 2.3 Household Assistance: Cash Transfers, 3.12 Housing Support: Other Housing Assistance, 3.15 Social Determinants of Health: Lead Remediation, 3.5 Education Assistance: Other	\$200,000	4
Grants of up to \$10,000 to low-income homeowners to make necessary upgrades and repairs to their home, including things such as roof repairs, sidewalk replacement, porch or deck repairs, etc. This project will also provide education and resources through a panel of volunteer experts to give owner's home repair advice, review proposals, etc.		
<b>City Ambassador Pilot Program</b> Expenditure Category: 2.11 Aid to Tourism, Travel, or Hospitality	\$200,000	3
Creating a Pilot Program for Morgantown City Ambassadors to provide services that include patrolling the Downtown and Riverfront Improvement District, removing litter and graffiti, providing safety escorts, motor vehicle assistance, addressing public disturbances, homeless outreach, security patrols, public space maintenance, beautification projects, and greeting and assisting people in the District.		
<b>Trail Connections and Recreation</b>	\$150,000	3
Investing in and creating greenspace and recreation in a low-income area which allows for the expansion of existing parks and connects to the rail trail via multiuse paths (Score updated to incorporate creating neighborhood greenspaces from the draft Action Plan).		

## Recovery Goal 3: Physical and Mental Health Resources

**Overview:** Public resources and services are a critical asset to the mental and physical wellbeing of our community. The intent of this recovery goal is to improve and increase access to tools and services that promote mental and physical health.

**Justification:** To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and **nonprofits**, or aid to impacted industries such as tourism, travel, and hospitality.

For the provision of government services to the extent of the **reduction in revenue due to the COVID-19 public health** emergency relative to revenues collected in the most recent full fiscal year prior to the emergency.

<b>PHYSICAL AND MENTAL HEALTH RESOURCES</b>	<b>\$1,150,000</b>	<b>Score</b>
<b>Non-profits Working on Physical/Mental Health</b> Expenditure Category: 1.10 Mental Health Services, 1.11 Substance Use Services, 2.10 Aid to Nonprofit Organizations, 3.11 Housing Support: Services for Unhoused Persons	\$300,000	4
Supporting Bartlett House at their Scott Avenue site with facility enhancements; Supporting Morgantown Community Resources and other social service agencies in their efforts to create a hub for expanded social services, ranging from feeding assistance, housing support, substance use disorders, and more; Funding support for support of the Hope Hill Sobering Center in its efforts to address alcohol and substance abuse		
<b>Enhanced Free Clinic for Homeless and Low-Income Population</b> Expenditure Category: 1.7 Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency, 1.11 Substance Use Services, 1.12 Other Public Health Services, 2.10 Aid to Nonprofit Organizations	\$800,000	3
Financial support for Mylan Puskar Health Right to be able to relocate and renovate a new enhanced facility that expands services to homeless and low-income population.		
<b>Educational Campaign</b> Expenditure Category: 3.4 Education Assistance: Social, Emotional, and Mental Health Services	\$50,000	3
Funding of an educational campaign to teach people about resources available for physical and mental health.		

## Recovery Goal 4: Dependable Water and Sewer Infrastructure

**Overview:** Dependable water and sewer infrastructure is vital to the livability of our city. The intent of this recovery goal is to support the maintenance of and make new improvements to existing water and sewer infrastructure in order to protect against flooding and improve water quality.

**Justification:** To make necessary investments in water, sewer, or broadband infrastructure.

<b>WATER AND SEWER INFRASTRUCTURE</b>	<b>\$1,750,000</b>	<b>Score</b>
<b>Flood Mitigation</b> Expenditure Category: <i>5.4 Clean Water: Combined Sewer Overflows, 5.5 Clean Water: Other Sewer Infrastructure, 5.6 Clean Water: Stormwater</i>	\$1,000,000	3
Funding for storm and sanitary sewer improvements and stream restoration along Popenoe Run to address and alleviate sewer overflows, damaged service lines, and to create flood control benches. MUB is also in the process of conducting a watershed study to identify issues causing/adding to downstream flooding and water damage during heavy rainfalls. Scoring was updated after refinement of project details.		
<b>Improving Water Quality</b> Expenditure Category: 1.12 Other Public Health Services, 3.13 Social Determinants of Health: Other, 5.4 Clean Water: Combined Sewer Overflows, 5.5 Clean Water: Other Sewer Infrastructure	\$400,000	3
This project is to develop an implementation plan and to jump start funding to eliminate Combined Sewer Outflows (CSO) within City limits, protecting our residents' homes from damage and to improve water quality. There are 36 CSOs within Morgantown City limits. Of these, 10 are listed as very active, with 80% of the those existing along Deckers Creek in a low-income neighborhood. During periods of heavy rainfall, the capacity of these active CSO is often exceeded, and can cause untreated combined sewage and storm water to back up into basements and to overflow into receiving waters.		
<b>Clean River</b> Expenditure Category: <i>5.8 Clean Water: Water Conservation</i>	\$350,000	3
Funding for a feasibility study and analysis of different technologies intended to remove trash from the river which builds up behind the Morgantown dam. In 2003, the City of Morgantown and many local agencies signed resolutions requesting Congress to fund a demonstration project on the Upper Monongahela River for removal and disposal of river trash and debris. While there were not funds to complete a demonstration project at that point, we continue to face the same problem two decades later.		

## **Recovery Goal 5: Technology**

**Overview:** Technology is an essential aspect of the city’s infrastructure. The intent of this recovery goal is to improve the technological capabilities and digital services in the city.

**Justification:** To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.

For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency.

To make necessary investments in water, sewer, or broadband infrastructure.

<b>TECHNOLOGY</b>	<b>\$375,000</b>	<b>Score</b>
<b>Enhance Digital Access to Public Services</b> Expenditure Category:	\$250,000	4
Funding for the City of Morgantown to invest into new technology resources to allow for a more current way of serving the community, including hybrid meetings, online permit submissions, payment of fees, request tracking, document access and more.		
<b>Traffic Lights Study</b> Expenditure Category: 7.2 Evaluation and Data Analysis, 7.3 Transfers to Other Units of Government	\$75,000	3
Study to evaluate traffic flow on the city’s heavily traveled corridors and at approximately 20 intersections, taking into consideration crash data and multimodal transportation, and where and how improvements can be made.		
<b>Undergrounding Utilities Study</b> Expenditure Category: 2.11 Aid to Tourism, Travel, or Hospitality, 2.13 Other Economic Support, 7.2 Evaluation and Data Analysis	\$50,000	3
Study to look at feasibility, scope, and estimated costs associated with undergrounding utilities in key areas of the city.		

September 16, 2021

Emily Muzzarelli, P.E.  
Assistant City Manager  
430 Spruce Street  
Morgantown, WV 26505

Ms. Muzzarelli,

This letter is to support and endorse the efforts of the City of Morgantown to utilize the American Recovery Plan Act (ARPA) funds to develop additional housing opportunities for the residents of Morgantown.

I am especially pleased and encouraged by the effort of the City of Morgantown to address homelessness through the creation of new permanent housing resources, which fall into the service area of the West Virginia Coalition to End Homelessness. We acknowledge a lack of affordable, accessible units throughout the Continuum of Care, and are excited to partner with the City to advance the development of this much needed housing resource. To individuals and families who have experienced homelessness, being able to establish permanent residency in their community is invaluable.

At WVCEH, we believe the ability to link our clients to affordable housing to meet their needs will only increase their success in housing. The West Virginia Coalition to End Homelessness supports this initiative and looks forward to continuing to work with the City of Morgantown in carrying out this endeavor.

Regards,



Rachael Coen  
Chief Programs Officer

Cc: Zach Brown, WVCEH CEO

# Morgantown Community Resources, Inc.

20 Scott Avenue  
Morgantown, WV 26508  
(304) 376-0578  
mcriwv@gmail.com

September 15, 2021

City of Morgantown  
389 Spruce Street  
Morgantown WV, 26505  
Phone: 304-284-7405

Dear Council Members, community members, and co-laborers,

As efforts continue to rebuild and enhance the facilities at 20 Scott Avenue, we are extremely excited to hear of the City's future focus on sustainability for all such projects through ARPA and other funding vehicles in and throughout Morgantown.

MCR has identified and categorized three major issues and concerns in the Morgantown community that include: homelessness, food insecurity, and substance use disorder (SUD). We continue to add new members on campus, and develop and build out the facility into a one-roof community shelter and treatment facility addressing those identified concerns.

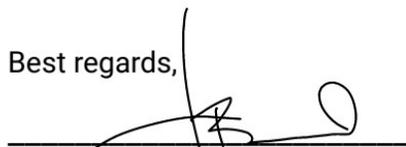
The building, which is now known as Hazel's House of Hope, currently houses four nonprofit organizations: Bartlett Housing Solutions, The Salvation Army, The United Way, and Hope Hill Sobering Center. In the near future, two additional charities will be housed on campus providing crisis intervention, counseling services, and a myriad of family operations from birth to three to immigration services.

Our four-story, 120,000 sq. ft. facility allows nonprofit organizations to collaborate and solve issues in an efficient and meaningful manner. We employ economies of scale, community and human resource collaboration, and above all, provide respect and dignity to our Morgantown neighbors in need.

MCR's mission is to improve inter-charity communication and coordination by providing affordable space through which a variety of local charities may base their operations and serve as a model that can be duplicated across West Virginia and the United States.

Thank you for your continued support of this project and all the individuals it serves.

Best regards,



Interim Executive Director  
Morgantown Community Resources, Inc.



September 13, 2021

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

Dear Ms Muzzarelli:

Based on recent discussions with you regarding the possibility of Milan Puskar Health Right (MPHR) moving to a new location, the MPHR Executive Committee of the Board of Directors wishes to express their interest in exploring this as an option. It is our understanding that the current recommendation to City Council is to consider using American Rescue Plan funding for the purchase/renovation or building of a structure to house the clinic. This money would be provided as a grant to MPHR and the proceeds from the sale of our current building would remain with MPHR to enhance service delivery and access to care.

While we are aware there are many details to work out in relation to this proposal, the MPHR Executive Committee supports future discussion and strategic planning regarding this issue. We appreciate being included in the City's plan for the American Rescue Plan Funds.

Sincerely,

A handwritten signature in cursive script that reads "Laura L. Jones".

Laura L. Jones  
Executive Director

PO Box 1519 / 341 Spruce Street  
Morgantown, WV 26507-1519

304-292-8234 (Clinic)  
304-284-0133 (Clinic Fax)

304-292-5702 (ADM)  
304-292-5291 (ADM Fax)





# 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

### 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  
(Attach additional sheets if necessary.)

### 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: 304-290-1882 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*)<sup>1</sup> 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.

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<sup>1</sup> 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 1<sup>st</sup>) 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: September 7, 2021  
(Date)

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Mayor

\_\_\_\_\_  
City Clerk