Office of the City Clerk

The City of Morgantown

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

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING

Tuesday, February 01, 2022 at 7:00 PM

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via Zoom at https://us02web.zoom.us/j/2716139586 using the meeting number 271 613 9586. The meeting will be recorded and can be viewed later on the City of Morgantown website. The public can also listen live by calling 301-715-8592 and using the access code 271 613 9586. If members of the public wish to comment on a particular issue they should submit written comments via email to the City Clerk at cwade@morgantownwv.gov.

1. **CALL TO ORDER:**
2. **ROLL CALL:**
3. **PLEDGE:**
4. **APPROVAL OF MINUTES:**
   - **A.** December 21, 2021, Regular Meeting minutes
   - **B.** January 4, 2022, Special Meeting minutes
   - **C.** January 4, 2022, Regular Meeting minutes
   - **D.** January 25, 2022, Committee of the Whole Meeting Minutes
5. **CORRESPONDENCE:**
6. **PUBLIC HEARINGS:**
   - **A. An Ordinance authorizing the conveyance to the Morgantown Building Commission of such Real and Personal Property as may be necessary in connection the Design, Acquisition, Construction and Equipping of Improvements to certain existing facilities of the City of Morgantown, including City Hall, the Public Safety Building, the Norwood Fire Station, and the City Public Works Garage, together with all necessary appurtenances thereto (The "Project"); The Leasing of the Project Property and all Project Improvements and Appurtenances thereto from the Morgantown Building Commission; The Sale and Issuance by the Morgantown Building Commission of its not to exceed $7,000,000 Lease Revenue Bonds, Series 2022 A (Multiple Facility Improvement Projects) (The "Series 2022 A Bonds"); Authorizing the Execution and Delivery of an Agreement and Lease and other Instruments and Authorizing and Approving other documents and matters relating to the Terms and**

Security of the Series 2022 A Bonds; and providing for certain other matters in connection therewith

7. **UNFINISHED BUSINESS:**

   A. Consideration of **APPROVAL To consider for enactment on (Second and Final Reading)** of **an Ordinance of City Council which would authorize and approve (i) the conveyance to the Morgantown Building Commission of such real and personal property as may be necessary in connection with the Project; (ii) the leasing of such Project property by The City of Morgantown from the Morgantown Building Commission; (iii) the sale and issuance by the Morgantown Building Commission of the Bonds to finance the costs of the Project, to fund a reserve fund for the Bonds, if any, and to pay costs in connection with the issuance of the Bonds and related costs; and (iv) the execution and delivery by the City of an Agreement and Lease and other documents in connection with such financing.** *(First reading 1/4/2022)*

   B. Boards & Commissions

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

9. **SPECIAL COMMITTEE REPORTS:**

   A. Civilian 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. Next scheduled meeting: Thursday, January 27, 2022, 2pm

10. **CONSENT AGENDA:**

    A. Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance annulling a portion of Campus Drive and accepting Declaration of Easement relocating Campus Drive** *(First reading 2/1/2022)*

    B. Consideration of **APPROVAL** to **Purchase Stadium Seating for Hazel Ruby McQuain Amphitheater**

    C. Consideration of **APPROVAL** of **A Resolution supporting the City of Morgantown seeking approval for a Mural in Morgantown**

11. **NEW BUSINESS:**

    A. Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance amending article 906 - Outdoor Dining** *(First reading 2/1/2022)*

    B. Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance authorizing a Lease Agreement for Car Rental Services at the Morgantown Municipal Airport** *(First reading 2/1/2022)*

    C. Consideration of **APPROVAL** of **A Resolution in Support of the Build Back Better Act**

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

A. City of Morgantown 2021 Year in Review

13. REPORT FROM CITY CLERK:

14. REPORT FROM CITY ATTORNEY:

15. REPORT FROM COUNCIL MEMBERS:

16. EXECUTIVE SESSION:

A. Pursuant to West Virginia Code section 6-9A-4(b)(12) to discuss potential or pending litigation.

17. ADJOURNMENT:

For accommodations please call or text 304-288-7072

SPECIAL MEETING
January 4, 2022

Special Meeting January 4, 2022: The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, January 4, 2022, at 6:02 p.m.

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

The meeting was called to order by Mayor Selin.

Executive Session: Pursuant to West Virginia Code Section 6-9a-4(b)(2)(a) to discuss Personnel Matters in considering new appointments for Board and Commissions. Motion by Deputy Mayor Trumble, second by Councilor Harshbarger, to go into executive session. Motion carried by acclamation. Present: City Council. Time: 6:03 p.m.

Board of Zoning Appeals

6:00 p.m. – Logan Shamberger

6:20 p.m. – Kevin Meehan

Tree Board

6:40 p.m. – Gregory Dahle

ADJOURNMENT:

There being no further business, motion by Deputy Mayor Trumble, second by Councilor Vega, to adjourn the meeting. Time: 6:52 p.m.

_____ _____

City Clerk Mayor

City of Morgantown

MINUTES
COMMITTEE OF THE WHOLE MEETING
January 25, 2022

The Committee of the Whole Meeting of the Common Council of the City of Morgantown was held via Zoom on Tuesday, January 25, 2022, at 7:09 p.m.

To protect public health during the COVID-19 pandemic, personal attendance at the meeting is not permitted. This meeting will take place via Zoom at https://us02web.zoom.us/j/2716139586 using the meeting number 271 613 9586. The meeting will be recorded and can be viewed later on the City of Morgantown website. The public can also listen live by calling 301-715-8592 and using the access code 271 613 9586. If members of the public wish to comment on a particular issue they should submit written comments via email to the City Clerk at cwade@morgantownwv.gov.

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

The meeting was called to order by Deputy Mayor Trumble.

PRESENTATIONS: None

PUBLIC PORTION:

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

Marley Ynigues spoke regarding the warming shelter.

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

ITEMS FOR DISCUSSION:

1. **An Ordinance annulling a portion of Campus Drive and accepting Declaration of Easement relocating Campus Drive**

   After discussion, this item was moved to the February 1, 2022, Regular Meeting Agenda.

2. **An Ordinance amending Article 906 – Outdoor Dining**

   After discussion, this item was moved to the February 1, 2022, Regular Meeting Agenda.

3. **Main Street Annual Report**

   Deputy Mayor Trumble read a brief report on Main Street Morgantown's Annual Report.

ADJOURNMENT:

There being no further business, motion by Councilor Vega, second by Mayor Selin, to adjourn the meeting. Time: 7:26 p.m.

City Clerk _____ Mayor _____

ORDINANCE OF
THE CITY OF MORGANTOWN

AN ORDINANCE AUTHORIZING AND APPROVING THE CONVEYANCE TO THE MORGANTOWN BUILDING COMMISSION OF SUCH REAL AND PERSONAL PROPERTY AS MAY BE NECESSARY IN CONNECTION WITH THE DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO CERTAIN EXISTING FACILITIES OF THE CITY OF MORGANTOWN, INCLUDING CITY HALL, THE PUBLIC SAFETY BUILDING, THE NORWOOD FIRE STATION AND THE CITY PUBLIC WORKS GARAGE, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO (THE "PROJECT"); THE LEASING OF THE PROJECT PROPERTY AND ALL PROJECT IMPROVEMENTS AND APPURTENANCES THERETO FROM THE MORGANTOWN BUILDING COMMISSION; THE SALE AND ISSUANCE BY THE MORGANTOWN BUILDING COMMISSION OF ITS NOT TO EXCEED $7,000,000 LEASE REVENUE BONDS, SERIES 2022 A (MULTIPLE FACILITY IMPROVEMENT PROJECTS) (THE "SERIES 2022 A BONDS"); AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT AND LEASE AND OTHER INSTRUMENTS AND AUTHORIZING AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE TERMS AND SECURITY OF THE SERIES 2022 A BONDS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, The City of Morgantown (the "City") has, by ordinance enacted August 2, 1988, created and established the Morgantown Building Commission (the "Issuer"), a public corporation and municipal building commission, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Issuer, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and the City has deemed the hereinafter described design, acquisition, construction and equipping of improvements to City Hall, the Public Safety Building, the Norwood Fire Station and the City Public Works Garage to be necessary and appropriate for the public interest;

WHEREAS, the Issuer under the Act has plenary power and authority to issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

WHEREAS, the Issuer either currently owns, or the City will convey unto the Issuer pursuant to such deed or deeds, bills of sale or other instruments of transfer as may be necessary and appropriate (collectively, the "Conveyance Documents"), the real estate comprising City Hall, the Public Safety Building, the City Public Works Garage and the Norwood Fire Station situate and being in The City of Morgantown, Monongalia County, West Virginia, together with all improvements and appurtenances thereto, which real property shall be more particularly described in **EXHIBIT A – REAL ESTATE DESCRIPTION**, attached to the hereinafter described Lease and made a part hereof (the "Properties");

WHEREAS, the Issuer desires to appoint the City as its agent for the purpose of undertaking the design, acquisition, construction and equipping of improvements to the Properties to be used in connection with the general activities of the City, together with all necessary appurtenances in connection therewith (the "Project"; the Properties together with all appurtenances thereto, and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "Facilities");

WHEREAS, the Issuer desires, pursuant to a Bond Authorizing Ordinance scheduled to be considered for enactment on February 1, 2022 (the "Issuer Ordinance"), to issue its Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects), in an aggregate principal amount not to exceed $7,000,000 (the "Series 2022 A Bonds") in order to provide funds for financing the costs of the Project, funding a reserve fund for the Series 2022 A Bonds, if any, and paying costs of issuance of the Series 2022 A Bonds;

WHEREAS, the purchaser of the Series 2022 A Bonds (the "Purchaser") and the terms, conditions and provisions of the Series 2022 A Bonds shall be approved by the Issuer pursuant to a resolution of the Issuer which is supplemental to the Issuer Ordinance (the "Issuer Supplemental Resolution");

WHEREAS, the Issuer will lease the Facilities to the City pursuant to an Agreement and Lease (the "Lease") to be dated or effective as of the date of delivery of the

Series 2022 A Bonds (the "Closing Date"), by and between the Issuer, as lessor, and the City, as lessee; and

WHEREAS, the City desires to take all steps necessary to authorize the conveyance of the Properties to the Issuer, the leasing of the Facilities from the Issuer, to act as the agent of the Issuer for purposes of undertaking the design, acquisition, construction and equipping of the Project, and to permit the Issuer to promptly proceed with the issuance of the Series 2022 A Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MORGANTOWN, AS FOLLOWS:

Section 1. Pursuant to the Act, this Ordinance is adopted and enacted and it is hereby found and determined that, to accomplish the purposes of the Act and the findings set forth in the preambles hereof, the following is hereby authorized and approved: (i) the conveyance of the Properties by the City to the Issuer pursuant to the Conveyance Documents; (ii) the undertaking of the Project by the City for and on behalf of the Issuer including but not limited to engaging such architects and other professionals, undertaking such public bidding processes, providing notice of award and notice to proceed to such construction contractors, entering into such construction contracts, purchase agreements and other documents as may be necessary in connection with same and performing under such agreements, (iii) the leasing of the Facilities by the City from the Issuer pursuant to the terms of the Lease and the payment of such Lease Rentals and other payments by the City which are provided for pursuant to the Lease, and (iv) the issuance and delivery of the Series 2022 A Bonds by the Issuer in the aggregate principal amount of not to exceed $7,000,000 for the purpose of financing the costs of the Project, funding a reserve fund for the Series 2022 A Bonds, if any, and paying costs of issuance of the Series 2022 A Bonds, are hereby authorized, approved, ratified and confirmed. The Series 2022 A Bonds shall be issued in accordance with, and shall have the terms provided in, the Issuer Ordinance authorizing the issuance of the Series 2022 A Bonds, which Issuer Ordinance is hereby approved.

Section 2. The City hereby agrees to act as the agent of the Issuer for the sole purpose of undertaking all actions necessary for the Project and to apply the proceeds of the Series 2022 A Bonds to the payment of the costs of the Project and the costs of issuance of the Series 2022 A Bonds, and to execute all construction contracts, requisitions, certificates or other documents necessary in connection therewith, and to give any and all authorizations as may be necessitated thereby.

Section 3. The Lease, pursuant to which the City will lease the Facilities from the Issuer and will agree to pay as Lease Rentals (but only from the sources set forth therein), amounts sufficient to pay the principal of and interest on the Series 2022 A Bonds and any other amounts payable thereunder, substantially in the form as submitted to this meeting and made a part of this Ordinance as though set forth herein, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the City and the Issuer. The Mayor and City Manager of the City are hereby authorized and directed to execute, acknowledge, as necessary, and deliver the Lease, and the Clerk of the City is hereby authorized

and directed to affix the seal of the City thereto and to attest the seal. The execution of the Lease by the Mayor and the City Manager shall be conclusive evidence of any approval required of the City by this Section.

Section 4. The Lease Assignment, pursuant to which the Issuer shall assign its rights under the Lease and Lease Rentals thereunder to the Purchaser in order to secure repayment of the Bonds, to be dated or effective as of the Closing Date (the "Assignment"), substantially in the form as submitted to this meeting and made a part of this Ordinance as though set forth herein, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Assignment by the Chairman of the Issuer shall be conclusive evidence of any such approval required of the Issuer.

Section 5. The Assignment of Funds and Accounts (the "Funds Assignment"), by the Issuer to the Purchaser, pursuant to which the Issuer shall assign its rights in and to certain funds and accounts established in connection with the Series 2022 A Bonds pursuant to the Lease, to be dated as of the Closing Date, substantially in the form as submitted to this meeting and made a part of this Ordinance as though set forth herein, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Assignment by the Chairman of the Issuer shall be conclusive evidence of any such approval.

Section 6. The Credit Line Deed of Trust, Fixture Filing and Security Agreement, pursuant to which the Issuer will convey the Encumbered Facilities (as defined in the Issuer Ordinance) in trust unto the trustee named therein for the benefit and security of the Purchaser as security for the Series 2022 A Bonds (the "Deed of Trust"), substantially in the form as submitted to this meeting and made a part of this Ordinance as though set forth herein, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Deed of Trust by the Chairman of the Issuer shall be conclusive evidence of any such approval required of the Issuer.

Section 7. The Bond Purchase Agreement (the "Bond Purchase Agreement"), by and between the Issuer and the Purchaser, and acknowledged and agreed to by the City, which provides the terms pursuant to which the Purchaser agrees to purchase the Series 2022 A Bonds from the Issuer, substantially in the form as submitted to this meeting and made a part of this Ordinance as though set forth herein, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer and acknowledged and agreed to by the City. The execution of the Bond Purchase Agreement by the Chairman of the Issuer shall be conclusive evidence of any such acknowledgement and agreement.

Section 8. The Series 2022 A Bonds, substantially in the form submitted to this meeting, shall be and the same are hereby approved in all respects, with such changes, variations, insertions and omissions as may be approved by the City and the Issuer. Such approval shall constitute the approval of the issuance of the Series 2022 A Bonds by an "applicable elected official" to the extent such approval may be required by any State or federal

law. The execution of the Series 2022 A Bonds by the Chairman of the Issuer shall be conclusive evidence of any such approval.

Section 9. The City hereby approves the sale of the Series 2022 A Bonds to the Purchaser, as shall be designated by the Issuer Supplemental Resolution. The price of the Series 2022 A Bonds shall be 100% of par value, there being no interest accrued thereon. The Series 2022 A Bonds shall be dated the Closing Date.

Section 10. All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Lease and all other instruments and documents relating thereto shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and by the Lease and all other instruments and documents relating thereto shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

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

Section 11. The City hereby ratifies all actions necessary to authorize and approve the design, acquisition, construction and equipping of the Project, the leasing of the Facilities by the Issuer to the City pursuant to the Lease, and the issuance of the Series 2022 A Bonds by the Issuer.

Section 12. The firm of Steptoe & Johnson PLLC, Bridgeport, West Virginia, is hereby acknowledged as bond counsel in connection with the issuance of the Series 2022 A Bonds.

Section 13. The execution, delivery and due performance of the Lease are hereby in all respects approved, authorized, ratified and confirmed, including, without limitation, all acts heretofore taken in connection with the undertaking of the Project; with respect to the issuance of the Series 2022 A Bonds and the leasing of the Facilities, and it is hereby ordered that the Mayor, the City Manager, the Clerk, the council members and other employees and officers of the City execute and deliver such other documents, certificates, agreements and instruments and take such other action as may be required or desirable to carry out the purposes of this Ordinance, the Series 2022 A Bonds and the aforesaid documents, certificates, agreements and instruments.

Section 14. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 15. This Ordinance shall take effect immediately following the public hearing hereon, or the vote of the City Council approving the Ordinance, whichever shall occur later.

Section 16. Upon adoption on first reading hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in *The Dominion Post*, a newspaper published and of general circulation in the City, together with a notice stating that this Ordinance has been adopted on first reading, and that the City contemplates the leasing of the Facilities and the issuance of the Bonds by the Issuer, and that any person interested may appear before the City upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Clerk of the City for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard and the Council of the City shall take such action as they shall deem proper in the premises.

Adopted on First Reading: January 4, 2022

Enacted on Second Reading
Following Public Hearing: February 1, 2022

THE CITY OF MORGANTOWN

By: _____
Its Mayor

By: _____
Its City Manager

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The City of Morgantown does hereby certify that the foregoing Ordinance was duly adopted and enacted by the council of The City of Morgantown following a public hearing thereon, at regular meetings duly held, pursuant to proper notice thereof, on January 4, 2022, and January 18, 2022, a quorum being present and acting throughout, and which Ordinance has not been repealed, rescinded, modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand and the seal of The City of Morgantown this _____, 2022.

By: _____
Clerk, The City of Morgantown

AGREEMENT AND LEASE

Between

MORGANTOWN BUILDING COMMISSION, Lessor

and

THE CITY OF MORGANTOWN, Lessee

Dated as of _____, 2022
Effective _____, 2022

MORGANTOWN BUILDING COMMISSION
$_____
Lease Revenue Bonds, Series 2022 A
(Multiple Facilities Improvement Projects)

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AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE (hereinafter called the "Lease") dated as of _____, 2022, but effective _____, 2022, by and between the **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia, as lessor (hereinafter called the "Issuer" or the "Lessor"), and **THE CITY OF MORGANTOWN**, a municipal corporation and political subdivision of the State of West Virginia, as lessee (hereinafter called the "City" or the "Lessee").

W I T N ES S E T H:

WHEREAS, pursuant to the authority of Chapter 8, Article 33, of the West Virginia Code of 1931, as amended (the "Act"), the City enacted an ordinance on August 2, 1988, creating the Issuer;

WHEREAS, the Issuer, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair, maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, including municipal buildings, jail facilities, police stations, fire stations, and other public buildings, and the City has deemed the hereinafter described design, acquisition, construction and equipping of improvements to City Hall, the Public Safety Building, the Norwood Fire Station and the City Public Works Garage to be necessary and appropriate for the public interest;

WHEREAS, the Issuer under the Act has plenary power and authority to issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

WHEREAS, the City has conveyed unto the Issuer pursuant to such deed or deeds, bills of sale or other instruments of transfer as may be necessary and appropriate (collectively, the "Conveyance Documents"), the real estate comprising City Hall, the Public Safety Building, the City Public Works Garage and the Norwood Fire Station situate and being in the City of Morgantown, Monongalia County, West Virginia, together with all improvements and

appurtenances thereto, which real property is more particularly described in **EXHIBIT A – REAL ESTATE DESCRIPTION**, attached hereto (the "Properties");

WHEREAS, the City desires to design, acquire, construct and equip improvements to the Properties to be used in connection with the general activities of the City, together with all necessary appurtenances in connection therewith (the "Project"; the Properties together with all appurtenances thereto, and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "Facilities");

WHEREAS, pursuant to a Bond Authorizing Ordinance enacted by the Issuer on _____, 2022, as supplemented by a Supplemental Resolution adopted by the Issuer on _____, 2022 (together, the "Issuer Ordinance"), the Issuer has authorized and issued its Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects) in the aggregate principal amount of $_____ (the "Bonds") for the purposes of (i) paying costs of the Project, (ii) funding a reserve account, if any, for the Bonds, and (iii) paying costs of issuance of the Bonds;

WHEREAS, the Bonds will be purchased by _____ (the "Purchaser") on the date hereof;

WHEREAS, pursuant to the Issuer Ordinance, the Issuer has appointed the City to undertake the Project and for the City to handle all requisitioning and application of the proceeds of the Bonds to the payment of the costs of the Project and related costs, for and on behalf of the Issuer;

WHEREAS, the City will lease the Facilities from the Issuer pursuant to the terms of this Lease, which provides that the Issuer shall lease the Facilities unto the City and the City will pay Lease Rentals (defined herein) in exchange therefor in amounts and at such times as to permit the Issuer to pay all debt service and other costs in connection with the Bonds; and

WHEREAS, the City and the Issuer have, through their respective governing bodies, duly authorized the execution and delivery of this Lease pursuant to the Issuer Ordinance and that certain Ordinance enacted by the City on _____, 2022 (the "City Ordinance").

NOW THEREFORE, in consideration of the premises and other good and valuable consideration and of the mutual benefits, covenants and agreements herein expressed, the receipt and sufficiency of all of which are hereby acknowledged, the Issuer and the City hereby agree as follows:

ARTICLE I
DEFINITIONS, ETC.

Section 1.01. Terms Defined. In addition to terms defined elsewhere herein and in the City Ordinance and Issuer Ordinance (including the recitals hereto and the recitals in the City Ordinance and Issuer Ordinance), which shall have the same meanings when used herein, the following terms shall have the following meanings herein, unless the context requires otherwise:

"Act" means Chapter 8, Article 33 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Bonds.

"Assignment" means the Lease Assignment of even date herewith, executed by the Issuer for the benefit of the Purchaser, as from time to time amended or supplemented.

"Authorized Representative" or "Authorized Officer" means, with reference to the Issuer, the Chairman or such other officer or officers designated in writing by the Issuer to execute those documents or perform those acts to which are then being referred and, with reference to the City, the Mayor, the City Manager or such other officer or officers designated by resolution of the City to execute those documents or perform those acts to which are then being referred.

"Bond" or "Bonds" means the Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects), dated _____, 2022, issued in the original aggregate principal amount of $_____.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized as expert in matters relating to the issuance of tax-exempt bonds and initially means Steptoe & Johnson PLLC, Bridgeport, West Virginia.

"Bondholder," "Holders of the Bonds," "Registered Owner" or any similar term means any person who shall be the registered owner of the Bonds and initially means the Purchaser and any successors and assigns.

"Bond Purchase Agreement" means the Bond Purchase Agreement by and between the Issuer and the Purchaser, and acknowledged and agreed to by the City.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Chairman" means the Chairman of the Issuer.

"City" or "Lessee" means The City of Morgantown.

"Closing Date" means the date upon which there is an exchange of the Bonds for the initial advance of the purchase price thereof, being _____, 2022.

"Code" means the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Costs" or "Project Costs" means all costs permitted to be financed under the provisions of the Act and incident to the undertaking of the Project, including but not limited to (i) all land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor or thereto; (ii) the design, acquisition, construction and equipping of the improvements to the Facilities; (iii) interest upon the Bonds prior to and during the period of acquisition and construction of the Project; (iv) any reserve or similar account funded from the proceeds of Bonds; (v) engineering, architectural and

legal expenses; (vi) expenses for feasibility studies or other estimates of cost and of revenues; (vii) expenses for plans, appraisals, specifications and surveys; (viii) other expenses necessary or incident to determining the feasibility or practicability of the Project; (ix) administrative, legal and fiscal expenses; (x) any sums required to reimburse the Issuer or the City for advances made for any of the above items, and repayment of any borrowings and the interest thereon incurred by the Issuer for such purposes; and (xi) such other expenses as may be necessary or incident to the financing herein authorized, the Project, the placing of the Facilities in operation and the performance of the things herein required or permitted in connection with any thereof.

"Costs of Issuance Fund" means the fund by that name established for the Bonds pursuant to Section 4.05 hereof.

"Deed of Trust" means the Credit Line Deed of Trust, Fixture Filing and Security Agreement of even date herewith executed by the Issuer to the trustee named therein for the benefit and security of the Purchaser in the repayment of the Bonds.

"Depository Bank" means _____, _____, _____, or its successor.

"Event of Default" means any of the events described as an Event of Default in Section 10.01 hereof.

"Facilities" shall have the meaning set forth in the preambles hereof.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means the fiscal year of the Issuer which, at the time of execution and delivery of this Lease begins on July 1 and ends on the next succeeding June 30, or such other 12-month period as may be designated by the Issuer in writing to the Bondholders.

"Issuer" or "Lessor" means the Morgantown Building Commission, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State, created by the City pursuant to the Act, and any successor in function.

"Lease" means this Agreement and Lease, all amendments thereof and supplements thereto and where applicable, also means any subsequent lease or leases of all or any portion of the Facilities.

"Lease Rentals" means all receipts, revenues, income and other moneys received by or on behalf of the Issuer from the leasing, operation, management, sale or other disposition of the Facilities, or any part thereof, and all rights to receive the same, determined in accordance with generally accepted accounting principles.

"Lease Term" shall have the meaning assigned to such term under Section 5.01 hereof.

"Net Proceeds" means, when used with respect to any insurance or condemnation award, the gross proceeds from the insurance or condemnation award with respect to which that term is

used remaining after payment of all expenses (including attorneys' fees and other expenses) incurred in the collection of such gross proceeds.

"Operating and Maintenance Expenses" means, with respect to the Facilities and with respect to the period of determination, the costs and expenses of normal operation and maintenance of the Facilities, including, without limitation, the costs and expenses of salaries and fringe benefits, utility service, insurance, taxes, fees, licenses, permits, administrative expenses, normal maintenance and repairs but excluding, however, depreciation and charges for renewal and replacement.

"Paying Agent" means _____, _____, _____, which will receive and disburse the principal of and interest on the Bonds, and any paying agent which may, from time to time, be appointed and any successor of either.

"Permitted Encumbrances," subject to the terms hereof, means the Deed of Trust, this Lease, the Assignment, and, as of any particular time:

(1) Liens for taxes and special assessments which are not then delinquent or, if then delinquent, are being contested by the Issuer in good faith;

(2) Utility, access and other easements and rights-of-way, restrictions and exceptions that the Issuer certifies will not interfere with or impair the operation of the Facilities;

(3) Any mechanics', laborers' or materialmen's lien if payment is not yet due; provided, however, such a lien may not be of record for in excess of thirty (30) days unless contested in good faith by the Issuer;

(4) Such minor defects and irregularities of title as normally exist with respect to properties similar in character to the Facilities and which do not materially adversely affect the value of the Facilities or impair the property affected thereby for the purpose for which it was acquired or is held or used by the Issuer;

(5) Zoning laws and similar restrictions;

(6) Subleases of a portion or portions of the Facilities bearing a term less than or equal to the then remaining term of the Lease, which subleases shall be subject to the lien and pledge of the Deed of Trust, this Lease and the Assignment;

(7) Such subsequent leases of the Facilities or portions thereof in accordance with the terms of this Lease and which shall be subject to the lien and pledge of the Deed of Trust, this Lease and the Assignment;

(8) Liens, security interests and other encumbrances which are expressly subject and subordinate to the Deed of Trust, this Lease and the Assignment; and

(9) Restrictive covenants, grant assurances, or other conditions imposed by, or in satisfaction of the requirements of, state or federal agencies having regulatory authority over the Properties.

"Project" shall have the meaning set forth in the preambles hereof.

"Project Fund" shall mean the fund by that name established pursuant to Section 4.05 hereof.

"Purchaser" means _____, a _____ banking corporation with headquarters in _____, _____, as the original purchaser of the Bonds directly from the Issuer.

"Rebate Fund" means the fund by that name established pursuant to Section 4.04 hereof.

"Sinking Fund" means the fund by that name established pursuant to Section 4.04 hereof.

"State" means the State of West Virginia.

"Tax Certificate" means the Tax and Non-Arbitrage Certificate, dated as of the date hereof, executed by the Issuer and the City in connection with the Bonds.

"Title" means good and marketable fee simple absolute title as to the Facilities, subject only to Permitted Encumbrances.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

Any requirement for execution of this Lease, the Bonds or any Certificate or other document by a Mayor, City Manager, Chairman, Secretary or Clerk or other officer shall mean that this Lease, such Bonds, Certificate or other document may be executed by the Vice Mayor, Assistant City Manager, Vice Chairman, Assistant Secretary, Assistant Clerk or Assistant to such other officer.

The terms defined in this Section have the meanings assigned to them in this Section, words importing the singular shall include the plural as well as the singular and vice versa, words importing persons shall include firms, associations and corporations, and words importing the masculine, feminine and neuter gender shall be deemed to include all such genders.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

Section 1.02. Exhibits. The following Exhibits are attached to and by reference are hereby made a part of this Lease:

EXHIBIT A – REAL ESTATE DESCRIPTION

ARTICLE II
REPRESENTATIONS

Section 2.01. Representations, Findings, Determinations and Warranties by the Issuer. The Issuer makes the following representations, findings, determinations, and warranties as the basis for the undertakings and covenants on its part and on the part of the Lessee contained herein, all such representations and warranties to be maintained until termination of this Lease:

(A) The Issuer is a public corporation and municipal building commission validly created and existing under the Act and the other laws of the State, is authorized to enter into the transactions contemplated by the Deed of Trust, this Lease, the Issuer Ordinance, the Bond Purchase Agreement, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith and to carry out its obligations hereunder and thereunder, has been duly authorized to execute and deliver the Deed of Trust, this Lease, the Bond Purchase Agreement, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith, and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

(B) The design, acquisition, construction and equipping of the Project, the issuance and sale of the Bonds, the execution and delivery of the Deed of Trust, this Lease, the Bond Purchase Agreement, the Assignment and all other agreements, documents, instruments and certificates in connection herewith and therewith and the performance of all covenants and agreements of the Issuer contained in the Deed of Trust, this Lease, the Issuer Ordinance, the Bond Purchase Agreement, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith and of all other acts and things required under the Constitution and laws of the State, or any other document, agreement or instrument by which the Issuer is bound, to make the Deed of Trust, this Lease, the Issuer Ordinance, the Bond Purchase Agreement, the Assignment and all other documents, agreements and certificates in connection herewith and therewith valid and binding obligations of the Issuer in accordance with the terms thereof, are authorized by the Act and have been duly authorized by proceedings of the Issuer enacted or adopted at meetings thereof duly called and held.

(C) The Issuer has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer any act or thing whereby its Title to and interest in the Facilities shall or may be impaired, charged or encumbered in any manner whatsoever except by Permitted Encumbrances.

(D) The Issuer, pursuant to the Issuer Ordinance, has authorized the City and has appointed the City, subject to the terms and conditions set forth in this Lease, to provide for the undertaking of the Project, including but not limited to entering into such construction contracts and other agreements and arrangements as may be necessary in connection therewith and handling the administration of such contracts and agreements by such means as shall be available to the City and in the manner determined by the City and for the purpose of requisitioning and applying the proceeds of the Bonds to the payment of the Costs of the Project.

(E) The Issuer has approved the terms and conditions set forth in this Lease, which terms and conditions the Issuer determines to be necessary, desirable and proper, to provide for the undertaking of the Project.

(F) To finance the payment of the Project Costs and costs of issuance of the Bonds, the Issuer has authorized issuance of the Bonds in the aggregate principal amount of not to exceed $_____ to be issued upon the terms set forth in the Issuer Ordinance, and in order to secure the payment of the principal of and interest on the Bonds, the interest of the Issuer in this Lease and the Lease Rentals and revenues to be received hereunder are pledged and assigned to Purchaser, pursuant to the Assignment.

(G) The Issuer has found and determined, and does hereby find and determine, that: (i) the undertaking of the Project as provided for herein; (ii) the financing of the Project Costs and the payment of costs of issuance by the issuance, sale and delivery by it of the Bonds; (iii) the leasing by it of the Facilities to the City under and pursuant hereto; and (iv) all other things contemplated by or contained in the Deed of Trust, this Lease, the Bond Purchase Agreement and the Assignment are necessary, proper and appropriate to accomplish the public purpose of better serving the citizens of the City.

Section 2.02. Representations and Warranties by the City. The City makes the following representations and warranties, all such representations and warranties to be applicable upon and following issuance of the Bonds and to be maintained until termination of this Lease:

(A) The City is a municipal corporation and political subdivision of the State, duly and validly created and existing under the Constitution and the other laws of the State, has been duly authorized to execute and deliver this Lease, the Bond Purchase Agreement and all other agreements, documents, instruments and certificates in connection herewith and therewith, and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

(B) The undertaking of the Project and payment of costs of issuance of the Bonds and related costs, the execution and delivery of this Lease, the Bond Purchase Agreement and all other agreements, documents, instruments and certificates in connection herewith, and the performance of all covenants and agreements of the City contained in this Lease, the Bond Purchase Agreement and all other agreements, documents, instruments and certificates in connection herewith, and of all other acts and things required under the Constitution and laws of the State, or any other document, agreement or instrument by which the City is bound, to undertake the Project and to make this Lease, the Bond Purchase Agreement and all agreements, documents and instruments in connection herewith, valid and binding obligations of the City in accordance with the terms thereof, are duly authorized under the Constitution and other laws of the State and have been duly authorized by proceedings of the City adopted at meetings thereof duly called and held. No authority or proceedings for the execution and delivery of this Lease and the Bond Purchase Agreement and the performance of the obligations hereunder and thereunder has or have been repealed, revoked or rescinded.

(C) The undertaking of the Project by the City and payment of costs of issuance of the Bonds by the City, the repayment of any prior loans temporarily incurred for such purpose and

the financing thereof by the Issuer, as provided under the Deed of Trust, this Lease, the City Ordinance, the Issuer Ordinance, the Bond Purchase Agreement and the Assignment, is a public purpose under the Act.

(D) There is no action, suit, proceeding, inquiry, order, claim, counterclaim, arbitration, demand or investigation at law or in equity or before or by any court, public board, authority or body, pending or threatened, or any order, judgment or decree in progress, nor is there any basis therefor, which would adversely affect the City with respect to the performance of its obligations hereunder, the Facilities or the transactions contemplated by the Deed of Trust, this Lease, the Bond Purchase Agreement, the Assignment or any of the documents, agreements, instruments or certificates in connection therewith or the consummation of the transactions contemplated thereby, the payment of Lease Rentals hereunder from the funds of the City specified in Section 5.02 hereof, the application of any money or security granted by the City that may be used for payment of the Bonds or the operation of the Facilities, or which in any way would adversely affect the validity or enforceability of the Deed of Trust, this Lease, the City Ordinance, the Bond Purchase Agreement, the Assignment, or the Bonds or the payment of Lease Rentals hereunder from the funds of the City specified in Section 5.02 hereof, or which in any way would adversely affect the ability of the City to perform its obligations under this Lease or any agreement, document or instrument in connection herewith and therewith, the creation, organization or existence of the City, the title to office of any officer thereof or the power of the City to lease, use and operate the Facilities.

(E) The City will use and operate the Facilities for the purpose of one or more governmental functions of the City or other public body until the date on which all of the Bonds have been fully paid and are no longer outstanding.

(F) Substantially all of the proceeds of the Bonds will be used to pay Project Costs, to pay costs of issuance of the Bonds or reimburse the Issuer or the City for payment of such costs previously incurred, including but not limited to the repayment of any interim construction financing entered into by the Issuer or the City in connection with the Project.

(G) The execution and delivery of this Lease, the Bond Purchase Agreement and all documents, agreements, instruments and certificates in connection herewith, the consummation of the transactions contemplated hereby and thereby, and the compliance with, fulfillment of and carrying out of the provisions and terms hereof and thereof, including, without limitation, the use and operation of the Facilities, do not and will not, with or without the giving of notice or passage of time, or both, conflict with or constitute on the part of the City a violation or breach of or constitute or result in a default or loss of rights (or give rise to any right of termination, cancellation or acceleration) under or result in the creation of any lien, charge or encumbrance pursuant to and are not materially adversely affected by any mortgage, indenture, note agreement, bond, contract, lease, document, resolution, deed of trust or other agreement, obligation or instrument to which the City is a party or by which the City or its properties are bound or affected by any charter provision, judgment, statute, ordinance, order, rule, law, court decision, decree or regulation by which the City or its properties are subject or affected, and will not cause any forfeiture or impairment of any license, authorization or permit.

(H) The City has complied and will comply in all material respects with the applicable provisions of law with respect to the undertaking of the Project or which would affect its ability to enter into this Lease, the Bond Purchase Agreement and consummate the transactions set forth herein and therein and has full legal right, power and authority to enter into, execute and deliver this Lease, the Bond Purchase Agreement and all other documents, agreements, instruments and certificates in connection herewith and perform its obligations hereunder and thereunder, to lease, operate and use the Facilities, to conduct its business as contemplated in this Lease, and to carry out and consummate all transactions contemplated by the foregoing, including, without limitation, the payment of Lease Rentals hereunder from funds of the City specified in Section 5.02 hereof.

(I) The funds specified in Section 5.02 hereof have been appropriated by the City or are available in an amount sufficient to make all Lease Rentals, if any, during the current Fiscal Year of the City (July 1, 2021, through June 30, 2022), and the City reasonably believes that such funds can be obtained in an amount sufficient to make all Lease Rentals during the entire Lease Term. It is the City's intent to make the Lease Rentals for the full Lease Term if such funds are legally available therefor and in that regard the City represents that: (a) the use of the Facilities and the undertaking of the Project is essential to its proper, efficient and economic functioning or to the services that it provides to its citizens; (b) the City has an immediate and continuing need for the use of substantially all of the Facilities, which is not temporary or expected to diminish in the foreseeable future; (c) the Facilities are and will be used by the City only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity other than the City; and (d) the functions performed by the Facilities will not be transferred to other facilities available to the City or which may be subsequently acquired for use by the City.

ARTICLE III
DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT

Section 3.01. Ratification of all actions necessary to authorize and approve the undertaking of the Project and any temporary financing thereof. The Issuer and the City hereby ratify all actions necessary to authorize and approve the undertaking of the Project and any temporary financing thereof. The Issuer hereby covenants and agrees to pay for the Costs of the Project in accordance with the provisions hereof, to the extent, but only to the extent of moneys available therefor in the Project Fund or from other moneys of the City previously expended or made available for such purpose. In the event that such moneys are insufficient to pay all of the Costs of the Project, the City hereby covenants that it will appropriate such moneys as may be necessary to pay the remaining Costs of the Project. The Issuer and the City hereby agree that payment of Costs of the Project shall be made in the manner and subject to the conditions specified in the Issuer Ordinance and Section 3.02 hereof, without further authorization of the Issuer.

The Issuer agrees that it will enter into, or accept the assignment of, such further contracts, agreements or documents as the City may request in order to effectuate the purposes of this Section 3.01, and that it will not execute any other contracts, agreements or documents, or give any order for such execution unless and until the City shall have approved the same in writing or pursuant to official action. Unless required by one of the other parties to the construction contracts, the Issuer and the City contemplate that the City shall be the party to all construction and other contracts that may be necessary to complete the design, acquisition, construction and equipping of the Project and that the City will take all actions necessary to perform under and otherwise administer such contracts. Pursuant to the Issuer Ordinance, the City shall (i) undertake the Project, (ii) shall be the contracting party for the undertaking of the Project and shall handle all bidding procedures in connection with same, (iii) shall be responsible for approving and submitting all funding requisitions for the payment of the costs of the Project and (iv) shall be the party to approve all change orders to the construction contracts which are necessary in connection with the undertaking of the Project and the payment of costs of issuance of the Bonds and related costs. Notwithstanding the foregoing, the Issuer reserves the right to approve change orders which would exceed in the aggregate, together with any prior change orders, 10% of the contract price for the construction and acquisition of the Project. However, nothing contained in this Lease shall relieve the City from its obligation to pay rent pursuant to Article V hereof.

Section 3.02. Disbursements from Project Fund. Disbursements shall be made from the Project Fund to pay Costs of the Project in accordance with the procedures described in Section 4.09 hereof.

Section 3.03. Cooperation of Parties. The Issuer and the City shall cooperate to the fullest extent practicable with a view to the completion of the Project with all reasonable promptness, but no delay in the undertaking or completion of the construction and acquisition of the Project, however caused, shall alter, affect, diminish or impair the obligations of the City to pay rent as provided herein or any other obligations of the City under this Lease.

ARTICLE IV
ISSUANCE AND PAYMENT OF BONDS BY THE ISSUER; FUNDS AND ACCOUNTS

Section 4.01. Sale of Bonds. If the Issuer and the City shall have determined that the Bonds can be issued and sold upon fair and reasonable terms, the Issuer shall issue, sell and deliver the Bonds in an aggregate principal amount of $_____ pursuant to and in conformity with the Issuer Ordinance and the Bond Purchase Agreement. The principal amount of the Bonds shall be advanced from time to time by the Purchaser to the Issuer as the same is requisitioned by the City as necessary to pay costs of the Project and costs of issuance of the Bonds as herein provided. The City shall requisition the funds on deposit in the Project Fund and the Costs of Issuance Fund held by the Purchaser as Depository Bank from time to time as necessary to pay the costs of the Project and costs of issuance of the Bonds as the same become due and payable.

Section 4.02. Payment of Bonds. The principal of and interest on the Bonds shall be payable in accordance with the provisions of the Issuer Ordinance, this Lease, the Assignment and the Bonds, and the Lease Rentals paid by the City hereunder are hereby pledged and a security interest therein granted and/or assigned to the Purchaser in order to secure the repayment of the Bonds, all as provided herein, in the Assignment and the Issuer Ordinance.

Section 4.03. Assignment of Rights Under Lease and Priority of Assignment. This Lease and the rights, interests, powers, privileges and benefits accruing to or vested in the Issuer hereunder, including but not limited to the Lease Rentals, shall be protected and enforced in conformity with the Assignment and are hereby and by the Assignment assigned by the Issuer to the Purchaser as security for the Bonds and shall be exercised and enforced for or on behalf of the Purchaser in conformity with the provisions hereof and of the Assignment. Notwithstanding anything herein or in the Assignment to the contrary, this Lease is and shall be expressly subject to the Assignment. THE ISSUER SHALL RETAIN NO RIGHTS HEREUNDER, EXCEPT THOSE RIGHTS SET FORTH IN SECTION 8.07, AND NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, ONLY THE PURCHASER OR SUBSEQUENT OWNERS OF THE BONDS SHALL HAVE THE RIGHT TO PURSUE ANY REMEDIES HEREUNDER.

Section 4.04. Establishment of Funds and Accounts with Paying Agent. Pursuant to this Article IV, the Sinking Fund and the Rebate Fund are created with, and shall be held by, the Paying Agent, segregated from all other funds and accounts of the Paying Agent, the Issuer and the City and from each other, (except as set forth in this Article IV) and used solely for the purposes provided herein.

Section 4.05. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the Project Fund and the Costs of Issuance Fund are created with, and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank, the Issuer and the City and used solely for the purposes provided herein.

Section 4.06. [Reserved].

Section 4.07. Sinking Fund. The Issuer shall deposit into the Sinking Fund the Lease Rentals received by the Issuer from the City which are necessary to pay the principal of and interest on the Bonds as the same becomes due and payable and all costs associated with the Bonds. The City is authorized and directed to pay and shall pay all Lease Rentals associated with the Bonds directly to the Paying Agent for deposit by the Paying Agent into the Sinking Fund. Moneys in the Sinking Fund shall be applied by the Paying Agent, on or before the due date thereof, to the payment of the monthly installments of principal of and interest on the Bonds as the same become due and payable. The Paying Agent shall, on or before _____ 15 of each year, commencing _____, 2023, from the balance of moneys or investments held in the Sinking Fund following the monthly payment of principal of and interest on the Bonds, (i) pay to the Registrar, Depository Bank and Paying Agent any fees and expenses thereof, and (ii) following such payment, transfer the balance of moneys, if any, in the Sinking Fund to the City. Except as provided in the foregoing sentence, moneys in the Sinking Fund shall be applied by the Paying Agent solely to payment of the principal of and interest on the Bonds, when due.

Section 4.08. Costs of Issuance Fund. A portion of the proceeds of the Bonds in the amount of $_____ will be transferred by the Purchaser to the Depository Bank on the Closing Date for deposit by the Depository Bank into the Costs of Issuance Fund maintained by the Paying Agent and will thereupon be applied by the City, along with other funds of the City, to the payment of the Costs of Issuance of the Bonds. For any Costs of Issuance not paid on the Closing Date, the City shall execute and deliver to the Depository Bank from time to time as may be necessary a Requisition for Payment of Costs of Issuance for the payment of any unpaid Costs of Issuance of the Bonds. The Depository Bank shall thereupon, within two (2) business days following its receipt of such a Requisition, disburse the amounts indicated in such Requisition to the payees referenced therein. Any funds remaining in the Costs of Issuance Fund thirty (30) days following the Closing Date shall be transferred by the Paying Agent to the Project Fund.

Section 4.09. Project Fund. A portion of the proceeds of the sale of the Bonds in the amount of $_____ shall, on the Closing Date, be deposited into the Project Fund established with the Depository Bank. The remaining proceeds of the Bonds not needed to pay Costs of Issuance of the Bonds shall be available for requisitioning by the City from time to time as necessary to pay Project Costs as the same become due and payable. The Project Fund shall be an account of the Issuer but the Issuer hereby authorizes and directs the City to requisition the proceeds of the Bonds from the Depository Bank from time to time as necessary to pay Project Costs. Monies on deposit in the Project Fund may be used by the City solely to pay Project Costs. The City shall periodically, but not more frequently than one time per month absent the prior consent of the Depository Bank, submit a requisition for the payment of Costs of the Project, with all supporting invoices attached thereto, to the Depository Bank. Upon receiving a requisition for the Costs of the Project which has been duly completed by the City, with all supporting invoices attached thereto, and executed and delivered by the City to the Depository Bank as set forth herein, the Depository Bank shall, following a reasonable period for the Purchaser to complete any necessary construction inspections in accordance with its standard procedures for construction projects of similar type, fund the approved requisitioned funds into the Project Fund and thereupon disburse the same either to the City for reimbursement to the City of Project Costs previously incurred and paid by the City or payment to the third party payees which are identified in the requisitions. A portion of the principal amount and purchase price of the Bonds will be funded with each Project Fund requisition which has been approved

and funded into the Project Fund and interest shall only accrue on the portion of the principal amount of the Bonds which has been funded by the Purchaser from time to time. If the Project has not been completed on or before _____, 202_, the Purchaser shall advance the remaining principal amount of the Bonds not theretofore advanced for the deposit of such monies into the Project Fund and interest shall thereafter accrue on the entire principal amount of the Bonds.

The moneys in the Project Fund in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Fund shall be expended by the City in accordance with the Project budget solely for the payment of Costs of the Project. The City will furnish upon the request of Purchaser, statements showing an itemization of all expenditures and unpaid invoices in connection with the Project.

In the event moneys remain in the Project Fund following the final disbursement for Costs of the Project, such moneys shall be transferred to the Sinking Fund and applied to the next periodic installment of principal of and interest on the Bonds.

Section 4.10. Rebate Fund. The Paying Agent shall establish the Rebate Fund and deposit therein such funds as may be provided by the Issuer or the City pursuant to the provisions of the Tax Certificate. The Paying Agent shall disburse funds on deposit in the Rebate Fund pursuant to the directive of the Issuer or the City for purposes of satisfying the arbitrage rebate requirements of the Code and in accordance with the Tax Certificate.

Section 4.11. Investments. Moneys in the Sinking Fund, the Costs of Issuance Fund and the Project Fund shall be invested by the Paying Agent and the Depository Bank in investments as set forth in written instructions of the Issuer or the City. In the absence of such written instructions from the Issuer or the City, the Paying Agent and the Depository Bank shall invest such excess funds in market priced money market investments, certificates of deposit or instruments of deposit (in each case, insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with direct obligations of the Department of the Treasury of the United States of America).

ARTICLE V
DEMISING CLAUSES AND RENT

Section 5.01. Leasing of the Facilities - Term of Lease; Option to Terminate. In consideration of the Lease Rentals to be paid by the City directly to the Paying Agent hereunder, and of the covenants, agreements and promises herein contained to be kept and performed by the City, and in consideration of the issuance of the Bonds by the Issuer and other good and valuable consideration, the Issuer hereby demises and leases the Facilities to the City and the City hereby hires, takes and leases the Facilities from the Issuer, for the Lease Term, at the Lease Rentals and on the conditions herein set forth.

The term of the demise and leasing of the Facilities by the Issuer to the City, subject to the provisions hereof (the "Lease Term"), shall commence immediately upon the Closing Date, and shall extend, unless sooner terminated in accordance with the provisions hereof, to _____, 20__, provided, however, that the Lease Term shall expire on such earlier or later date as the principal of and interest on all the Bonds and all other expenses or amounts payable by the City hereunder or under the Issuer Ordinance or the Assignment shall have been paid or provisions for their payment shall have been made in accordance with this Lease, the Issuer Ordinance and the Assignment.

Notwithstanding the foregoing or anything herein or in the Issuer Ordinance or the Assignment to the contrary, the Issuer hereby grants to the City the option to terminate this Lease during any Fiscal Year covered hereby, in accordance with the Act and other provisions of law, and in the event of the exercise of such option to terminate this Lease, the payments of Lease Rentals hereunder shall be canceled without penalty to the City at the end of the then current Fiscal Year, whereupon the City shall surrender the Facilities to the Issuer at the end of the then current Fiscal Year. Unless otherwise limited by law, the City covenants to provide the Issuer and each Bondholder with written notice, in accordance with Section 11.01 hereof, of its intention to exercise such option to terminate this Lease not less than ninety (90) days prior to the end of the Fiscal Year in which the City elects to exercise such option.

Section 5.02. Rent. The City hereby pledges to pay the Lease Rentals due under this Section 5.02 from moneys received by the City to the extent such moneys are permitted by law to be used for such purposes and to the extent such moneys are legally available therefor. Until payment in full of the Bonds and the interest thereon, and any fees, charges and other amounts due under the Issuer Ordinance, the Assignment or hereunder, the City shall pay directly to the Paying Agent, on or before the first (1st) day of each month, commencing _____ 1, 2022, from the funds specified in this Section 5.02, Lease Rentals in an amount equal to the monthly installments of principal of and interest on the Bonds.

In any event, the City shall pay sufficient Lease Rentals to promptly pay the principal of and interest on the Bonds, as the same become due and payable and to pay all other amounts payable by the City or the Issuer pursuant to this Lease, the Issuer Ordinance or the Assignment.

All payments of Lease Rentals shall be made by the City directly to the Paying Agent for deposit by the Paying Agent into the Sinking Fund, and application to the payment of the

principal and interest due and owing on the Bonds and otherwise as set forth in Section 4.07 and this Section 5.02 and, thereafter, to any other parties entitled to payment. This Lease is a net lease, and the Issuer shall be under no obligation to operate, maintain, replace or improve the Facilities or pay the cost thereof so long as this Lease remains in force and effect, but shall be entitled to have the Lease Rentals paid as required herein on an absolute net basis, and, except as provided otherwise in Section 5.01, such Lease Rentals shall not be subject to abatement before retirement of all Bonds as contemplated in Section 5.04 hereof, and payment of all amounts due hereunder, provided, however, that in the event of any partial prepayment of Bonds as provided in Section 5.06 hereof, then the Lease Rentals payable hereunder shall be adjusted accordingly.

Section 5.03. City's Obligations - Limited Obligations. The Issuer and the City covenant and agree that, during the term of this Lease, the City shall bear all risk of damage or destruction in whole or in part to the Facilities or any part thereof, including, without limitation, any loss, complete or partial, or interruption in the use, occupancy or operation of the Facilities, or any manner or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Facilities or the compliance by the City with any of the terms hereof. Notwithstanding the foregoing or anything herein to the contrary, the City's obligations to pay the Lease Rentals from the funds specified in Section 5.02 hereof, and the City's obligations to perform and observe the other covenants and agreements contained herein, shall be special and limited obligations of the City payable solely from the funds specified in Section 5.02 hereof and other sources provided for herein, in the Assignment and in the Issuer Ordinance and shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation or constitute or give rise to a pecuniary liability of the City, except that the City may pay such Lease Rentals and any other sums provided hereunder from any lawful source notwithstanding the foregoing. Neither the Issuer nor any holder of any Bond shall ever have the right to compel the exercise of the taxing power of the City to pay the Lease Rentals and any other sums provided hereunder or to pay the principal of the Bonds or the interest thereon. The obligations of the City hereunder shall never be a charge against or pledge of the property, faith and credit or taxing power of the City.

Section 5.04. City's Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreement, the City may institute such action against the Issuer as the City may deem necessary to compel the performance or to recover damages for nonperformance, subject to Section 8.07 hereof, so long as such action shall not violate the City's agreements in Section 5.03. The City may at its own cost and expense, and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding against third parties or take any other action which the City deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Facilities under this Lease, subject to the terms hereof. In that event the Issuer agrees to cooperate fully with the City, and to take all action necessary to effect the substitution of the City for the Issuer in any such action or proceeding if the City shall so request.

Section 5.05. Non-appropriation. The City hereby warrants that the funds specified in Section 5.02 hereof have been appropriated or are available in an amount sufficient to make all Lease Rentals, if any, during the Fiscal Year ending June 30, 2022, and reasonably believes that such funds can be obtained in the amount necessary to make all Lease Rentals during the Lease

Term and hereby covenants that it will do all things lawfully within its power to collect, maintain and properly request and pursue such funds from which the Lease Rentals may be made, including making provisions for such payments to the extent necessary in each annual budget. During the Lease Term, the City shall not give priority in the application of such funds to any facilities functionally similar to the Facilities. During the Lease Term, the City will furnish to each Bondholder, no later than thirty (30) days following adoption of the budget for each Fiscal Year, a certificate that Lease Rentals due in that Fiscal Year have been included in the budget approved by the City for such Fiscal Year, or if not so included, notification of such fact.

Section 5.06. Prepayment of Rent. There is hereby reserved to the City the right, and the City is hereby authorized and permitted, at any time and as often as it may choose, to prepay all or any part of the Lease Rentals payable under Section 5.02 hereof, together with such other amounts as shall be sufficient to prepay all or a portion of the Bonds in accordance with the Issuer Ordinance and the Bonds, and the Issuer agrees that the Paying Agent and the Bondholders may accept such prepayments of Lease Rentals and other sums when the same are tendered by the City or the Issuer. All Lease Rentals and other sums prepaid pursuant to this Section 5.06 shall be applied to the prepayment or purchase of outstanding Bonds in the manner and to the extent provided for in the Issuer Ordinance and the Bonds. Any partial prepayment of Lease Rentals hereunder for the purpose of making a partial prepayment of the Bonds shall be applied to shorten the maturity date of the Bonds and not to the reduction of monthly Lease Rental payments or monthly debt service payments on the Bonds. The City shall provide at least thirty (30) days prior written notice to the Issuer and the Purchaser prior to making any full prepayment of all Lease Rentals.

The City may prepay the Lease Rentals and the Bonds may be redeemed in whole or in part at a price of 100% of the principal amount prepaid, with no prepayment premium or penalty, plus accrued interest to the date of redemption.

In the event of all or any portion of the Bonds becoming due and payable pursuant to the provisions of Article X hereof, Lease Rentals hereunder sufficient to pay the interest and principal thereon shall be and become at once due and payable.

Section 5.07. Termination of Lease upon Payment of All Rent. Upon payment of all Lease Rentals required hereunder and upon payment by the Issuer of the principal of and interest on the Bonds (including, if applicable, any prepayment premium), the Deed of Trust, this Lease and the Lease Assignment shall be terminated and released. The Issuer and the City shall cause to be executed and recorded such releases or other documents as shall be necessary or appropriate to effectuate and properly record such termination and release. In addition, upon the payment by the City to the Issuer of the sum of one dollar ($1.00), the Issuer shall execute and deliver a deed which conveys the Facilities, with covenants of general warranty, to the City upon the payment of all Lease Rentals and the repayment or defeasance of the Bonds in full.

Section 5.08. Right to Purchase. The Issuer hereby grants unto the City the right to purchase its interest in the Facilities at any time for a sum equal to (i) the remaining principal amount of the Bonds, together with any prepayment premium which would be due and owing to the Purchaser as set forth in Section 5.06; and (ii) interest accrued to the date of such purchase and payment therefor which date shall be a prepayment date for the Bonds, plus any other

amounts due from the City hereunder. The City may also purchase the Issuer's interest in the Facilities at any time if the Bonds are defeased in their entirety as set forth in Section 5.09 hereof. Upon exercise of such right by the City, the Deed of Trust, this Lease and the Lease Assignment shall be terminated and released. The Issuer and the City shall cause to be executed and recorded such releases or other documents as shall be necessary or appropriate to effectuate and properly record such termination and release.

Section 5.09. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the registered owners of all Bonds, the principal of and interest due or to become due thereon, then the Issuer Ordinance, this Lease and the pledges of Lease Rentals and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the registered owners of such series of Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied with respect to such series of Bonds.

Any series of Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such series of Bonds, plus the applicable prepayment premium on such series of Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. A series of Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Paying Agent or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said series of Bonds on and prior to the maturity date thereof, plus the applicable prepayment premium on such series of Bonds or if the Issuer irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Paying Agent or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said series of Bonds; provided, that any cash received from such principal, prepayment premium, if any, and interest payments on such securities deposited with the Paying Agent or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and prepayment premium, if any, and interest to become due on said series of Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Paying Agent or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only United States Treasury Obligations.

ARTICLE VI
COVENANTS RELATING TO THE USE AND OPERATION OF THE FACILITIES

Section 6.01. Taxes and Assessments. Subject to the provisions of Section 6.04 hereof, the City shall pay any and all lawfully assessed taxes, charges, fees, fines, impositions, liens and assessments, general and specific, ordinary and extraordinary, if any, levied, taxed, imposed or assessed upon or on account of the use or operation of the Facilities or any part or portion thereof, or the interest of the Issuer and of the City or either of them in or to the Facilities, or upon the Issuer's and City's interest, or the interest of either of them, in this Lease or the Lease Rentals payable hereunder during the term of this Lease, and all water and sewer charges, assessments, and other legally enforceable governmental charges and impositions whatsoever. The City will furnish to the Issuer and all Bondholders all notices of amounts due under this Section when requested to do so.

If, under applicable law, any such tax, charge, fee, fine, imposition, lien, rate, imposition or assessment may, at the option of the taxpayer, be paid in installments, the City may exercise such option, except to the extent otherwise provided. The City covenants and agrees that it will, at its own cost and expense, obtain exemption from all taxes and other charges referred to in this Section 6.01 to the extent permitted under applicable law.

As between the parties hereto, the City shall have the duty of making and filing all statements or reports which may be required under applicable law in connection with any such tax, charge, fee, rate, imposition or assessment, or otherwise related to the Facilities, and the Issuer agrees promptly to forward to the City any and all notice of or bills in connection with any such charge, fee, rate, fine, imposition, lien or assessment; provided, however, that an Authorized Officer of the Issuer shall execute and file, or execute and cause to be filed, in a timely fashion, all statements and filings relating to the Facilities which it is required by law to file, notwithstanding the foregoing or anything herein to the contrary. The Issuer hereby grants to the City the right to use the name of the Issuer, to the extent the use of the name of the Issuer is permitted by or necessary under applicable law, in connection with any contest of the amount or validity of any tax, charge, fee, rate, imposition or assessment. If the provisions of any law, rule or regulation at the time in effect shall require such statements or reports to be executed and filed by the Issuer or such proceedings to be brought by the Issuer, the Issuer shall, at the request and expense of the City, execute and file such statements or reports or, as the case may be, shall join in such proceedings, but the Issuer shall not be subject to any liability for the payment of any costs or expenses in connection therewith and the City covenants to indemnify and save the Issuer harmless from such costs and expenses. The City covenants and agrees that all statements, reports and other documents prepared for execution by the Issuer solely or by the Issuer jointly with the City, shall be true, accurate and complete.

Nothing contained herein shall be deemed to constitute an admission by either the Issuer or the City to any third party other than the Bondholders that either the Issuer or the City is liable for any tax, charge, fee, rate, lien, imposition or assessment.

Section 6.02. Liens. Subject to the provisions of Section 6.04 hereof relating to permitted contests, the City and the Issuer will not create or permit to be created or remain and will, at its cost and expense, promptly discharge all liens, encumbrances and charges on the Facilities or any part thereof, other than Permitted Encumbrances.

Section 6.03. Compliance with Orders, Ordinances, Etc. Subject to the provisions of Section 6.04 hereof relating to permitted contests, the City shall, throughout the term of this Lease, at its sole cost and expense, promptly comply in all material respects with all laws, codes, ordinances, orders, decrees, rules, regulations and requirements of duly constituted authorities which may be applicable to the Facilities or to the repair and alteration thereof, or to the use, manner of use or leasing of the Facilities. This Lease shall be amended by the parties hereto to the full extent necessary to ensure compliance with all such laws, codes, ordinances, orders, decrees, rules, regulations and requirements to enable the continued operation of the Facilities by the City but not in any manner which would materially adversely affect or impair the obligations of the Issuer under the Issuer Ordinance or the Assignment or materially adversely affect or impair the Issuer Ordinance or the Assignment or the lien of the Deed of Trust, based upon an opinion of counsel.

Section 6.04. Permitted Contests. Except as otherwise expressly provided herein, the City shall not be required to pay any tax, charge, fee, rate, imposition or assessment referred to in Section 6.01 hereof, nor to remove any lien, charge or encumbrance required to be removed under Section 6.02 hereof, nor to comply with any law, code, ordinance, order, decree, rule, regulation or requirement referred to in Section 6.03 hereof, so long as the City shall contest, in good faith and at its cost and expense, in its own name and behalf or in the name and behalf of the Issuer, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of, or other realization upon, the tax, charge, fee, rate, imposition, assessment, lien or encumbrance so contested, and the sale, forfeiture, or loss of the Facilities or any part or portion thereof, or of the rent or any portion thereof, to satisfy the same; provided, that no such contest shall subject the Issuer or any Bondholder to the risk of any liability. While any such matters are pending, except as otherwise required herein, the City shall not pay, remove or cause to be discharged the tax, charge, fee, rate, imposition, assessment, lien or encumbrance being contested unless the City agrees to settle such contest. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of the City to settle any such contest), and in any event the City will, to the extent permitted by applicable law, save the Issuer and the Bondholders harmless against all losses, judgments, decrees and costs (including attorney's fees and expenses in connection therewith) and will, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be levied, assessed, imposed or determined to be payable therein, together with all penalties, fines, interest, costs and expenses thereon or in connection therewith. The City shall give the Issuer prompt written notice of any such contest and the Issuer agrees to cooperate with the City, at the City's cost and expense, in any such contest.

Notwithstanding any rights granted to the City under the preceding paragraph of this Section 6.04, if the Issuer or any Bondholder shall notify the City that, in the opinion of independent counsel, by nonpayment of any of the foregoing items, the Deed of Trust, Issuer Ordinance or the Assignment or the lien as to any substantial part of the Facilities will be

materially endangered or the Facilities or any part thereof will be subject to imminent loss or forfeiture or the rights or obligations of the Issuer under the Deed of Trust, the Issuer Ordinance or the Assignment shall in any way be materially adversely affected or impaired or the lien, pledge and security interest of this Lease, the Deed of Trust, the Issuer Ordinance or the Assignment shall be materially or adversely affected or impaired, then the City shall promptly, but in any event in not more than five (5) days from receipt by the City of such notification, pay all such unpaid items or cause them to be stayed, satisfied and discharged.

Section 6.05. Acquisition, Construction and Use of the Facilities.

(A) The City will carry on (or cause to be carried on) with reasonable dispatch, and will not abandon, the undertaking of the Project.

(B) Except as otherwise required herein, the City may sublease the Facilities or agree or contract for the performance by others of management or operations on or in connection with the Facilities or any part or portion thereof, for any lawful purpose, provided that (i) each such sublease, agreement or contract shall not be inconsistent with the provisions of this Lease, the City Ordinance, the Issuer Ordinance or the Assignment; (ii) any such sublease, agreement or contract shall not adversely affect the excludability of interest on the Bonds from gross income of the owners thereof for federal income tax purposes, as evidenced by an opinion of Bond Counsel delivered to the Issuer and the Bondholders prior to the execution of such sublease, agreement or contract; and (iii) any such sublease, agreement or contract shall have been approved in writing by the Issuer and all the Bondholders.

Section 6.06. Repairs, Maintenance and Alterations. The City will, throughout the Lease Term, at its own cost and expense, keep and maintain the Facilities in good condition and repair and not abandon the same, or any part or portion thereof, nor commit or permit the commission of waste on or in the Facilities, or any part or portion thereof, or permit any building, structure or improvement to be removed, destroyed, demolished or structurally altered in whole or in part except as permitted herein and shall cause any person in possession of the Facilities or any portion thereof to comply with all laws, ordinances, rules and regulations relating to the use, leasing or maintenance of the Facilities and with all requirements, directions and orders and notices of violations thereof issued by any governmental agency, body or officer, and will make all necessary repairs thereto, structural and non-structural, ordinary as well as extraordinary and foreseen as well as unforeseen, and all necessary replacements or renewals.

The City shall have the right from time to time at its sole cost and expense to make additions, alterations and changes (hereinafter collectively referred to as "alterations") in or to the Facilities, provided, however, that no alteration of any kind shall be made which would result in a violation of the provisions of Section 6.05 hereof.

With respect to any repairs, construction, renovation, restoration, replacement or alterations performed upon the Facilities by the City during the Lease Term, in accordance with or as required by any provisions hereof, the City agrees that:

(1) No work in connection therewith shall be undertaken until the City shall have procured and paid for, so far as the same may be required, from time to time, all municipal and

other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and the Issuer agrees to join in the application for such permits or authorizations whenever such action is necessary;

(2) All work in connection therewith shall be done promptly and in good workmanlike manner and in compliance with the building and zoning laws of the municipality or other governmental subdivision wherein the Facilities are situate, and with all laws, ordinance, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and shall not violate the provisions of any policy of insurance covering the Facilities, and the work shall be prosecuted with reasonable dispatch, unavoidable delays excepted; and

(3) It shall carry or cause to be carried workers' compensation coverage for all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Issuer or the City, and general liability insurance (specifically covering this class of risk) for the mutual benefit of the Issuer and the City in such amounts as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure and as otherwise required or permitted by applicable law. The general liability insurance provided for in this paragraph may be effected by an appropriate endorsement, if obtainable, upon the insurance referred to in Section 6.09 hereof. All such insurance shall be effected with financially sound and reputable insurance companies qualified to do business in the State.

Section 6.07. Renewal and Replacement of Equipment. In any instance where the City in its sole discretion determines that any items of furnishings, fixtures or equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the City may remove such items from the Facilities and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability therefor, provided that such removal or substitution shall not impair the operating utility of the Facilities.

Section 6.08. Installation of Furnishings, Fixtures and Equipment by the City. The City may from time to time in its sole discretion and at its own cost and expense, install or place other furnishings, fixtures or equipment and tangible personal property in the Facilities. Except as otherwise expressly provided herein, the City may remove such furnishings, fixtures or equipment and tangible personal property at any time at its own cost and expense, whether or not the same shall have been affixed or annexed to the Facilities, but any damage caused to the Facilities by any such removal shall be restored at the sole cost and expense of the City.

Section 6.09. Liability and Casualty Insurance. The City shall procure and maintain the following insurance during the Lease Term at its sole cost and expense:

(A) Commencing on or prior to the Closing Date, insurance on all insurable portions of the Facilities against loss or damage to the Facilities, including, without limitation, all improvements, buildings, structures, fixtures, machinery and equipment included thereon or therein, including in such insurance fire, lightning, flood, extended coverage, vandalism, malicious mischief, and boiler and machinery coverage with standard extended coverage and with such deductible provisions as are usual for similar properties, such insurance to be in an

amount not less than 100% of the replacement value thereof, or such other amount as may from time to time be acceptable to the Purchaser or 100% of the subsequent Bondholders, provided, that in any event each such policy shall be in an amount sufficient to prevent the City, the Issuer and the Bondholders from becoming co-insurers under the applicable terms of such policy;

(B) At all times, workers' compensation insurance, disability insurance and each other form of insurance which the City is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees; and

(C) At all times, comprehensive general liability insurance and owner's liability insurance protecting the City, the Issuer and the Bondholders against loss or losses from liabilities imposed by law or assumed in any contract and arising from the death and/or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability endorsement), with limits of not less than $1,000,000 per occurrence and not less than $1,000,000 in the aggregate for claims made in any one year on account of injury to persons or for property damage excluding liability imposed upon the City by any applicable workers' compensation law, and insurance with the same limits to protect the Issuer, the City and the Bondholders from claims arising out of operation of or ownership of motor vehicles of or for the Facilities.

Such insurance coverage shall (i) be issued by recognized, financially sound and reputable insurers qualified to do business in the State and acceptable to the Bondholders, in forms acceptable to the Bondholders, (ii) name the Issuer, the City and the Bondholders as insureds, as their respective interests may appear, and provide that such policy shall not be canceled without at least thirty (30) days' prior written notice to each insured named therein. Any policy obtained pursuant to subparagraph (A) above shall further provide that any loss thereunder shall be payable to the Bondholders notwithstanding any act of negligence of the City which might otherwise invalidate said insurance, and the Bondholders shall have the exclusive right to receive the proceeds from such insurance and to receipt for claims thereunder. The City shall have the right to receive the proceeds from any insurance maintained pursuant to subparagraphs (B) and (C) above but the City shall apply such proceeds to the payment of any judgment, settlement or liability incurred for risks covered by such insurance.

Upon the commencement of the term of this Lease and thereafter not less than thirty (30) days after January 1 of each year, commencing January 1 of the year following the date hereof, certificates issued by the respective insurers of the policies provided for in subparagraphs (A), (B) and (C) shall be delivered by the City to the Bondholders.

Section 6.10. Bondholders' Rights to Perform City's Covenants; Advances; Inspection of Premises. In the event the City shall fail to (i) pay any tax, charge, assessment, imposition, fee, fine or lien pursuant to Section 6.01 hereof, (ii) remove any lien, encumbrance, or charge pursuant to Section 6.02 hereof, (iii) maintain the Facilities in repair pursuant to Section 6.05 hereof, (iv) procure the insurance required by Section 6.09 hereof, or (v) fail to make any other payment (other than rent) or perform any other act required to be performed hereunder, then and in each such case any Bondholder may (but shall not be obligated to) remedy such default for the account of the City and make advances for that purpose; provided that this clause shall not otherwise abate the obligations of the Issuer under the Ordinance or the

Assignment with respect thereto. No such performance or advance shall operate to release the City from any such default or constitute an acquiescence therein and any sums so advanced by any Bondholder shall be repayable by the City on demand and shall bear interest at the rate of interest on the Bonds, from the date of the advance until repaid. The Bondholders shall have the right of entry on the Facilities or any part or portion thereof at reasonable times in order to effectuate the purposes of this Section 6.10 and in order to inspect the premises.

Section 6.11. City Shall Manage, Operate and Administer Facilities. This Lease is a net lease and the Issuer shall retain no rights with respect to the operation, management or administration of the Facilities. The City shall have the sole right subject to the terms of the Issuer Ordinance, the Assignment and this Lease, during the term of this Lease, to operate, manage and administer the Facilities, including, but not limited to, all decisions with respect to hiring and discharge of employees, subleasing of all or any portion of the Facilities, acquiring and selling of furnishings, fixtures or equipment or additional property, adding, improving, renovating or removing portions of the Facilities and all other matters incidental to the operation, management and administration of the Facilities, and the City shall further pay all Operating and Maintenance Expenses.

Section 6.12. Permits, Etc. The City hereby represents, warrants and covenants, all such representations and warranties to be applicable upon and following issuance of the Bonds and to be maintained until termination of this Lease, that the City has obtained or received and will obtain and receive and has and will keep in full force and effect, all consents, permits, licenses, approvals, certificates, exemptions, rights, orders, franchises, privileges and authorizations, all of which have been and validly granted, issued and/or assigned, and has timely made and/or submitted and will timely make and/or submit all declarations, filings, payments, reports, notices, statements, papers and registrations, necessary to enter into and perform its obligations under and consummate the transactions contemplated in this Lease and all other documents, agreements, instruments and certificates in connection therewith, to lease, use and operate the Facilities; and the City has taken and will take all other action required in connection with this Lease, the consummation of the transactions contemplated herein and all other documents, agreements, instruments and certificates in connection herewith, the leasing, use and operation of the Facilities. The City is and will remain in compliance with all applicable laws, rules and regulations relating to the Facilities.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01. Damage or Destruction. The City agrees to notify in writing the Issuer and the Bondholders immediately in the case of loss or damage covered by insurance required under 6.09(A) hereof and shall remit to the Bondholders the proceeds required to be paid to the Bondholders to be held in an appropriately designated fund. Thereafter, the City shall determine and advise the Issuer and the Bondholders, in writing, within sixty (60) days of the occurrence of such loss or damage whether it is practicable to repair, reconstruct or replace such damaged or destroyed property and the estimated time required for such repair, reconstruction or replacement. The City may elect to apply the proceeds at its discretion to the repair, reconstruction or restoration of such damaged property or to the prepayment of the Bonds. In the event of such election the City will promptly inform the Issuer and the Bondholders in writing of its decision not to rebuild and the Net Proceeds of such insurance shall be applied to prepayment of rent hereunder and such series of Bonds as shall be specified by the City and the interest thereon shall become due and payable on the first payment due date following receipt of such written notice and not more than sixty (60) days after such event. In the event that the City elects to prepay Bonds following such damage or destruction, it shall pay, as additional rent hereunder, any amounts required to effect such prepayment and which may not be available from the proceeds of such insurance and direct the series of Bond which is to be prepaid. Pursuant to the Issuer Ordinance and the Bonds, in the event that the Bonds or any part thereof are prepaid pursuant to this Section 7.01, no premium or penalty shall be applicable. In the event that the City elects to repair, reconstruct or replace the damaged property, the City shall promptly proceed to repair, reconstruct and replace such part of the Facilities to its original condition as far as possible. The moneys required for such repair, reconstruction and replacement shall be paid from: (i) the Net Proceeds of insurance received by reason of such occurrence which Net Proceeds shall be deposited in a reconstruction fund held by or on behalf of the Bondholders (in escrow or otherwise as acceptable to the Bondholders) and disbursed in accordance with a requisition procedure acceptable to the Bondholders; and (ii) to the extent such insurance proceeds are not sufficient, from moneys to be provided by the City to the extent authorized by law and to the extent such moneys are lawfully available therefor. Notwithstanding the foregoing or anything herein to the contrary, the proceeds of any insurance award shall be invested, pending disbursement or use as provided in this Lease, as then permitted by applicable law ("Permitted Investments"), as evidenced by an opinion of Bond Counsel, it being the intent that such investments will not adversely affect the tax-exempt status of interest on the Bonds.

Section 7.02. Condemnation.

(A) Immediately after the commencement of any condemnation or similar proceedings by a third party in the exercise of a power of eminent domain, or a power in the nature of eminent domain which in any way affects the Facilities, the City shall immediately notify the Issuer and the Bondholders in writing. The Net Proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the exercise of such power, with respect to the Facilities or any part or portion thereof shall be paid to the Bondholders to be held in an appropriately designated fund. The City may, in its discretion, within sixty (60) days of

receipt of such condemnation award or compensation, by written notice to the Issuer and the Bondholders, elect to have such Net Proceeds or other compensation applied to prepayment of rent hereunder, in which event such proceeds shall be applied to prepayment of such series of Bonds as shall be designated by the City and the City shall pay any additional amount required to effect such prepayment or the City may elect to replace or restore the part or portion of the Facilities affected by such taking or conveyance, in which event the City shall promptly proceed to replace or restore such part or portion of the Facilities, including any fixtures, furniture, equipment and effects, to its original usefulness and condition or a condition of at least an equivalent value immediately prior to such event, insofar as possible. The moneys required for such replacement or restoration shall be paid: (i) from the Net Proceeds of such condemnation award, or other compensation, which Net Proceeds or other compensation shall be transferred to a reconstruction fund held by or on behalf of the Bondholders (in escrow or as otherwise acceptable to the Bondholders) and disbursed in accordance with a requisition procedure acceptable to the Bondholders; and (ii) to the extent that such proceeds are not sufficient, from moneys to be provided by the City, to the extent authorized by law and to the extent moneys are lawfully available therefor.

(B) Notwithstanding the foregoing, the proceeds of any condemnation award or other compensation shall be invested, pending disbursement or use as provided herein in Permitted Investments, as then permitted by applicable law, as evidenced by an opinion of Bond Counsel, it being the intent that such investments will not adversely affect the tax-exempt status of interest on the Bonds.

ARTICLE VIII
ADDITIONAL COVENANTS OF THE LESSEE AND OTHERWISE

Section 8.01. Maintenance of Existence. The City agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

Section 8.02. [Reserved].

Section 8.03. Books and Records. The City will keep books and records of account with respect to all transactions relating to the Facilities, in which complete and correct entries shall be made of all transactions relating to the Facilities, and any Holder of a Bond or Bonds shall have the right at all reasonable times to inspect the Facilities and all parts or portions thereof and all records, accounts and data of the City relating thereto.

The accounting system for the Facilities shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by applicable law. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the supervision of the City shall be reported to such agent of the City as the City shall direct.

The City shall, at least once a year, cause its books, records and accounts to be audited by the Chief Inspector Division of the West Virginia State Auditor's Office, or independent certified public accountants and upon receipt of the report of such Division or independent certified public accountants, shall promptly mail such report to any Holder or Holders of Bonds. The City shall provide a copy of such annual audit report to the Purchaser within two hundred seventy (270) days following the conclusion of the City's Fiscal Year, or if such audit report is not available at that time, the City shall provide the same to the Purchaser within five (5) business days of the same being provided to the City. In addition, the City will provide Purchaser with any other information about the City's operations, financial affairs and condition within thirty (30) days following Purchaser's reasonable written request therefor.

Section 8.04. No Representation by Issuer as to Condition or Suitability. The City acknowledges (i) that the Issuer has acquired Title to the Facilities in connection with this Lease and that the City has examined the Facilities and knows the condition thereof and accepts the same in said condition, (ii) that the Issuer has made no warranty, either express or implied, as to the condition of the Facilities or any part or portion thereof or that the Facilities will be suitable for the City's purposes or needs, and (iii) that the City in entering this Lease is relying solely upon its own knowledge of the Facilities.

Section 8.05. Liens and Encumbrances. The City and the Issuer covenant that they will not, directly or indirectly, create, assume, incur or suffer to exist any mortgage, pledge, encumbrance, lien, security interest or charge of any kind upon the Facilities or upon any income, revenues, receipts or proceeds of the Issuer or the City in respect of the Facilities except Permitted Encumbrances and except as expressly allowed herein.

Section 8.06. City Authorization. The City covenants and warrants that it is duly authorized, under the Constitution and laws of the State and under all other applicable provisions of law, to execute and deliver this Lease, that all action on its part for the authorization of this Lease has been duly and effectually taken, that the Lease is and will be a valid and enforceable obligation of the City in accordance with its terms and as herein set forth, and that the City now has or will use its best efforts to obtain complete and lawful authority and privilege to maintain and operate the Facilities and that no consents, certificates, orders, permits, rights, franchises, registrations, licenses, exemptions, filings, approvals, authorizations, declarations or privileges of the City, all of which are currently in full force and effect, will be allowed to lapse or be forfeited so long as the same shall be necessary for the operation and/or maintenance of the Facilities and that it will procure the extension or renewal of each and every permit, consent, certificate, order, right, franchise, registration, license, exemption, filing, declaration, approval, authorization or privilege so expiring and necessary or desirable for the operation and/or maintenance of the Facilities.

Section 8.07. Indemnity. To the fullest extent allowed by law and the Constitution of the State, the City will pay, and will protect, indemnify and save the Issuer and the Bondholders harmless from and against any and all liabilities, losses, damages, costs and expenses (including attorneys fees and expenses of the Issuer and the Bondholders), causes of actions, suits, claims, demands, actions, proceedings and judgments of any nature arising from or caused by:

(1) Any injury to or death of any person or damage of property in or upon the Facilities, or growing out of or connected with the use, nonuse, condition or occupancy of the Facilities or a part or portion thereof; any repairs, construction or alterations and remodeling thereto or the condition of the Facilities and any equipment or facilities at any time located on the Facilities or used in connection therewith;

(2) Violation of any agreement, warranty, covenant or condition hereof, except by the Issuer;

(3) Violation of any lease, contract, agreement or restriction by or upon the City relating to the Facilities, which shall have existed at the commencement of the Lease Term; and

(4) Violation of any law, ordinance, regulation, franchise or court order affecting the Facilities or a part thereof or the ownership, occupancy or use thereof.

Section 8.08. Maintenance of Security Interests, Etc. The City will execute all documents, agreements and instruments, including, without limitation, financing statements provided for by the Uniform Commercial Code of the State, deemed necessary or advisable in the opinion of independent counsel for perfection of and continuance of the perfection of the liens, pledges and security interests created by this Lease, the Deed of Trust, the Assignment or the Issuer Ordinance. However, all obligations of the City under this Section 8.08 are subject to the condition that the Issuer shall execute all documents, agreements and instruments, including, without limitation, all such financing statements, required of it in the opinion of independent counsel, and will file and record all such documents, agreements and instruments executed by the City and the Issuer, or cause them to be filed and recorded, and shall continue the security interests, pledges and liens of all such documents, agreements and instruments by appropriate

refiling and re-recording as specified in the opinion of independent counsel, or cause them to be so continued, for as long as any Bonds shall remain outstanding.

Section 8.09. Granting of Easements. If no Event of Default under this Lease shall have happened and be continuing, the City and the Issuer may at any time or times (i) grant easements, licenses, rights of way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Facilities, free from any lien or (ii) release existing easements, licenses, rights of way and other rights or privileges with respect to any property included in the Facilities, all with or without consideration and upon such terms and conditions as the City and the Issuer shall determine, and the Issuer agrees that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangements, upon receipt by the Issuer and the Bondholders of: (a) a copy of the instrument of grant or release or of the agreement or other arrangement, (b) a written application signed by an authorized officer of the entity requesting such instrument, (c) a certificate executed by an Authorized Representative of the City stating that such grant or release is not detrimental to the use of the Facilities as intended, and (d) other evidence satisfactory to the Issuer and the Bondholders that action will not materially adversely affect the value of the Facilities. Any such easement or right and the rights of such other parties thereunder shall not be affected by any termination of this Lease or default on the part of the City hereunder.

If no Event of Default shall have happened and be continuing, any payments or other consideration received by the City for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the City but, in the event of the termination of this Lease or default of the City, all rights then existing of the City with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer and the Bondholders. No conveyance or release effected under the provisions of this Section shall entitle the City to any abatement or diminution of the rent payable hereunder.

Section 8.10. [Reserved].

Section 8.11. Continued Operation of Facilities. In the event the City gives notice to the Issuer and all Bondholders of its election to exercise its option to terminate this Lease at the end of the then current Fiscal Year as provided in Section 5.01 hereof, the City covenants and agrees to use its best efforts to assign this Lease or sublease the Facilities or otherwise cause the Facilities to be operated or managed as a revenue-producing facility on substantially the same basis as provided in this Lease; provided, however, that no such assignment, sublease or management or operating agreement or contract shall be entered into without the prior written consent of the Issuer and all of the Bondholders and without first filing with the Issuer an opinion of Bond Counsel to the effect that the execution and performance of such assignment, sublease or management or operating agreement or contract will not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof for federal income tax purposes.

ARTICLE IX
COVENANTS OF THE ISSUER

Section 9.01. Restriction on Sale, Etc. The Issuer and the City acknowledge and agree that the Lease Rentals payable under this Lease are assigned and pledged as security for the Bonds issued under the Issuer Ordinance and that the Issuer has entered into certain covenants with the Bondholders in the Issuer Ordinance and the Assignment which may affect the Facilities and this Lease in the event of default hereunder. The Issuer agrees that it will not, except as contemplated herein, in the Issuer Ordinance, or in the Assignment, enter into any other contract or agreement affecting this Lease, the Lease Rentals payable hereunder or the Facilities in any way or assign the same as security for any other obligations of the Issuer without the prior written consent of the City.

Section 9.02. Prepayment of Bonds. If the City is not in default hereunder and if the lawfully available moneys are sufficient to effect such prepayment, the Issuer, at the request at anytime of the City, shall forthwith take all steps that may be necessary under the applicable prepayment provisions of the Issuer Ordinance and the Bonds to effect prepayment of all or part of the then outstanding Bonds, as may be specified by the City on the earliest prepayment date on which prepayment may be made under such applicable provisions.

Section 9.03. Nature of Issuer's Covenants. The City acknowledges and agrees that any obligation of the Issuer created by or arising out of this Lease shall be payable solely out of the proceeds derived from the Lease, the sale of the Bonds and any insurance and condemnation award received pursuant hereto. The foregoing limitation shall not, however, preclude the City from seeking injunctive relief in any court to compel the Issuer to perform any such obligation.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 10.01. Events of Default Defined. The following shall be "Events of Default" under this Lease and the terms Event of Default or Default shall mean any one or more of the following events:

(A) Failure of the City to pay the rent required to be paid under Section 5.02 hereof as when due and payable; or

(B) Failure of the City and/or the Issuer to perform any other covenant, condition or provision hereof and to remedy such failure within thirty (30) days after notice thereof from the Issuer or any Bondholder to the City or from any Bondholder or the City to the Issuer, as the case may be; or

(C) If any representation or warranty made by the City in any statement or certificate furnished to the Issuer or the Bondholders in connection with the sale of the Bonds or furnished by the City pursuant hereto proves untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within thirty (30) days after notice thereof to the City by the Issuer; or

(D) Any judgments, writs of execution, warrants of attachment or any similar process in an aggregate amount in excess of $1,000,000 shall be entered or filed against the City or against any of its property and remains unvacated, unpaid, unbonded or unstayed for a period of one hundred twenty (120) days; or

(E) If the City admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the City, or for any part of its property; or

(F) If a trustee or receiver is appointed for the City or for any part of its property and is not discharged within sixty (60) days after such appointment; or

(G) If bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the City, and if instituted against the City are allowed against the City or are consented to or are not dismissed, stayed or otherwise nullified within sixty (60) days after such institution;

(H) If the City abandons substantially all of the Facilities (except as permitted by this Lease) for a period of thirty (30) consecutive days; or

(I) If there shall occur an "Event of Default" under the Issuer Ordinance or a default under the Assignment.

Section 10.02. Remedies on Default. If any Event of Default shall occur and be continuing, the Issuer may, at its option and with the consent of the Bondholders, exercise any one or more of the following remedies:

(A) The Issuer may terminate this Lease by giving to the City notice of the Issuer's intention so to do, in which event the Lease Term shall end, and all right, title and interest of the City hereunder shall expire, on the date stated in such notice, which shall not be less than ten (10) days after the date of the notice by the Issuer of its intention so to terminate; or

(B) The Issuer may terminate the right of the City to possession of the Facilities or any portion thereof by giving notice to the City that the City's right of possession shall end on the date stated in such notice, which shall not be less than ten (10) days after the date of notice by the Issuer of its intention so to terminate; or

(C) The Issuer may enforce the provisions of this Lease and may enforce and protect the right of the Issuer hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy; or

(D) The Issuer may accelerate and declare all future rent hereunder to be immediately due and payable; provided, however, that rent payable as interest on the Bonds upon any such acceleration shall be limited to the interest due on the Bonds until payment of the Bonds and the interest thereon in full; or

(E) The Issuer may, upon written notice to the City, revoke or rescind any and all rights and options of the City hereunder.

Section 10.03. Right of Re-Entry. If an Event of Default shall occur, the Issuer may then or at any time thereafter re-enter and take complete and peaceful possession of the Facilities or any portion thereof, with or without process of law, and may remove all persons therefrom, and the City covenants that, in any such event it will peacefully and quietly yield up and surrender the Facilities and any part or portion thereof to the Issuer.

Section 10.04. Right to Sublet or Relet. If the Issuer terminates the City's right of possession pursuant to subparagraph (B) of Section 10.02, the Issuer may re-enter the Facilities or any part or portion thereof and take possession of all or any part or portion thereof (including any and all equipment and apparatus thereon), may remove any portion of the equipment, machinery or apparatus thereon not subject to a conditional sale agreement, equipment lease, or lease purchase agreement in favor of third parties, which the Issuer elects so to do, and may, upon receipt of an opinion of recognized Bond Counsel that the tax exempt status of the interest on the Bonds will not be adversely affected, except as otherwise expressly provided in the Ordinance, sublet or relet the Facilities or any part or portion thereof from time to time for all or any part of the unexpired part of the then Lease Term or for a longer period, and the Issuer may collect the rents from such reletting or subletting and apply the same, first, to the payment of the expense of re-entry and reletting, and second, to the payment of the rents payable hereunder and in the event that the proceeds from such reletting and subletting are not sufficient to pay in full the foregoing, the City shall, subject to the City's option to terminate this Lease at the end of the

then current Fiscal Year pursuant to Section 5.01 hereof, remain and be liable therefor, and the City promises and agrees to pay the amount of any such deficiency from time to time and the Issuer may at any time and from time to time sue and recover judgment for any such deficiency or deficiencies.

Section 10.05. Damages in the Event of Termination. In the event of the termination of this Lease by the Issuer pursuant to Section 10.02 hereof, the Issuer shall be entitled to recover immediately from the City, to the fullest extent allowed by law: (i) the aggregate principal amount of all Bonds then outstanding, together with any prepayment premium due thereon; (ii) the total amount of all unpaid interest accrued or to accrue until payment of all Bonds; and (iii) such amounts as will be sufficient to pay all costs and expenses, including attorneys' fees, which the Issuer, the Trustee and the Bondholders shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of rent.

Section 10.06. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 10.07. Agreement to Pay Attorneys' Fees and Expenses. In the event the City should default under any of the provisions of this Lease and the Issuer or the Bondholders should employ attorneys or incur other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it will on demand therefor pay from lawfully available funds to the Issuer, the trustee under the Deed of Trust, or the Bondholders the reasonable fees of such attorneys and such other expenses so incurred by the Issuer, the trustee under the Deed of Trust or the Bondholders.

Section 10.08. No Additional Waiver Implied by One Waiver. In the event the breach of any agreement contained herein should be waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.09. Waiver of Stay or Extension Laws. The City covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Lease, the Ordinance or the Assignment; and the City (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Issuer or the Bondholders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 10.10. Remedies to be Performed by the Bondholders. Notwithstanding any provision in this Article X to the contrary, to the extent provided in the Assignment, the Bondholders shall have any right to effect any remedy hereunder. The Issuer shall cooperate fully with the Bondholders in performing or effecting any such remedy.

ARTICLE XI
GENERAL

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, with proper address as indicated below. The Issuer, the City, the Paying Agent and the original Purchaser may, by written notice given to each of the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated hereby. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

ISSUER:

Morgantown Building Commission
c/o The City of Morgantown
City Hall
389 Spruce Street
Morgantown, WV 26505
Attention: Chairman

CITY:

The City of Morgantown
City Hall
389 Spruce Street
Morgantown, WV 26505
Attention: City Manager

REGISTRAR/PAYING AGENT/DEPOSITORY BANK:

_____
_____
_____, __ _____
Attention: _____

PURCHASER:

_____
_____
_____, __ _____
Attention: _____

Section 11.02. Assignment of Lease. The City shall not, without the prior written consent of the Issuer and all of the Bondholders, assign this Lease or any portion hereof, subject to the provisions of Section 8.11 hereof. Simultaneously with the delivery hereof, this Lease has

been conditionally assigned by the Issuer pursuant to and by the Assignment to the Purchaser, and the City consents to such conditional assignment by the Issuer to the Purchaser.

Section 11.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Issuer and the City and their respective successors and permitted assigns.

Section 11.04. Severability. If any provision of this Lease, including, without limitation, the remedies granted hereunder, shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Lease contained, shall not affect the remaining portions of this Lease, or any part thereof.

Section 11.05. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State.

Section 11.06. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, but only with the written consent of all the Bondholders subsequent to the issuance of the Bonds and before the Issuer Ordinance and the Assignment are satisfied and discharged in accordance with their terms, this Lease may not be effectively amended, changed, modified, altered or terminated nor may any provision be waived hereunder.

Section 11.07. Survival. All covenants, representations or warranties contained herein or in any certificates delivered pursuant hereto, shall survive delivery and termination of this Lease and payment of the Bonds.

Section 11.08. Execution Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the **MORGANTOWN BUILDING COMMISSION** and **THE CITY OF MORGANTOWN** have caused this Lease to be executed in their respective corporate names, and have caused their corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, all as of the date first above written.

MORGANTOWN BUILDING COMMISSION

By: _____
Its Chairman

ATTEST:

By:_____
Its Secretary

THE CITY OF MORGANTOWN

By: _____
Its Mayor

By: _____
Its City Manager

ATTEST:

By: _____
Its City Clerk

The foregoing instrument was prepared by Steptoe & Johnson PLLC, 400 White Oaks Boulevard, Bridgeport, WV 26330.

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this _____, 2022, by _____, CHAIRMAN of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, on behalf of said public corporation.

My commission expires: _____

[NOTARIAL
SEAL]

_____
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this _____, 2022, by Jenny Selin, MAYOR, and A. Kim Haws, CITY MANAGER of THE CITY OF MORGANTOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires:_____

[NOTARIAL
SEAL]

_____
Notary Public

EXHIBIT A - REAL ESTATE DESCRIPTION

LEASE ASSIGNMENT

THIS LEASE ASSIGNMENT, dated as of _____, 2022, but effective _____, 2022 (the "Assignment"), executed by the **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia (the "Issuer" or "Lessor"), in favor of _____, a _____ banking corporation with headquarters in _____, _____ (the "Purchaser").

WITNESSETH

WHEREAS, pursuant to the authority of Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Act"), The City of Morgantown (the "City") enacted an ordinance on August 16, 1988, creating the Issuer;

WHEREAS, the City has conveyed unto the Issuer pursuant to such deed or deeds, bills of sale or other instruments of transfer as may be necessary and appropriate (collectively, the "Conveyance Documents"), the real estate comprising City Hall, the Public Safety Building, the City Public Works Garage and the Norwood Fire Station situate and being in the City of Morgantown, Monongalia County, West Virginia, together with all improvements and appurtenances thereto, which real property is more particularly described in **EXHIBIT A – REAL ESTATE DESCRIPTION**, attached hereto (the "Properties");

WHEREAS, the City desires to design, acquisition, construction and equipping of improvements to the Properties to be used in connection with the general activities of the City, together with all necessary appurtenances in connection therewith (the "Project"; the Properties together with all appurtenances thereto, and all additions and improvements thereto, of every kind and nature, now or hereafter acquired or constructed, herein called the "Facilities");

WHEREAS, the City and the Issuer have, through their respective governing bodies, duly authorized the execution and delivery of this Lease Assignment pursuant to a Bond Authorizing Ordinance enacted by the Issuer on _____, 2022, as supplemented by a Supplemental Resolution adopted by the Issuer on _____, 2022 (together, the "Issuer Ordinance") and an ordinance enacted by the City on _____, 2022, as supplemented by a Supplemental Resolution adopted by the City on _____, 2022 (together, the "City Ordinance" and collectively with the Issuer Ordinance, the "Ordinances");

WHEREAS, in order to provide for the financing of the costs of the Project, the funding of a reserve fund for the Series 2022 A Bonds, if any, and to pay costs of issuance of the Bonds and related costs, the Issuer has determined, in the Issuer Ordinance, to issue, sell and deliver its Lease Revenue Bonds, Series 2022 A

(Multiple Facilities Improvement Projects) in the aggregate principal amount of $_____ (the "Bonds") to the Purchaser;

WHEREAS, the Purchaser is the original purchaser of the Bonds from the Issuer;

WHEREAS, the Issuer has leased its interest in the Facilities to the City, pursuant to an Agreement and Lease, of even date herewith (the "Lease") in order to provide for and secure the payment of the principal of and interest on the Bonds and to provide for the operation, maintenance and administration of the Facilities;

WHEREAS, the Issuer deems this Assignment and the terms hereof proper, necessary and advisable in connection with exercising powers as provided in the Act;

WHEREAS, the execution and delivery of this Assignment and issuance of the Bonds have been in all respects duly and validly authorized by the Ordinances;

WHEREAS, the Issuer has found and determined, and does hereby find and determine, that this Assignment is for a public purpose of the Issuer and is necessary, proper and appropriate to accomplish the public purposes of the Act; and

WHEREAS, all things necessary to make the Bonds, when authenticated and issued as in the Issuer Ordinance provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Assignment a valid assignment of the Lease Rentals, issues and profits derived from the Lease of the Facilities to secure the payment of the principal of and interest on the Bonds and a valid assignment of the rights of the Issuer under the Lease of the Facilities, all subject to the terms hereof, have been done and performed, and the creation, execution and delivery of this Assignment, and the authorization, execution, issuance and delivery of the Bonds, subject to the terms thereof, have in all respects been duly authorized;

NOW, THEREFORE, the Issuer, in consideration of the foregoing, does hereby **ASSIGN, TRANSFER** and **SET OVER** unto the Purchaser, its successors and assigns, all of the Issuer's right, title and interest in, to and under the Lease in connection with the Facilities (the "Assigned Facilities"), and all amendments to the Lease and future leases of the Assigned Facilities, including all property described in **EXHIBIT A - REAL ESTATE DESCRIPTION**, attached hereto as a part hereof, or any portion thereof, the Lease Rentals, issues and profits payable or arising therefrom, together with all moneys and investments in any fund or account established under the Lease (with the exception of the Rebate Fund), until the principal of and interest on the Bonds and all other fees, charges and expenses in connection therewith shall have been fully paid and satisfied or until the Purchaser shall be entitled to possession by order of court, operation of law or otherwise, such assignment to be subject to the following terms and conditions:

Section 1. So long as no Event of Default (as defined in the Issuer Ordinance or in the Lease) or default hereunder or under the Lease, shall have occurred, which shall not have been cured, the Purchaser will not exercise any of its rights hereunder except as otherwise expressly provided in the Lease or in the Issuer Ordinance; provided, however, that upon the occurrence of any Event of Default or default hereunder or under the Lease, then for so long as such Event of Default or default shall continue uncured, at the option of the Purchaser, the Purchaser shall have any and all of the rights hereinafter provided, including, without limitation, the right to collect such Lease Rentals, issues and profits; provided further, that if any such Event of Default or default shall be deemed to be waived, any exercise of the foregoing option shall be deemed to be rescinded and this Assignment shall be deemed to be reinstated in the same manner and to the same extent as any such waiver under, rescission under or reinstatement of the Bonds pursuant to the Issuer Ordinance.

Section 2. Subject only to the foregoing, the rights of the Purchaser hereunder in case of default shall be as follows:

(a) All sums collected and received by the Purchaser out of the Lease Rentals, issues and profits from the Lease and any other future leasing of the Assigned Facilities shall be applied by it to the payment of: the costs of collection thereof; the costs of management, repair, upkeep and improvement of the Facilities, including all taxes, assessments, premiums for public liability insurance and other insurance premiums required to be carried, maintained and paid by the City, and under the laws of the State of West Virginia; and/or the Bonds, in such order as shall be determined by the Purchaser in its sole discretion.

(b) The Purchaser may from time to time appoint such agents or employees as shall be necessary for the collection of the Lease Rentals, issues and profits and for the proper care and operation of the Assigned Facilities and dismiss same, and the Issuer hereby grants to such agents or employees so appointed full and irrevocable authority on the Issuer's behalf to manage the Assigned Facilities and to do all acts relating to such management, including among others the making of new leases in the name of the Issuer or otherwise, the alteration, assignment, subleasing or amendment of existing leases, the authorization of repairs or replacements to maintain the building or buildings, other improvements and chattels situated upon the Assigned Facilities in good and tenantable condition, and making of such alterations or improvements as, in the judgment of the Purchaser, may be necessary to maintain or increase the income from the Assigned Facilities. The Purchaser shall have the sole control of such agents or employees whose remuneration may be paid out of the Lease Rentals, issues and profits as hereinbefore provided, at the rate of compensation accepted in the community wherein the Facilities are situated, unless otherwise specified, and the Issuer, to the fullest extent allowed by law, hereby expressly releases the Purchaser of any liability to the Issuer for the negligent acts of such agents and agrees that the Purchaser shall not be liable for its neglect (to the extent allowed by law) with respect to monies that come into its hands unless actually received by the Purchaser at its principal banking office.

Section 3. The Issuer further agrees that nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to the Purchaser under or by the provisions of the Bonds, the Issuer Ordinance, the Credit Line Deed of Trust, Fixture Filing and Security Agreement, dated as of _____, 2022, but effective _____, 2022, executed by the Issuer to the trustee named therein for the benefit and security of the Purchaser (the "Deed of Trust"), or any other instrument, agreement or document securing payment of, or otherwise executed and delivered in connection with the issuance of the Bonds. The application of the Lease Rentals, issues and profits derived from leasing of the Assigned Facilities to the Bonds or other purposes above mentioned shall not operate in any way to waive any default which might hereafter exist under the Bonds, the Issuer Ordinance, the Deed of Trust or any other instrument, agreement or document securing payment of, or otherwise executed and delivered in connection with the issuance of the Bonds. The Issuer expressly agrees that the collection of such rents, issues and profits hereafter to be made shall not constitute a waiver of any default and that the Purchaser, by accepting this Assignment, does not hereby release any security it may hold for the Bonds, or any part thereof or in any way extend the time for payment of the Bonds, or any part thereof.

Section 4. This Assignment is made subject to all of the terms, covenants and conditions of the Issuer Ordinance and the Lease, which are made a part hereof and incorporated herein by this reference, and in the event any provision of this Assignment conflicts with any provision of the Issuer Ordinance or the Lease, the provisions of the Issuer Ordinance or the Lease, as applicable, shall govern, notwithstanding anything herein to the contrary.

Section 5. In the event the Bonds are assigned, sold or otherwise conveyed to a registered owner other than the Purchaser, this Assignment shall be assigned by the Purchaser to such registered owner.

Section 6. This Assignment shall be binding upon the Issuer, its successors and assigns, and shall inure to the benefit of the Purchaser, and its successors and assigns.

Section 7. This Assignment is governed by and shall be construed in accordance with the laws of the State of West Virginia.

Section 8. References in this Assignment to any other document, agreement or instrument or documents, agreements or instruments are and shall be references to such other document, agreement or instrument, or documents, agreements or instruments as the same may from time to time be duly modified, amended, supplemented, renewed or extended in accordance with the terms hereof.

Section 9. If any provision of this Assignment, including, without limitation, the remedies granted hereunder, shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public

policy, or for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

IN WITNESS WHEREOF, MORGANTOWN BUILDING COMMISSION has caused this Lease Assignment to be executed in its name and on its behalf and its corporate seal to be affixed and attested by its officers thereunto duly authorized, all as of the date and year first above written.

MORGANTOWN BUILDING
COMMISSION

By:_____
Its Chairman

ATTEST:

By:_____
Its Secretary

THIS INSTRUMENT WAS PREPARED BY:
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this _____, 2022, by _____, CHAIRMAN of the MORGANTOWN BUILDING COMMISSION, a public corporation and municipal building commission, on behalf of such public corporation.

My commission expires _____.

[NOTARIAL SEAL]

_____
Notary Public

EXHIBIT A - REAL ESTATE DESCRIPTION

ASSIGNMENT OF FUNDS AND ACCOUNTS

WHEREAS, on the date hereof the Morgantown Building Commission, a public corporation and municipal building commission of the State of West Virginia (the "Issuer") has issued its Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects), dated _____, 2022, issued in the original aggregate principal amount of $_____ (the "Bonds");

WHEREAS, the Bonds were issued for the purposes of financing costs of the design, acquisition, construction and equipping for and on behalf of the Issuer of improvements to City Hall, the Public Safety Building, the City Public Works Garage and the Norwood Fire Station in The City of Morgantown, West Virginia (the "Properties"), together with all necessary appurtenances in connection therewith (the "Project"; the Properites, together with all rights of way, appurtenances, buildings, personal property and fixtures associated therewith, including, but not limited to, the Project improvements to be constructed thereon and all additions and improvements thereto now or hereafter acquired, created or constructed, of every kind and nature, herein called the "Facilities");

WHEREAS, The City of Morgantown (the "City") and the Issuer have entered into an Agreement and Lease, dated as of _____, 2022, but effective _____, 2022 (the "Lease"), pursuant to which the Issuer has established certain funds and accounts with _____, a _____ banking corporation with headquarters in _____, _____, as Paying Agent and Depository Bank thereunder (the "Bank"). Such funds and accounts include a Sinking Fund (Account # _____) (the "Sinking Fund"), a Costs of Issuance Fund (Account # _____) (the "Costs of Issuance Fund"), and a Project Fund (Account # _____) (the "Project Fund").

NOW, THEREFORE, WITNESSETH:

1. For so long as the Bonds are outstanding and unpaid, the Issuer does hereby assign and grant unto _____ and any other registered owner of the Bonds from time to time (the "Purchaser") a first lien on and security interest in the Sinking Fund, the Costs of Issuance Fund and Project Fund established with the Bank pursuant to the Lease.

2. The Sinking Fund, the Costs of Issuance Fund and Project Fund will not be invaded by the Purchaser unless and until an event of default has occurred under the terms of the Lease, the Issuer's Bond Authorizing Ordinance enacted on _____, 2022, as supplemented by a Supplemental Resolution adopted on _____, 2022 (together, the "Issuer Ordinance"), or the Credit Line Deed of Trust, Fixture Filing and Security Agreement, dated as of _____, 2022, but effective _____, 2022, executed by the Issuer to the trustee named therein for the benefit and security of the Purchaser in the repayment of the Bonds (the "Deed of Trust"), but if such an event of default shall occur the Purchaser shall have the immediate right to invade the Sinking Fund, the Costs of Issuance Fund and the Project Fund and to apply the funds

on deposit therein to the Purchaser's costs in enforcing its remedies and to the payment of principal of and interest on the Bonds.

3. If the Purchaser shall at any time transfer an interest in the Bonds to another party the Issuer, the City and the Bank agree to execute and deliver any account control agreements that may then be necessary to perfect the security interests in the Sinking Fund, the Costs of Issuance Fund and Project Fund herein conveyed.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the MORGANTOWN BUILDING COMMISSION and _____ have caused this Assignment of Funds and Accounts to be executed in their respective corporate names, and have caused their corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, all as of this _____, 2022.

MORGANTOWN BUILDING
COMMISSION

By: _____
Its Chairman

_____

By: _____
Its _____

A CREDIT LINE DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

THIS INSTRUMENT SECURES AN OBLIGATION THAT MAY INCREASE AND DECREASE FROM TIME TO TIME

THIS INSTRUMENT CONTAINS AFTER ACQUIRED PROPERTY PROVISIONS

THIS CREDIT LINE DEED OF TRUST IS FILED FOR RECORD IN THE REAL ESTATE RECORDS AS A FIXTURE FILING PURSUANT TO WEST VIRGINIA CODE SECTION 46-9-502

THIS CREDIT LINE DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (the "Deed of Trust and Security Agreement"), dated as of _____, 2022, but effective _____, 2022, by and among the **MORGANTOWN BUILDING COMMISSION**, a public corporation and municipal building commission of the State of West Virginia, as Grantor hereof (hereinafter called "Grantor"), whose address is c/o The City of Morgantown, City Hall, 389 Spruce Street, Morgantown, WV 26505, Attention: Chairman, _____, as trustee, a resident of _____ County, State of West Virginia, whose address is _____, _____, West Virginia _____ (hereinafter called the "Trustee"), and _____, a _____ banking corporation together with any other registered owner of the Bonds (hereinafter defined) from time to time, as beneficiary, with an address of _____, _____, _____ _____ (hereinafter called "Lender" or "Beneficiary");

WITNESSETH: That for and in consideration of the indebtedness and trusts hereinafter set forth and the sum of Ten Dollars ($10.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant and convey unto Trustee with the power of sale and, other than the Premises, to the Lender:

(A) All that certain real estate more particularly set forth and described in **"EXHIBIT A - REAL ESTATE DESCRIPTION,"** attached hereto and made a part hereof, together with all buildings and improvements thereon or hereafter constructed thereon or affixed thereto, and all rights, privileges, easements, hereditaments and appurtenances thereunto belonging or appertaining (the "Premises");

(B) A security interest under Chapter 46, Article 9 of the Code of West Virginia 1931, as amended (the "Code") in and to all personal property and equipment financed with the proceeds of the Bonds (as hereinafter defined) owned by the Grantor or in which Grantor has a leasehold interest and which is acquired with proceeds of the Bonds and which is located on the Premises or used by The City of Morgantown (the "City") in connection with the operation of the Premises (the "Personal Property");

(C) A security interest pursuant to the Code in and to all monies of the Grantor from time to time on deposit in the Project Fund, the Sinking Fund, the Costs of Issuance Fund or any other fund or account established pursuant to the Agreement and Lease (with the exception of the Rebate Fund) in connection with the Bonds (both as hereafter defined) (the "Funds");

(D) All receipts, revenues, rents, royalties, income and other moneys received by or on behalf of the Grantor from the ownership, leasing or operation of the Personal Property and the Premises, including, but without limiting the generality of the foregoing, all payments received pursuant to the Agreement and Lease (hereinafter defined), insurance and condemnation proceeds with respect to the Premises or Personal Property or any part or portion thereof which have not been applied to the repair or reconstruction of the Premises or Personal Property, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence (collectively, the "Gross Receipts");

(E) Any and all fixtures of every kind financed with the proceeds of the Bonds which are or shall be attached to, or be deemed to be fixtures and a part of, the Premises, and together also with all fixtures hereafter owned by Grantor or in which it has or shall have an interest, procured for incorporation in or to be affixed to buildings or other improvements on the Premises or appurtenances thereto, and all easements and rights-of-way (collectively, the "Fixtures"); and

(F) All right, title and interest of the Grantor, as lessor or sublessor, in and to any and all leases and subleases of the Premises, Personal Property or Fixtures or portion thereof, now existing or hereafter executed by the Grantor, all of which, together with the Premises, the Personal Property, the Funds, the Gross Receipts and the Fixtures, shall secure the indebtedness herein described and covered by this Deed of Trust and Security Agreement and is sometimes herein referred to collectively as the "Secured Property."

TO HAVE AND TO HOLD the Secured Property unto the Trustee or the Lender, or both, as the case may be, and their successors in trust forever; and Grantor does hereby covenant to and with Trustee and Lender, their successors and assigns, that Grantor warrants generally the Secured Property hereby conveyed; that Grantor has the right to grant and convey the Secured Property to Trustee or the Lender, or both, as the case may be; that the same is free from any and all liens and encumbrances other than Permitted Encumbrances as defined in the Agreement and Lease between Grantor and the City, dated as of _____, 2022, but effective _____, 2022 and recorded in the office of the Clerk of The County Commission of Monongalia County (the "Agreement and Lease"); that Trustee shall have quiet possession thereof and that Grantor will execute and deliver such other and further assurances of the Secured Property as may be requisite, including, but not limited to, the execution and delivery of financing statements, continuation statements and such other instruments as Lender may require to perfect the lien and security interest hereof more specifically upon any item or items of property, or rights or interests therein, covered by this Deed of Trust and Security Agreement, and will do such other and

further reasonable acts as Lender or Trustee may require to carry out more effectually the purposes of this Deed of Trust and Security Agreement.

IN TRUST NEVERTHELESS to secure the payment of a loan to Grantor from the Lender in the maximum aggregate principal amount of $_____, a portion of the principal amount of which has been advanced by the Lender to the Grantor and thereupon deposited in the Project Fund and the Costs of Issuance Fund maintained by the Depository Bank pursuant to the terms of the Agreement and Lease (the "Loan"). The remaining amount of the Loan will be advanced by the Lender from time to time as requisitioned by the City for deposit in the Project Fund maintained by the Depository Bank in order to pay costs of the Project as the same becomes due and payable. The Loan is evidenced by those certain Morgantown Building Commission Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects), dated as of the effective date hereof, and issued in the original aggregate principal amount of $_____ (the "Bonds"). The address of said Lender, the beneficial owner of the indebtedness secured hereby at the time of execution and delivery hereof, is _____, _____, _____, _____ _____. All notices of subsequent liens shall be sent to the Lender at this address for purposes of providing notice under W.Va. Code 38-1-14(e). This Deed of Trust and Security Agreement secures repayment of the Loan, the indebtedness of which is represented by the Bonds and also secures any and all replacements, extensions, modifications and/or renewals of said Bonds, or any part thereof, however changed in form, manner or amount, and all other indebtedness of Grantor to Lender or Trustee or otherwise, at any time and from time to time arising hereunder or under the Bonds or Agreement and Lease, and any and all replacements, extensions, modifications and/or renewals of such other indebtedness (all of which indebtedness, together with the interest thereon, is sometimes hereinafter collectively referred to as the "Secured Debt").

Grantor, for and in the consideration aforesaid, covenants, represents, warrants and agrees as follows:

1. That it will, so long as the Secured Debt, or any part thereof, remains unpaid: (a) pay, and/or ensure that the City pays pursuant to the terms of the Agreement and Lease, as and when due and payable all taxes, assessments, impositions and other governmental charges, fines and fees that may be levied or assessed against the Secured Property or any part thereof, including the buildings and improvements now situate on the Premises, or that may hereafter be erected thereon, and any improvements and additions made therein or thereto from time to time, all as provided in the Agreement and Lease and subject to the terms thereof; (b) have and keep, and/or ensure that the City has and keeps, as provided in the Agreement and Lease, the Personal Property and the buildings and improvements now situate on the Premises or that may hereafter be erected thereon, and all other insurable property covered by this Deed of Trust and Security Agreement, constantly insured against loss or damage by fire and such other casualties, contingencies and hazards as set forth in the Agreement and Lease and subject to the terms thereof; (c) keep and maintain and cause the City to keep and maintain, pursuant to the terms of the Agreement and Lease, the Secured Property in good condition and repair and not abandon the same, or any part thereof, nor commit or permit the commission of waste on or in the Secured Property, or any

part thereof, or permit any building or improvement to be removed, destroyed, demolished or structurally altered in whole or in part except as permitted by the Agreement and Lease, and Grantor shall comply with all leases and subleases of any part of the Secured Property, including, without limitation, the payment of all leasehold payments thereunder, and shall, as provided in the Agreement and Lease and subject to the terms thereof, comply, and cause all occupants of the Secured Property or those in possession thereof to comply, with all laws, ordinances, orders, rules, regulations and requirements relating to the use or maintenance of the Secured Property and with all requirements, directions and orders and notices of violations thereof issued by any governmental agency, body or officer; (d) permit the Trustee or Lender, or either of them, or their agents, to enter and inspect the Secured Property at all reasonable times; (e) pay to Trustee, or to Lender, upon demand, any and all sums of money, including all costs, expenses and reasonable attorneys' fees, which Trustee or Lender may incur or expend in any action or proceeding that may concern the Secured Property, or any part thereof or interest therein, including without limitation any eminent domain proceeding, or any action or proceeding to sustain the lien of this Deed of Trust and Security Agreement, or its priority, or in defending any party thereto, or any party secured hereby, against the liens, demands or claims of title of any person, firm or corporation, asserting priority over this Deed of Trust and Security Agreement, or asserting title adverse to the title under which Trustee holds, or in the discharge of any such liens, demands or claims, or in connection with any action to foreclose this Deed of Trust and Security Agreement, or to recover any indebtedness secured hereby or any other payments made on behalf of the Grantor pursuant to the Agreement and Lease.

2. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust and Security Agreement, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents, covenants, and warrants to Lender that: (a) During the period of Grantor's ownership of the Premises and Personal Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or on the Premises; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Premises by any prior owners or occupants of the Premises or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Premises shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on,

under, about or from the Premises and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Premises to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Premises with this Section of the Deed of Trust and Security Agreement. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations, covenants, and warranties contained herein are based on Grantor's due diligence in investigating the Premises for hazardous waste and hazardous substances. To the extent permitted by applicable law, Grantor hereby (a) releases and waives any future claims against Lender and Trustee for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender and Trustee against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender or Trustee may directly or indirectly sustain or suffer resulting from a breach of this Section of this Deed of Trust and Security Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Premises, whether or not the same was or should have been known to Grantor.

The Premises, or some substratum of the Premises, does not contain an underground storage tank or tanks. To the extent that there may be some obligation under state or federal law imposed upon the Lender or the Trustee with respect to any such underground storage tank, the Grantor warrants that such tank or tanks, and all lines and connections thereto have been properly inspected and tested, and all such tanks, lines and connections are tight such that there is no leakage therefrom. To the extent permitted by applicable law, Grantor hereby (a) releases and waives any future claims against Lender and Trustee for indemnity or contribution in the event Grantor becomes liable for clean-up or other costs associated with such tanks, lines and connections, and (b) agrees to indemnify and hold harmless Lender and Trustee against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender or Trustee may directly or indirectly sustain or suffer resulting from a breach of this Section of this Deed of Trust and Security Agreement or as a consequence of any use, storage, disposal, release or threatened release from such tanks, lines and connections, whether or not the same was or should have been known to Grantor.

The provisions of this Section of this Deed of Trust and Security Agreement, including the obligations to indemnify and hold harmless, shall survive the payment of the Secured Debt and the satisfaction and reconveyance of the lien of this Deed of Trust and Security Agreement and shall not be affected by Lender's acquisition of any interest in the Premises, whether by foreclosure or otherwise.

3. The loan secured by this Deed of Trust and Security Agreement is in the maximum aggregate principal amount of $_____, plus interest thereon and taxes, insurance premiums and other obligations, including interest thereon, undertaken by the Grantor due pursuant to the Bonds, the proceeds of which are being

provided by Lender to Grantor pursuant to the terms of the Issuer Ordinance and the Agreement and Lease for the purposes of financing costs of the design, acquisition, construction and equipping of improvements to the City Hall, the Public Safety Building, the Norwood Fire Station and the City Public Works Garage in The City of Morgantown (the "Properties") together with all necessary appurtenances in connection therewith (the "Project"). The Issuer Ordinance and the Agreement and Lease are hereby incorporated into and made a part of this Deed of Trust and Security Agreement as if set forth in full herein.

4. In the event Grantor fails (a) to make any payment required, or fails to comply with, perform or carry out any of the provisions of paragraphs 1 or 2 hereof, or (b) to perform any of the terms, covenants or agreements by Grantor to be performed under the Agreement and Lease, the Lease Assignment dated the date hereof, by and between Grantor and Lender (the "Assignment"), or the Issuer's Bond Authorizing Ordinance enacted on _____, 2022, as supplemented by a Supplemental Resolution adopted on _____, 2022 (together, the "Issuer Ordinance") or is otherwise in default under the Agreement and Lease, the Assignment, or the Issuer Ordinance, then, and in any such event, Lender shall have the right, without notice to or demand upon Grantor or any other person, to make any such payment, take any such action or do any such thing as, in the exercise of Lender's discretion, may be determined to be reasonably necessary to protect the lien and security hereof as fully and completely as if Grantor made each and every such payment when due, and kept, complied with, performed and carried out the provisions of said paragraphs 1 and 2. Without limiting the generality of the foregoing, Lender may, in any such event, (i) obtain the required insurance covering the Secured Property and pay the premiums thereon or pay any unpaid premiums on any insurance procured by Grantor or the City; (ii) pay said taxes, assessments, impositions and other governmental charges, fines and fees together with any penalties and interest accrued thereon, and redeem the Secured Property from a tax sale if it has been sold, and shall be subrogated to the lien of the governmental body to which such payment was made; (iii) make and pay for any and all repairs which Lender deems necessary to place or keep the Secured Property in good condition and repair; (iv) stop or mitigate waste on or in the Secured Property or any part thereof; (v) stop or prevent the removal, destruction, demolition or structural alteration of any building or improvement on the Secured Property; (vi) stop or prevent the violation of any law, ordinance, rule or regulation relating to the use or maintenance of the Secured Property or of any requirement, direction or order or notice of violation thereof issued by any governmental agency, body or officer; (vii) pay all or any part of any sum or sums of money that may be due or payable under the provisions of subparagraph (e) of paragraph 1 hereof; and (viii) pay all or any part of the leasehold payments due and payable under any leases or subleases of any of the Secured Property; and Grantor hereby promises to pay to Lender, or to Trustee, as the case may be, upon demand, any and all sums of money paid out or expended by them, or any of them, for any of the purposes set out in this paragraph 4, together with interest thereon from the date of payment at the rate provided in the Bonds, and agrees that any sum or sums of money so paid by Lender or by Trustee, or any of them, shall thereupon be and become a part of the Secured Debt, including those moneys expended on behalf of the Grantor pursuant to the Agreement and Lease, the Assignment, or the Issuer Ordinance and

shall be collectible as such, all without waiver of any right arising from the breach of or default in the performance of any warranty, covenant, condition, provision or agreement herein contained or contained in the Agreement and Lease, the Assignment or the Issuer Ordinance, including, without limitation, the right to enter and take possession of the Secured Property, and rent and manage the same, and the right to foreclose this Deed of Trust and Security Agreement; but nothing herein contained shall be construed as imposing any duty or obligation upon Lender, or upon Trustee, to pay any such sum or sums of money herein authorized to be paid, or to take any other action authorized hereunder.

5. Upon the occurrence of an Event of Default pursuant to the terms of the Agreement and Lease, the Assignment, the Issuer Ordinance, the Bonds or default by the Grantor in any of its covenants hereunder (hereinafter collectively called an "Event of Default"), the Secured Debt shall at the option of Lender immediately become due and payable without notice to or demand on Grantor or any other person.

6. If any one or more Events of Default shall occur and be continuing, any one or more of the following rights and remedies shall exist, any two or more of which may be exercised concurrently:

(A) Without notice to or demand on Grantor or any other person, Trustee or Lender may forthwith, separately or jointly: (i) enter into and upon all of the Secured Property, or any part or portion thereof, either in person or by agent, and take possession of the Secured Property, or any part or portion thereof, without process of law, and without liability to Grantor or other owner or owners of the Secured Property, and manage and rent the same, collect and receive the rents, issues and profits thereof (past due, due or to become due) and apply the same to the payment of the Secured Debt, after first deducting the costs and expenses incurred in managing the Secured Property and in collecting said rents, issues and profits (including reasonable compensation for managing the same and collecting and disbursing said rents, issues and profits accruing therefrom), and after deducting such further amount or amounts as may be necessary to pay or reimburse the Lender and Trustee for any sum or sums of money paid by them, or any of them, under the provisions hereof, together with interest at the rate provided in the Bonds to the date of payment; or (ii) have a receiver appointed by any court having jurisdiction to take charge of the Secured Property, or any part or portion thereof, and collect, receive and apply the rents, issues and profits thereof. In either case, any person or persons in possession of the Secured Property, or any part or portion thereof, shall be deemed a tenant at will and shall at once surrender such possession on demand of Lender or Trustee or a receiver. It is understood and agreed by and between the parties hereto that nothing herein contained shall be construed as a substitute for, or in derogation of, the right to foreclose this Deed of Trust and Security Agreement or as imposing any duty or obligation upon Lender or upon Trustee, or any of them, to take charge of the Secured Property, or any part or portion thereof, to collect said rents, issues or profit or to have a receiver appointed for such purposes.

(B) Without notice to or demand on Grantor or any other person, Lender may at its option declare the Secured Debt to be immediately due and payable

and upon the exercise of said option the Secured Debt may be collected by proper action, foreclosure of this Deed of Trust and Security Agreement, or any other legal or equitable proceeding.

(C) At any time after the exercise by Lender of the option to declare the Secured Debt to be immediately due and payable, Trustee, upon the written request of Lender, shall foreclose upon and sell the Secured Property, or any part or portion thereof, at one or more successive sales, as an entirety or otherwise, both as the Trustee may deem expedient, to satisfy the Secured Debt at public auction or auctions at the front door of the courthouse of the county in which the Secured Property is situate, for cash in hand on the day of sale or upon such other terms as the Trustee or Lender may establish prior to the sale, after first giving legally sufficient notice of each such sale. The Trustee shall publish a Notice of Trustee's Sale once a week for two (2) successive weeks in a newspaper of general circulation whose publication area shall be or include the county or counties where the Secured Property is located, or by such other public advertisement as may be prescribed by applicable law. A copy of the Notice of Trustee's Sale shall be served on the Grantor, or its agent or personal representative, by certified mail, return receipt requested, addressed in accordance with the provisions of Section 4.5 hereof. Notice of such sale shall be deemed complete when such Notice of Trustee's Sale is sent to the Grantor in the aforesaid manner, notwithstanding the fact that such mail or courier package may be returned as refused or undeliverable. A copy of such Notice of Trustee's Sale shall be served by certified mail, at least twenty (20) days prior to the sale, upon any subordinate lien holder who has previously notified Lender by certified mail of the existence of a subordinate lien. Notice to a subordinate lienholder shall be complete when such Notice is mailed in accordance with the provisions of this paragraph, directed to the address of the subordinate lienholder as provided by such subordinate lienholder in the notice of existence of a subordinate lien.

The Trustee, without demand on Grantor, shall sell the Secured Property at the time and place and under the terms designated in the Notice of Trustee's Sale. The Trustee may sell the Secured Property, real and personal, at any place within any county in which any of the Secured Property is located, in one or more parcels or lots and in such order as the Trustee may determine. The sale of the Secured Property shall be by public auction, to the highest bidder, for cash, or upon such other lawful terms as the Lender or Trustee may designate. The sale of the Secured Property may be at the same time of or otherwise in conjunction with a sale of any other real or personal property serving as collateral for the indebtedness secured hereby or any other debts or obligations owed by the Grantor or others to the Lender or to other creditors, all of which may be sold in one or more parcels or lots and in such order as the Trustee may determine. The Trustee may employ such surveyors, engineers, appraisers, auctioneers, attorneys, and other persons as he may reasonably determine are necessary or desirable to assist the Trustee in execution of this trust. The Trustee may postpone sale of all or any lot or parcel of the Secured Property by public announcement at the time and place of any previously scheduled sale or at the time and place of any adjourned sale. Lender or Lender's designee shall be entitled to bid on all or any portion of the Secured Property and to purchase all or any portion of the Secured Property at any sale.

The Trustee or Lender may sell the Personal Property and other personal property components of the Secured Property by private sale and upon such terms and conditions as it may establish if Trustee or Lender reasonably believe that such will result in the highest and best price therefore under the circumstances and if such private sale is permissible under the circumstances by the Code.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Secured Property so sold with covenants of special warranty. The recitals in the Trustee's deed shall be prima facie evidence of the statements therein. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, a reasonable Trustee's fee not to exceed five percent (5%) of the first $300 of gross proceeds of sale, and two percent (2%) on the residue of the proceeds, the Trustee's expenses, and reasonable attorneys' fees and expenses; (b) cost of title evidence; (c) to the payment of the indebtedness secured hereby; and (d) the excess, if any, to any subordinate lienholders in their order of priority, including the Lender, and then to the Grantor or any successors or assigns of Grantor as their interests may appear. Within two months after a sale is made, the Trustee shall file a Report of Trustee's Sale Under Deed of Trust, containing an inventory of the property sold and on account of the sale as well as such other matters as the Trustee may deem appropriate, in all offices in which this Deed of Trust and Security Agreement is recorded. The recitals in the Trustee's report shall be prima facie evidence of the statements therein.

(D) In addition to the rights, remedies and powers hereinabove set forth, Lender and Trustee shall have as to the Secured Property which constitutes fixtures and personal property, including the Personal Property, covered by this Deed of Trust and Security Agreement, all rights, remedies and powers of a secured party under the Code, as the same may now be in effect or hereafter amended.

7. As to any of such Secured Property as is personal property or fixtures subject to the Code, this instrument shall constitute a security agreement, and the Grantor does hereby grant a security interest therein to Lender. This instrument is to be filed for record in the real estate records of Monongalia County, West Virginia, so as to serve as a fixture filing pursuant to Code § 46-9-502.

Notwithstanding the release of any of the Premises that is deemed real property or any proceedings to have released this Deed of Trust and Security Agreement or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby until the repayment or satisfaction in full of the obligation of Grantor under the Bonds. Nothing herein shall preclude Lender or Trustee from proceeding as to both real and personal property in accordance with the Lender's or Trustee's rights and remedies in respect of property as provided in Article 9 of the Code.

8. Grantor hereby waives personal service of notice of any sale made hereunder, but not any notice by mailing as prescribed in paragraph 6(C) hereof, upon it, its successors or assigns, and also waives the posting of notice of sale at the courthouse, and agrees that any sale made hereunder may be adjourned from time to

time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale. The Grantor does hereby, to the full extent permitted by applicable law, waive any right to require the Trustee and/or the Lender to post a bond or any like security in connection with the performance of the Trustee's duties pursuant to the terms of this instrument.

9. In the event that foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by them in commencing such proceedings, and, in addition, shall be entitled to, and paid, as a commission, reasonable compensation therefor, in accordance with Code § 38-1-7(a); and all costs and expenses so incurred by Trustee, and such commission, together with interest thereon until paid at the rate of interest provided in the Bonds, shall be payable by Grantor on demand, and shall be and become a part of the Secured Debt and shall be collectible as such.

10. Trustee, or the successors or survivors thereof, may act in the execution of this trust, and in the event any Trustee shall act alone, the authority and power of the Trustee so acting shall be as full and complete as if the powers and authority granted to any Trustees herein jointly had been granted to such Trustee alone; and the Trustee, or any successor trustee, is hereby authorized to act by agent or attorney in the execution of this trust and need not be present in person at any foreclosure sale.

11. It is hereby expressly covenanted and agreed by all parties hereto that Lender may, at any time and from time to time hereafter, without notice and with or without cause, appoint and substitute another Trustee or Trustees, corporations or persons, in place of the Trustee or Trustees herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted Trustee or Trustees by the Trustee herein named, or by any substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustees herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustees who are named herein within the meaning of this instrument, and substituted in their place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust and Security Agreement, and the description of the Premises, which instrument, executed and acknowledged by Lender and recorded in the office of the Clerk of The County Commission of Monongalia County, West Virginia, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest.

12. Any notice required or permitted to be given under this Deed of Trust and Security Agreement shall, except to the extent expressly otherwise required or provided herein and except as otherwise required by applicable law, be effective upon the deposit of such notice, in writing, in the regular United States mail, certified, return receipt requested, postage paid, addressed to the party or parties to receive such

notice at the following addresses or at such other address as any such party may give the other parties in the manner for giving notice herein prescribed:

TO GRANTOR:

Morgantown Building Commission
c/o The City of Morgantown
City Hall
389 Spruce Street
Morgantown, WV 26505
Attention: Chairman

TO PURCHASER:

_____
_____
_____, __ _____
Attention: _____

TO TRUSTEE:

_____
_____
_____, __ _____

13. All rights and remedies herein contained shall be cumulative and not exclusive. No failure or delay of Lender or Trustee to exercise any option, right or power herein contained shall constitute a waiver of any right, power or privilege herein given or granted to Lender or Trustee, or an acquiescence therein, and a waiver by Lender or Trustee of the right to exercise any option, right or power as to any breach or default shall not constitute a waiver of the right to exercise the same option, right or power, or any other option, right or power herein contained, as to another or any continuing or subsequent breach or default.

Neither Grantor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Deed of Trust and Security Agreement shall be relieved of such obligation by reason of the failure of Trustee to comply with any request of Lender or of any other person so obligated to take action to foreclose on this Deed of Trust and Security Agreement or otherwise enforce any provision of this Deed of Trust and Security Agreement or the Agreement and Lease or by reason of the release regardless of consideration of all or any part of the security held for the indebtedness secured by this Deed of Trust and Security Agreement or by reason of any agreement or stipulation between any subsequent owner of the Secured Property and Lender extending the time of payment or modifying the terms of this Deed of Trust and Security Agreement, and Grantor and all such other persons shall continue to be liable to make payments according to the terms of any such agreement, unless expressly released and discharged in writing by Lender or otherwise in accordance with the provisions of the Agreement and Lease.

14. If all or any part of the Secured Property or an interest therein is sold or transferred by Grantor (except as may be permitted by the Agreement and Lease) without the prior written consent of the Lender, the Lender may, at its option, declare all sums secured by this Deed of Trust and Security Agreement to be immediately due and payable. Notwithstanding the foregoing, the Grantor shall be permitted to sell, transfer, lease or otherwise convey any interest in the Secured Property which is deemed by the Grantor to be no longer useful in the operation by the City of the Secured Property for the purpose of performing one or more of its governmental.

15. It is further understood and agreed between the parties hereto that if any term or provision of this Deed of Trust and Security Agreement or of the Agreement and Lease, Assignment, the Issuer Ordinance, or the Bonds hereby secured shall contravene or be in conflict with any law of the State of West Virginia or any other applicable law or regulation, such term or provision is amended and modified to conform with such law.

16. It is further understood and agreed by and between the parties hereto that all of the representations, covenants, conditions, agreements, warranties and provisions of said parties herein contained shall extend to and bind Grantor, its successors and assigns, and shall inure to the benefit of Lender and Trustee, their successors and assigns. It is further understood and agreed by Grantor that Lender shall have the right to pledge and assign its rights, title and interests under this Deed of Trust and Security Agreement without obtaining the consent of Grantor.

17. Unless the context shall otherwise indicate, words importing the singular shall include the plural, words importing persons shall include firms, associations and corporations, and vice versa, words importing the masculine, feminine and neuter gender shall be deemed to include all such genders, and the terms "hereof," "hereby," "hereunder" and "herein" shall refer to this Deed of Trust and Security Agreement.

[Remainder of Page Intentionally Blank]

WITNESS the following signature:

MORGANTOWN BUILDING COMMISSION

By: _____
Its: Chairman

ATTEST

By: _____
Its Secretary

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, To-Wit:

The foregoing instrument was acknowledged before me this _____, 2022, by _____, CHAIRMAN of the MORGANTOWN BUILDING COMMISSION, a West Virginia public corporation and municipal building commission on behalf of such public corporation.

My commission expires: _____.

[NOTARIAL SEAL]

_____
Notary Public

THE FOREGOING INSTRUMENT WAS PREPARED BY:
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330

EXHIBIT A - REAL ESTATE DESCRIPTION

BOND PURCHASE AGREEMENT

_____, 2022

Morgantown Building Commission
c/o The City of Morgantown
City Hall
389 Spruce Street
Morgantown, West Virginia 26505

Ladies and Gentlemen:

The _____ (the "Purchaser") offers to enter into the following agreement (this "Agreement") with the Morgantown Building Commission (the "Issuer"), with the acknowledgement and agreement of The City of Morgantown, West Virginia (the "City"), for the purchase by the Purchaser from the Issuer of certain bonds proposed to be issued by the Issuer, as described below. Upon acceptance of this offer by the Issuer, and acknowledgement and agreement by the City, to be evidenced by the respective countersignatures of their respective duly authorized officers in the signature spaces provided below, the following terms of agreement shall become contractual and binding, by and between the Purchaser and the Issuer, and the provisions of Sections 4 and 11 through 15 shall be binding on the City. This offer is made subject to the Issuer's written acceptance hereof on or before 5:00 p.m. Eastern Standard Time on the date hereof, and, if not so accepted, will be subject to withdrawal by the Purchaser upon notice delivered to the Issuer at any time prior to the acceptance hereof by the Issuer. Terms used but not defined herein shall have the meanings given such terms in the Agreement and Lease, effective as of Closing Date (defined herein), by and between the Issuer, as lessor, and the City, as lessee (the "Lease").

In consideration of their mutual covenants and agreements, and effective upon the execution of this Agreement by the Issuer, the Purchaser and the Issuer agree as follows:

1. Description of and Agreement to Purchase the Bonds. Upon and subject to the terms, conditions and provisions set forth in this Agreement, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer agrees to sell to the Purchaser, all but not less than all of a certain series of revenue bonds proposed to be issued by the Issuer, in an aggregate principal amount of $_____, to be designated Morgantown Building Commission Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects) (the "Bonds"). The Bonds are to be issued under, for the purposes described in, and secured as provided in the Lease, the Deed of Trust (defined herein) and the Bond Ordinance (defined herein) and shall contain the various terms set forth in Exhibit A hereto.

2. Purchase Price. The aggregate purchase price of the Bonds shall be $_____.

3. Representations, Warranties and Covenants of the Issuer. The Issuer represents, warrants and covenants as follows:

(a) The Issuer is a public corporation and municipal building commission, duly created and validly existing under the laws of the State of West Virginia, with the powers set forth in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Building Commission Act"), and has full power and authority pursuant to the Constitution of the State, the other laws of the State of West Virginia (the "State"), including, without limitation, the Building Commission Act and Chapter 8, Article 16 of the West Virginia Code 1931, as amended (together, the "Act"), and any regulations promulgated thereunder, as the same may be amended or replaced from time to time (collectively, the "Laws"), to: (i) enter into this Agreement; (ii) enact the Bond Ordinance; (iii) enter into (1) the Lease, (2) the Lease Assignment, effective as of the Closing Date, executed by the Issuer in favor of the Purchaser, (3) the Credit Line Deed of Trust, Fixture Filing and Security Agreement on the Secured Property (the "Deed of Trust"), and (4) a Tax Certificate and Agreement dated the Closing Date executed by the Issuer and the City (the "Tax Certificate"); (iv) issue, sell and deliver the Bonds as provided in this Agreement; and (v) perform its obligations under and as contemplated in this Agreement, the Bond Ordinance, the Deed of Trust, the Lease, the Lease Assignment, the Tax Certificate, the Bonds, and any documents or instruments required to be executed by the Issuer in connection with any of the foregoing (collectively, the "Transaction Documents"). The members and other officials of the Issuer have been duly and lawfully appointed to such positions.

(b) The Issuer has, by Bond Authorizing Ordinance duly enacted and effective on _____, 2022, as supplemented by a Supplemental Resolution of the Issuer duly adopted on _____, 2022 (together, the "Bond Ordinance"), which Bond Ordinance has not been amended, further supplemented, rescinded or repealed, and which remains in full force and effect, duly authorized the execution, delivery and due performance of each of the Transaction Documents and the taking of any action as may be required on the part of the Issuer to consummate the transactions contemplated by the Transaction Documents. All necessary approvals of the transactions contemplated by the Transaction Documents by the City and of the Issuer, have been obtained; and there is no further requirement as to any other consent, approval, authorization or other order of, filing with, registration with, or certification by, any regulatory authority having jurisdiction over the Issuer and no election or referendum of or by any person, organization or public body whatsoever is required in connection with any of the foregoing transactions, except the Issuer makes no such representations with respect to the Blue Sky requirements of any state. There are no provisions of the Laws which would allow, as of the date of this Agreement or any subsequent date, any public vote, referendum, or other non-judicial proceeding the results of which could invalidate any of the Transaction Documents or invalidate, limit or condition the obligations of the Issuer undertaken in any of the Transaction Documents or under any document or instrument executed in connection with the transactions contemplated by any of the Transaction Documents.

(c) The Bonds will conform to their description in the Bond Ordinance and the Lease, and when delivered to and paid for by the Purchaser, will have been duly authorized, executed, issued, and delivered by, and will constitute valid and binding special, limited obligations of the Issuer, payable from the sources specified in the Bond Ordinance and the Lease, enforceable in accordance with their terms and the terms of the Bond Ordinance and the Lease, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights and except to the extent that the enforceability may be limited by the application of general principles of equity. No event of default under the Lease, any other Transaction Documents or the Bond Ordinance has occurred and is continuing, and no event has occurred and

is continuing which, with the lapse of time or the giving of notice or both, would constitute such an event of default.

(d) Upon their due execution and delivery, the Transaction Documents will constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms and the terms of the Bond Ordinance and the Lease, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights and except to the extent that the enforceability may be limited by the application of general principles of equity.

(e) The execution and delivery of the Transaction Documents, the enactment of the Bond Ordinance, and compliance with the provisions of the Transaction Documents, will not conflict with or result in a violation of the Laws or any other law to which the Transaction Documents or the transactions contemplated thereby are subject, including, without limitation, any debt limitations or other restrictions or conditions on the debt-issuing power of the Issuer, and will not conflict with or result in a violation of, or breach of, or constitute a default under, any law or administrative regulation or any of the terms, conditions or provisions of any judgment, decree, loan agreement, note, resolution, indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is a party or by which it is bound.

(f) No action, suit, inquiry, investigation or proceeding, at law or in equity, to which the Issuer is or would be a party, is pending or threatened, nor to the best of the knowledge of the Issuer, is any such matter to which the Issuer is not a party, pending or threatened, in or before any court, governmental agency, authority, body or arbitrator, which in any way: (i) affects the creation, organization or existence of the Issuer; or (ii) contests the title of the present members of the Issuer's governing body or other officers of the Issuer to their respective offices; or (iii) seeks to restrain or enjoin the issuance, sale or delivery of the Bonds or the execution and delivery of the Transaction Documents, or the pledge of any funds or property pledged under the Transaction Documents, to secure the payment of the principal of and interest on the Bonds (the "Pledged Property"); or (iv) contests or affects, in any way, the validity or enforceability of the Transaction Documents, the pledge of the Pledged Property, the powers or authority of the Issuer with respect to the Transaction Documents; or (v) contests or affects the exemption of the Bonds from registration with the United States Securities and Exchange Commission.

(g) Neither this Agreement nor any of the statements, materials, documents, certificates, contracts, financial information or other information relating to the Issuer or the Bonds supplied to the Purchaser by or on behalf of the Issuer contains, to the best knowledge of the Issuer following due inquiry (in each case as of its date), an untrue statement of a material fact or omits a material fact necessary to make the statements and information contained herein or therein not misleading, in light of the circumstances under which they were made. None of the statements, documents, certificates or other items, including the Transaction Documents, to be prepared or supplied by the Issuer between the date hereof and the Closing in respect of the transactions contemplated herein will contain, to the best knowledge of the Issuer, an untrue statement of a material fact or omit a material fact necessary to make the statements and information contained therein not misleading, in light of the circumstances under which they will be made. There is no fact (other than matters of a general economic or political nature which do not affect the Issuer uniquely) known to the Issuer which the Issuer has not disclosed to the Purchaser and to counsel to the Purchaser in writing and of which the Issuer is aware which materially and adversely affects

or could materially and adversely affect the ability of the Issuer to timely satisfy its obligations to the Purchaser under the Transaction Documents.

(h) The covenants, representations and warranties of the Issuer contained in the Deed of Trust and the Lease will, when the Deed of Trust and Lease are executed and delivered by the Issuer, be true and correct in all material respects.

(i) The Issuer will not take or omit to take any action which will in any way result in the proceeds from the sale of the Bonds being applied in a manner other than as provided in the Bond Ordinance and the Lease.

(j) Prior to the Closing Date, the Issuer shall have taken all actions necessary to be taken by it for: (i) the issuance and sale of the Bonds upon the terms set forth in this Agreement, the Bond Ordinance, the Lease and under the Laws, and (ii) the execution and delivery by the Issuer of all such other instruments and the taking of all such other actions on the part of the Issuer as may be necessary or appropriate for the effectuation and consummation of the transactions contemplated by the Transaction Documents. Between the date of this Agreement and the Closing Date, the Issuer will take such actions as are reasonably necessary to cause the covenants, warranties and representations contained in this Agreement to be true as of the Closing Date.

(k) Any certification signed by the Chairman or other official of the Issuer, or by a duly appointed and acting deputy or assistant of said officials on his or her behalf, and delivered to the Purchaser shall be deemed a representation and warranty by the Issuer to the Purchaser as to the truth of the statements made by the Issuer in that certificate.

(l) Except for the use of Crews & Associates, Inc., as Placement Agent for the Bonds (the "Placement Agent"), the fees and expenses of which will be paid by the Issuer from the proceeds of the sale of the Bonds, the Issuer has not engaged any broker or finder in connection with the transactions contemplated herein, and no action by the Issuer will cause or support any claim to be asserted against the Purchaser by any broker, finder or intermediary in connection with such transaction.

(m) The Issuer will not take or omit to take any action which action or omission would result in the loss of the excludability from gross income for purposes of federal income taxation of the interest on the Bonds.

(n) There does not exist, nor will the Issuer knowingly create, any pledge or lien on the Bonds which is superior to the pledge of and lien on the Bonds.

4. Representations of the City. The City represents as follows:

(a) The City is a municipal corporation and political subdivision of the State of West Virginia validly created and existing under the laws of the State of West Virginia, and has full power and authority pursuant to the Laws, to: (i) acknowledge and agree to this Agreement, (ii) enact the ordinance dated _____, 2022, as supplemented by a supplemental resolution dated _____, 2022, authorizing the transactions contemplated hereby and in the Transaction Documents (together, the "City Ordinance"); (iii) enter into, execute and deliver the Lease, the

Tax Certificate and any other Transaction Documents to which it is a party, and (iv) perform its obligations under and as contemplated in this Agreement, the City Ordinance, the Lease, the Tax Certificate, and any documents or instruments required to be executed by the Issuer in connection with any of the foregoing.

(b) The execution and delivery of this Agreement and the Lease, the fulfillment of or compliance with the terms and conditions thereof and hereof, and the consummation of the transactions contemplated hereby, will not conflict with, constitute a breach of, or default under any existing law or organizational documents or bylaws of the City or any indenture, agreement or other instrument to which the City is a party or by which it is bound, or any constitutional or statutory provision, or order, rule, regulation, decree or ordinance of any court, government or governmental body to which the City, the Facilities or any of the City's other properties are subject.

(c) Both this Agreement and the Lease have been duly authorized, executed and delivered by the City and both constitute the legal, valid and binding obligations of the City enforceable in accordance with the respective terms of both this Agreement and the Lease, except to the extent that the enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, or other laws now or hereafter in effect relating to or affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the City's knowledge, threatened, against the City, wherein an unfavorable ruling or finding would adversely affect the validity or enforceability of this Agreement or the Lease, or which would materially and adversely affect any of the transactions contemplated hereby or the ability of the City to perform its obligations hereunder.

(e) To the knowledge of the City, it is not in breach of or in default under any existing law, court or administrative regulation, judgment, decree, order, agreement, indenture, mortgage, lease, sublease or other instrument to which it is a party or by which it is bound, and no event has occurred or is continuing that, with passage of time or the giving of notice, or both, would constitute a default or an event of default thereunder, except in either case for such breaches, defaults or potential defaults or events of default, if any, which individually and in the aggregate would have no material adverse effect on the performance by the City under this Agreement or the Lease.

(f) The Facilities will be used by the City at all times in accordance with the Laws, and the City has full legal right, power and authority to operate the Facilities.

(g) No further notice, approval, authorization, consent or order of any governmental or regulatory authority or other public board or body (other than in connection or in compliance with the provisions of the state securities or "blue sky" laws, as to which no representation is made) is or will be legally required, with respect to the participation of the City in the issuance, sale and delivery of the Bonds including, but not limited to, the valid authorization, execution and delivery of this Agreement and the Lease and the performance by the City of its obligations under this Agreement and the Lease.

(h) The City will not take or omit to take any action which action or omission would result in the loss of the excludability from gross income for purposes of federal income taxation of the interest on the Bonds.

(i) The City has not taken and shall not take any action or omit to take any action which action or omission will cause the City to breach, violate or default under any provision of this Agreement or the Lease.

5. Representations of the Purchaser. The Purchaser represents as follows:

(a) The Purchaser has full power and authority to execute and deliver this Agreement, to make the representations and warranties specified herein, and to consummate the transactions contemplated herein, and it has full right and power to subscribe for the Bonds and perform its obligations pursuant to this Agreement.

(b) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any governmental body, agency or court having jurisdiction over the Purchaser, other than those that have been made or obtained, is necessary or required for the performance by the Purchaser of its obligations under this Agreement or to consummate the transactions contemplated herein.

(c) This Agreement has been duly authorized, executed and delivered by the Purchaser.

(d) The Purchaser is not in violation of or default under any term of its organizational documents, of any provision of any mortgage, indenture, contract, agreement, instrument or contract to which it is a party or by which it is bound or of any judgment, decree, order, writ or, any statute, rule or regulation applicable to the Purchaser which would prevent the Purchaser from performing any material obligation set forth in this Agreement. The execution, delivery and performance of and compliance with this Agreement, and the consummation of the transactions contemplated herein, will not, with or without the passage of time or giving of notice, result in any such material violation, or be in conflict with or constitute a default under any such term, or the suspension, revocation, impairment, forfeiture or non-renewal of any permit, license, authorization or approval applicable to the Purchaser or its business or operations which would prevent the Purchaser from performing any material obligations set forth in this Agreement.

(e) The Purchaser has full power and authority to execute and deliver an Investor Letter with respect to its purchase of the Bonds and the representations on the part of the Purchaser contained therein with respect to its qualification to purchase the Bonds shall be true and correct as of the Closing Date.

(f) The Purchaser is a bank[1], any entity directly or indirectly controlled by a bank, or under common control with a bank (other than a dealer registered under the Securities

[1] The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act [12 USCS § 1462(5)], (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act [12 USCS § 1462(4)], whether incorporated or not, doing business under the laws of any

Exchange Act of 1934), or a consortium of such entities; and the Purchaser is purchasing the Bonds solely for its own account to evidence the making of a commercial loan in the ordinary course of its business, with a present intent to hold the Bonds until maturity, early redemption or mandatory tender (subject to the understanding that disposition of Purchaser's property will remain at all times within its control).

6. Closing, Delivery, and Payment of the Bonds. The closing of the transactions contemplated herein (the "Closing") shall be held at 12:00 p.m. Eastern Standard Time on _____, 2022 (the "Closing Date"). On the Closing Date, the Purchaser will accept delivery of the Bonds from the Issuer duly executed and authenticated, and of the Closing Documents as defined below, and shall make the initial advance the proceeds of the Bonds which has been requisitioned by the Issuer in cash by delivery of a certified or bank cashier's check or wire transfer to an account designated by the Issuer. The acceptance of delivery and payment of the Bonds will be subject to satisfaction of any conditions precedent as set forth in this Agreement. The Issuer and the Purchaser agree that there shall be a preliminary closing held at the offices of the Issuer, or at such other time or place as the Purchaser and the Issuer may mutually determine, commencing at 10:00 a.m. Eastern Standard Time on _____, 2022.

7. Closing Documents. The Closing Documents shall consist of the following, each properly executed, certified or otherwise verified, dated as of such date and in such form, as may be satisfactory to Bond Counsel and the Purchaser:

(a) An opinion of Bond Counsel addressed to the Issuer and the Purchaser, with respect to the due authorization, legality, validity and enforceability of the Bonds, the Bond Ordinance, the Deed of Trust, the Lease Assignment and the Lease, the validity and enforceability of the security interest in the Pledged Property, the excludability from gross income of interest on the Bonds for federal and state income tax purposes, and certain legal matters relating to the Issuer and its issuance, sale and delivery of the Bonds;

(b) A letter from the Purchaser indicating its qualifications to purchase the Bonds as an Accredited Investor pursuant to 17 CFR §230.501 and indicating the understanding of the Purchaser with respect to certain risks associated with its purchase of the Bonds;

(c) A closing certificate of the Issuer confirming, as of the Closing Date: (i) the representations and warranties made by the Issuer in this Agreement; (ii) the adoption and present effectiveness of the Bond Ordinance; and (iii) the execution and enforceability of the Transaction Documents;

State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph. 15 U.S.C.S. § 78c.(a)(6).

(d) A closing certificate of the City confirming, as of the Closing Date: (i) the representations and warranties made by the City in this Agreement; and (ii) the execution and enforceability of the Transaction Documents to which it is a party;

(e) A certificate of the Placement Agent which confirms the purchase of the Bonds by the Purchaser, the material terms of the Bonds, certain statistics with respect to the Bonds, that the interest rate on the Bonds reflects the prevailing market rate for such obligations and other matters as may be required by the Issuer and agreed to by the Placement Agent;

(f) The Bond Ordinance, the enactment of which shall be certified by the Secretary of the Issuer;

(g) The City Ordinance, the enactment of which shall be certified by the City Clerk of the City;

(h) Fully executed counterpart originals of the Transaction Documents;

(i) A properly completed and executed Form 8038-G of the Internal Revenue Service relating to the Bonds; and

(j) Such additional certificates, proceedings, opinions, instruments and other documents as the Purchaser or the Issuer may reasonably request in connection with the transactions contemplated by this Agreement.

8. Conditions of the Obligations of the Purchaser and the Issuer. The obligations of the Purchaser to purchase and pay for the Bonds will be subject to the completeness and correctness, on the date of this Agreement and on the Closing Date, of the representations and warranties of the Issuer made in this Agreement and in the Lease; to the performance by the Issuer of its obligations and covenants under this Agreement; and to the following additional conditions precedent: (i) the Bonds and the other Transaction Documents shall have been duly authorized and executed by the Issuer and shall constitute valid and binding obligations; (ii) the Bond Ordinance shall have been duly enacted by the Issuer; (iii) this Agreement the other Transaction Documents, and the Bond Ordinance shall be in full force and effect and shall not have been amended, modified or supplemented (except with the consent of the Purchaser); and (iv) there shall have been taken, in connection with the issuance of the Bonds and with the transactions contemplated by the Transaction Documents, all such actions as in the reasonable opinion of the Purchaser, are necessary and appropriate.

9. Risks. The Purchaser is aware that the debt service on the Bonds is secured by all right, title and interest of the Issuer in and to (a) the Lease, including all Lease Rentals (as such term is defined in the Lease) and revenues received by the Issuer from the leasing of the Secured Property (except for Unassigned Issuer's Rights), (b) the Deed of Trust on the Secured Property, including and any improvements, renovations, furnishings and equipment associated therewith, and (c) all other property of every name and nature from time to time hereafter by delivery or by writing mortgaged, pledged, delivered or hypothecated, as and for additional security for the Bonds, by the Issuer or by anyone on its behalf or with its written consent. The Bonds do not constitute an indebtedness or liability of the State of West Virginia, or the Issuer, except as expressly provided in the Lease. The Lease Rentals payable pursuant to the Lease shall be subject

to annual appropriation by the City and the Lease shall be subject to cancellation at the conclusion of each fiscal year of the City as more particularly described in the Lease.

10. Placement Agent Role and Responsibilities. The Issuer and the Purchaser acknowledge and agree that: (i) Crews & Associates, Inc. is serving as the Issuer's placement agent, serving solely as an intermediary for the Issuer for the placement of the Bonds by the Issuer directly to investors, including without limitation, the Purchaser; (ii) the Placement Agent is not underwriting the Bonds, nor acting or serving as a municipal advisor, financial advisor, or fiduciary to the Issuer and has not assumed any fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto; (iii) the Issuer and the Purchaser, respectively, will consult with their own financial and/or municipal, legal, accounting, tax, and other advisors, as applicable, to the extent each deems appropriate; and (iv) the Placement Agent assumes no financial or underwriting risk in the transaction, but is only entitled to a fee from the Issuer for its services rendered as the placement agent. The Issuer further acknowledges and agrees that if it wishes to engage the services of a municipal advisor that would have a legal, fiduciary duty to the Issuer, then the Issuer is free to so engage a municipal advisor to serve in that capacity.

11. No Third-Party Beneficiaries; Survival of Representations. This Agreement is made solely for the benefit of the parties hereto, including the City, and no other person shall acquire or have any right under or by virtue of this Agreement. All representations, warranties and agreements of the Issuer and the City shall remain in full force and effect regardless of any investigation made by or on behalf of the Purchaser and shall survive the delivery of the Bonds.

12. Notice. Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Agreement to be made, given or furnished to or filed with the following Persons upon receipt by such Person, if the same shall be delivered in person or duly mailed by registered or certified mail, postage prepaid, return receipt requested, at the following addresses:

To the Issuer:

Morgantown Building Commission
Attn: Chairman
c/o The City of Morgantown
City Hall
389 Spruce Street
Morgantown, WV 26505

To the City:

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

To the Purchaser:

_____
Attn: _____
_____
_____

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia. The parties hereto acknowledge and agree that any contract claims and/or actions arising out of this transaction could be brought in West Virginia Circuit Court or any court where jurisdiction and venue are proper.

14. Severability. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Remainder of Page Intentionally Left Blank]

Respectfully submitted:

[PURCHASER]

By: _____
Name: _____
Title: _____

ACCEPTANCE BY THE ISSUER:

Accepted this ____ day of _____, 2022, for and on behalf of the Issuer, pursuant to the Bond Ordinance.

MORGANTOWN BUILDING COMMISSION

By: _____
Its Chairman

ACKNOWLEDGED AND AGREED TO BY THE CITY:

Acknowledged and agreed to this ____ day of _____, 2022, for and on behalf of the City.

THE CITY OF MORGANTOWN, WEST VIRGINIA

By: _____
Its Mayor

By: _____
Its City Manager

EXHIBIT A

TERMS OF THE BONDS

- Issuer: Morgantown Building Commission (the "Issuer").

- Par Amount of Bonds: $_____ Lease Revenue Bonds, Series 2022 A (Multiple Facilities Improvement Projects) (the "Bonds"). The Bonds shall be issued as draw down obligations, with a draw down period commencing on _____, 2022, and ending on _____, 20__.The Bonds will be issued on the basis that the interest thereon is excludable from gross income for federal income tax purposes under the Code and exempt from taxation by the State of West Virginia and any political subdivision thereof.

- Purchaser: The Bonds will be placed directly with _____ (the "Purchaser"). The Purchaser will require a single term instrument with scheduled principal payments and without DTC registration. Unless Crews & Associates, Inc. obtains a written representation in the following form as part of the Investor Letter or otherwise, Crews & Associates, Inc. will be required under its regulatory authority to obtain a CUSIP for the Bonds:

  The Purchaser is a bank, any entity directly or indirectly controlled by a bank, or under common control with a bank (other than a dealer registered under the Exchange Act), or a consortium of such entities; and the Purchaser is purchasing the Bonds solely for its own account for investment purposes only, with a present intent to hold the securities until maturity, early redemption or mandatory tender (subject to the understanding that disposition of Purchaser's property will remain at all times within its control).

- Issue Date: The date of issuance and delivery of the Bonds to the Purchaser is _____, 2022.

- Source of Repayment: The Bonds will be special, limited obligations of the Issuer payable solely from the Lease Rentals, revenues and other monies received pursuant to the Lease. The City shall make monthly rental payments on the first day of each month, commencing on _____, 2022.

- Security: The Bonds will be special, limited obligations of the Issuer payable from the Lease Rentals payable by the City to the Paying Agent for the account of the Issuer pursuant to the Lease. The Facilities (Premises, Personal Property and Fixtures as defined and described in the Deed of Trust, as hereinafter defined) will be leased from the Issuer by the City pursuant to the Lease contemporaneously with the issuance of the Bonds. The Bonds will be secured by a Credit Line Deed of Trust, Fixture Filing and Security Agreement on the Facilities (the "Deed of Trust"), including any additions, improvements, renovations, furnishings and equipment associated therewith. The Bonds do not constitute an indebtedness of the State, the County, or the Issuer for purposes of the Constitution and laws of the State and the principal, interest and other costs associated with the Bonds shall be payable solely from the Lease Rentals payable by the City pursuant to the Lease and

any proceeds of the security provided for repayment of the Bonds pursuant to the Deed of Trust. The Lease Rentals payable pursuant to the Lease shall be subject to annual appropriation by the City and the Lease shall be subject to cancellation at the conclusion of each fiscal year of the City as more particularly described in the Lease. The payment of debt service and other costs associated with the Bonds will also be secured pursuant to a Lease Assignment (the "Lease Assignment"), executed by the Issuer in favor of the Purchaser, under which the Issuer will assign, transfer and set over unto the Purchaser all of the Issuer's right, title and interest in, to and under the Lease, which shall include the Lease Rentals payable by the City thereunder. The Issuer reserves the right to further secure repayment of the Bonds pursuant to an Assignment of Funds and Accounts.

- Interest Rate: The Bonds shall bear interest at a fixed rate of ____% per annum, calculated on the basis of a 360-day year of twelve 30-day months.

- Final Maturity: The date on which the principal of the Bonds, together with all interest thereon remaining unpaid at such time, becomes due and payable, is _____, 20__ (the "Maturity Date").

- Authorized Denominations: The Bonds shall be issued in authorized denominations of $100,000 and any increment of $0.01 in excess thereof.

- Interest Payments: Interest is payable monthly, on the 15th day of each month beginning _____, 2022, and ending on the Maturity Date. The Bonds shall be issued on a draw-down basis, and interest shall be payable only on advances of proceeds outstanding and not theretofore repaid. The draw down period for the Bonds commences on _____, 2022 and ends _____, 20__. Accrued interest only shall be due and payable on the fifteenth day of each month commencing _____ 15, 2022, and continuing on the fifteenth day of each month thereafter to and including _____, 20__.

- Principal Payments: Principal is payable monthly on the principal amount of the Bonds advanced and not theretofore repaid, on the 15th day of each month beginning _____, 20__, and ending on the Maturity Date, pursuant to the debt service schedule that shall be attached to the Bonds as Exhibit A.

- Optional Redemption: The Bonds are subject to optional redemption prior to maturity, in whole or in part at any time, at a Redemption Price equal to 100% of the principal amount redeemed plus accrued interest to the Redemption Date.

- No CUSIP: The Purchaser acknowledges that there will be no CUSIP identifier assigned to the Bonds.

- Continuing Disclosure: It is understood that, with respect to the Bonds, neither the Issuer nor the City will be required to comply with the continuing disclosure requirements of SEC Rule 15c2-12(b). However, the Issuer and City may, in their sole discretion, voluntarily file information with the Municipal Securities Rule Making Board via the Electronic Municipal Market Access website.

- Bond Rating: The Bonds shall be non-rated.

Boards & Commissions

- **Board of Zoning Appeals** – ***2 Vacant and 2 Alternates open***

Members: Logan Shamberger, *Vacant position (3-year term 1/1/20 – 12/31/2022)*, Heidi Cook, *Vacant position (3-year term 1/1/22 – 12/31/24)*, Chris Benison, and Kevin Meehan (Alternate member).
Term to expire 12/31/22 – Vacant position
No other applicants have applied.

- **BOPARC Board** – ***1 vacant***

Members: Danielle Trumble, Jenny Thoma, Cal Shamberger, Rachel Fetty, Jenny Selin, *Vacant position (6-year term 7//17 – 6/30/23)*, and Susan Klingensmith.
Interviewed: Peter Giacobbi 7/27/21, Jim Heiko 8/10/21, Ash Orr 8/31/21, Lisa Di Bartolomeo 10/26/21.
No other applicants have applied.

- **Cultural Arts Commission** – ***1 Term to Expire 3/31/2022***

Members: Deborah West, Richard McEwuen, Mark Downs, Mark McCoy, Nikki Bowman-Mils, Ron Dulaney, Joshua Williamson, Brian Butcher.
Term(s) to expire 3/31/22 – Deborah West
No applicants have applied.

- **Civilian Police Review & Advisory Board** – ***9 Vacant***

No Members at this time:
Applied and interviewed: Rachel Fetty 8/10/21, Mary Clark 9/21/21, Ross Jones 10/5/21, Jan Derry 10/19/21, Richard Burks 11/30/21, Stephen Prince 11/30/21, Joseph Scotti 12/7/21, Robert Bob Cohen 12/7/21 *(letter from NAACP recommending him)*, and Shirley Robinson 12/21/21.
Scheduled to interview: Nicholas Anderson-Amore 2/1/22, Ronald Allen 2/1/22, Dr. Dady Dadyburjor 2/15/22, and Brian Blackburn 2/15/22.
Terms to expire: 3 open positions not filled will expire on 5/17/2022.
Applicants have applied: Ronald Allen, Dr. Dady Dadyburjor, Brian Blackburn, and Nicholas Anderson

- **Fairmont – Morgantown Housing Authority** – ***1 Term to Expire 8/3/2022***

Members: Jay Rogers, Margaret Stout, Marcella Yaremchuk, John Fallon, and Brian McAllister
Terms to expire 8/3/2022: Margaret Stout
Applicant who has applied: Tanner Smith (County) sent application to Chair of the Housing Authority

- **Fire Civil Service Commission** – ***1 Term to Expire 6/30/2022***

Members: Charlie Sims (Chamber of Commerce), Noel Hoffman (City Manager), and Jonathan Prince IAFF Local #313).
Terms to expire 6/30/2022: Charlie Sims
No one has applied at this time.

- **Fire Code Board of Appeals** – ***3 Vacant***

Members: *Vacant position – Legal (3-year term 5/1/19 – 6/30/22)*, Pat Esposito, *Vacant position – General Contractor (3-year term 5/1/19 – 4/30/22)*, Edward Heyden, Larissa Cason, Mark Lambert, *Vacant position - ALT Member (3-year term 5/1/9 – 4/30/22),* and Jonathan McGee.
Terms to expire 4/30/2022: All members and Vacant positions above
No one has applied at this time.

- **Health & Wellness Commission** – ***3 Vacant***

Members: *Vacant position (3-year term 1/1/21 – 12/31/23)*, Lynn Castro, Kimberly Kelly, *Vacant position (3-year term 1/1/20 – 12/31/22)*, Margaret Karcher, *Vacant position (3-year term 1/1/22 – 12/31/24)*, Ixya Vega, and Ronalie Abeyratne (student).

Term to expire 12/31/2022: Vacant position, Margaret Karcher, and Ronalie Abeyratne
Interviewed: Joseph Scotti, PhD. (12/7/21)
Scheduled to interview: Sabina Nduaguba (2/1/22)
No other applicants have applied.

- **Historic Landmarks Commission** – ***1 Vacant and 1 to Expire 11/4/2022***

Members: Jessica Eichlin, Shannon Tinnell, *Vacant position (4-year term 11/5/21– 11/4/25)*, Mark Lambert, and Bill Kawecki.
Term to expire 11/4/2022: Jessica Eichlin
No one has applied at this time.

- **Human Rights Commission – *4 Terms to Expire 6/30/2022***

Members*:* Ash Orr, Daniel Trejo. Bonnie Brown, Jan Derry, Rosalyn Lauderback, Don Spencer, Jena Martin, and Tim Harston.
Terms to expire 6/30/2022: Ash Orr, Daniel Trejo, Bonnie Brown, and Jan Derry.
No one have applied at this time.

- **ICC Board of Appeals** – ***2 Vacant and 1 to Expire 4/30/2022***

Members: *Vacant position - Master Electrician (5-yr term – 5-yr term 5/1/20 – 4/30/25),* Jim Pompili, Barry Dickson, Pat Esposito, *Vacant position - Civil Engineer (5-year term 5/1/21 – 4/30/26))*.
Terms to expire 4/30/2022: Pat Esposito
No one has applied at this time.

- **Library Board – *1 Term to Expire 6/30/2022***

Members: Meredith Hartery, Judith Lannin Panagakos, Penny Pugh, Sue Carpenter, and Linda Durfee.
Terms to expire 6/30/2022: Penny Pugh
No one has applied at this time.

- **Parking Authority – *4 Terms to Expire 6/30/2022***

Members: Shane Mardis, Charles McEwuen, Amy Dale, Jeanne Hagen, and Brian Butcher
Terms to expire 6/30/2022: Shane Mardis, Charles McEwuen, Amy Dale, and Jeanne Hagen.
No one has applied at this time.

- **Personnel Board** – ***1 Term to Expire 6/30/2022***

Members: Suzanne Gosden Kitchen*, Vacant position (3-yr term 7/1/21 – 6/30/24), Sarah Stevenson*
Terms to expire 6/30/2022: Sarah Stevenson
No one has applied at this time.

- **Planning Commission** – ***2 Terms to Expire 12/31/2022***

Members: Sam Loretta, Tim Stranko, William Blosser, William Petro, Mike Shuman, Peter DeMasters, *Vacant position (3-year term 1/1/22 – 12/31/24)*, AJ Hammond, Danielle Trumble.
Terms to expire 12/31/21: William Blosser and Peter DeMasters
No one has applied at this time.

- **Police Civil Service Commission – *1 Term to Expire 5/31/2022***

Members: Jerry Summers (Chamber of Commerce), Charlie Chico (City Manager), and Kevin Clark (FOP).
Terms to expire 5/31/2022: Kevin Clark (FOP)
No one has applied at this time.

- **Sister Cities Commission** – ***4 Vacant and 3 to Expire 5/31/2022***

Members: George Leis, Helene Friedberg, Elizabeth Finklea, 3 *Vacant positions (6/1/21 – 5/31/24)*, Bryan Phillips, *Vacant position (6/1/20 – 5/31/23)*, Ixya Vega, Lola Contreras (Ex-Officio), Vacant (Ex-Officio).
Terms to Expire 5/31/2022: George Lies, Helene Friedberg, and Elizabeth Finklea.
No one has applied at this time.

- **Traffic Commission** – ***2 Vacant***

Members: 1st Ward Francis Brownfield, 2nd Ward Tony Tarantini, 3rd Ward Charlie Byrer, *4th Ward Vacant position 4/4/21 – 4/3/2024, 5th Ward Vacant position 4/4/21 – 4/3/2024*, 6th Ward Sharon Patrick, 7th Ward Martin Dombrowski, Damien Davis Engineering Department, William Runyan Morgantown Police Department, William Blosser Planning Commission, Dave Harshbarger, Chip Wamsley, Matthew Cross.
No Terms to Expire in 2022.
No one has applied at this time.

- **Transit Authority Board of Directors** – ***No Vacancies and 2 to Expire 12/31/2022***

Members: Carol Heiberger, Jenny Dinsmore, Marly Hazen, Jeremy Evans (County/City), Terri Cutright (County), Ron Bane (County, and Wesley Nugent (County).
Terms to expire 12/31/2022: Marly Hazen and Jeremy Evans
Applicant who has applied: Tanner Smith (County) sent application to Chair of the Transit Board.
No others have applied.

- **Tree Board** – ***1 Vacant and 2 to Expire 11/14/2022***

Members: Donna Foster, Matthew Cummons, *Vacant position (3-yr term 11/15/20 – 11/14/23),* Dan Brown, Jon Weems, Dave Barnett, Greg Dahle, Joe Abu-Ghannam, Marchetta Maupin.
Terms to Expire 11/14/22: Dan Brown and Jon Weems
No one has applied at this time.

- **Urban Landscape Commission** – ***2 Vacant and 2 to Expire 11/14/2022***

Members: *Vacant position – Horticulture (3-yr term 7/1/20 – 6/30/23)*, Michael Hasenmyer, Kara Hurst, *Vacant position – Plant Health (3-yr term 7/1/21 – 6/30/24)*, Mel Burch, Danielle Trumble, Marchetta Maupin (ex-officio).
Terms to Expire 11/14/22: Michael Hasenmyer and Kara Hurst
No one has applied at this time.

- **Ward & Boundary Commission** – ***3 Vacant***

Members: 1st Ward Sarah Barnes, 2nd Ward Cindy O'Brien, *3rd Ward Vacant (2-yr term 7/1/21 – 6/30/23), 4th Ward Vacant (2-yr term 7/1/21 – 6/30/23),* 5th Ward Johnathon Trumble, 6th Ward Alice Meehan, *7th Ward Vacant (2-yr term 7/1/21 – 6/30/23).*
No terms to Expire in 2022.
No one has applied at this time.

- **Woodburn School Redevelopment Commission** – ***2 Vacant and 3 to Expire 12/31/2022***

Members: Chris Haddox, Johnathon Trumble, Evan Fedorko, *Vacant position (3-year term 1/1/22 – 12/31/24)*, *Vacant position (3-year term 1/1/22 – 12/31/24)*, Marti Shamberger, Ron Dulaney, Danielle Trumble.
Terms to Expire 12/31/22: Chris Haddox, Johnathan Trumble, and Evan Fedorko
No one has applied at this time.

AN ORDINANCE ANNULLING A PORTION OF CAMPUS DRIVE AND PROVIDING FOR DEDICATION OF ADDITIONAL PUBLIC RIGHT-OF-WAY TO CAMPUS DRIVE

WHEREAS, It appears to the Common Council of The City of Morgantown, West Virginia, that a portion of the public right-of-way known as Campus Drive between Beechurst Avenue and Grant Avenue in the City of Morgantown, Monongalia County, West Virginia, and as laid down, designated and dedicated to public use as a street on a map or plat shown on, and with the legal description provided in, the attached **Exhibit 1**, (the "Annulment Area") is not necessary for public purposes if annulled in accordance with the terms of this Ordinance; and

WHEREAS, It appears to the Common Council that it is in the interests of the City of Morgantown and the public generally that the Annulment Area be annulled as a public street in accordance with the terms of this Ordinance; and

WHEREAS, It appears to the Common Council that no property of any person, firm, or corporation will be injured or damaged by annulment pursuant to the conditions of this Ordinance, and that the owners of all property adjoining the Annulment Area have consented to annul the Annulment Area;

NOW, THEREFORE, the City of Morgantown hereby ordains as follows:

Section 1. The Annulment Area is hereby vacated, abandoned and annulled and from and after the date this ordinance becomes effective the same shall cease to be a public way or public street within the City of Morgantown, and the easement of the City of Morgantown therein, thereon, and thereover for street purposes and any and all other public uses or purposes is hereby vacated, abandoned, and annulled, and all right, title, and interest of the City of Morgantown therein as an easement for street purposes and any and all other public uses or purposes is hereby expressly released and relinquished from and after the date this ordinance becomes effective.

Section 2. That the City accepts the "Easement Declaration" attached hereto as **Exhibit 2** and incorporated herein by reference, providing for the dedication of additional area as a public right-of-way adjoining the existing public right-of-way designated as Campus Drive, all as shown in Exhibit 2.

Section 3. That following the date this ordinance becomes effective the City Clerk of the City of Morgantown shall cause a duly certified copy of the ordinance to be recorded in the appropriate deed book in the office of the Clerk of the County Commission of Monongalia County, West Virginia, as evidence of the vacating, abandoning, and annulling of the Annulment Area, together with an exhibit showing the location of the public right-of-way annulled.

This Ordinance shall be effective only upon the occurrence of the following conditions:

(1) Grantor's execution and delivery of the Easement Declaration attached hereto as Exhibit 2 and incorporated in this Ordinance by reference, providing for dedication of public right-of-way adjoining the public right of way designated as Campus Drive; and

(2) The determination by the City Manager, reduced to writing and filed with the City Clerk, that all preconditions necessary to relocation of the Campus Drive right-of-way, as described in this Ordinance and the Easement Declaration, have occurred.

If the foregoing conditions are not fulfilled within three hundred sixty-five days of adoption of this Ordinance, this Ordinance shall expire.

FIRST READING:

_____
MAYOR

ADOPTED:

FILED:

_____
CITY CLERK

RECORDED:

This document prepared without benefit of title examination by:
Ryan P. Simonton, Esq.
KAY CASTO & CHANEY, PLLC
150 Clay Street, Suite 100
Morgantown, WV 26501

STATE OF WEST VIRGINIA
COUNTY OF MONONALIA, to wit:

I, _____, a Notary Public of said County, do hereby certify that _____, Clerk, and _____, on behalf of the City of Morgantown, whose names are signed to the foregoing document dated as of the _____ day of _____, _____, have this day acknowledged the same before me in my said County.

Given under my hand this _____, day of _____, _____.

My Commission expires _____, _____.

{SEAL}

_____
Notary Public

EXHIBIT 1
Annulment Area

BEGINNING at a point in the southern existing city right of way line of Campus Drive, said point being 150 feet right and at right angle of proposed US Route 19 centerline at Station 128+27; Project U331-19-13.24, NHPP-0019(444)D, Monongalia County, West Virginia;

thence, westerly, with said southern existing city right of way line of Campus Drive 171 feet, more or less, to a point, said point being in the southern proposed city right of way line 38 feet right of and at right angle to centerline at Station 129+56;

thence, northeasterly, with said southern proposed city right of way line 20 feet, more or less, to a point 54 feet right of and at a right angle to centerline at Station 126+67;

thence, easterly, with said southern proposed city right of way line 16 feet, more or less, to a point 70 feet right of and at a right angle to centerline at Station 129+65;

thence, easterly, with said southern proposed city right of way line 19 feet, more or less, to a point 85 feet right of and at a right angle to centerline at Station 129+54;

thence, southeasterly, with said southern proposed city right of way line 30 feet, more or less, to a point 104 feet right of and at a right angle to centerline at Station 129+30;

thence, southeasterly, with said southern proposed city right of way line 113 feet, more or less, to the place of beginning and containing 3,656 square feet, more or less.

The tract of land hereinabove described is a portion of that same real estate conveyed unto The City of Morgantown, from The Morgantown Building and Investment Company by plat dated March 23, 1894, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Plat Cabinet 1 Envelope 233B.

PARCEL NO.	PLAN SHEET NO.	TITLEHOLDER	RECORDED DEED BOOK	RECORDED PAGE NO.	TRACT NO.	AREA - Sq. Ft. (Unless noted otherwise) C/A	NON-C/A	EASEMENT TYPE	EASEMENT AREA	REMAINING LEFT	REMAINING RIGHT	REMAINING TOTAL	TOTAL TAKEN	PARCEL TOTAL	REMARKS	R/W DEED RECORD DEED BOOK	R/W DEED RECORD PAGE NO.
~~1~~	~~11~~	~~VIC'S GARAGE, INC~~	~~825~~	~~227~~									~~0~~	~~13,619 (c)~~	NO TAKE		
~~2~~	~~11~~	~~SOLOMON,VIC'S GARAGE,INC. GARY, VICTOR, & CYNTHIA~~	~~W137~~	~~698~~									~~0~~	~~17,217 (c)~~	NO TAKE		
~~3-1~~	~~11~~	~~WOODFORD OIL COMPANY~~	~~1061~~	~~492~~									~~0~~	~~15,556 (c)~~	NO TAKE		
~~3-2~~	~~11~~	~~WOODFORD OIL COMPANY~~	~~1061~~	~~492~~									~~0~~	~~16,079 (c)~~	NO TAKE		
~~4~~	~~11~~	~~MODE ROMAN LTD CO.~~	~~1286~~	~~479~~									~~0~~	~~16615 (c)~~	NO TAKE		
~~5~~	~~11~~	~~CAROLYN DEVITO~~	~~1364~~	~~712~~									~~0~~	~~10250 (c)~~	NO TAKE		
~~6~~	~~11~~	~~CITY OF MORGANTOWN~~	~~773~~ 747	~~20~~ 620									~~0~~	~~15825 (c)~~	NO TAKE		
~~7~~	~~11~~	~~GRANDEOTTO, INC.~~	~~784~~	~~424~~									~~0~~	~~0.181 Ac.~~	NO TAKE		
~~8~~	~~11~~	~~BONANZA LAND COMPANY, LLC~~	~~1465~~	~~633~~									~~0~~	~~10380 (c)~~	NO TAKE		
~~9~~	~~11~~	~~1390 UNIVERSITY, LLC~~	~~1441~~	~~734~~									~~0~~	~~6116 (c)~~	NO TAKE		
~~10~~	~~12~~	~~KTA PROPERTIES, LLC~~	~~1462~~	~~392~~									~~0~~	~~0.28 Ac.~~	NO TAKE		
~~11-1~~	~~12~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1233~~	~~165~~									~~0~~	~~37,340 (c)~~	NO TAKE		
~~11-2~~	~~12~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1338~~	~~135~~									~~0~~	~~10,187~~	NO TAKE		
11-3	12	WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS	1347	360	1		1,221				9,417	9,417	1,221	10,638 (c)			
					2			TCE	1,243								
~~11-4~~	~~13-15~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1305~~ 1233	~~35~~ 165									~~0~~	~~3.85 Ac. (c)~~	NO TAKE		
~~11-5~~	~~13~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1233~~	~~165~~									~~0~~	~~11,789 (c)~~	NO TAKE		
11-6	13-15	WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS	1233	165	1		702				653,458	653,458	7,620	661,078 (c)	ONE PROPERTY IS PART OF A LARGER PARCEL		
			1276	285			0.02 Ac.				15.00 Ac.	15.00 Ac.	0.17 Ac.	15.18 Ac. (c)	CONTAINING 20 AC AS DESCRIBED IN DB5-144.		
					2		6,918										
							0.16 Ac.										
					3			TCE	9,989								
									0.23 Ac.								
~~11-7~~	~~15~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1423~~ 1441	~~306~~ 208									~~0~~	~~14,226 (c)~~	NO TAKE		
~~11-8~~	~~15~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1425~~	~~45~~									~~0~~	~~8,433 (c)~~	NO TAKE		
~~11-9~~	~~15~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1260~~	~~321~~									~~0~~	~~12,738 (c)~~	TO BE OBTAINED THROUGH AGREEMENT		
~~11-10~~	~~15~~	~~WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS~~	~~1260~~	~~321~~									~~0~~	~~15,392 (c)~~	TO BE OBTAINED THROUGH AGREEMENT		
~~12~~	~~12~~	~~STEPHEN A. CALLEN ET AL~~	~~W160~~	~~608~~									~~0~~	~~5,641 (c)~~	NO TAKE		
~~13~~	~~12~~	~~F & P REALTY CO.~~	~~844~~	~~543~~									~~0~~	~~5,107 (c)~~	NO TAKE		
~~14~~	~~12~~	~~RT. REV. JOHN J SWINT~~	~~222~~	~~391~~									~~0~~	~~59,482 (c)~~ 1.37 Ac. (c)	NO TAKE		

Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	County	Sheet No.	Total Sheets
W. V.	04	U331 -19-13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	2	26

07/10/2020 02/12/2021

J04C23C03-PLAN e

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

DESIGNED	DATE
ALT	02/2021
DRAWN	
LNR	02/2021
CHECKED	
JDV	02/2021
CHECKED	

Stantec

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
OWNERSHIP AND UTILITY INDEX
SHEET 1 of 3

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Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	County	Sheet No.	Total Sheets
W. V.	04	U331 -19- 13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	15	26

UTILITY OWNERSHIP

E - FIRST ENERGY (ELECTRIC)
FIB - CITYNET (FIBER OPTIC)
FIB - COMCAST (FIBER OPTIC)
FIB - LUMOS (FIBER OPTIC)
G - UTILITY COMPANY
S - MORGANTOWN UTILITY BOARD (SANITARY)
STO - MORGANTOWN UTILITY BOARD (STORM)
STEAM - MORGANTOWN ENERGY ASSOCIATES
T - FRONTIER (TELEPHONE)
TV - COMCAST (TELEVISION)
UE - FIRST ENERGY (UNDERGROUND ELECTRIC)
UT - FRONTIER (UNDERGROUND TELEPHONE)
W - MORGANTOWN UTILITY BOARD (WATER)

PROPOSED US 19 ℄

CURVE #3 DATA

PI = STA. 126+46.02
△ = 18°14'32.00" (LT)
D = 28°30'19.31"
T = 32.27
L = 64.00
R = 201.00
E = 2.57

END RIGHT-OF-WAY PROJECT
STA. 129+73.00 ℄ EXISTING US 19

STA 50+00.00 ℄ PROPOSED CAMPUS DR -
STA 230+14.65 ℄ EXISTING US 19

STA 130+14.65 ℄ PROPOSED US 19 -
STA 230+14.65 ℄ EXISTING US 19 (6.18' OFFSET)-
STA 49+93.82 ℄ PROPOSED CAMPUS DR

BEGIN WORK
STA. 46+00.00 ℄ PROPOSED CAMPUS DR.
END WORK
STA. 49+66.20 ℄ PROPOSED CAMPUS DR.

END CONSTRUCTION PROJECT
STA. 230+93.50 ℄ EXISTING US 19

PROPOSED CAMPUS DRIVE

CURVE #4 DATA

PI = STA. 46+35.53
△ = 58°52'34.01" (RT)
D = 76°23'39.74"
T = 42.33'
L = 77.07'
R = 75.00'
E = 11.12'

CURVE #5 DATA

PI = STA. 49+02.94
△ = 65°42'33.70" (LT)
D = 52°05'13.46"
T = 71.04'
L = 126.15'
R = 110.00'
E = 20.94'

DESIGNED	DATE
ALT	02/2021
DRAWN	
LNR	02/2021
CHECKED	
JDV	02/2021
CHECKED	

Stantec

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
US 19 R/W PLAN SHEET
STA. 125+60 - END

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

SCALE : 0 20 ft.

07/10/2020 02/12/2021

EXHIBIT 2

Easement Declaration

This instrument was prepared by:

Ryan Simonton
KAY CASTO & CHANEY, PLLC
150 Clay Street, Suite 100
Morgantown, WV 26501

EASEMENT DECLARATION

This Declaration is made and entered into this the ___ day of _____, 2021, by West Virginia University Board of Governors on behalf of West Virginia University, a public higher education institution of the State of West Virginia ("Grantor"), in favor of and for the benefit of THE CITY OF MORGANTOWN, West Virginia, a municipal corporation ("City").

For and in consideration of the amount of Ten Dollars ($10.00), other good and valuable consideration, the receipt, sufficiency, and adequacy of all of which are acknowledged by Grantor, and with the intent of being legally bound by and obligated under, in accordance with, and pursuant to this Declaration, Grantor declares, covenants, and agrees in favor of and for the benefit of City as follows:

Grantor grants, conveys, and transfers to City and creates, dedicates, and establishes in favor of and for the benefit of City, in, on, over, upon, under, through, and across the below-described parcel, perpetual easements and rights-of-way for the purposes of building, installing, constructing, improving, extending, maintaining, operating, inspecting, repairing, removing, replacing, rebuilding, reinstalling, reconstructing, re-improving, and re-extending a public way and street, with sidewalks and related appurtenances including utilities, and otherwise generally developing and improving the parcel for the foregoing purposes, including, without limitation, as rights appurtenant, material, essential, and integral to such easements and rights-of-way and such purposes, the rights to use and enjoy the parcel to (a) access the parcel by way of other easements, rights-of-way, and properties of City, (b) travel and traverse the parcel with persons, equipment, materials, and supplies, and (c) locate, set, stage, and operate equipment and machinery on and/or from the parcel while City shall be using or enjoying the parcel for the purposes set forth, contained, and provided for in this Declaration.

The parcel dedicated by this Declaration (the "Easement Area") is more specifically described as follows:

PARCEL 11-6

BEGINNING at a point in the southern existing city right of way line of Campus Drive, said point being 150 feet right and at right angle of proposed US Route 19 centerline at Station 128+27; Project U331-19-13.24, NHPP-0019(444)D, Monongalia County, West Virginia;

thence, westerly, with said southern existing city right of way line of Campus Drive 171 feet, more or less, to a point, said point being in the southern proposed city right of way line 38 feet right of and at right angle to centerline at Station 129+56;

thence, northeasterly, with said southern proposed city right of way line 20 feet, more or less, to a point 54 feet right of and at a right angle to centerline at Station 126+67;

thence, easterly, with said southern proposed city right of way line 16 feet, more or less, to a point 70 feet right of and at a right angle to centerline at Station 129+65;

thence, easterly, with said southern proposed city right of way line 19 feet, more or less, to a point 85 feet right of and at a right angle to centerline at Station 129+54;

thence, southeasterly, with said southern proposed city right of way line 30 feet, more or less, to a point 104 feet right of and at a right angle to centerline at Station 129+30;

thence, southeasterly, with said southern proposed city right of way line 113 feet, more or less, to the place of beginning and containing 3,656 square feet, more or less.

The tract of land hereinabove described is a portion of that same real estate conveyed unto The City of Morgantown, from The Morgantown Building and Investment Company by plat dated March 23, 1894, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Plat Cabinet 1 Envelope 233B.

PARCEL 11-9

BEGINNING at a point in the southern existing city right of way line of Campus Drive, said point being 150 feet right and at right angle of proposed US Route 19 centerline at Station 128+27; Project U331-19-13.24, NHPP-0019(444)D, Monongalia County, West Virginia;

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thence, easterly, with said southern proposed city right of way line 16 feet, more or less, to a point 70 feet right of and at a right angle to centerline at Station 129+65;

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PARCEL 11-10

BEGINNING at a point in the southern existing city right of way line of Campus Drive, said point being 150 feet right and at right angle of proposed US Route 19 centerline at Station 128+27; Project U331-19-13.24, NHPP-0019(444)D, Monongalia County, West Virginia;

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The tract of land hereinabove described is a portion of that same real estate conveyed unto The City of Morgantown, from The Morgantown Building and Investment Company by plat dated March 23, 1894, of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia, in Plat Cabinet 1 Envelope 233B.

The benefits, rights, burdens, obligations, covenants and restrictions set forth in this Declaration shall inure to the benefit of and be binding upon the heirs, devisees, legatees, personal representatives, agents, employees, contractors, tenants, invitees, licensees, successors and/or assigns of each party herein, and are intended to and shall run with the land.

In the event that any one or more of the provisions set forth, contained, or provided for in this Declaration, or the application thereof, in any circumstance, shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of such provision or provisions in any other circumstance shall not be affected or impaired thereby, and the remaining provisions set forth, contained, and provided for in this Declaration shall remain of full force and effect and be construed and interpreted as if such invalid, illegal, or unenforceable provision or provisions were never included. The provisions of this Declaration shall be severable.

Declaration of Consideration or Value

In accordance with the provisions of Article 22 of Chapter 11 of the West Virginia Code, Grantor declares that the transfer made and effected by this Declaration is exempt from the applicable excise taxes on the basis that City is a political subdivision of the State of West Virginia.

{Signature page follows}

Witness the following signature:

_____
West Virginia University Board of Governors
on behalf of West Virginia University
By:
Its:

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to wit:

I,_____, a Notary Public in and for the County and State aforesaid do certify that _____, who signed the foregoing writing bearing date the ____ day of _____ 2021, as Grantor, has this day in my said County and State before me acknowledged the said writing to be the act and deed of said individual.

Given under my hand and notarial seal this ____day of _____ 2021.

My commission expires_____.

_____
Notary Public

THE CITY OF
MORGANTOWN
WEST VIRGINIA

Arts & Cultural Development
389 Spruce Street
Morgantown, WV 26505
304.284.7472

MEMORANDUM

Date: January 24, 2022

To: Kim Haws – City Manager

Through: Emily Muzzarelli – Assistant City Manager

From: Vincent E. Kitch - Director Vincent E. Kitch

RE: Seating Purchases for Ruby Amphitheater

The Arts & Cultural Development Department is requesting authorization to purchase seating and related equipment to replace the aluminum bench seating at the Ruby Amphitheater in Hazel Ruby McQuain Park. The City of Morgantown is part of a membership organization that allows government agencies to make purchases through a Master Intergovernmental Cooperative Purchasing Agreement with Omnia Partners. Omnia Partners is a national contracting agency which establishes and provided nationally leveraged and competitively solicited purchasing contracts. The manufacturer of the seats is the Irwin Seat Company serviced by our regional vendor, Maffei Strayer Furnishings. This project is fully funded from a recent grant made by the Hazel Ruby McQuain Charitable Trust

Ruby Amphitheater Seating Replacement $216,207.68

The Ruby Amphitheater seating project will provide over 1000 fixed permanent stadium style seats to replace the original aluminum bench style seating currently installed. This project will provide a more comfortable seating area for audience members, allow for more options of reserved seats, and will enhance the amphitheater's ability to host ticketed events.

Irwin Seating Company

OMNIA Seating Proposal

Per OMNIA Contract #R191805

DATE: Wednesday, January 19, 2022

TO: Mr. Vincent Kitch
Director of Arts and Cultural Development
389 Spruce Street, Room 21
Morgantown, WV 26505

REFERENCE: Hazel Ruby McQuain Park Morgantown Amphitheater - BOWL Seating

We are pleased to offer the following proposal for Irwin Seating Company products per OMNIA Contract #R191805:

Bowl Seating Replacement

1,092	**Irwin Seating Company Outdoor Stadium Model 507.507.202.202 with the following components, options, accessories and finishes:**
	No. 507 - Non-upholstered blow molded polyethylene back with four slats.
	No. 507 - Non-upholstered blow molded polyethylene seat with simulated slats.
	No. 202 Stadium cast iron center standards, riser mounted.
	No. 202 Stadium two-legged aisle end standards. Closed Panel-Regular Row Plate
	Caddy Stadium center armrests.
	Caddy Stadium aisle armrests.
	Caddy Stadium cupholders on armrests for front row seating.
	Rear mount stadium cupholders
	Clipped corner row designation letter plates.
	Row letter plates mounted on aisle end panel.
	Clipped corner seat designation number plates.
	Seat number plates mounted on chair backs.
10	ADA transfer arm.
5 of each	Attic Stock parts: seats, backs, center and aisle standards, armrests
	E-coat standards for outdoor use.
	Irwin standard powder coat color on metal components.
	Irwin standard plastic color on seat component. **MYRTLE GREEN**
	Irwin standard plastic color on back component. **MYRTLE GREEN**
	Hilti stainless anchors.

LIST PRICE: $ 275.62 List Price per chair, FOB Grand Rapids

1,092	List Price per chair	$	264.58	$	288,921.36
1,092	50% Discount per OMNIA Contract	$	(132.29)	$	(144,460.68)
1,092	**OMNIA Member Net Price per chair**	**$**	**132.29**	**$**	**144,460.68**

PRICING BASED ON SHIPMENT IN 2022

Pricing Continued on Page 2

QTY	Freight & Other Costs @ Contract Price Terms DESCRIPTION	NET	EXTENDED
1	Products shipped FOB Grand Rapids, MI. Includes an LTL drop shipment for the seats and backs from Dewitt, IA.	$ 10,013.00	$ 10,013.00
1	Installation of bowl chairs, including debris removal to Maffei provided dumpster. We include storage containers for uninstalled parts.	$ 51,984.00	$ 51,984.00
1	Demolition & Recycling by MSF of Existing Aluminum Benches in Bowl Area	$ 9,750.00	$ 9,750.00
			Total
	Total Contract Price, Furnished & Installed		**$ 216,207.68**

TERMS AND CONDITIONS

- Pricing based on preliminary seating layout Revision B, dated 1/20/22.
- Payment Terms are Net 30, progress billings will be issued.

Unless otherwise noted:

- This proposal is subject to Irwin Seating Company Standard Terms and Conditions.
- This proposal is based upon the use of standard Irwin Seating Company products, manufactured using standard Irwin Seating Company methods.
- This proposal is based upon the use of the referenced fabric, and standard paint, plastic, stain and laminate selections. Options or special details are only provided to the extent specifically listed in this proposal. If any of the above specifications change, alternative pricing must be quoted.
- Pricing is based on floor mount chairs mounted to concrete unless specified otherwise in this proposal.
- Pricing is based on minimum average row length of 10 chairs.
- Pricing is based on 54" wide fabric without a pattern or direction orientation specified. Railroaded (directional) fabrics or fabric with repeats may result in additional costs.
- Pricing is F.O.B. factory and does not include freight, installation, sales tax, and performance and payment bonds.
- If applicable, sales tax will be charged based on the tax rate in effect at the time of billing. For tax exempt orders, please provide Irwin Seating Company a copy of your tax exempt certificate along with your purchase order for review and approval.
- Pricing is based on shipment in the 2022 calendar year.
- Storage and order modification fees may be incurred if changes are requested after the order is entered into production.
- Adherence to project milestones as outlined in the critical date schedule is required to meet requested shipment dates.
- Our quotation is based upon the following concrete specifications: (if applicable)
  1) Floor mounted chairs must be 3" thick free from obstructions for top 1-1/2".
  2) Riser mounted chairs must be 4" thick free from obstructions for 2-1/2" from riser face.
  3) Riser to be plumb + or - 1/8".
  4) Normal weight concrete to be compressive strength 3000 PSI (structural concrete).
  5) Structural light weight concrete is acceptable if it is 5000 PSI minimum and weights 90-115 pounds per cubic foot.
  6) Screed is not an acceptable anchoring base. If screed dimension exceeds 1", special installation hardware and procedures may be necessary.

  Any deviations from the concrete conditions mentioned above may result in additional installation charges, the need for alternative anchoring, etc. Installers need to be able to easily drill through the screed to reach clear structural concrete.
- Our quotation is based upon the following wood specifications: (if applicable)
  1) Minimum of 1-1/2" thickness
  2) Construction:

A. PLYWOOD: (Minimum Requirements)
C-DX underlayment; Plug and touch sanding; Tongue and grooved
B. FLOORING: Sub floor plus hard wood (tongue and groove) finish flooring.

3) Method of Fastening: No. 14X2" Hex washer head S.M. screw

NOTE: Wood construction for riser mounting is not recommended.

Any deviations from the conditions mentioned above may result in additional installation charges, the need for alternative anchoring, etc.

- Pricing is valid for 90 days from date of issue. If purchase order is not received within 90 days of this quote date Irwin Seating Company reserves the right to reissue the quotation with adjusted pricing.

If you have any questions, please contact your Irwin Seating Company Project Administrator for clarification.

IRWIN SEATING COMPANY

Andy Reinecke
Pricing Analyst



505.515.202.202 Stadium

- No. 505 double wall polymer back with recess for seat number plate
- No. 515 polymer seat with upholstered pad and cast iron seat lift arms
- No. 202 cast iron aisle standard with optional screen printed logo plate & beveled row letter plate landing
- No. 202 cast iron chair platform (center standard)



RESOLUTION SUPPORTING THE CITY OF MORGANTOWN SEEKING APPROVAL FOR A MURAL IN MORGANTOWN

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 issued a national call for artists to design and install a mural on the Westover Bridge Pier at the riverfront in Morgantown contributing to the aesthetics and quality of life; and

WHEREAS, artist Rafael Blanco was recommended by a Public Art Advisory Panel of community stakeholders and approved by the Cultural Arts Commission to design and install a mural on the Westover Bridge Pier; and

WHEREAS, an application approved by the West Virginia Department of Transportation Division of Highways would allow the City and Department of Arts & Cultural Development to install a newly commissioned mural at the riverfront.

NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown, this ____ day of _____, 2022, 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 Transportation Division of to seek approval for the placement of mural on the Westover Bridge Pier located between the Walnut Street landing and Hazel Ruby McQuain Park.

_____
Mayor

_____
City Clerk

APPLICATION FOR INSTALLATION OF ART WITHIN DOH RIGHT-OF-WAY

(NOTE THAT DOH MAY REJECT OR RETURN APPLICATION THAT DOES NOT INCLUDE ALL ITEMS OR INFORMATION REQUESTED/INDICATED)

Date of Application: Tuesday, February 01, 2022

I. APPLICANT INFORMATION: **CITY OF MORGANTOWN ARTS & CULTURAL DEVELOPMENT DEPARTMENT**

A. Applicant is of which type of political subdivision:
Municipality ☒ County agency ☐ State agency ☐ Other political subdivision ☐

1. If submitted by a municipality, application is to include a City resolution expressing support of the proposal—City Resolution included? ☒ Yes ☐ No ☐ N/A
2. If submitted by a County agency, application is to include a County Commission resolution expressing support of the proposal—County Resolution included? ☐ Yes ☐ No ☒ N/A

B. Applicant Mailing Address: 389 Spruce Street, Morgantown, WV 26505
C. Applicant Telephone: 304-284-7472
D. Applicant Website (if none, indicate "none"): https://www.morgantownwv.gov/
E. Applicant Contact Information:
F. Name of individual with whom WVDOH should coordinate: Choose an item. Vincent Kitch
G. Contact Person Title: Director Arts & Cultural Development
H. Contact Person Email Address: vkitch@morgantownwv.gov
I. Contact Person Mailing Address, if different than applicant mailing address: ____

II. ART PROJECT INFORMATION:

A. Location of proposed ART project
1. County (if multiple Counties, list all) Monongalia
2. City in Morgantown
3. DOH roadway(s) affected
   a. to be installed within right-of-way of which route(s) Bridge pier located at Morgantown riverfront near Rt 19 and University Ave.
   b. to be installed on bridge/structure carrying which route(s) NA
   c. to be installed on DOH structure along which route(s) NA
4. Location map clearly identifying the proposed location(s) of the ART with respect to the State Highway System and means of access to the ART included (utilize DOH County maps, accessible at http://www.transportation.wv.gov/highways/programplanning/gti/GIS/MAPS/Pages/WVCountyMaps.aspx? ☒ Yes ☐ No

B. Provide description/details/plans regarding the ART proposal See attached
C. Provide narrative and conceptual illustration describing the proposed ART and its cultural, historical or other significance to the community
See attached
D. Conceptual illustration regarding the proposed ART included? ☒ Yes ☐ No
E. Identify any other entities (public or private) with whom applicant has coordinated the development of this ART proposal (e.g., local art council, community organizations, etc.)
This project was coordinated by the City of Morgantown utilizing a Public Art Advisory Committee of community stakeholders and reviewed and approved by the Cultural Arts Commission to ensure compliance and cohesiveness with the City of Morgantown Mural Program.
F. Indicate who will be installing the ART (applicant employees, volunteers, local artists, etc.)

Artist Rafael Blanco

G. Describe the physical method(s) by which ART is to be installed (e.g., painted from scaffolding, etc.)
The artwork consists of an original mural artwork that will be painted from scaffolding or bucket lift..

H. Identify/describe any proposed utility work or involvement associated with ART proposal (if none anticipate, indicate "none")
The City will relocate a box of unsecure electrical outlets attached to the bridge pier in conjunction with DOH direction and agreement

I. Analyses regarding sight distance and clear zone included with this application? ☐ Yes ☒ No

J. Applicant's plan for maintenance of traffic (including pedestrian facilities) during installation, and during maintenance activities included? ☒ Yes ☐ No

K. Describe the method and frequency by which applicant will maintain ART after installation
The mural will be monitored ongoing for damage or grafitti and will be cleaned or repainted as needed to maintain the integrity of the artwork over the life of the piece.

L. Provide copies of agreements, permits or other documents between applicant and any other party that will be installing ART, regarding any aspect of the installation of ART by other parties, with indemnification of DOH—agreements included? ☒ Yes ☐ No ☐ N/A

M. Provide copy of certificate of liability insurance covering applicant and any other entity implementing ART project—certificate(s) included? ☒ Yes ☐ No ☐ N/A

1. General commercial liability insurance policy with minimum limit of One Million Dollars ($1,000,000.00)? ☒ Yes ☐ No ☒ N/A
2. Department added as an additional insured under policy? ☒ Yes ☐ No ☐ N/A
3. Policy with an insurer or agent authorized to do business in West Virginia, as required by applicable law? ☒ Yes ☐ No ☐ N/A

N. Applicant contacted Miss Utility **Click here to enter a date.**

1. Utility located (or to be located) within area of ART project ☐ Yes ☒ No
   If yes, identify utility(ies) _____
2. Utility relocation, adjustment, and/or installation appears to be necessary to implement ART project ☐ Yes ☒ No
3. Applicant acknowledges that applicant accepts responsibility for monthly utility cost associated with ART project ☐ Yes ☐ No ☒ N/A

O. Applicant's proposed implementation schedule for ART project:

1. Begin work within DOH right-of-way **Friday, April 01, 2022**
2. Complete work within DOH right-of-way **Tuesday, May 31, 2022**

III. Printed applications (one original and a CD or USB containing PDF of application) are to be submitted to:
Commissioner's Office of Economic Development
1900 Kanawha Boulevard, East
Building 5, Room 164
Charleston, West Virginia 25305

Ordinance No. 2022-____

AN ORDINANCE REPEALING AND REPLACING ARTICLE 906 PROVIDING FOR OUTDOOR DINING PERMITS

WHEREAS, The City of Morgantown has plenary power and authority over the public rights of way as provided by *W. Va. Code* § 8-12-5(1) and (4); and

WHEREAS, the West Virginia Alcohol Beverage Control Administration (WVABCA) licenses sales of nonintoxicating beer, wine, and liquor in outdoor dining spaces and outdoor street dining spaces; and

WHEREAS, The City of Morgantown intends to promote outdoor street dining, including the sale and consumption of alcoholic drinks at premises licensed by WVABCA;

NOW, THEREFORE, The City of Morgantown hereby ordains that Article 906 is repealed in its entirety and replaced as follows:

ARTICLE 906. OUTDOOR DINING.

906.01. Intent and Purpose.

The purpose of this article is to create a permit process by which private persons may use the public right-of-way for business purposes or other events in a manner designed to serve the public, to increase public enjoyment of the right-of-way, and to promote increased business and pedestrian traffic by offering safe and visually appealing opportunities for activities in public places, while also providing a local approval process for permits or licenses from the West Virginia Alcohol Beverage Control Administration when needed for outdoor dining.

906.02. Definitions.

Alcoholic beverages means alcoholic liquors as defined by W. Va. Code section 60-1-5(2); nonintoxicating beer as defined by W. Va. Code section 60-1-5(13); wine as defined by W. Va. Code section 60-1-5(22); and any other alcohol the sale and distribution of which is controlled or regulated by WVABCA.

Commissioner means the Commissioner of the West Virginia Alcohol Beverage Control Administration.

Director means the Director of Development Services of the City of Morgantown.

WVABCA means the West Virginia Alcohol Beverage Control Administration

HVAC means heating, ventilation, and air conditioning

Sidewalk Dining means an area of the public right-of-way that is designated for private use by a restaurant, café, bar or other establishment offering food and/or beverages that is in close proximity to the Sidewalk Dining area, and is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

Outdoor Dining means an area outside of the public right-of-way made available for private use by a restaurant, café, bar or other establishment to serve food and/or beverages to entrants, which may include service of alcoholic beverages by licensees authorized to do so by the Commissioner, and which is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

Outdoor Street Dining means an area of the public right-of-way that is closed to ordinary travel and use by the City Manager and which is made available for private use by a restaurant, café, bar or other establishment to serve food and/or beverages to entrants, which may include service of alcoholic beverages by licensees authorized to do so by the Commissioner, and which is (1) Outside and not served by an HVAC system for air handling services and use outside air; (2) Open to the air; and (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve except for a partial enclosure with up to three temporary or fixed walls when such seasonal partial enclosure is approved by the Director, and, for areas serving alcoholic beverages, by the Commissioner.

906.03. Permit required; conditions; effect.

A permit provided for in this Article is required to operate Sidewalk Dining, Outdoor Street Dining, Outdoor Dining only as required by the section regarding Outdoor Dining permits, or other activities regulated by this Article. Any such permit shall grant the recipient the right to provide the services identified in the area covered by the permit during the time the permit is valid, and the permit shall operate as the authorization of the City for open door access from private clubs to legally demarcated deck or other outdoor areas for any licensed private club pursuant to Title 175, Series 2, Section 4.10 of the West Virginia Code of State Rules. Permits for these activities are a privilege subject to the conditions of this Article and any other conditions stated in the permit, and they may be revoked by the City for noncompliance or other reasons identified in this Article or the permit.

906.04. Sidewalk Dining Permit.

(a) Permit required. Sidewalk Dining may only be conducted with a valid permit from the City (a "Sidewalk Dining Permit"). Each Sidewalk Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31.

(b) Application; issuance. A Sidewalk Dining Permit may be issued only upon completion of an application form prescribed by the Director and shall be required prior to any private use of the public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of $25.00. Renewal applications shall not require an administrative review fee.

(c) Application requirements. Applications for permits shall include the following information:

(1) Dimensions; obstructions. Applicants for a permit must submit the application required by the City, including a dimensioned plan showing the right-of-way and all existing public improvements and encroachments including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks, and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. The Director may issue a permit conditioned on the subsequent approval of other agencies, and the failure to have such agencies' approval will not prevent review of an application. Any such conditional permit will become effective upon receipt of the necessary agency approvals. Outdoor street dining permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions..

(2) Location. Proposed permit areas should be in close proximity to the Applicant's business. For purposes of this subsection, "Close Proximity" means an available area within 150 feet of the Applicant's business and under the Applicant's control with the right of ingress and egress to the area. Areas under the Applicant's control include areas on the public right-of-way that the City may authorize for use under a dining permit. Permit areas directly adjoining a business or property not owned or controlled by the Applicant will require consent by the owner of the adjoining business or property prior to issuance of a permit.

(d) Enclosure and boundary requirements. All equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City. For any permit with alcohol service, the equipment used to partition the permit area shall also be acceptable to WVABCA. Barriers enclosing the area should be sufficiently secure that they cannot be easily moved by an individual member of the public. Barriers may not be permanently affixed to the street, sidewalk, poles, or other public facilities without specific prior approval of the Director, which shall be included in the permit authorizing the area. The Director may approve permit areas without enclosures or barriers, so long as no alcohol will be served in the permit area. No equipment, furniture, or object may be placed in the permit area except those specifically described in the application and approved in the permit.

(e) Equipment and furniture in outdoor street dining permit area. All equipment and furniture placed in the permit area shall be acquired through the City, or, at the option of the

Director, acquired directly by the applicant after approval by the City. The design and placement of equipment and furniture tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State, or local law. Equipment and furniture shall follow the design standards in Table 906.01.1, if applicable.

(f) Alcohol service and consumption in permit area. The permittee shall ensure that any consumption and possession of alcoholic beverages in the area for which a permit has been issued complies with all applicable laws and regulations, including those of WVABCA. An area for which a permit has been issued, and which is in compliance with all WVABCA laws and regulations, shall be exempt from the prohibition on possession, consumption, or sale of alcohol in public places stated in Section 521.06 during the lawful hours of operation of the permitted area.

(g) License from WVABCA required. In order to serve any alcoholic beverages in a permit area, the designated area must be included in the floor plan for the licensed premises as approved by the WVABCA. All alcoholic beverages shall be served and consumed only on the enclosed or bounded portion of the public right-of-way designated as the permit area. Patrons may not carry any beverage regulated by the WVABCA out of the outdoor dining permit area, except as authorized by WVABCA in accordance with the license governing the premises where the beverage is sold.

(h) Health Department regulations. All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.

(i) Maintenance of permit area. All rights-of-way encompassed by the outdoor street dining permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis during the day by the permittee. Permittees shall see that the public areas encompassed by their outdoor dining permit are kept clean throughout the day and at the end of each business day, so as not to have any food, scraps, or drink leftover remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

(j) Waste disposal; recycling. Permittees shall be responsible for properly emptying any public trash or recycling containers placed in the permit area by the City.

(k) Hours of operation. Outdoor dining permitted under this section may only occur during the hours of 8:00 a.m. to 11:00 p.m., or limited hours during that time period which may be specified in the permit issued for each premises. If a permittee serves any beverage regulated by the WVABCA in an outdoor dining permit area, all laws and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(l) Insurance requirements. The applicant for an outdoor dining permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner: (1) Worker's compensation insurance in at least the required statutory limits; (2) Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least $1,000,000.00 per occurrence, and $1,000,000.00 for any single injury; and (3) Prior to issuance of an outdoor dining permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City, the West Virginia Department of Transportation Division of

Highways, and – for permits authorizing service of any beverage regulated by WVABCA - WVABCA as additional insured parties; (4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the outdoor dining permit until 30 days after written notice of such change has been delivered to the additional insured parties.

(m)Permit a privilege; limitations and revocation. Outdoor dining is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke an outdoor dining permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke an outdoor dining permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, any Federal, State, or local law, or of the specific conditions of any outdoor dining permit shall be cause for immediate revocation of the outdoor dining permit.

906.05. Outdoor Street Dining Permit.

(a) Permit required. Outdoor Street Dining may only be conducted with a valid permit from the City (a "Street Dining Permit"). Each Street Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31, or for the specific date(s) stated on the permit.

(b) Application; issuance. A Street Dining Permit may be issued only upon completion of an application form prescribed by the Director and shall be required prior to any private use of the public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of $25.00. Renewal applications shall not require an administrative review fee.

(c) Application requirements. Applications for permits shall include the following information:

(1) Dimensions; obstructions. Applicants for a permit must submit the application required by the City, including a dimensioned plan showing the right-of-way and all existing public improvements and encroachments including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks, and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. The Director may issue a permit conditioned on the subsequent approval of other agencies, and the failure to have such agencies' approval will not prevent review of an application. Any such conditional permit will become effective upon receipt of the necessary agency approvals. Outdoor street dining permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions. When applicants propose to place tables and chairs without an enclosure in the street dining area, the Director may waive the requirement for a dimensioned plan identifying improvements and encroachments.

(2) Location. Proposed permit areas should be in close proximity to the Applicant's business. For purposes of this subsection, "Close Proximity" means an available area within 150 feet of the Applicant's business and under the Applicant's control with the right of ingress and egress to the area. Areas under the Applicant's control include areas on the public right-of-way that the City may authorize for use under a permit, including the area of the public right-of-way closed for outdoor street dining. Permit areas directly adjoining a business or property not owned or controlled by the Applicant will require consent by the owner of the adjoining business or property prior to issuance of a permit.

(d) Enclosure and boundary requirements. The area of the public right-of-way where the City has allowed outdoor street dining will be marked by the City and posted with sufficient barriers and/or personnel to demarcate the area. Permittees do not need to provide an enclosed area within the outdoor street dining area to obtain a permit. When an applicant proposes to establish an enclosed area within the outdoor street dining area, all equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City. For any permit with alcohol service, the equipment used to partition the permit area shall also be acceptable to WVABCA. Barriers enclosing the area should be sufficiently secure that they cannot be easily moved by an individual member of the public. Barriers may not be permanently affixed to the street, sidewalk, poles, or other public facilities without specific prior approval of the Director, which shall be included in the permit authorizing the area. No equipment, furniture, or object may be placed in the permit area except those specifically described in the application and approved in the permit.

(e) Equipment and furniture in outdoor street dining permit area. All equipment and furniture placed in the permit area shall be acquired through the City, or, at the option of the Director, acquired directly by the applicant after approval by the City. The design and placement of equipment and furniture tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State, or local law. Equipment and furniture shall follow the design standards in Table 906.01.1, if applicable.

(f) Alcohol service and consumption in permit area. The permittee shall ensure that any consumption and possession of alcoholic beverages in the area for which a permit has been issued complies with all applicable laws and regulations, including those of WVABCA. An area for which a permit has been issued, and which is in compliance with all WVABCA laws and regulations, shall be exempt from the prohibition on possession, consumption, or sale of alcohol in public places stated in Section 521.06 during the lawful hours of operation of the permitted area.

(g) License from WVABCA required. In order to serve any alcoholic beverages in a permit area, a license or permit from WVABCA authorizing service in the outdoor street dining area is required. All alcoholic beverages shall be served and consumed only on the enclosed or bounded portion of the public right-of-way designated as the outdoor street dining area. Patrons may not carry any beverage regulated by the WVABCA out of the outdoor street dining area, except as authorized by WVABCA in accordance with the license governing the premises where the beverage is sold.

(h) Health Department regulations. All applicable Health Department sanitation requirements shall be followed for outdoor food handling. The permittee shall be responsible for posting the outdoor seating area as to any special Health Department requirements.

(i) Maintenance of permit area. All rights-of-way encompassed by the outdoor street dining permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis during the day by the permittee. Permittees shall see that the public areas encompassed by their outdoor dining permit are kept clean throughout the day and at the end of each business day, so as not to have any food, scraps, or drink leftover remaining which would pose an attraction to animals or insects. Each permit holder shall wash, as needed, the public area to remove any food or drink residue that may attract animals and/or create a pedestrian slip hazard.

(j) Waste disposal; recycling. Permittees shall be responsible for properly emptying any public trash or recycling containers placed in the permit area by the City.

(k) Hours of operation. Outdoor dining permitted under this section may only occur during the hours of 8:00 a.m. to 11:00 p.m. or limited hours during that time period which may be specified in the permit issued for each premises. If a permittee serves any beverage regulated by the WVABCA in an outdoor dining permit area, all laws and regulations of the WVABCA regarding permitted days and hours of service shall be followed.

(l) Insurance requirements. The applicant for an outdoor dining permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner: (1) Worker's compensation insurance in at least the required statutory limits; (2) Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least $1,000,000.00 per occurrence, and $1,000,000.00 for any single injury; and (3) Prior to issuance of an outdoor dining permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City, the West Virginia Department of Transportation Division of Highways, and – for permits authorizing service of any beverage regulated by WVABCA - WVABCA as additional insured parties; (4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the outdoor dining permit until 30 days after written notice of such change has been delivered to the additional insured parties.

(m)Permit a privilege; limitations and revocation. Outdoor dining is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of an outdoor dining area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke an outdoor dining permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke an outdoor dining permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, any Federal, State, or local law, or of the specific conditions of any outdoor dining permit shall be cause for immediate revocation of the outdoor dining permit.

906.06. Outdoor Dining Permit.

(a) Purpose and applicability. The provisions in this section shall apply to outdoor dining that occurs on private property incidental to an otherwise permitted use, and where allowed in compliance with applicable zoning code regulations. Whenever outdoor dining includes areas in

both public and private property, the provisions of this section and of the applicable section related to public property apply.

(b) Permit authorized; outdoor dining permitted. Outdoor Dining is permitted when in compliance with all applicable provisions of the Zoning Code and any other applicable provision(s) of the City Code. When any applicant seeks an Outdoor Dining permit to obtain approval for Outdoor Dining from WVABCA or another entity (an "Outdoor Dining Permit"), the City will review applications and may issue permits under this section. Each Outdoor Dining Permit issued will be valid from January 1, or the date the application is approved, through December 31, or for the specific date(s) stated on the permit.

(c) Standards. All permits issued pursuant to the terms of this section shall conform to all of the following requirements. No permit shall be issued that does not comply with these standards.

(1) The outdoor dining area shall not extend beyond the boundaries of the subject property, and shall not be located or utilized in a manner which causes an obstruction of a public walkway or interferes with the flow of pedestrian or other traffic.

(2) The proposed outdoor dining activity shall not interfere with the use of any public walkway by neighboring property owners and tenants.

(3) The proposed outdoor dining activity shall not unlawfully alter the associated indoor dining use of the subject property.

(4) The subject property shall have previously received all necessary zoning-related approvals and shall be in compliance with those approvals.

(5) A permit shall be issued only to the owner and operator of the eating establishment or restaurant that will provide the outdoor dining - private area.

(6) A permit shall not be transferable to any entity or person, and is valid only as to the original applicant, unless the Director gives prior written approval for the transfer and the transferee accepts all terms and conditions of the permit in writing.

(7) The outdoor dining area shall be kept in a good state of repair and maintained in a clean, safe, and sanitary condition.

(8) All temporary fencing, dividers, appurtenances, furnishings and furniture that occur with a permitted use under this section shall be reviewed and approved by the Director to ensure that they are in keeping with the aesthetic and architectural character of the area and with all approved design guidelines.

(9) The outdoor dining area shall be located in a manner that will not interfere with visibility, vehicular or pedestrian mobility, or access to City or public utility facilities. The determination of whether an incidental outdoor dining area or any part thereof interferes shall be made by the Director at the time of application based on the characteristics of each proposed site.

(10) The Director may place additional conditions upon the issuance of the permit to ensure the protection of the public walkway, the rights of all adjoining property owners, and the health, safety, and welfare of the public.

(11) The hours of operation for outdoor dining on private property shall be limited to the hours of operation for the associated indoor dining, unless otherwise authorized

(12) Permits and outdoor dining on private property areas shall conform with all other applicable City and other governmental requirements including, without limitation, zoning and design review, except as otherwise provided herein.

906.07. Private use permits.

The City Manager is authorized to issue permits for the use of public rights-of-way for business purposes other than outdoor dining to permit businesses with locations adjoining the public right-of-way to extend business operations into the right-of-way ("private use permits"), including conditions upon the time or manner in which the permitted area may be used, subject to the following conditions:

(a) A private use permit may be issued only upon completion of an application form prescribed by the City Manager or City Manager's designee and shall be required prior to placing goods or equipment on any public right-of-way. Each initial or modified application form shall be submitted with a nonrefundable administrative review fee of $25.00. Renewal applications shall not require an administrative review fee. Permits issued hereunder shall be valid from January 1 through December 31. The permit fee for a nonpartitioned private use permit shall be $50.00 for each year the permit is obtained. The permit fee for a partitioned private use permit shall be $200.00 for each year the permit is obtained. Permit fees are fees charged for the City services necessarily provided to enforce the provisions of this article as to each permitted area and do not constitute payment for a license or rental of the area.

(b) The design and placement of all equipment shall comply with applicable requirements of the Americans with Disabilities Act and any applicable Federal, State or local law.

(c) The proposed use shall not unreasonably interfere with pedestrian or vehicular traffic or with access to parked vehicles, and in no event shall the uses permitted by a private use permit reduce the open portion of any sidewalk to less than four feet in width. The placement of items in the public right-of-way shall comply with visibility requirements of the Planning and Zoning Code.

(d) Prior to issuance of a permit, the applicant shall furnish to the City Manager a dimensioned plan showing the right-of-way and all existing public improvements and encroachments, including but not limited to light posts, benches, planters, trash receptacles, fences, trees and tree grates, bicycle racks and newspaper boxes. The diagram shall also include the location of the curb relative to the building to be served by the permit and the proposed location of all furniture and other equipment to be placed in the right-of-way. The applicant shall furnish all floor plans and approvals required by the City, including Health Department or West Virginia Alcoholic Beverage Control Administration approvals if applicable. Private use permits shall not be issued for an area that would obstruct access to a fire hydrant, Fire Department standpipe connection, fire escape, bus stop, loading zone, mail boxes, or traffic signal stanchions.

(e) The permit area must be adjacent to the business requesting a permit. No permits will be issued for off-site use (i.e. placement in front of a business other than the applicant's own).

(f) All equipment used to partition an area shall be sufficient to control access to the permitted area, must be removable by the permittee during non-operating hours, and must be of a design and construction acceptable to the City.

(g) All rights-of-way encompassed by the private use permit shall be maintained by the permittee in a sanitary manner at all times. Food, trash, and recyclables shall be disposed of in appropriate containers on a regular basis throughout the day by the permittee.

(h) Permittees shall be responsible for emptying any public trash containers placed in the permit area by the City.

(i) Permittees shall see that the public areas encompassed by their private use permit are kept clean throughout the day and at the end of each business day. Each permit holder shall wash, as needed, the public area to remove any food, drink or other residue that may attract animals and/or create a pedestrian slip hazard.

(j) No equipment shall be permanently attached or affixed to the sidewalk, poles or any other public facilities. No equipment shall be placed in the permit area except as specifically approved in the permit application.

(k) Uses permitted under this article may only occur during the hours specified in the permit issued for each premises.

(l) The applicant for a private use permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner:

(1) Worker's compensation insurance in at least the required statutory limits;

(2) Comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least $1,000,000.00 per occurrence, and $1,000,000.00 for any single injury; and

(3) Prior to issuance of a private use permit, the permittee shall provide the City with copies of the certificates of insurance for the required policies for each type of insurance naming the City as an additional insured party.

(4) The required insurance policies shall each provide that they shall not be changed or canceled during the life of the private use permit until 30 days after written notice of such change has been delivered to the City.

(m) The permittee shall hold harmless, indemnify and defend the City and the West Virginia Department of Transportation, Division of Highways, from and against any and all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, consequential or otherwise, including reasonable attorneys' fees, which may in any way arise out of or be connected with the granting or use of a private use permit or from any act or failure to act by the permittee, its agents or employees.

(n) Private use of public space is a privilege. The City shall have the right and power, acting through the City Manager, to prohibit the operation of a private use permit area at any time because of anticipated or actual problems and conflicts in the use of the right-of-way area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the right-of-way, or from demonstrations or emergencies occurring in the area. The City Manager may suspend or revoke a private use permit for any reason after providing at least three days' prior written notice to a permittee, and the City Manager may revoke a private use permit without notice in a situation determined by the City Manager to be an emergency. Any violation of the provisions of this section, and Federal, State or local law, or of the specific conditions of any private use permit shall be cause for immediate revocation of the private use permit.

906.99. Penalty.

Any person, firm or corporation violating any provision of this article, shall be fined not less than $50.00 nor more than $500.00 for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

TABLE 906.01.1. DESIGN STANDARDS

The following design standards shall apply to private persons seeking an Outdoor Sidewalk Dining Permit or Outdoor Street Dining Permit. The Director may publish design guidelines demonstrating materials, equipment, and furniture that comply with these standards.

BARRIERS

(a) Outdoor Sidewalk and Street Dining Area barriers (fences, planter boxes, etc.) must be visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

(b) Barriers are required in the following instances:

(1) Required for full perimeter of outdoor sidewalk dining areas when the seating area extends more than two and a half (2 1/2) feet into the public right-of-way. A detectable barrier is required for the full perimeter (with the exception of the access openings).

(2) Required for full perimeter of all outdoor sidewalk dining areas when serving alcohol. State law requires that outdoor sidewalk dining areas, where alcohol is served or consumed, must be enclosed with only one opening to the sidewalk for access. Such access must face the main ingress and egress of the operator's establishment. All access openings must measure no less than thirty-six (36) inches in width and shall comply with applicable National Fire Protection Association (NFPA) Fire and Life Safety Codes.

(c) The following types of barriers are permitted: sectional fencing, planters, planter boxes, or combination thereof. Prohibited barrier styles include, but are not limited to chain-link, rope, chains, cyclone fencing, buckets, food containers, tires, tree stumps, wood pallets, chicken wire, plastic fencing, or similar appurtenances and materials not specifically manufactured for fencing or to be used for pedestrian traffic control.

(1) Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) are permitted. Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be painted or stained.

(2) If a stanchion or other vertical supporting device is attached to the sectional fencing, the base must be flat and must measure no more than one-half (1/2) of an inch above the sidewalk surface. No domed bases for the stanchion or other vertical supporting device for the fencing. The base must not be a tripping hazard.

(3) All barriers shall have a minimum heigh of thirty-six (36) inches above the level of the sidewalk and maximum height of forty-eight (48) inches. Exceptions may be granted for barriers that include landscape (planting) materials or a combination of landscape materials and sectional fencing.

(4) Planters may be used in addition to or in place of other barrier designs. They may also be used in situations where no barrier is required.

A. All planters themselves must be a total height of thirty-six (36) inches above the level of the sidewalk. The plants (live) within the planters shall not exceed sixty (60) inches in height, measured from the surface of the sidewalk.

B. All planters must have plants contained within them. If plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way.

(5) All barriers must be freestanding, without any permanent or temporary attachments to buildings, sidewalks, or other infrastructure, unless such attachments are specifically permitted by the Director in the permit.

TYPES OF FURNITURE

(a) Outdoor Sidewalk and Street Dining Area furniture must be visually appealing and must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times and shall be of high quality, durable and of sufficiently sturdy construction. All furniture and fixtures shall be consistent and match each other by being visually similar design, construction, and color.

(b) All furniture other than tables, chairs, and umbrellas are prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, trash receptacles, and torches. Outdoor space heaters may be permitted as authorized by the Director and in accordance with any applicable law. Locations for outdoor space heaters must be located on original site plan on the Outdoor Dining Area Permit Application.

(1) Tables must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Tables are not permitted to be of any plastic material.

(2) Square or rectangular tables are preferred, but not required for outdoor dining areas. All tables shall be consistent and match each other by being visually similar design, construction, and color.

(3) Chairs must be of metal (aluminum, steel, iron, or similar) or of wood construction and may be colored or of a natural unpainted material (i.e., wood, metal, etc.). Chairs are not permitted to be of any plastic material. All chairs shall be consistent and match each other by being visually similar design, construction, and color.

(4) Upholstered pillows or any other type of cushions for the furniture is permitted.

(5) Umbrellas must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl/laminate fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor dining area, but this shall not prohibit outdoor dining areas existing under areas where fixed awnings or similar structures are attached to a building. Umbrella covers must be of one solid color.

(6) Signage, graphics or wording on the umbrellas is prohibited, except where the Operator's business name/logo is used.

(7) Square or Rectangular Umbrellas are preferred. Market-style or those designed specifically for patio or outdoor restaurant are preferred.

(8) All parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

(9) When extended, the umbrella must measure at least eight (8) feet above the surface in order to provide adequate circulation space below. Any part of an umbrella used in the outdoor dining area may not exceed a height of ten (10) feet above the level of the sidewalk.

(c) The floor of any outdoor dining area should be uncovered sidewalk material. Prohibited sidewalk coverings include, but are not limited to carpet, platforms, raised decks, or any other

flooring material including but not limited to tile, nylon, vinyl, canvas, or any other covering that is intended to resemble turf are prohibited.

(d) All furniture and fixtures must be freestanding. At no time shall furniture and fixtures be secured to other permanent structures including, but not limited to trees, street signs, hydrants, or any other street infrastructure by means of ropes, chains, or any other devices.

This ordinance is effective upon adoption. Any permit issued pursuant to the prior version of this Article 906 shall remain valid in accordance with its terms until its expiration.

FIRST READING: _____

SECOND READING: _____

ADOPTED: _____

FILED: _____

_____
Mayor

_____
City Clerk

Ordinance No. 2022-____

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH HERTZ AT THE AIRPORT

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached lease agreement with Hertz, and such additional documents as necessary to effectuate the lease.

This ordinance is effective upon adoption.

FIRST READING: _____

SECOND READING: _____

ADOPTED: _____

FILED: _____

_____
Mayor

_____
City Clerk

OFF AIRPORT RENTAL CAR CONCESSION

AND

LEASE AGREEMENT

AT

MORGANTOWN MUNICIPAL AIRPORT
BETWEEN

CITY OF MORGANTOWN

AND

THE HERTZ CORPORATION

Morgantown Municipal Airport
City of Morgantown

And

The Hertz Corporation

Concession Lease Summary

TYPE OF AGREEMENT	Off-Airport Rental Car Concession Agreement
TENANT	The Hertz Corporation
REPRESENTATIVE(S)	Senior Vice President, Real Estate and Facilities
NOTICE ADDRESS	The Hertz Corporation 8501 Williams Road Estero, Florida 33928 Attention: Real Estate Department
COMMENCEMENT DATE	February 1, 2022
TERM	Five (5) Years
RENEWAL OPTIONS	Month to Month
TERMINATION DATE	January 31, 2027
LEASEHOLD/ASSIGNED PREMISES	6 Parking Spaces: $10/space / month
INITIAL RENTAL RATE	Ready Return Spaces: $720 annually or $60.00 monthly
RENTAL ADJUSTMENT	CPI-U
OTHER FEES, RATES AND CHARGES	**Concession Fee:** 10% of Gross Receipts
AUTHORIZED USE(S)	Car Rental Services

Note: This summary is presented as a reference of the agreement information at the time of execution. If there is a discrepancy between the information contained in this summary and the requirements contained in the remainder of the Lease, the requirements as stated in the remainder of the Lease will prevail.

MORGANTOWN MUNICIPAL AIRPORT
OFF AIRPORT
RENTAL CAR CONCESSION AND LEASE AGREEMENT

This Agreement, entered into this 1st day of February, 2022, by and between the CITY OF MORGANTOWN, a municipal corporation of the State of West Virginia (hereinafter referred to as the "City"), and THE HERTZ CORPORATION, a foreign corporation duly registered and authorized to do business in the State of West Virginia (hereinafter referred to as the "Concessionaire").

WHEREAS, the City is the owner and operator of Morgantown Municipal Airport (Airport) and the Terminal Building located thereon, said Airport being situated in the County of Monongalia, State of West Virginia; and

WHEREAS, the City has the right to lease premises and facilities at the Airport and to grant rights and privileges with respect thereto; and

WHEREAS, the City has determined that automobile rental services at the airport are necessary for proper accommodation of passengers arriving and departing from the Morgantown Municipal Airport; and

WHEREAS, the Concessionaire intends to operate a Rental Car Concession and related services at off-airport premises and has requested operating rights at the Airport in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the premises and mutual undertakings of the parties set forth herein, it is agreed as follows:

ARTICLE I
DEFINITIONS AND EXHIBITS

1.01 DEFINITIONS

All capitalized terms used in this Agreement, but not otherwise defined have the following meanings:

"Agreement" means this Rental Car Concession and Lease between the City of Morgantown and the Concessionaire, as such agreement may be amended from time to time.

"Agreement Year" means the 12-month period commencing on the Effective Date and each subsequent 12-month period falling wholly or partly within the Term or any extension options.

"Airport" means the Morgantown Municipal Airport.

"Airport Director" means the City's Airport Director, or when duly designated in writing, his or her representative or representatives. The Airport Director serves as the prominent aviation business leader at the Airport.

"City" means City of Morgantown

"Council" means the governing body of the City of Morgantown.

"Concession Fee(s)" means the amount paid by the Concessionaire for the privilege of operating the Rental Car Concession, which may be either the MAG or a percentage of Gross Revenues or both.

"Concessionaire" means The Hertz Corporation.

"Customer Service Performance Standards" means the customer service performance standards contained in this Agreement, which the Concessionaire hereby acknowledges and agrees to meet, and which may be amended from time to time.

"**Effective Date"** means February 1, 2022.

"FAA" means the Federal Aviation Administration.

"Fixed Improvement" means all buildings and other structures erected on the Premises, all fencing, grading and surfacing with stone and/or hardtop, all underground and overhead wires, cables, pipes, conduits, tanks and drains, and all property of every kind and nature, excluding Trade Fixtures (as herein defined), which are so attached to any building or structure on the Premises that same may not be removed without material injury to said property or to the building or structure to which same are or shall be attached.

"General Ledger" means the main accounting record of the Concessionaire exclusively representing and dedicated to the Concessionaire's Rental Car Concession operations at the Airport which uses double entry record keeping and includes accounts for such items as fixed assets, current assets and liabilities, profit and loss or income and expenditure items, and funds or reserves and gives a summary of all of the Concessionaire company transactions at the Airport.

"Gross Revenues" means all revenues or alternative forms of value paid, submitted, or due to the Concessionaire arising out of or in connection with its operations at the Airport, including, without limitation: (a) all time and mileage revenues and all revenues from the sale of personal accident insurance, or any insurance of a similar nature; (b) all Concession Fees; (c) all mark-up and additional fees above actual costs received by the Concessionaire for damage to Concessionaire's vehicles or the Concessionaire's property or premises, or from loss, conversion, or abandonment of Motor Vehicles; and (d) all other revenues paid or due to the Concessionaire arising out of or in connection with its operations at the Airport. The adjustment, at any time, by the Concessionaire of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, any other discounts, rebates, or coupons, or any other designation of any nature, or for any purpose, is prohibited. Anything not explicitly excluded from the definition of Gross Revenues shall be included within Gross Revenues.

Gross Revenues shall not include: (i) amounts of any Federal, State, or municipal taxes; (ii) any Customer Facility Charges collected by the Concessionaire, if any; (iii) amounts for credits, refunds, or adjustments to customers for transactions made at the Airport at the time of, or prior to, the close-out of the rental transaction and shown on the customer Contract (without mark-up or additional fees); (iv) sums received by reason of the Concessionaire's disposal of personal property (capital assets) (without mark-up or additional fees); (v) sums received by the Concessionaire from its customers for traffic tickets, parking tickets, highway tolls, towing charges, impound fees, and other similar governmental fines and charges actually paid by the Concessionaire on behalf of such customers (without mark-up or additional fees); and (vi) sums received by the Concessionaire for pass-through charges collected by the Concessionaire from its customers with respect to damage repair, parts replacement, and extraordinary cleaning of vehicles, and towing and transporting of damaged or abandoned vehicles, rented by such customers, and replacement of keys for such vehicles (without mark-up or additional fees).

"Monthly Operating Statement" means the monthly statement required by the City generally in the form prescribed by the City from time to time.

"Mystery Shopper" means an individual who anonymously evaluates, on the Airport's behalf, the Concessionaire's compliance with the Airport's Customer Service Performance Standards with regard to Concessionaire's operations at the Airport.

"Net Profit" means revenue remaining from Gross Revenues after all costs such as, but not limited to, wages, rent, fuel, raw materials, interest, depreciation, and fees are deducted.

"Net Worth" means the difference between one's total assets minus one's total liabilities.

"Point-of-Sale Terminals" means a terminal device which is a computerized replacement for a cash register which shall be equipped with the ability to record and track customer transactions, process credit and debit cards, connect to their systems in a network, manage inventory and interface with the General Ledger.

"**Premises"** means those premises shown on **Exhibit A** as well as all Fixed Improvements, and buildings, fixtures and other improvements located thereon.

"Rental Car Concession" means the rental car business operated by the Concessionaire on the Airport pursuant to this Agreement.

"Term" means the term of this Agreement as defined in Article IV, herein.

"Terminal" means the passenger terminal located on the Airport and operated by the City.

"Termination Date" means the date this Agreement terminates according to its terms or otherwise.

"Trade Fixture" means, but is not limited to, any sign, electrical or otherwise, used to identify or advertise Concessionaire's business and all machinery and equipment used in connection with such business, whether or not such sign, machinery, or equipment is bolted or otherwise attached to any improvement at the Premises.

1.02 EXHIBITS LIST

The following documents are attached hereto, and are deemed a part of this Agreement:

Exhibit A - Facility Diagrams Terminal Rental Car Parking Space

ARTICLE II
CONCESSION

2.01 CONCESSION GRANT

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts, the non-exclusive right and obligation for access and operating rights for vehicle rentals, including pick-up and drop-off of customers and parking vehicles in designated spots for customer pick-up and drop-off for a Rental Car Concession for the convenience of the general and traveling public.

2.02 SCOPE OF CONCESSION OPERATIONS; AND OPERATIONAL STANDARDS

A. Scope
The Concessionaire shall operate its Rental Car Concession continuously during the Term of this Agreement and shall operate it in a first-class manner to serve passengers and other users. The City extends to the Concessionaire the non-exclusive rights to parking spaces near the terminal for the picking up and discharging of customers and for services incidental thereto. This right shall be for no other purpose. No office or counter space is provided under this agreement.

B. Premises
This agreement shall permit passengers, Airport employees, contractors, other car rental agencies and their employees, and other agents, invitees and airport tenants to cross or travel through the parking area and shall

not place any fixtures or personal property on said area without the written approval of the Airport Director or conduct any activities inconsistent with or impeding use by others.

C. Pricing
The Concessionaire shall not misrepresent to the public its prices or the terms and conditions of its rental agreements or those of its competitors.

D. Manager
The Concessionaire shall, throughout the Term of this Agreement, engage a full-time manager who: (i) is qualified and experienced; (ii) has full authority and control of the day to day operations at the Airport; and (iii) has the authority to respond to emergencies, including the cleanup of a hazardous substance release, in a timely and appropriate manner.

E. Personnel
The Concessionaire shall maintain a sufficient number of trained personnel to ensure that: (i) the Concessionaire's customers will receive prompt and courteous service at all times; and (ii) vehicle maintenance, car handling, office and administrative duties are performed in an efficient and effective manner.
The Concessionaire shall be responsible for the conduct, demeanor, and appearance of its officers, agents, employees, and representatives. Employees on duty shall wear uniforms or other suitable business attire. Uniforms and employees shall be neat, orderly, and clean.

F. Solicitation Prohibited
The Concessionaire shall not permit its agents or employees to use pressure sales tactics or to overtly solicit for car rentals or related services offered by the Concessionaire under this Agreement.

G. Operating Restrictions
The Concessionaire shall not position equipment or personnel to process customers in any area(s) not approved by the Airport Director. The Concessionaire shall not sell any automobiles from the Premises or Airport grounds.

H. Customer Complaints
In the event the Concessionaire receives (or the City receives and forwards to the Concessionaire) any written complaint concerning the Concessionaire's operation of the Rental Car Concession, the Concessionaire shall promptly respond to such complaint in writing within thirty (30) days of receipt and make a good-faith attempt to explain, resolve, or rectify the cause of such complaint. The Concessionaire shall keep a copy of such complaint and the response for a period of one (1) year from the date of such complaint and shall make the complaint and response available to the City upon its request.

I. Prohibition against car sales
Except as permitted by Section 2.02.F., above, the Concessionaire shall not sell any automobiles from the Premises or Airport.

J. Licenses and Permits
The Concessionaire will be required to obtain, and maintain at all times during the term of this Agreement, at its expense, all licenses and permits necessary for the operation of the Rental Car Concession, including, without limiting the generality of the foregoing, a current business license issued by City

K. Selling of Insurance
The Concessionaire shall have the non-exclusive right to offer personal accident insurance and collision damage waivers to its Rental Car Concession customers, which insurance costs shall be separately stated to each such customer. The Concessionaire shall not sell or offer for sale any form of air travel insurance.

L. Compliance with All Laws
All Rental Car Concession operations shall be in strict conformity at all times with all Federal, State, and Local laws and regulations.

ARTICLE III
PREMISES

3.01 PREMISES
The City, for and in consideration of the rents specified herein and the stipulations and covenants herein given on the part of the Concessionaire, grants, demises, and leases to the Concessionaire, for the Concessionaire's exclusive use, and the Concessionaire hires and takes from the City, the Premises as set forth in Exhibit A.

Subject to the terms and provisions of this Agreement, the Concessionaire understands and agrees that the Concessionaire, by execution of this Agreement, agrees to accept the Premises in its "AS IS" condition as existing as of the Effective Date, and that the City has made no representations or warranties regarding the condition of the Premises or its suitability for the Concessionaire's proposed use.

3.02 USE OF PREMISES
The Concessionaire has the right, subject to the terms, conditions, and covenants set forth herein, to use the Premises for operation of the Concessionaire's Rental Car Concession as described in this Agreement and for no other purpose.

3.03 EASEMENTS
The Concessionaire's rights and privileges under this Agreement are subject to all existing utility and other easements, if any, as delineated on **Exhibit A** or of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia or visible upon inspection of the Premises.

3.04 MAINTENANCE AND REPAIR OF PREMISES

A. CITY'S RESPONSIBILITIES
The City shall not be obligated to maintain or repair the Premises or any part thereof other than the following:
1. Maintenance and repair of Ready/Return Car Parking lot surface and lighting systems

3.05 CONCESSIONAIRE'S TRADE FIXTURES
The Concessionaire may, at its own expense, install, maintain, operate, and replace any and all Trade Fixtures and other personal property in connection with the Concessionaire's operations, or use of the Premises, subject to the approval requirements of Section 3.09 of this Agreement. All such Trade Fixtures will be and remain the property of the Concessionaire.

The Concessionaire shall, at its own expense, repair any damage to the Premises caused by the removal of Trade Fixtures, by placing said Premises or other City property in the same condition as when constructed or installed, normal wear and tear excepted.

3.06 RIGHT OF INGRESS AND EGRESS
The Concessionaire has full rights of ingress to and egress from the Premises for the Concessionaire, its employees, customers, and other invitees, including persons supplying materials or furnishing services to the Concessionaire.

3.07 INSPECTIONS BY THE CITY
The City has the right to periodically inspect during construction of any Fixed Improvement, or new or addition to, or alteration of, any Fixed Improvement on the Premises, and the Concessionaire will reimburse the City for the reasonable cost thereof.

3.08 CITY'S RIGHT OF ENTRY
The City has the right to enter upon the Premises at all reasonable hours for any purpose necessary, incidental to, or connected with its performance of any obligations under this Agreement, including inspecting the Premises,

making repairs, additions, or alterations to the Premises or any property owned or controlled by the City, or in the exercise of its governmental functions, or in the event of an emergency.

3.09 SIGNS AND ADVERTISING

The Concessionaire shall not erect or install any signs, advertising, posters, etc. at the Premises or on the Airport without the prior written consent of the Airport Director.

3.10 RIGHT TO RELOCATE OR SUBSTITUTE SPACE OR FACILITIES

The City shall have the right during the term of this Agreement, and from time to time, to substitute substantially equivalent space and facilities for the Premises. City shall provide Concessionaire with such notice as is reasonably possible. In the event the City, at its discretion, determines to move the car rental office, customer counter space, ready/return car parking spaces, Car Rental Service Areas and Buildings, or other assigned facilities at the Airport to a different location, the City shall provide Concessionaire with equivalent facilities at the new location, in which event Concessionaire shall not be responsible for costs of constructing the equivalent facilities nor moving costs associated with the relocation.

ARTICLE IV
TERM

4.01 TERM

The agreement shall be for a maximum term of five (5) years beginning on February 1, 2022 and ending on January 31, 2027. The agreement year for the Lease and Concession Agreements shall be from February 1 to January 31.

4.02 HOLDING OVER

If the Concessionaire should continue operating its Rental Car Concession after the termination of this Agreement, Concessionaire's continued right of occupancy of the Premises shall be deemed a tenancy from month-to-month and subject to all the terms and conditions of this Agreement, unless otherwise changed by mutual agreement by both parties by amendment to this Agreement.

ARTICLE V
CONCESSION FEE AND RENT

5.01 CALCULATION OF CONCESSION FEES

The Concessionaire agrees to pay to the City for the rights and privileges granted to it herein, for each Agreement Year, ten percent (10%) of the Concessionaire's Annual Gross Revenues for such Agreement Year.

5.02 RENT

In consideration for the Concessionaire's exclusive use of the Premises, the Concessionaire shall pay the City for Facilities/Premises leased, used or outlined in this agreement and its exhibits and in accordance with current rates and charges of the City. Updates to the Airport Schedule of Rates and Charges in future years may result in changes in the price per square foot charged for the Premises under this Agreement.

The Premises shall include Rental Office and Customer Counter located in the Terminal and Car Rental Service Area Building (NOROP Building).

A. **Car Parking Space**: For the parking spaces made available in the existing "Ready Car" and "Return Car" parking areas, the Concessionaire shall pay rent monthly in advance at the rate of Ten Dollars **($10)** per parking spot per month. The concessionaire agrees to pay the City the sum of **$720.00** per year for Ready Line Parking spaces. Payment will be made in equal monthly installments of **$60.00** in advance and without demand, on or before the fifteenth day of each calendar month.

Rates for the Premises may be adjusted, unless otherwise provided for in this section, by the City annually as part of its annual rate setting process. New rates will be effective on July 1 of each year. For purposes of this

section, the Annual Rental Payment shall mean an amount equal to twelve times the sum of the monthly rental fees and the monthly privilege fees.

5.03 PAYMENT OF CONCESSION FEES AND RENTS

A. The Concessionaire will pay to the City on or before the 15th day of each month, without demand or invoice, ten percent (10%) of Concessionaire's prior months Gross Revenues. The sum of these monthly payments will be reconciled to the Annual Gross Receipts at the annual contract year-end.

B. YEAR END RECONCILIATION: Before June 20th of each year, the City shall reconcile the Concession Fee payments received for the previous agreement year (ending January 31) to the Annual Gross Receipts for the same period. The City will produce a Car Rental Concessionaire credit or invoice. This reconciliation will ensure the total amount paid to the City for each agreement year (February 1 to January 31) is equal to 10% of the Total Gross Revenues.

C. All sums payable to the City hereunder must be made payable to the "City of Morgantown" and submitted at:

City of Morgantown
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia 26505
Attention: Airport Director

Or at such other place as the Airport Director or his authorized representative may hereafter designate by notice in writing to Concessionaire.

All sums must be made in legal tender of the United States. Any check given by Concessionaire to the City will be received by the City subject to collection, and Concessionaire agrees to pay any charges, fees, or costs incurred by the City for such collection, including reasonable attorneys' fees.

5.04 LATE PAYMENTS

All sums payable to the City by the Concessionaire pursuant to the terms of this Agreement are considered Rent for all purposes hereunder. If the Concessionaire fails to pay any Rent when the same is due, then the Concessionaire, in addition to the full amount owed, may be subject to a late payment charge equal to one and one-half percent (1.5%) of the amount due per month for each month; provided that such late payment charge shall not exceed the maximum amount permitted by applicable law, and, if such charge would exceed the maximum permissible amount, then it shall be reduced to the maximum amount permitted by law..

5.05 MAINTENANCE AND SUBMISSION OF CONCESSIONAIRE'S RECORDS

A. The Concessionaire shall provide and maintain in a true and accurate manner, and in accordance with generally accepted accounting principles (GAAP), such accounts, books, records, and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and with generally accepted auditing standards. Such books and records shall include all original individual rental agreements as well as records of those agreements with, and receipts from, Airport customers in a form consistent with good accounting practice (which may include, without limitation, electronic media compatible with computers available to the City or computer-generated hard copies) as well as a breakdown of the various components of Gross Revenues and the permitted exclusions therefrom. Microfiche or microfilm is not sufficient for audit purposes unless that data is printed on hard copy. Daily business reports shall not suffice to take the place of revenue journals and/or summaries. The Concessionaire must also maintain a separate General Ledger for all of its business conducted at the Airport and this information must be available to the City.

B. The Concessionaire shall keep complete records of all transactions pertaining to the business conducted at the Airport, and those records shall contain only information about the Concessionaire's Rental Car Concession business conducted at the Airport and be kept separate from the any other Concessionaire business conducted at any other airport. The City shall have the right to reproduce or make copies of all documents pertaining to any business originating from the Airport. Failure to provide the City with copies of closed rental agreements pertaining to vehicles rented at the Airport, and the General Ledger or similar documentation, as well as other books of accounts and records, shall be deemed by the City to be a material breach of this Agreement.

C. The Concessionaire's Airport records shall be segregated from books and records, including all financial or statistical reports, of Concessionaire's business conducted at any other airport and other locations or those outside the scope of this Agreement.

D. The Concessionaire shall also supply to the City any other reasonable financial or statistical reports kept by the Concessionaire in the ordinary course of business related to this Agreement that the City may require during the term of this Agreement.

E. A verified "Monthly Statement of Gross Revenues," on a form approved by the City, shall be submitted to the City by the 15th calendar day of each month following the month covered by the report.
   1. At a minimum, the Monthly Statement of Gross Revenues must include the following:
      a) Gross Revenues, by category, for the month
      b) Concession Fee calculated using ten (10) percent times the monthly Gross Revenue
   2. Monthly Statements shall be submitted for every month during the term of this Agreement. All monthly reports shall be prepared on a form or format acceptable to the City.

F. Within ninety (90) calendar days following the end of each Agreement Year without demand by the City and at its own cost and expense, the Concessionaire shall provide to the City an "Audited Schedule of Gross Revenues and Concession Fees Paid," as set forth below, accompanied by an independent auditor's report expressing an unqualified opinion on such schedule as of the end of that Agreement Year, prepared in accordance with generally accepted auditing standards and certified by an independent certified public accountant licensed to practice in the State of West Virginia and who is not an employee of the Concessionaire. Such opinion should state that all receipts derived from the Rental Car Concession provided by the Concessionaire at the Airport which are required to be included in Gross Revenues, have been so included and that to the best knowledge of the individual providing such opinion, the information provided on the "Audited Schedule of Gross Revenues and Concession Fees Paid," is true, accurate and complete.

   The "Audited Schedule of Gross Revenues and Concession Fees Paid," shall set forth, both for each month of the applicable agreement year and cumulatively for the applicable the agreement year, the following:

   1. Gross Revenues by category;
      a) The Concession Fee the Concessionaire actually paid to the City;
      b) The difference, if any, between the Concession Fees due and owing and the Concession Fees such Concessionaire actually paid to the City;
      c) The amount specified pursuant to (b) above, plus the amount of interest accrued as of the date of the Audited Schedule of Gross Revenues and Concession Fees Paid calculated at the rate of the lower of Twelve percent (12%) per annum or the maximum rate of interest allowed by law from the date the Concession Fees should have been paid to the date of actual payment by the Concessionaire.

G. The Concessionaire shall provide and maintain, by generally accepted accounting principles, accurate records of its Gross Revenues and individual rental agreements and all records required in this Agreement for a period of at least six (6) years following the end of each agreement year. The Concessionaire agrees that said records will be kept on the Premises, or at its corporate headquarters,

during the Term hereof. After the expiration or earlier termination of this Agreement, said records shall be kept at the Concessionaire's principal office and shall remain accessible to the City as provided herein.

H. The City shall have the right at any and all reasonable times to examine and audit the General Ledger or similar documentation, other books of accounts, closed rental agreements issued from Airport, and other records, financial statements and documentation without restriction for the purpose of determining the accuracy of the Gross Revenues reported by the Concessionaire, or may so designate a duly authorized representative to make a review or investigation of the daily, weekly or monthly Gross Revenues accruing from said business. The Concessionaire will freely lend its own assistance in making such inspections, examinations and audits, if requested.

I. The Concessionaire's failure to keep a General Ledger or similar documentation, other books of account, closed rental agreements issued from Airport, and other records, financial statements and documentation and make them available for inspection by the City is a material breach of this Agreement and cause for termination of this Agreement at the option of City.

J. Should the Concessionaire not wish to make its books and records available at the Concessionaire's Airport facility, the City shall have the option of either having them transported to a location on the Airport for examination, or have the audit performed at a location where the Concessionaire maintains its records. Should the City elect to have the audit performed at a location outside the local area, the Concessionaire shall pay the City for the audit costs incurred. The audit costs shall include round trip air and ground transportation from the auditor's duty station to the location at which the books and records are maintained, as well as hotel lodging and a per diem rate for meals at the then current rate, for each day of travel or on-site audit work. After the audit is completed, the City shall bill the Concessionaire for the costs incurred and the billing shall be supported by a copy of the travel authorization form then currently in use by the City.

K. The Concessionaire shall not exchange vehicles, modify accounting treatment of revenue, or rename or redefine services or products in any manner that would deprive the City of revenues which should, under the terms of this Agreement, be payable to the City.

L. In addition to the audits provided for in this Agreement, the City is hereby granted the right to conduct an audit of the books and records, including the General Ledger or similar documentation, and all rental agreements, of any of the Concessionaire's vehicle rental facilities located within the Counties of Monongalia, Preston, Marion, and Harrison for the purpose of determining how many, if any, of the vehicle rentals were made to Airport customers and have been diverted from the Airport, and should have been reported as Gross Revenues hereunder. The Concessionaire hereby agrees to freely lend its assistance and support to the City in the conduct of any audit hereunder, including the conduct of customer origin/destination surveys as the City deems appropriate.

M. The intentional diversion, through direct or indirect means, of Rental Car Concession revenues from the inclusion in Gross Revenues is prohibited and may be deemed by the City to be a material breach of this Agreement and cause for termination. A shortage of rental vehicles at the Airport, while having rental vehicles available elsewhere in the local area and renting such vehicles to a potential customer that arrived at the Airport, and not including the resulting rental as Gross Revenues defined under the Agreement, shall constitute an intentional diversion. The taking of a reservation, advising or suggesting that a potential customer arriving at the Airport should go to another car rental location, regardless of the reason, and not including the rental car revenue resulting from such transaction as Gross Revenues shall also constitute an intentional diversion. In addition to other remedies available by law, the City shall have the right to immediately terminate this Agreement upon a determination by the Airport Director that the Concessionaire has intentionally diverted revenues as described herein.

N. The Airport Director shall have the discretion to require the installation of any additional reasonable accounting methods or controls he or she may deem necessary.

O. The Concessionaire agrees to operate the Rental Car Concession at the Airport so that every rental agreement invoice identifies the Airport as the place of origination or destination of the transaction, and shall be available for each sale or transaction.

a) The Concessionaire shall maintain a log of all rental agreement numbers assigned to the Airport.
b) The Concessionaire shall maintain daily logs of all rental agreements issued and retain such daily logs for at least six (6) years following the end of each Agreement Year.
c) The Concessionaire must maintain a copy of every rental agreement issued originally from the Airport, regardless of where the vehicle was returned.

P. All such accounting records shall be stored in a manner to provide reasonable and expeditious access for audit purposes.

Q. If either the required "Audited Schedule of Gross Revenues and Concession Fees Paid" or any audit performed reveals that the amount of Concession Fee actually due and owing pursuant to Section 5.01 and should have paid during an Agreement Year is greater than the total of such Concession Fees the Concessionaire paid to the City, then the Concessionaire shall pay the difference to the City, without demand or invoice, at the time it submits to the City such statement or, in the case of an audit, within thirty (30) days of notice by the City of the difference, together with payment of interest which shall accrue on such difference at the rate of the lower of twelve percent (12%) per annum or the maximum rate of interest allowed by law, calculated from the date the Concession Fees should have been paid to the date of actual payment by the Concessionaire. If the Concession Fees actually paid by the Concessionaire during an Agreement Year exceed the Concession Fees due and owing pursuant to Section 5.01, then the Concessionaire shall be entitled to a credit in the amount of the excess against the Concession Fees next due and owing from the Concessionaire to the City; provided however, that the annual payment to the City by the Concessionaire shall not be less than the MAG stipulated herein. Upon the termination of this Agreement, if there are any amounts due pursuant to the preceding sentence then the City shall refund the amount due to the Concessionaire within thirty (30) days of the City's receipt of the Concessionaire's "Audited Schedule of Gross Revenues and Concession Fees Paid" or the City's completion of its own audit or examination.

R. If an audit or examination reveals that the amount of Concession Fees a Concessionaire should have paid to the City is more than two percent (2%) greater than the amount of Concession Fees the Concessionaire paid to the City, then the Concessionaire shall reimburse the City for the entire cost of the audit or examination.

S. If the Concessionaire fails to furnish to the City any Monthly Statement of Gross Revenues or annual Audited Schedule of Gross Revenues and Concession Fees Paid within the time required, it may be deemed by the City to be a material breach of this Agreement and cause for termination of this Agreement.

5.06 CITY'S RIGHT TO INFORMATION

In addition to those obligations set forth in Section 5.05 above, the Concessionaire will make available to the City, or its authorized representative, at any time, Monday through Friday, inclusive, between the hours of 8:00 A.M. and 4:00 P.M., either at its Airport office(s), or at the City's office, at the Concessionaire's election, all records, books, or pertinent information as may be required for audit purposes.

ARTICLE VI
FACILITIES AND SERVICES

6.01 FACILITIES AND SERVICES TO BE PROVIDED BY THE CITY

In the operation of the Concessionaire's activities hereunder, the City shall provide adequate floor space, roads, drives, for the Concessionaire and/or its customers or staff to access its rented facilities at the Airport. In the operation of the Concessionaire's activities hereunder, the City shall provide:

a. Within the "Ready/Return Car" Areas:

1) All exterior maintenance and repairs of paved surfaces;
2) The City will provide for ice and snow removal and illuminate and maintain the parking space and pickup space provided hereunder, the use of which is granted to Concessionaire under the terms of this Agreement. No higher priority will be given to snow and ice removal of this area than is given to any other snow removal operation in this same area in the City's normal scheme of snow removal operations.
3) Such repairs occasioned by negligence of the Concessionaire shall be repaired by the Concessionaire at its own expense within twenty (20) days of the date of written request from the City to Concessionaire's local manager, and in a manner subject to prior written approval by the City. In the event the Concessionaire does not make or does not complete such repairs in accordance with the time schedule and in the manner approved by the City, the City, at its option, may make such repairs and bill the concessionaire for the costs thereof, plus a 15% administration fee.

ARTICLE VII
ASSIGNMENT, TRANSFER, SUBCONTRACTS, SUBCONTRACTING BY CONCESSIONAIRE

7.01 ASSIGNMENT

Following the award of this Rental Car Concession to the Concessionaire, the Concessionaire shall not transfer, assign, mortgage, pledge, or otherwise encumber this Agreement or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise (any such action being called an "assignment") without the prior written consent of the City Manager, which consent may be conditioned upon such additional terms and conditions as may be imposed in the reasonable discretion of the City Manager.

7.02 CONSENT TO ASSIGNMENT

The Concessionaire's request for consent to an assignment shall include copies of all documentation pertaining to the assignment. In addition, the Concessionaire shall provide the City with such additional information and documentation as may be reasonably requested. The factors upon which the City Manager's decision on whether to grant such consent may be based may include, but not be limited to (1) an assessment of whether the proposed assignee meets standards of creditworthiness; (2) whether the assignee will continue to operate the Rental Car Concession and only operate the Rental Car Concession described in this Agreement; and (3) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement.

7.03 RELEASE

In the event of any assignment, either in whole or in part, the Concessionaire shall not be released from any liability hereunder and the assignee shall be required to execute a written assumption agreement, agreeing to assume all obligations and liabilities under this Agreement and to abide by all of the terms and provisions of this Agreement, which assumption agreement must be acceptable to the City in all respects. In the event that the Concessionaire shall seek the City's consent to an assignment to an affiliate of the Concessionaire, then as a condition of such assignment, the Concessionaire (or those persons or entities that have majority ownership of the Concessionaire, directly or indirectly) may be required to execute an irrevocable guaranty of payment and performance of this Agreement, which shall be in form and substance satisfactory to the City.

7.04 DEFAULT

In no case will an assignment be permitted if a default shall have occurred hereunder and remain uncured.

7.05 DEFINITION

An "assignment" shall include any transfer of this Agreement by merger, consolidation, or liquidation or by operation of law, or if the Concessionaire or any sublessee or subcontractor is a corporation, any change in control of or ownership of or power to vote a majority of the outstanding voting stock of the Concessionaire, or any sublessee or subcontractor or of any parent corporation of the Concessionaire or any sublessee or subcontractor from the owners of such stock or those controlling the power to vote such stock on the dated date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions), or if the Concessionaire or any sublessee is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture (or a transfer of an interest in a corporate general partner or corporate joint venturer) which results in a change in control (either directly or indirectly) of such partnership or joint venture from those controlling such partnership or joint venture on the dated date of this Agreement (whether occurring as a result of a single transaction or as a result of a series of transactions). Notwithstanding the foregoing, a transfer of stock among current stockholders or among current stockholders and their immediate families, any transfer of stock resulting from the death of a stockholder, a transfer of partnership or joint venture interests among existing partners or among existing partners or joint venturers and their immediate families, or any transfer of such an interest resulting from the death of a partner or joint venturer, shall not be deemed an assignment for purposes of this section. Notwithstanding the foregoing, the provisions of this Section 7.05 shall not apply to any public trades of registered stock of a Concessionaire or sublessor that occurs on a national stock exchange.

7.06 LACK OF CONSENT BY CITY

In the event any action specified hereunder shall be taken without the prior written consent of the City, then any such assignment or other action shall be null and void and of no force or effect and in addition to all other available remedies, the City shall be entitled to immediately terminate this Agreement. Any written consent required hereunder shall not be effective unless evidenced by a written document signed by the authorized representative of the City.

If the Concessionaire assigns, sells, conveys, transfers, pledges, or sublets without the prior written consent of the City, in violation of this Article, the City may – but shall not be obligated to - collect Concession Fees from any assigns, subcontractors, or anyone who claims a right to this Agreement, and the City shall apply the net amount collected to the Concession Fees herein reserved; but no such collection shall be deemed a waiver by the City of the provisions of this Article or any acceptance by the City of any such assignee.

ARTICLE VIII
PREMISES & IMPROVEMENTS

8.01 DAMAGE & DESTRUCTION

If the Premises are partially damaged or totally destroyed by fire, the elements, or other casualty, and are rendered untenantable, the City may elect, at its option, within a reasonable time after the damage or destruction, of the Premises to either terminate this Agreement or repair and restore the Premises to a tenantable condition. Until the Premises are restored to a tenantable condition, within a reasonable time thereafter the building rent payable under this Agreement will be abated totally if more than fifty percent (50%) of the entire Premises, excluding the parking lots, are rendered untenantable, or if less than fifty percent (50%) of the Premises, excluding the parking lots, is rendered untenantable, the Rent will be abated *pro rata* for the portion rendered untenantable.

Notwithstanding the foregoing, if the Premises are damaged or destroyed as a result of negligence, omission, or willful act of the Concessionaire, its agents, representatives, employees, guests, or other invitees, then the Concessionaire will not receive any Rent abatement and the Concessionaire, at its own expense, shall repair and restore the Premises in accordance with the direction and approval of the City.

In the event the Premises are, without the fault of the Concessionaire, its agents, representatives, employees, guests, or other invitees, damaged or destroyed rendering all or more than one-half (1/2) thereof untenantable, the Concessionaire may terminate this Agreement by serving written notice on the City within thirty (30) days of the event rendering the Premises untenantable.

If any improvement, including Fixed Improvements, on the Premises ("Improvement") is partially damaged or totally destroyed by fire, the elements, or other casualty covered by the insurance the Concessionaire must maintain pursuant to this Agreement, the Concessionaire must repair or replace with due diligence the Improvement; provided, however, that in making such repair or replacement, the Concessionaire may make changes in the plans and specifications of such Improvement, so long as: 1) the value of such Improvement after such repair or replacement has been made is the same as or greater than the value of the Improvement as it existed immediately prior to the damage; and 2) any change from the original plans and specifications is approved in writing by the City.

In the event of damage to or destruction of any Improvement, the insurance proceeds maintained by Concessionaire pursuant to this Agreement shall be payable to the Concessionaire and the City, and such proceeds shall be used to repair and replace such Improvement. In the event the Concessionaire fails to repair and replace any such Improvement, the City has the right to receive any proceeds collected under any insurance policies covering such Fixed Improvement or any part(s) thereof pursuant to this Agreement; and the Concessionaire shall pay to the City an amount equal to the replacement cost of such fixed improvement as it existed immediately prior to the damage, less any insurance proceeds paid to the City.

The Concessionaire's obligation to repair or restore any Improvement is limited to the amount of the insurance proceeds made available to it; provided, however, the Concessionaire has carried insurance to the extent of not less than one hundred percent (100%) of the replacement cost of all insurable improvements as required by this Agreement.

8.02 QUIET ENJOYMENT

The City covenants that it has operational jurisdiction of the Premises, free and clear of all liens and encumbrances having priority over this Agreement, and that it has the right and authority to lease the same as herein set forth. The City warrants to the Concessionaire peaceful possession and quiet enjoyment of the Premises, except for noise and other related interference arising out of the use of the Airport for aviation purposes, during the term hereof upon performance of the Concessionaire's covenants herein.

8.03 EMINENT DOMAIN

In addition to any other right the Concessionaire may have under this Agreement, the Concessionaire has the right to intervene and appear on its own behalf in any eminent domain proceeding affecting the Premises and to recover any award to which it may be adjudged entitled in connection with the Concessionaire's Fixed Improvements, Trade Fixtures, or other personal property, it being understood that, as between the City and the Concessionaire, the Concessionaire will be entitled to the portion of the condemnation award for the Trade Fixtures and other personal property thereon and the portion representing the unamortized cost of any Fixed Improvements constructed by the Concessionaire after the Effective Date of this Agreement, such amortization to be on a straight-line basis over the primary Term of this Agreement.

ARTICLE IX
DEFENSE AND INDEMNIFICATION

The Concessionaire will indemnify, hold harmless, and upon the City's request, defend the City, its Airport Director, City Council members, officers, employees, agents, and representatives from and against all lawsuits, claims, liability, damages, losses, costs, expenses, and judgments of any nature whatsoever including, but not limited to, those for personal injuries, including death, or property damage, including theft or loss, arising or alleged to arise, either directly or indirectly, (a) out of or in connection with Concessionaire's operations under this Agreement; or (b) out of or in connection with the acts or omissions of Concessionaire, its officers, employees, agents, representatives, contractors, guests, or other invitees where such acts or omissions occur at the Airport, whether at the Premises or elsewhere. This indemnity obligation of Concessionaire is intended to cover all claims to the full extent permitted by law but shall not be construed to include claims based solely upon the negligence of intentional tortious conduct of the City.

ARTICLE X
INSURANCE

A. The Concessionaire, at its own expense and in its own name, and, in the name of the City, as additional insureds, as their interests may appear for liabilities arising out of the conduct and/or operation of the concession, shall maintain and pay the premium of the following limits which shall cover its operations hereunder and shall be effective during the entire term of this Agreement:

1. Commercial General Liability Insurance on an occurrence basis, with contractual liability and property damage endorsements, covering the entire Concessionaire's operations and activities on or in connection with this Agreement, including the Rental Car Concession, in which the combined single limits of liability are no less than two million dollars ($2,000,000) per occurrence. The insurance policies shall provide the primary coverage for claims arising out of or related to this Agreement. The City shall be named as an additional insured, *as their interest may appear for liabilities arising out of the conduct of the concessionaire*, with respect to this Agreement under all such insurance policies, and a current certificate evidencing such coverage and any renewals thereof will be furnished to the City at the execution of this agreement, at yearly intervals thereafter, and upon demand. The Concessionaire, nor its Insurer, shall not revise such policies or change the insurance, or any part thereof, without first giving the City thirty (30) days prior written notice.
2. Automobile Liability Insurance, in accordance with the laws of the State of West Virginia, which includes coverage for residual liability for bodily injury and property damage with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence; and
3. Fire and Extended Coverage Insurance and All Risk Hazard Insurance for One Hundred Percent (100%) of the replacement value of all insurable Fixed Improvements and personal property on the Premises, including without limitation, inventory, equipment, furnishings and other property that may be removable by the Concessionaire under the provisions of this Agreement, and which is primary and non-contributory.
4. Worker's Compensation Insurance, as required by the laws of the State of West Virginia, or participation in any self-insured workers' disability compensation program approved by the State of West Virginia, and Employer's Liability Insurance with all limits of not less than Five Hundred Thousand Dollars ($500,000).

B. Cancellation Notice. Each policy required hereunder must provide, or be so endorsed, for at least thirty (30) days unconditional advance written notice to the City prior to any cancellation, termination, or material modification of the policy or any part thereof.

C. Proof of Insurance. Prior to commencing operations, and by the expiration date of any expiring policies, the Concessionaire must deliver to the City, either a certified copy of each insurance policy required hereunder, or a certificate of insurance as evidence of compliance with this Section; provided, however, that the Concessionaire will, within thirty (30) calendar days following the written request from the City, replace any insurance certificate with a certified copy of each insurance policy. If at any time, any of the policies become unsatisfactory to the City as to form or substance, of if the companies issuing such policies become unsatisfactory to the City, the Concessionaire will promptly obtain new and satisfactory policies in replacement.

D. Compliance is Continuing. Compliance with this Section is a continuing condition of the Concessionaire's enjoyment of the rights and privileges granted under this Agreement. In the event the Concessionaire fails to maintain and keep in force insurance as hereinabove required, the Concessionaire will forthwith cease all operations from and at the Premises until such failure is completely remedied.

E. Waiver of Subrogation. The concessionaire waives any rights of subrogation for personal injury or property damage against the City, its employees and agents arising from this Agreement. In the event of any payment by any insurer of the Concessionaire, such insurer will not be subrogated to any of the Concessionaire's rights of recovery therefor against the City, its employees and agents. The

Concessionaire will not execute, nor deliver any instruments or other documents, nor take any other action to secure any such rights for the Concessionaire's insurer(s) against the City, its employees and agents.

In addition, the Concessionaire waives any rights of recovery it may have against the City, its employees and agents for insured losses occurring to any property insured by the Concessionaire in accordance with this Agreement.

ARTICLE XI
TERMINATION AND CANCELLATION

11.01 CANCELLATION BY CITY

The City retains the right to cancel this Agreement upon thirty (30) calendar days written notice to the Concessionaire, except under Subsection A and B below, in which case such written notice shall be seven (7) calendar days, at any time after the occurrence of any one or more of the following events:

A. Non-payment of rents, concession fees or other monies due the City and such non-payment continuing for fourteen (14) calendar days following the date of certified or registered mailing to the Concessionaire of written notice from the City of the existence of the default.
B. Breach of any covenant or provision of this Agreement by the Concessionaire, except in the case of nonpayment of Concession Fees or Rents, and failure of the Concessionaire to remedy such breach within fourteen (14) calendar days from the date of electronic, certified or registered mailing to the Concessionaire of written notice from the City of the existence of such breach, or, if the breach is of such character as to require more than fourteen (14) calendar days to remedy, then failure of the Concessionaire within said fourteen (14) day period to commence and thereafter proceed diligently to remedy such breach and written notice to the City of the Concessionaire's intent to remedy under the time period required to remedy. Such timetable must be approved in writing by the City.
C. Institution of voluntary or involuntary bankruptcy by or against the Concessionaire if not dismissed within one hundred twenty (120) calendar days of institution.
D. Assignment by the Concessionaire for the benefit of creditors.
E. Abandonment by the Concessionaire of and discontinuance of operations hereunder.

11.02 CANCELLATION BY THE CONCESSIONAIRE

The Concessionaire shall have the right, upon thirty (30) calendar days written notice to the City, to terminate this Agreement at any time after the occurrence of one or more of the following events:

A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the remaining in force of said injunction, whether permanent or temporary, for a period of ninety (90) calendar days.

B. Breach by the City of any covenant or provision of this Agreement and failure of the City to remedy such breach within sixty (60) calendar days from the date of registered mailing to the City of written notice from the Concessionaire of the existence of such breach, or, if the breach is of such a character as to require more than sixty (60) calendar days to remedy, then failure of the City within said sixty (60) day period to commence and thereafter proceed diligently to remedy such breach.

C. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the Airport facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the Concessionaire's operation for a period of ninety (90) calendar days or more.

Upon termination of this Agreement, in any event, the Concessionaire shall immediately vacate the demised premises, and such vacated premises shall be left in satisfactory condition, normal wear and tear excepted.

11.03 CONCESSIONAIRE'S FAILURE TO PERFORM

If the City elects to pay any sum or sums or incurs any obligations of expense by reason of the failure, neglect or refusal of the Concessionaire to perform or fulfill any one or more of the provisions of this Agreement thirty (30) calendar days after notification of such failure, neglect or refusal, the Concessionaire shall pay to the City promptly the sum or sums so paid by the City or the expense so incurred.

11.04 CITY'S RIGHT TO REPAIR

Any provisions in this Agreement to the contrary notwithstanding, the City shall have the absolute right to make any repairs, alterations and additions to any building or the Airport as a whole or to any part thereof, free from any and all liability to the Concessionaire, due to loss of business or consequential damages of any nature whatsoever to the Concessionaire caused during the making of such repairs, alterations or additions except for personal injuries caused by the negligence of the City.

11.05 STANDARDS OF OPERATION

Any questions or complaints regarding the standards of service, appearance of the Premises, or other standards of operation or public safety, which shall be brought before the City, shall be subject to review by the City. The City may take such actions as it deems appropriate in the particular circumstances. The Concessionaire shall thereafter take the necessary steps to comply with the directives of the City. Continued violation of this clause shall be sufficient grounds for the termination of this Agreement.

Notwithstanding any other provision of the Agreement, the City retains the right to cancel this Agreement if the Concessionaire fails to consistently render the amount or quality of service required within sixty (60) calendar days of receipt of written notice to the Concessionaire. The quality of service required of the Concessionaire shall equal the highest rendered by similar concessionaires at small hub airports in the United States, and any deviation therefrom shall be corrected immediately. At all times, the general public shall be given the highest consideration in matters relating to the Concessionaire's operation.

11.06 WAIVER OF DEFAULT

No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.

11.07 FORCE MAJEURE

The parties to this Agreement shall not be required to perform any term, condition, or covenant in this Agreement so long as such performance is satisfactorily demonstrated to have been absolutely delayed or prevented by force majeure, which shall mean Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the parties hereto and, which by the exercise of due diligence, the parties hereto are unable, wholly or in part, to prevent or overcome except as otherwise provided herein.

ARTICLE XII
ENVIRONMENTAL RESPONSIBILITIES

A. Definitions

1. The term "Environmentally Regulated Substances" as used in this Agreement means any and all elements, substances, chemicals, compounds, pollutants, contaminants which are now or hereafter regulated, controlled or prohibited by any local, state or federal law or regulation requiring the removal, warning or restrictions on the use, generation, disturbance or transportation thereof, including without limitation any substance (in whole or in part) defined as a “hazardous substance,” “hazardous material” “toxic substance” or “air pollutant” by any Environmental Law.

2. The term "Environmental Law" as used in this Agreement means any common law or duty, case law, decision or ruling, statute, rule, regulation, law, ordinance or code, whether local, state or federal, that regulates, creates standards for or imposes liability or standards of conduct concerning any Environmentally Regulated Substances, and includes but is not limited to the

following: (i) the Clean Water Act (33 U.S.C. § 1251 et seq.); (ii) the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); (iii) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.); (iv) the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Clean Air Act (42 U.S.C. § 7401); (v) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11011 et seq.); (vi) the National Environmental Policy Act (42 U.S.C. § 4231 et seq.); (vii) the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.); (viii) the Pollution Prevention Act (42 U.S.C. § 13101 et seq.); (ix) the Safe Drinking Water Act (43 U.S.C. § 300 et seq.); (x) the Superfund Amendments and Reauthorization Act (42 U.S.C. § 9601 et seq.); (xi) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); and/or (xii) any administrative rules, regulations, guidelines and/or restrictions promulgated pursuant to any Environmental Law.

B. **Indemnification**

The Concessionaire hereby indemnifies and agrees to defend, protect and hold harmless, the City, its Council members, officers, employees and agents, and any successor or successors to the City's interests (collectively "City Indemnitees") from and against any and all demands, investigations, losses, liabilities, fines, charges, damages, injuries, penalties, response costs, or claims of any and every kind whatsoever paid, incurred, or asserted against, or threatened to be asserted against, any City Indemnitee, in any way relating to or regarding, directly or indirectly, Environmentally Regulated Substances or any Environmental Law, including all related claims or causes or action at common law or in equity which arise from or relate to the Premises if caused in whole or in part by the Concessionaire or its members, contractors, licensees, invitees, officers, employees or agents (hereinafter "Environmental Claims"). The Concessionaire's indemnification obligations shall include without limitation: (i) all consequential damages; (ii) the costs of any investigation, study, removal, response or remedial action, as well as the preparation or implementation of any monitoring, closure or other required plan or response action; and (iii) all actual costs and expenses incurred by any City Indemnitee in connection with such matters including, but not limited to, actual fees for professional services or firefighting or pollution control equipment related to fuel spills. The Concessionaire's indemnification obligations shall survive the cancellation, termination or expiration of the Term of this Agreement.

C. Compliance with Environmental Law

The Concessionaire shall keep and maintain and shall conduct its operations on and around the Premises in full compliance with any Environmental Law. The Concessionaire shall further ensure that its employees, licensees, invitees, agents, contractors, subcontractors, and any other persons conducting any activities on the or adjacent to the Premises to do so in full compliance with any Environmental Laws By virtue of its operational control of the Premises, the Concessionaire shall be responsible for obtaining any and all necessary government permits or other approvals required by any Environmental Law with respect to the Concessionaire's use or occupancy of the Premises in its name.

In particular, the Concessionaire shall comply with all regulations related to the installation, operation, maintenance of storage tanks containing any regulated substances. The Concessionaire shall have Class A and B Operators, with up-to-date certifications from the State of West Virginia, either on their payroll or under contract and all employees that dispense fuel from Concessionaire-operated Fuel Storage Tanks shall be trained as Class C Operators. A list of Class A, B, and C Operators shall be maintained by the Concessionaire and made available to the City upon request.

D. Notification

The Concessionaire shall immediately notify the City in writing of any event that might give rise to any Environmental Claims, or if the Concessionaire obtains knowledge of any release, threatened release, disbursement, discharge, disposal or emission of any Environmentally Regulated Substances in, on, under, adjacent or around the Premises which is not in full and complete compliance with any Environmental Law. The Concessionaire shall promptly notify the City regarding any and all fuel spills which occur, under, adjacent or around on the Premises.

The Concessionaire shall immediately notify the City of any soil or groundwater contamination resulting from the failure of any Fuel Storage Tank components, including tanks, piping, and dispensers. Further, the Concessionaire shall undertake all appropriate remediation of such contamination as prescribed by the State of West Virginia. The City shall be provided copies of all reports regarding investigation and remediation of any contamination resulting from the use of Fuel Storage Tanks on the Premises.

E. Right to Take Action

The City shall have the right, but not the obligation or duty, to join or participate in, including if it so elects as a formal party, any legal or administrative or equitable proceedings or actions initiated by any person or entity in connection with any Environmentally Regulated Substances, Environmental Law and/or any Environmental Claims pertaining to the Concessionaire's operation at, on, around and adjacent to the Premises, or if the Concessionaire is not fulfilling its obligations under this Section, and in such case the Concessionaire shall reimburse the City for all of its actual attorneys' fees, investigative costs and litigation costs incurred in connection therewith. The City's obligation to reimburse attorney's fees, investigative costs and litigation costs incurred by the City shall survive the termination and/or expiration of this Agreement and shall be immediately due and payable upon the demand of the City.

F. Right to Investigate

The City shall have the right, but not the obligation or duty, any time from and after the Commencement Date, to investigate study and test to determine whether Environmentally Regulated Substances are located in, on or under the Premises, or were emitted or released therefrom, which are not in compliance with any Environmental Law. Upon the reasonable request of the City, the Concessionaire shall provide a list of any and all Environmentally Regulated Substances used by the Concessionaire, its members, officers, employees, subcontractors, licensees and/or agents, on, at, adjacent to, around and/or under the Premises, certified as true and correct, and specifying how such Environmentally Regulated Substances are used, stored, treated and/or disposed. The Concessionaire shall provide any and all documents required to by any Environmental Law to demonstrate the proper use, storage, treatment and disposal of any Environmentally Regulated Substances.

G. City Responsibilities

1. As between the Concessionaire and the City, the City shall only be and remain responsible for the clean-up, removal and disposal, response and/or remediation of any and all Environmentally Regulated Substances which were neither: (i) exposed (directly or indirectly) to the Premises by the Concessionaire or the Concessionaire's officers, employees, subcontractors, guests, invitees and/or agents; nor (ii) exacerbated, disturbed or dispersed by the Concessionaire or the Concessionaire's officers, employees, subcontractors, guests, invitees and/or agents. The City shall have the right to direct the Concessionaire to alter the location of any construction related to the Premises or otherwise modify the plans and specifications for any construction related to the Premises in order to investigate the need for any clean-up, removal and disposal, response or remediation. The Concessionaire shall consult with the City prior to preparing its plans and specifications to minimize any disturbance to any Environmentally Regulated Substances.

2. The Concessionaire, before commencing or continuing any construction work on the Premises, shall promptly advise the City in advance of any environmental findings by the Concessionaire which suggest that any Environmentally Regulated Substances may be disturbed by any construction work related to the Premises. The City shall have the unconditional right to direct the Concessionaire to stop the performance of any construction work related to the Premises if the City reasonably expects such work will disturb any Environmentally Regulated Substances. The City shall thereafter promptly commence the performance of any appropriate environmental testing at such location or redirect the Concessionaire to an alternative location. The Concessionaire shall thereafter commence construction only with the written approval of the City.

3. As between the Concessionaire and the City, the Concessionaire shall be responsible for the clean-up, removal and disposal, response or remediation of any and all Environmentally Regulated Substances which could subject any person to liability for costs of clean-up, removal,

response or remediation under any Environmental Law and which arise out of, relate to or result from (1) the use or occupancy of the Premises by the Concessionaire or its officers, employees, guests, subcontractors, invitees, contractors and agents, or (2) any acts or omissions of the Concessionaire, or any of the Concessionaire's officers, employees, guests, subcontractors, invitees, contractors and/or agents; provided that the Concessionaire shall not be responsible under this subparagraph with respect to any Environmentally Regulated Substances to the extent the City is specifically responsible for such Environmentally Regulated Substances under subparagraph G. 1. above and to the extent that the Concessionaire strictly follows the procedures and provisions under subsection G. 1. and G. 2., above.

ARTICLE XIII
CITY'S RESERVED RIGHTS

13.01 RESERVED RIGHTS

All rights not expressly granted to the Concessionaire herein are reserved by the City, including, without limitation, the rights set forth in this Article XIII.

13.02 CAR MOVEMENT ROUTES

The Concessionaire's car movement routes shall be designated by the Airport Director and are subject to change at any time.

13.03 CUSTOMER FACILITY CHARGE

The Concessionaire shall be bound by the requirements of the City's Customer Facility Charge ("CFC") if adopted.

13.04 ADDITIONAL/DIFFFERENT RENTAL CAR BRANDS

The City shall have right during the Term of this Agreement to approve additional or replacement brands upon request by the Concessionaire. Approval of any additional or different brands shall be at the sole discretion of the Airport Director under any terms and conditions deemed necessary by the Airport Director.

ARTICLE XIV
FEDERAL GOVERNMENT AGREEMENTS

This Agreement is subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

ARTICLE XV
NATIONAL EMERGENCY

All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control of the Airport, or any part thereof, during the time of war and national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of any other lease or grant to the United States of America shall be suspended thereby.

ARTICLE XVI
GOVERNMENTAL REQUIREMENTS

The Concessionaire and any subcontractors must comply with any ordinance and all rules and regulations adopted by the City with respect to use of the Airport, as well as all applicable federal and state laws and regulations. In connection with the Concession operation, the Concessionaire must, at its own expense, obtain any and all lawfully required governmental licenses and permits, and will pay all assessed service charges necessary for such use.

To the extent authorized by the City's authority under the laws of the State of West Virginia to lease premises and to regulate activities at the Airport, the terms and conditions of this Agreement and the Airport Rules and Regulations shall take precedence over and shall govern the parties hereto to the exclusion of, any local governmental law or ordinance in conflict therewith.

A. **Non-Discrimination Covenant Pursuant to Requirements of the Department of Transportation**. The Concessionaire for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, hereby covenants and agrees that: (1) no person on the grounds of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status will be excluded from participation in, denied the benefits of, or will otherwise be subjected to discrimination in the Premises; (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status will be excluded from participation in, denied the benefits of, or will otherwise be subjected to discrimination; and (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

   In the event of breach of any of the above nondiscrimination covenants, the City has the right to terminate this Agreement and to re-enter and repossess the Premises and hold the same as if this Agreement had never been made or issued.

B. **Affirmative Action Assurance Requirements of the Federal Aviation Administration**. The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Concessionaire also assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by in 14 CFR Part 152, Subpart E. The Concessionaire assures that it will require that its covered suborganizations provide assurances to the Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

C. **Additional Federal Requirements.**
   1. The Concessionaire assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance. This provision obligates the Concessionaire or its transferee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. This provision binds the Concessionaire through the completion of this Agreement.

   2. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F, and any amendment thereto. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F, and any amendment thereto.

The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

D. **Airport Concessions Disadvantaged Business Enterprises**.

1. Policy: It is the obligation of the Department of Transportation that ACDBEs as defined in 49 CFR Part 23, and any amendments thereto, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the ACDBE requirements of 49 CFR Part 23, and any amendments thereto, apply to this Agreement.

2. ACDBE Obligation: The Concessionaire agrees to ensure that ACDBEs as defined in 49 CFR Part 23, and any amendments thereto, have the maximum opportunity to participate in the performance of contracts under this Agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, and any amendments thereto, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Concessionaire and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts for work at the Airport.

E. **City Non-Discrimination Requirements.**

1. The Concessionaire or any subcontractors must not:

a) Refuse to recruit, hire, employ, promote, bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status of any individual.

b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status.

c) Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status.

d) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status of prospective employees, except when the purpose of such inquiry of form of application is to promote diversity in the workforce and collect and retain anonymized data promoting such purpose; provided, that, in all cases, the provision of such information shall not be mandatory upon applicants or interested persons.

e) Make or keep a record of information described in subparagraph (d) above or disclose that information.

f) Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status. , except when the purpose of such inquiry of form of application is to promote diversity in the workforce and collect and retain anonymized data promoting such purpose; provided, that, in all cases, the provision of such information shall not be mandatory upon applicants or interested persons.

g) Discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with this Agreement with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status. This Section does not apply if it is determined by the City that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon Concessionaire.

2. The Concessionaire must notify any subcontractors of the obligations relative to nondiscrimination under this Agreement. The Concessionaire must include the provisions of this Article in any subcontract, as well as provide the City a copy of any subcontract agreement.

3. The Concessionaire and its subcontractors must not discriminate against any minority business enterprises (MBEs) or women business enterprises (WBEs), in selecting and retaining subcontractors to perform work under this Agreement.

4. Breach of these covenants may be regarded as a material breach of this Agreement.

5. If the Concessionaire does not comply with the non-discrimination provisions of this Agreement, the City may impose sanctions as it determines to be appropriate, including but not limited to cancellation, termination or suspension of this Agreement, in whole or in part.

ARTICLE XVII
PRIMARY LIEN OF CITY

All sums which shall be due the City hereunder by reason of any provisions of this Agreement are and shall always be a valid and first lien upon the equipment and other personal properties except automobiles and computerized reservation equipment utilized in the operation of the Rental Car Concession by the Concessionaire. Upon any default under this Agreement, the City may exercise its first lien upon the equipment and personal properties of the Concessionaire and dispose of same in any manner sanctioned by the West Virginia Uniform Commercial Code without resort to legal processes.

ARTICLE XVIII
PATENTS AND TRADEMARKS

The Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. The Concessionaire agrees to defend, save, and hold the City, its officers, employees, agents and representatives, free and harmless from any loss, liability, cost, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Concessionaire under or in any way connected with this Agreement.

ARTICLE XIX
MISCELLANEOUS

19.01 TAXES

The Concessionaire agrees to pay all taxes lawfully assessed against the furnishings and equipment provided by it, the space occupied by it, and upon the conduct of its operations hereunder; provided, however, the Concessionaire shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes, pending any legal proceeding instituted to determine the validity of such taxes.

19.02 GOVERNING LAW

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of West Virginia. The parties hereto agree that any action in regard to this Agreement or arising out of the terms and conditions hereof shall be instituted and litigated in the courts of the State of West Virginia and in

no other. In accordance herewith, the parties hereto submit to the jurisdiction of the courts of the State of West Virginia.

19.03 RELATIONSHIP OF PARTIES

Notwithstanding the provisions herein contained for the payment by the Concessionaire to the City of sums based upon a percentage of gross revenues as above provided, it is expressly understood and agreed that the City shall not be construed or held to be a partner, associate, or joint venturer of the Concessionaire in the conduct of its business, but the Concessionaire shall at all times have the status of an independent contractor, without the rights or authority to impose tort or contractual liability upon the City.

19.04 SUCCESSORS

The terms, conditions, and covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of the City under this Agreement, including but not limited to any notices required or permitted to be delivered by the City to the Concessionaire hereunder, may, at the City's option, be exercised or performed by the City's agent or attorney, including but not limited to the Airport Director.

19.05 NOTICES

Unless otherwise required under this Agreement, all notices, communications or statements required under this Agreement must be sent electronically or by registered or certified mail, return receipt requested, postage prepaid, or nationally recognized express mail service, to the following addresses:

To the City:

City of Morgantown
Morgantown Municipal Airport
100 Hart Field Road
Morgantown, West Virginia 26505
Attention: Airport Director

To Concessionaire:

The Hertz Corporation
8501 Williams Road
Estero, Florida 33928
Attention: Real Estate Department

Parties hereto shall give written notice of any change of address.

19.06 CAPTIONS

When used herein, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders. The captions or headings of paragraphs in this agreement are included for convenience in reference only and shall not be considered in construing the provisions hereof if any questions of intent should arise.

19.07 SEVERABILITY OF INVALID CONTRACTUAL TERMS

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances is, to any extent, judicially determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, is not affected and is enforceable.

19.08 AMENDMENTS

No amendment, alteration, or change to this Agreement is binding upon the City unless such amendment, alteration, or change is in writing signed by both the City and the Concessionaire.

19.09 ACTIONS TAKEN BY CITY

Unless otherwise explicitly provided in this Agreement, the Airport Director or his or her designee may take all actions under this Agreement on behalf of the City.

19.10 NO THIRD-PARTY BENEFIT

No provision contained or incorporated in this Agreement by reference shall create or give to third parties any claim, or right of action, against the City or the Concessionaire, beyond that which may legally exist in the absence of any such provision.

19.11 ENTIRE AGREEMENT

This Agreement consists of Articles I through XIX, and all attachments hereto. This Agreement sets forth all the covenants, promises, conditions, and understandings between the City and the Concessionaire concerning the Rental Car Concession and the Lease of the Premises, and all prior agreements or understandings, written or oral, are superseded by the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalves by their respective duly authorized officers all as of the day and year first above written.

CITY OF MORGANTOWN

_____

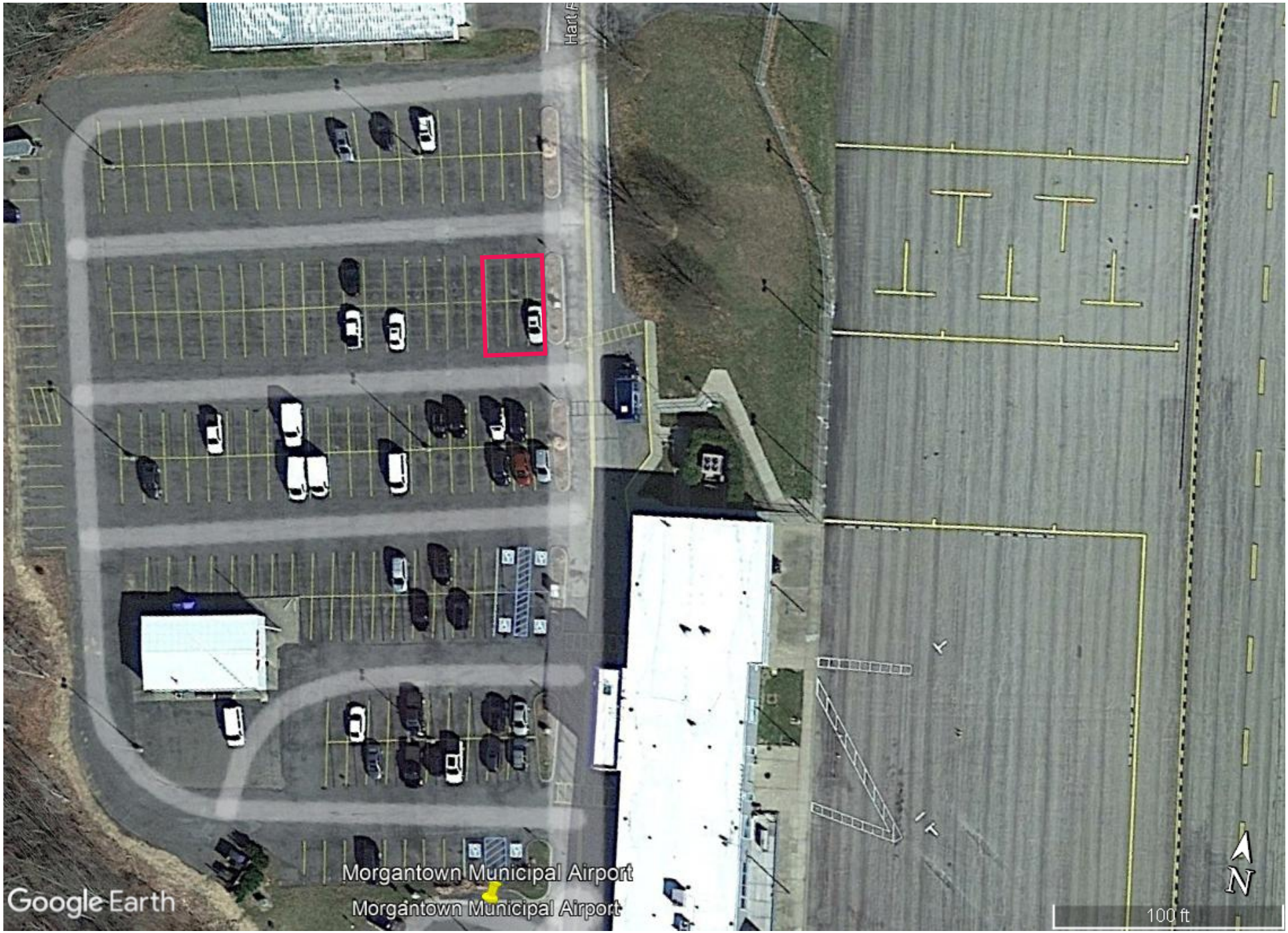
A. Kim Haws
City Manager

THE HERTZ CORPORATION

By: _____

Name: Stephen A. Blum
Its: Senior Vice President, Real Estate & Facilities

Exhibit A



- Hertz Ready?Return Parking Spaces

RESOLUTION IN SUPPORT OF THE BUILD BACK BETTER ACT

WHEREAS, West Virginia has one in five children living in poverty and median household income is second lowest among the 50 states at $16,862. Seven counties have no childcare services, limiting parents' participation in the workforce.

WHEREAS, coal miners are facing an epidemic as black lung disease has risen to historically unprecedented levels, hitting a 25-year high in Appalachian coal mining states, and the Build Back Better Act contains a four-year extension of funding for the Black Lung Disability Trust Fund.

WHEREAS, the Build Back Better Act contains historic investments to address child care deserts, health and food insecurity, and lack of good paying jobs. The Child Tax Credit would lift 22,000 West Virginia children above the poverty line. Build Back Better would expand availability and affordability of quality childcare for 89,607 West Virginia children.

WHEREAS, the Build Back Better Act will bring 31,000 jobs to West Virginia, many in rural communities through provisions like 48C clean energy manufacturing jobs and the Civilian Climate Corps which will put people to work in land restoration right where they live.

WHEREAS, the Build Back Better Act allows Medicare to negotiate lower prescription drug prices, penalize pharmaceutical companies that unfairly raise prices, and cap annual out-of-pocket prescription drug costs for seniors at $2,000. Nearly 600,000 West Virginians with chronic conditions such as cancer, diabetes, and asthma will see their prescription drug cost go down.

WHEREAS, the Build Back Better Act invests $85/ton of CO_2 into equipping coal and gas power plants with carbon capture technology, helping these power sources stay online even as the United States transitions towards a zero carbon economy.

WHEREAS, the Build Back Better Act is paid for by closing loopholes that allow corporations to pay $0 taxes, stopping incentives for companies to take jobs overseas, and increasing taxes on incomes greater than $10 million.

NOW, THEREFORE BE IT RESOLVED, that The City of Morgantown urges Senators Manchin and Capito to vote for the Build Back Better Act without delay.

Adopted this ___ day of _____, 2022.

_____
Mayor

_____
City Clerk

The undersigned organizations urge Senators Manchin and Capito to vote for the Build Back Better Act

- 84 Agency
- Appalachian Community Health Emergency
- Corazon Latino
- Covenant House
- Future Generations University
- Gesundheit Institute
- HOPE Community Development Corporation
- Kid In The Background, Inc.
- Matthew J. Watts Ministries
- Mid-Ohio Valley Climate Action
- Moms Clean Air Force, West Virginia Chapter
- Monongalia Friends Meeting
- Mountain State Justice
- National Association of Social Workers WV Chapter
- On the Levels Farmstead
- Preserve Monroe
- Race Matters West Virginia
- Rise Up WV
- Starry Eyes
- Tuesday Morning Group
- West Virginia Food & Farm Coalition
- West Virginians for Affordable Health Care
- Wind Dance Farm & Earth Education Center
- Women's March West Virginia
- WV Citizen Action Group
- WV FREE
- WV Interfaith Power and Light
- Yew Mountain Center
- Young West Virginia Forward

THE CITY OF
MORGANTOWN
WEST VIRGINIA









YEAR IN REVIEW **2021**





MESSAGE FROM THE CITY MANAGER

The City of Morgantown experienced a lot of growth and transition in the past year. It was my first full year serving as the City Manager and we successfully and safely navigated the evolving COVID-19 pandemic all while implementing a transparent and successful community engagement plan for the use of over $11 million in federal American Rescue Plan (ARP) funds which resulted in the creation of a robust ARP Action Plan for the city. The city's ARP engagement process and action plan was highlighted as a leading example by the Southern Economic Advancement Project in its ARP "Good Examples" report, which was referenced by the U.S. Treasury.

Looking to 2022, we will continue to build off of the successes listed here and further our efforts to improve our services and become more transparent and accountable to our citizens by upholding our core values:

1. **Transparency**
2. **Trust**
3. **Integrity**
4. **Community**
5. **Diversity**

The information in this document is but a snapshot of the services city staff delivered to our citizens in the last year. Morgantown continues to be a leader in the state for its forward-thinking initiatives such as the Monongalia Morgantown Area Geographic Information Consortium (MMAGIC) which was the first of its kind in the state. The city also saw great strides in supporting diversity with the approval of the CROWN Act and protecting our citizens well being with a ban on conversion therapy. These efforts resulted in the city achieving its first perfect score in the 2021 Municipal Equality Index. These are just a few things that our community can be proud of as we move into the new year.

Sincerely,
A. Kim Haws

MORGANTOWN CITY COUNCIL



Jenny Selin
Mayor
Fourth Ward



Danielle Trumble
Deputy Mayor
Fifth Ward



Joe Abu-Ghannam
First Ward



Bill Kawecki
Second Ward



Ixya Vega
Third Ward



Dave Harshbarger
Sixth Ward



Brian Butcher
Seventh Ward

MORGANTOWN MUNICIPAL AIRPORT





BUDGET:
$2,306,076

- **Began construction on the Runway 18-36 Extension Project at an estimated cost of $50 million.**
- **Launched Art at the Airport Program with Arts & Culture Department and Morgantown Art Association.**
- **Removed 100 year old t-hangars to make room for new development at the airport.**

The Morgantown Municipal Airport (MGW) offers daily flights to Washington Dulles Airport (IAD) and Pittsburgh International Airport (PIT) in Pennsylvania accessing nearly 1,000 connecting flights to domestic and international destinations. Commercial flights are operated by Southern Airways Express. Southern is a Mississippi-based airline, offering scheduled regional air service to over twenty cities in the Gulf and Mid-Atlantic regions. Southern Airways interline tickets connecting with United, American and Alaska Airlines flights.

The Morgantown Municipal Airport and the City of Morgantown held a Groundbreaking Ceremony on March 24, 2021 for the Morgantown Municipal Airport Runway 18-36 Extension Project. The groundbreaking marked the beginning of what is anticipated to be a five-year, multi-phase project. Phase 1 construction began in March 2021 and continued through the end of the year. This phase includes land clearing and embankment construction. Phase 2 construction began in fall 2021, and Phase 3 construction is expected to begin in spring/summer 2022. The Runway 18-36 Extension Project will modernize the airport's facilities to enhance current operations, recruit new business, and improve airport safety. The project will add 1,001 feet to the existing runway, extending the total length to 6,200 feet. The total cost for the runway extension is approximately $50 million.

In partnership with the Arts & Cultural Development Department and the Morgantown Arts Association, the airport launched the Art at the Airport program. The program showcases local artists' work in an exhibition at the airport terminal. Along with showcasing artwork, there are opportunities for the artists to sell their work if desired. The Morgantown Art Association coordinates the selection of artists and rotating the exhibition.

The World War II era T-Hangars located on the West side of the airport were removed at the beginning of 2021 through a competitively bid contract. The hangars were removed at no cost to the City as the cost of recycled steel offset the price of the removal of the steel structures. The removal of these old facilities allows for new development opportunities for new corporate aviation facilities.

ARTS AND CULTURAL DEVELOPMENT





BUDGET:
$353,003

- **Reopened the Metropolitan Theatre, Ruby Amphitheater, and Hazel Ruby McQuain Park.**
- **Established the Cultural Arts Commission.**
- **Transitioned Morgantown History Museum from BOPARC to Arts and Cultural Development.**
- **Established Public Art and Mural Programs.**

The Arts and Cultural Development Department (DACD) strives to enhance the vitality of Morgantown and the quality of life for all residents by supporting an environment where arts and cultural organizations thrive, artists and culture bearers are celebrated and supported, and people of all ages enjoy opportunities for expression and experiencing the arts.

The COVID-19 pandemic continued to place limitations on public gatherings and theater spaces. The Metropolitan Theatre hosted only 15 events for nearly 6,000 attendees instead of nearly 100 performances with annual audiences of over 30,000 pre-pandemic. The Ruby Amphitheater open and hosted 20 total events reaching nearly 7,500 people including concerts, Shakespeare in the park, weddings, and culminating with the 4th of July Celebration of America. We also held a number of Story Time events in collaboration with the Morgantown Public Library and free weekly Thai Chi classes in partnership with the Osher Institute for Lifelong Learning at WVU.

This year marked the first meeting of the newly created Cultural Arts Commission. With the consolidation of the department and the planned transition of the Morgantown History Museum, the former Metropolitan Theatre and Museum Commissions were combined into a new Cultural Arts Commission (CAC) designed to look at all arts, culture, and history related programs, activities, and city owned facilities being managed by the DACD. The CAC toured city facilities and selected an artist for the Westover Bridge Pier Mural project as part of this year's activities.
The Morgantown History Museum was transferred from the auspices of BOPARC to the City of Morgantown and became part of the DACD. Most of the existing staff became City employees and salaries were raised as well. The City applied for and received funding from the Preservation Alliance of West Virginia to partially fund a full-time AmeriCorps staff person who has added to the capacity and management of the museum. The museum has been focused on updating the prehistory section of the museum and catching up on the back log of accessioning artifacts that have been donated. A new website for the museum was also created and launched by the City.

This was a big year for public art and murals in Morgantown. Staff partnered with Main Street Morgantown to commission and install 3 murals and 6 utility box murals in the downtown district. Staff also assisted the Alpha Phi sorority to install a utility box mural on Willey Street and worked with Generation Morgantown to secure funding for, and commission, a "Greetings from Morgantown" mural that will be installed on the north side of the Morgantown Dental Group building on High Street. Staff are also assisting Main Street Morgantown with 3 additional mural projects slated for completion in the spring of 2022. The DACD issued a regional/national call for artists for the Westover Bridge Pier Mural Project at the waterfront and a public art advisory committee of community stakeholders selected artist Rafael Blanco who will complete the mural in March/April 2022.

Staff also partnered with the Morgantown Municipal Airport and Morgantown Art Association to create and launch 2 exhibitions of the Art at the Airport Program. This activity showcases local artwork at the airport in the baggage and gate areas and has resulted in numerous sales for local artists in addition to transforming the aesthetics of the airport.

CITY CLERK





BUDGET:
$225,844

- **Received the 2021 All Star Community Award at the 2021 WVML Conference for Diversity training.**
- **Developed alternative processes for nominating candidates in municipal elections to promote safe distancing and prevent the spread of COVID-19.**
- **Saved the city $12,543.22 in 2021 election through the elimination of waste and improving efficiencies.**

The Office of the City Clerk serves as the administrative support to City Council, the city's election official for city council elections, and as secretary to the Police Civil Service Commission and Fire Civil Service Commission. The City Clerk is the official record keeper of city council meetings and minutes; deeds; history of the city; ordinances; and resolutions. The office performs administrative tasks as required by West Virginia state law, the Morgantown City Charter and Municipal Code. The Clerk's office also serves as a liaison between Morgantown residents and city government.

In 2021, the Clerk's office effectively met the city's goals to provide a welcoming election. This was accomplished by providing an inclusive workplace that fostered the development of Poll Workers, facilitated cooperation and teamwork, and supported constructive resolution of conflicts. The Clerk's office worked with West Virginia University staff to prepare in-person and virtual diversity training simultaneously for election workers prior to the April 2021 election. The training event was open to all city residents and community organizations and was the first Diversity Training of its kind in Morgantown. The collaboration with WVU resulted in the university providing the training at no cost. In facilitating our first diversity training through thoughtful collaboration with citizens, community organizations, and WVU, the City of Morgantown demonstrated its commitment to embracing the growing diversity of our community. The Clerk's office hopes to share our training with other cities. The city received the 2021 All Star Community Award at the 2021 West Virginia Municipal League Conference for this Diversity training.

To promote safe distancing to prevent the spread of COVID-19 during the 2021 City Council election process the Clerk's office corresponded with and collaborated with City Attorney Ryan Simonton, West Virginia Secretary of State representatives and General Counsel, and Communications Director Andrew Stacy in the development of a nomination form the registered voters could use to nominate candidates. City residents were able to print and complete forms themselves and send them to the candidate they were nominating by email or mail – no in-person contact with others.

The core of Lean Methodology involves the identification and elimination of waste and improving efficiency. Waste was identified during the 2019 Election. Utilizing the Lean Methodology, the Clerk's Office was able to achieve their goal in a healthier, smarter, and more sustainable way. Through process improvements and a reduction of part-time staff for the 2021 election season a cost savings of $11,331.19 was achieved. Overtime was also reduced resulting in a cost savings of $1,212.03. Total cost savings in salary for the 2021 election season was $12,543.22.

CITY MANAGER





BUDGET:
$702,218

- **Received $2,051,687 million in grants for rent, utility and feeding assistance and other city initiatives.**
- **Conducted a transparent and thorough public planning process for the use of $11,243,509 million in federal American Rescue Plan funds.**
- **Improve the city's cyber security monitoring, detection, and response and training for all city employees.**

The City Manager's Office provides staff support for several City initiatives. As the city's Chief Administrative Officer, the City Manager is responsible for carrying out policy enacted by City Council, overseeing the administration of the City, and maintaining inter-governmental relationships.

The City of Morgantown applied for and received $1,000,000 in grant funding from the state's HUD supplemental program, which was funded through the federal CARES Act. These funds were in addition to the City's direct allocation of CDBG-CV funds. These funds will be used to help those most impacted by the COVID-19 pandemic. The city will use $500,000 to help approximately 200 individuals avoid eviction and/or shut off of utilities by providing funding assistance to cover passed due rent and/or utilities. The other $500,000 will be used to provide funding to local food pantries, which will help approximately 600 individual.

Morgantown received direct funding of $11,243,509 through the American Rescue Plan Act (ARPA). The funding was given to cities with the guidance to use the funds however it would have the most positive effect to address local impacts of the COVID-19 pandemic. Recognizing the importance of community support and for use of the funds, the City focused on gathering public input on possible uses of the funds and to keep the public informed of the planning process. The engagement process was widely advertised, online surveys were opened, and a series of community forms were held to gather input and refine project ideas. Projects were then scored, with results publicly available on the city's website.

The Information Technology staff worked to improve the city's cyber security capability and increase training for all city employees. In 2021, IT staff partnered with Cynamics on improving cyber security monitoring of the city's network. One of the best ways to prevent cyber attacks is to have a properly trained staff. That's why the city worked with Infima to provide ongoing cyber security training for all city employees. Staff also upgraded the city's antivirus software to include end point detection and response to further enhance the city's cyber security.

The past year and a half has been full of change for the city. In 2020, while the City was recruiting a new City Manager, there was high turnover in the executive team as well. Three director retirements and three director resignations left the City with major voids to fill. Other employees stepped up to fill the gaps during this time of transition while others permanently filled these top roles. Several reorganizations of staff also occurred. While four of the new directors have long tenures with the City, only two of the current executive team members have more than five years of experience in their current role. We strongly believe that where there is change, there is opportunity and we look forward to working with our current leadership in making Morgantown a great place to live, work, and play

COMMUNICATIONS



BUDGET:
$194,066

- **Improved city's ability to conduct hybrid and virtual public meetings and training to limit the spread of COVID-19.**
- **Implemented a robust public engagement campaign for the use of American Rescue Plan funds, which resulted in over 4,000 public comments.**
- **Assisted in the development of two new websites and led a complete redesign of the City of Morgantown website.**

The Communications Department ensures accountability to the public and transparency of government. The department encourages citizen involvement and participation in government and community activities; works to establish and maintain an accurate perception of the city among the public; informs citizens of municipal programs and services; and promotes the city's achievements. This year was the first that the Communications Department was a stand alone department.

In 2021, the Communications Department worked to increase virtual and hybrid methods for the city to conduct internal business, public meetings and training. Communications staff developed a method for city council to conduct hybrid meetings at minimal cost through the use of existing technology. The Communications Department worked with the City Clerk's office to promote and increase access to the 2021 Morgantown Municipal Election held on April 27, 2021. The ongoing COVID-19 pandemic created unique challenges which required city staff to develop innovative solutions to ensure that voters, candidates, and election workers could still take part in the election process while minimizing in-person contact. One of the ways Communications helped was by creating a virtual option for election workers and trainers to participate in diversity training. The training resulted in the city winning the 2021 All-Star Community Award from the West Virginia Municipal League.

Through the American Rescue Plan (ARP) of 2021, the City of Morgantown received $11,243,509 in federal funds to help recover from the effects of the COVID-19 pandemic. Throughout August and September 2021, the city embarked on a robust Community Engagement process which included an ARP webpage on the city's website, an online survey and two community forums. The city's ARP webpage serves as the information hub for the city's ARP projects and it includes the city's process for community engagement and selecting ARP funded projects. The online survey, meetings and action plan were promoted via multi-lingual flyers, city social media platforms, Morgantown 15, city newsletters and eblasts, and by local news media outlets. The community engagement process resulted in over 4,000 public comments. The comments were used by city staff to develop an ARP Action Plan that was presented to the public and ultimately approved by city council. The community engagement process was highlighted as a leading example by the Southern Economic Advancement Project in its ARP "Good Examples" report, which was referenced by the U.S. Treasury.

The Communications Department assisted with the development of several new city affiliated websites and a web redesign. In early 2021, we worked with Civic Plus on a complete redesign of the City of Morgantown website. The work was included in the city's current contract with Civic Plus so there was no additional cost required for the redesign. Working with the Arts and Cultural Development Department, Communications staff assisted in the development of a new website for the Metropolitan Theatre and the Morgantown History Museum. Over the last half of 2021, Communications staff has worked with a local design firm on a website for the Morgantown Police Department. This is expected to be rolled out in early 2022.

DEVELOPMENT SERVICES





BUDGET:
$1,597,223

- **Merged with the Code Enforcement Department to streamline services and improve communication.**
- **Launched the pilot pedlet program to showcase outdoor dining in downtown Morgantown.**
- **Prepared for the 10 year update to the city's Comprehensive Plan, which will begin in 2022.**

The Development Services Department is responsible for protecting public health, safety, and welfare through the administration of land development and land use, the Department seeks to provide an efficient and effective development review process supporting desired growth and economic and community development. Development Services also provides administrative and technical support to boards and commissions that direct and review issues on land development and land use such as the Board of Zoning Appeals and the Planning Commission. The Development Services Department also includes Code Enforcement, which ensures buildings and rental units in the city are safe for occupation.

There was a lot of change for the Development Services Department in 2021. In March, the City Manager hired Rickie Yeager as the new Director of Development Services and the Department was merged with the Code Enforcement Department. The merge was designed to increase communication with staff that have jurisdiction over the City's planning and permitting processes, as well as increase both department's organizational capacity. Accomplishments to date include the hiring of a new certified Chief Building Official, Amy Fairman, distribution of educational materials to property owners regarding code enforcement activities and the establishment of city-wide property maintenance zones. The latter was designed to improve response times and help staff to be more proactive.

During the summer of 2021, the City of Morgantown launched a pilot program with Gibbie's Pub & Eatery to facilitate and showcase outdoor dining opportunities in downtown Morgantown. To maximize the establishment's outdoor dining space, city staff worked with the Mills Group to design a temporary walkway around the existing sidewalk, which is referred to as a pedlet. The pedlet was constructed and installed by the Engineering and Public Works Department. The design included planters for aesthetic purposes and flowers were planted by the Urban Landscape Department. The hope is that this pilot pedlet will encourage more outdoor dining opportunities in the downtown area in 2022.

The City of Morgantown is required to update its Comprehensive Plan every 10 years in accordance with West Virginia State Code. To assist staff in this effort, the city hired the planning and design firm of Rhodeside & Harwell (RHI) located in Alexandria, Virginia. Over the next year, city staff will be working with RHI to draft a plan that reflects the community's vision and priorities. The city is working with RHI and the Communications Department to develop an effective public engagement campaign. Public engagement and outreach efforts are slated to start in January 2022.

ENGINEERING & PUBLIC WORKS

BUDGET:
$4,153,752





- **Merged the Engineering Department with the Public Works Department to increase efficiencies and improve communication.**
- **Completed over 2 miles of paving on the Deckers Creek Rail-Trail.**
- **Installed the first outdoor dining pedlet at Gibbie's Pub and Eatery in downtown Morgantown.**

The Engineering and Public Works Department (EPWD) responsible for the design, supervision and inspection of all street, highway, sidewalk and bike path construction, management of city public right-of-ways; and the preparation and carrying out of traffic and crash analysis studies. The EPWD provides the community with a safe and efficient roadway system and minimizes disruptions to return life to normalcy during and after natural disasters.

The past year brought many changes with the EPWD. Previously, these were two separate departments, but they were merged in June 2021. The intent of this merger was to continue efforts to improve how the city provides services. This merger enhances focus on key service areas, as well as allows for better integration of planning and technology into daily work. Under the direction of a single Director of Engineering and Public Works, there are three divisions: Streets and Right-of-Ways, Fleet, and Facilities and Permitting, each led by a Deputy Director or Superintendent. The divisions each have advanced professional staff working along staff performing labor and hands on work. The merger has already proven to be successful in sharing of ideas, learning new ways of accomplishing tasks, and planning for improvements.

With funding from the Federal Highway Administration's Recreational Trails Program, Hazel Ruby McQuain Charitable Trust, People For Bikes, the City of Morgantown, and donations to the Mon River Trails Conservancy, the City and BOPARC were able to assist the Mon River Trails Conservancy on the completion of a grant project to repave two sections of the Deckers Creek Rail-Trail. The original grant was awarded in 2014, but it wasn't until June 2021 that Mountaineer Contractors was able to be selected to perform the work. The project involved repaving over 2 miles of trail. The newly repaved trail is already being enjoyed by many cyclists and pedestrians.

The ongoing COVID-19 pandemic has caused local restaurants and bars to suffer huge negative economic impacts due to limited seating capacity, social distancing, remote working, and other restrictions. Numerous city programs were expanded and enacted to promote more outdoor dining, particularly in the downtown area. The outdoor dining program was expanded to allow any business within the City apply for use of the city's right-of-way to be used as an outdoor dining/business area. The fee was also waived to encourage businesses to take advantage of it. Two different outdoor dining areas were installed by EPWD staff utilizing existing on street parking. The first "parklet" was located in front of Tin 202. It was comprised of a raised platform and decorative concrete blocks to protect diners. The second "pedlet" was installed in front of Gibbie's Pub and Eatery. In this particular application, the sidewalk was pushed out into the parking area utilizing a raised platform and decorative planters for pedestrian safety. Both of these outdoor dining areas were installed by City crews and enjoyed by many. The City is looking at expanding the outdoor dining program in the upcoming year.

FINANCE





BUDGET:
$1,039,412

- New Finance Director Kevin Tennant was hired in May 2021.
- Increased Financial Stabilization Fund to $6 million and General Fund Contingency to $1.5 million.
- Providing financial management and planning services to city departments on the use of $11,243,509 in ARP funds.

The Finance Department is responsible for providing professional and courteous service to the citizens and businesses of Morgantown. As the Finance Department is often the primary contact a resident or business taxpayer has with City personnel, the staff strives to make it a positive experience, while ensuring that all aspects of the City's financial administration are performed in an efficient and equitable manner.

The Finance Department is also an integral component of the administrative structure of the City of Morgantown, rendering services in a staff capacity to the other City administrative and operating departments. In May 2021, city administration hired Kevin Tennant as the new Finance Director.

The City of Morgantown has been extremely resilient financially over the past year, despite the ongoing COVID-19 pandemic. The pandemic has forced the city to be even more vigilant with its finances. Thanks to these efforts, the city has not had to layoff or furlough any employees as a result of the pandemic. Over the past year, the city continued streamlining its services and cutting unnecessary spending which, with assistance from the federal CARES Act, has allowed the city to provide itself a level of protection from future negative financial impacts.

The city's Financial Stabilization Fund has increased to $6 million and the General Fund Contingency has increased to $1.5 million.

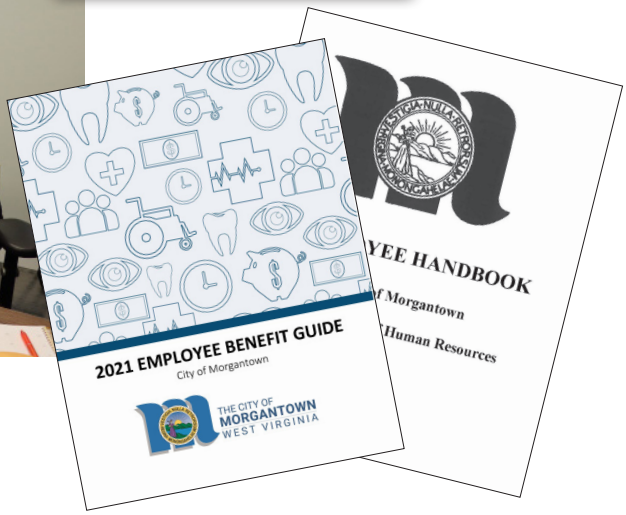
The Finance Department has been integral in the planning and management of the city's $11,243,509 in American Rescue Plan funds. In 2021, the city received the first of two installments in the amount of $5,621,754.50. A second installment is anticipated in the same amount in the Spring/Summer of 2022. The city has until December 31, 2024, to obligate funds and December 31, 2026, to spend the funds. Finance Department staff are represented on each of the ARP project committees to provide advice and insight into how to best use the funds.

The past year was also the first full year of collection of the city's Municipal Sales Tax, which was implemented in July 2020. In the last fiscal year, the 1% sales tax was expected to generate $6,00,000 in revenue for the city. The sales tax came with a reduction in Business & Occupation taxes for retail, by .05 percent, and service, by .1 percent. The funds gathered from the sales tax are only used for police and fire pensions, other post-employment benefits, capital infrastructure projects, and capital improvements to BOPARC facilities and parks.

HUMAN RESOURCES



BUDGET:
$369,804



- **Worked towards completion of a new Employee Handbook with expected rollout to employees in 2022.**
- **Worked with outside contractor and other city departments on a Compensation Plan for city employees.**
- **Brought on-board over 50 new employees, including seven leadership positions.**
- **Helped 15 employees attempt to quit using Tobacco/Nicotine/Vaping through employee wellness initiatives.**

The Human Resources Department manages the process of hiring new employees, processing medical, vision, and dental insurance forms, as well as working with all employees on questions related to employee benefits and pay.

In 2021, the Human Resources Department continued work on a new Employee Handbook for City of Morgantown Employees. The last wholesale update of the city's Employee Handbook was in 1993, approximately thirty years ago. Some areas of the new handbook required immediately policy review, education, and presentation to employees such as our harassment policy. Human Resources staff is currently finalizing the new handbook and working with city administration and the Finance Department regarding potential changes. The final document is expected to be presented to employees in 2022.

The Human Resources Department also sought to provide some structure as to how the city pays its employees. Staff issued a Request For Proposals for a Compensation Review for City of Morgantown employees. Consulting firm GOV HR was awarded the bid in the amount of $32,500. The plan is nearly completed and Human Resources staff is working with city administration to fine tune the plan and finalize it for presentation to city employees.

Despite the ongoing COVID-19 pandemic, Human Resources staff brought onboard over 50 new employees. Several leadership positions were also filled from both internal applicants and external applicants. Leadership positions filled included: Director of Finance, Police Chief, Fire Chief, Director of Development Services, Chief Building Official, and the Deputy Police Chief.

This was also the first full year of integrating employee wellness initiatives such as the Tobacco/Nicotine/Vaping Program with the City Health Insurance Plan. Thanks to these efforts the City of Morgantown had 15 employees attempt to quit using Tobacco/Nicotine/Vaping and received reimbursement of $25.00 per pay for attempting to do so.

FIRE









BUDGET:
$6,560,450

- **Captain Eugene Deem was appointed as the new Fire Chief in September 2021.**
- **Fire Department staff responded to 2241 total incidents, including 79 fires and 983 Rescue or Emergency Medical Service.**
- **Engaged 882 adults and 1,173 children through various fire education initiatives.**

The Morgantown Fire Department (MFD) is comprised of 61 sworn members and one civilian Administrative Assistant. The Administrative side of the department consists of the Fire Chief, Fire Marshal and Operations Captain. The MFD is divided into three divisions: Operations, Training, and Fire Marshal.

The Operations Division consists of 54 personnel and is responsible for all aspects of emergency response. The Operations Division is divided into three crews, each comprised of eighteen firefighters, three lieutenants and a division captain. The Training Division is under the direction of the department's Operations Captain. This division is responsible for training of all departmental personnel. They are an active partner with West Virginia University Fire Service Extension, RESA 7, the West Virginia State Apprenticeship Training Board and other groups dedicated to fire training. The Fire Marshal's Division consists of the Fire Marshal and three deputy fire marshals, who are responsible for the inspection of buildings for compliance with local and state fire codes; review of building plans, working with contractors and business owners in the areas of fire and life safety; handling complaints and investigations concerning life safety violations; enforcement of occupancy limits; investigating the cause and origin of fires within the City; conducting criminal investigations of fires determined to be arson; and public education services conducted by the Fire Prevention Coordinator.

Like most city departments, the MFD underwent leadership change in the past year. In September 2021, Eugene Deem became the new Fire Chief. Chief Deem took over for former Fire Chief Mark Caravasos, who retired after more than 30 years of service. John Lemley was promoted to Captain

In 2021, the MFD responded to 2241 total incidents. Of those, 79 were fires, 983 were rescue and/or emergency medical service, and 579 were fire alarms. As part of its annual public fire education services, the MFD installed 16 smoke and CO2 alarms, conducted 227 fire extinguisher trainings and 7 home fire safety visits and distributed over 10,000 MFD branded items.

POLICE





BUDGET:
$8,785,585

- **Created a Crisis Intervention Team to respond to calls regarding psychological or substance abuse issues.**
- **Worked with other departments on methods to improve methods for recruitment.**
- **Responded to 37,143 calls for service in 2021 or 30 percent of all calls received by MECCA 911.**

The Morgantown Police Department is a full-service law enforcement agency with an authorized strength of 76 sworn police officers and 12 civilian support staff. The MPD strives to provide outstanding services with integrity, respect, and fairness while providing a safe environment. We serve an area of approximately 11 square miles and a population of more than 30,000 residents. In 2021, Eric Powell was named as the new Chief of Police and P.J. Scott took over as Deputy Chief.

One of the major accomplishments for the MPD in 2021 was the creation of the Crisis Intervention Team (CIT). The program consists of 12 officers which all took part in training centered around methods for responding to individuals that are experiencing a crisis related to psychological or substance abuse issues. One of the main topics of the training is to divert these individuals to facilities that are better equipped to provide treatment for those issues. Officers in the CIT program are part of a regular crew and are "dressed down" with less formal, but identifying attire. When a crisis situation is identified the CIT member will receive the call and be the primary responding officer.

The MPD administration began working with city administration, the Human Resources Department, City Clerk's office and the Communications Department on new methods to our recruiting process. Some of these methods have been put into place such as identifying a recruitment officer to serve as a point of contact for applicants as they navigate the application process and the creation of a new MPD web site with a focus on recruitment. The Police Civil Service Commission also now accepts applications for entry level police officer on a continual basis, offering two testing dates a year.

Other accomplishments in 2021 include two officers being recognized by the Governors Highway Safety Program as top performers in distracted driving enforcement in the State of West Virginia. Equipping all officers with updated communications equipment (radios) This involved the purchase of 70+ new radios. The MPD began implementing a vehicle lease program which will gradually replace current fleet with leased vehicles ultimately saving the city money while creating better sustainability of the fleet.

In 2021, the MPD responded to 37,143 calls for service or 30% of all calls received by MECCA 911 in the county. The calls for service in 2021 generated 5,988 cases 651 were cleared by arrest, 626 cleared by citation, 842 were cleared due to lack of leads or the victim's refusal to cooperate with investigation. In 2021, MPD officers responded to 291 domestic disputes, 463 disturbances, 133 drug incidents, 101 loitering or panhandling complaints, 188 loud party complaints, 527 petit larceny complaints, 188 loud party complaints, and 244 shoplifting complaints, there were 65 calls regarding drug overdoses, and 48 drug overdose calls. The MPD also responded to 76 reports of assault or battery, 110 burglaries and 19 breaking and entering calls.

URBAN LANDSCAPES

BUDGET:
$290,665





- **Designed, planted and maintained 40 flower planters in the downtown area and logged 1,327 trees into the city's tree inventory.**
- **Urban Landscapes staff planted 25 trees throughout the city with assistance from volunteers and contractors.**
- **Designed and planted seasonal ornamentals and flowers for the Hight Street pilot pedlet project in front of Gibbie's Pub & Eatery.**

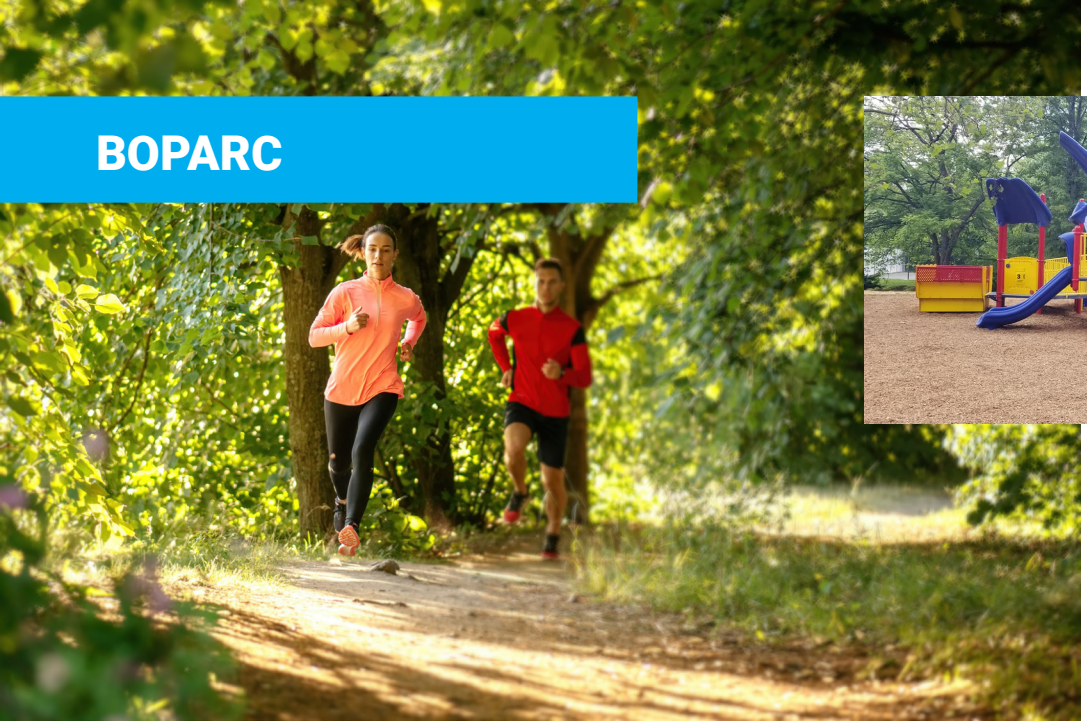
The Urban Landscapes Department works to promote the beautification of the city and to provide an aesthetically attractive environment in the City of Morgantown.

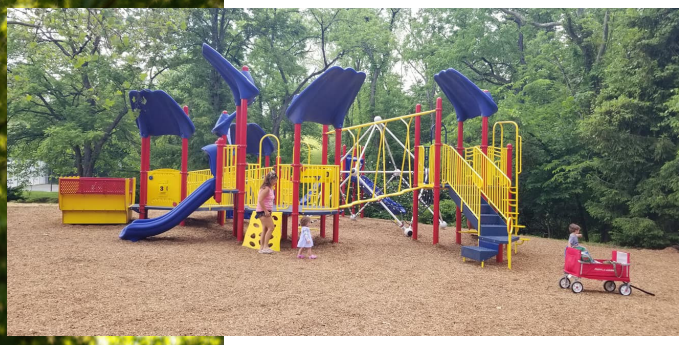
In 2021, there were a total of 40 flower planters planted in the downtown area. Approximately 50 bags of soil mix were used to plant 149 flowers. The planters are a favorite for residents and visitors. A variety of city staff from multiple departments assist with the planting process and help make this a successful program. The Engineering and Public Works Department assists with mounting the flower baskets on the poles. The horticulture staff of the Urban Landscapes Department inserts coco shell liners and fills them with soil, water retaining granules, and a slow release fertilizer. The baskets are planted around the second week of May every year, although cold temperatures may delay the planting. Staff then waters and fertilizes them once a week with a liquid fertilizer. At the beginning of July, as the flowers grow and begin to cascade over the sides, we switch to a 7 day watering schedule and water every other day. This extends into the weekend. At the end of September, staff removes the flowers and soil. The soil is recycled for other Urban Landscape project sites.

Contracted tree plantings for 11 large trees with a measurement greater than 2" caliper were planted at the Public Safety Building, Morgantown Public Library, the High Street bump out at Pleasant Street, Hazel Ruby McQuain Park, and in the Evansdale and Suncrest neighborhoods. Mon Power donated and assisted with planting 2 large Dogwoods in Sabraton. The City Arborist planted 10 trees, with a 1" caliper, at the Willey-Richwood Pedestrian Corridor and in the South Park neighborhood. Four trees were planted with volunteers to celebrate Arbor Day in Krepps Park. In total, the City Arborist logged in 1,327 trees into the city's tree inventory.

The horticulture staff with the Urban Landscape Department designed and planted a fall/winter/spring planting for the High Street pedlet planters located at Gibbies Pub & Eatery. Fifty bags of soil were used to fill the planters. Staff planted ornamental grasses, Blue Zinger Carex (26), ornamental cabbage and kale (32), and Pansies (56).

BOPARC





BUDGET:
$1,039,412

- **Updated Krepps Park playground through the Play for All program to make it more accessible.**
- **Established a Trail Division within BOPARC and hired a full-time position to assess and maintain our municipal park trail system.**
- **Completed a Current Conditions Study, Concept Design and received public input for upgrades to the 63 year old Marilla Pool.**

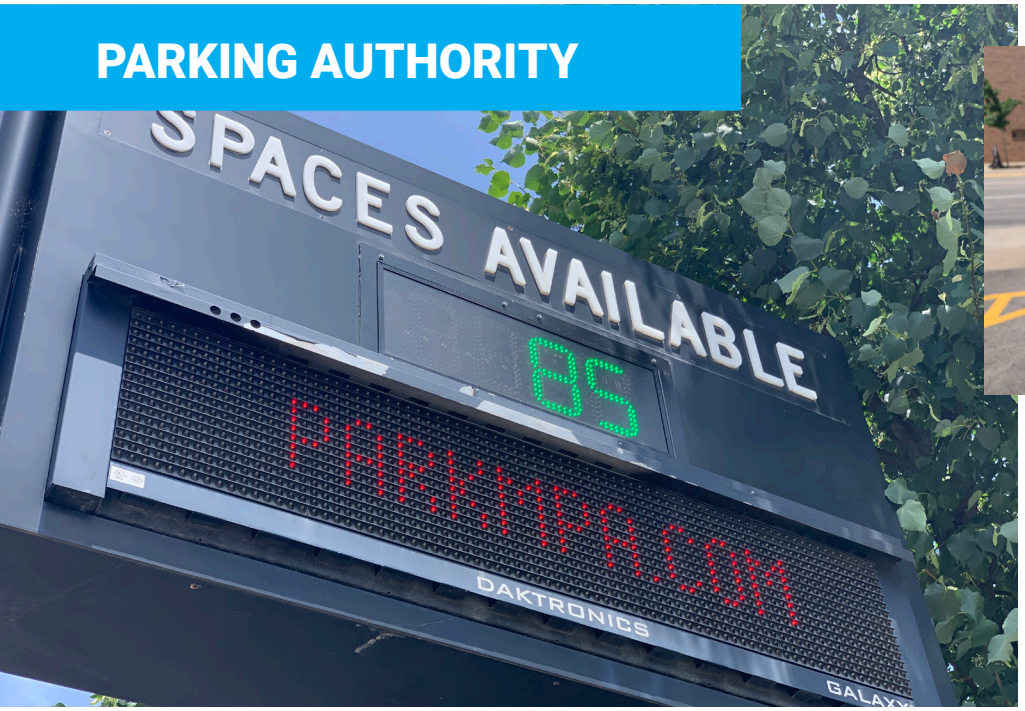
The Board of Parks and Recreation (BOPARC) is responsible for operation and maintenance of the city's public parks and recreational facilities. The board is made up of seven members. Two members of the Morgantown City Council serve on the board along with five other members which are appointed by City Council.

Over the past year, BOPARC's commitment to accessible and inclusive play spaces through its Play for All program made a significant improvement at Krepps Park. Through this program, BOPARC staff replaced playground equipment that was originally installed over 25 years ago, added multi-sensory options providing greater accessibility and opportunities for a more diverse social experience. The total cost of this project was $251,410.

The BOPARC trail system contains shared use trails in several of its parks, including Krepps, Marilla, White, Dorsey's Knob and Whitemoore Park. In addition to BOPARC's partnership with the Mon River Trail Conservancy (MRTC) for maintenance of portions of the Rail-Trail, the opportunities for trail experiences provide an important recreational component within the municipal park system. Due to the extensive use of these trail systems, BOPARC made the decision to invest in them to the extent that the community desires and deserves. This investment came in the form of establishing a Trail Division. With the establishment of this division, BOPARC will focus on assessment and improvement of trails over the next several years.

Another important accomplishment for BOPARC in 2021 was the completion of a study and concept design for upgrades to Marilla Pool. Administration at BOPARC engaged The Thrasher Group and aquatics experts Counsilman-Hunsaker for concept design, A&E and project management as it endeavors to upgrade the 63 year old aquatic facility in Marilla Park. The current conditions study and public input portions of the process are completed and BOPARC staff are looking forward to conceptual models for consideration. This project is one of two major projects (the other being Ice Arena renovations) that we hope to bond in 2022.

PARKING AUTHORITY





BUDGET:
$2,282,581

- **Offered three months of free parking to assist downtown businesses impacted by the ongoing COVID-19 pandemic.**
- **Secured $2,350,918.37 in 2021 Parking Revenue Bonds for Capital Improvements to parking facilities.**
- **Completed repairs and construction on three major projects using Parking Revenue Bonds.**

The Morgantown Parking Authority works diligently to provide convenient, safe, clean, and accessible public parking for the Downtown area. The Authority continually works to maintain, improve, and increase parking opportunities to meet the unique challenges that are present as the result of growth and continued development in the City of Morgantown.

In 2021, the Parking Authority continued daily operations through the pandemic. The Authority was able to keep all staff employed by cutting unnecessary expenses. However, there was an initial $600,000 revenue loss because most citizens sheltered in place and did not feel comfortable frequenting stores in person for roughly three months. During this time, the Parking Authority did not charge for parking to try and help downtown businesses struggling to stay open.

The Morgantown Parking Authority was able to secure Parking Revenue Bonds for Capital Improvements to its facilities. The process took close to two years with the help of City Attorney Ryan Simonton and Bond Counsel. The Bonds were for $2,350,918.37 through United Bank.

Capital Improvement projects completed using the bonds include the replacement of the Armory Lot Retaining Wall which was completed by Parrotta Paving for $107,000. The wall was demolished and rebuilt in the fall of 2021. The University Avenue Parking Garage underwent substantial repairs as well. Nathan Contracting was the successful bidder for that project. The estimated repair cost is $1,000,000, this included change orders from Nathan Contracting and additional upgrades requested by Parking Authority staff. The repairs include concrete deck repairs, replacing broken tendons within the floor slabs, repairing the University Avenue stairwell, block wall repair, and much more. Before the bids went out for repairs, GAI Engineering Consultants completed an assessment of the entire University Avenue garage built-in 1977. GAI concluded that the garage would last another 25 years if the repairs were done. The University Avenue Parking Garage Elevator was also completed using bond revenue funds. Kone is performing the elevator upgrades in the University Avenue Parking Garage, which includes new electronics, a new elevator car, and a new fire system for $110,000. The project was completed in December 2021.

DOWNTOWN INVESTMENT



High Street is known as the heart of Morgantown's downtown historic district. Known for its good food, unique businesses, vibrant nightlife, and historic nineteenth century architecture, the downtown area is a place of great pride for residents and visitors alike. The City of Morgantown is working with community partners such as Main Street Morgantown and the Morgantown Area Partnership to help spur investment in the downtown and ensure it has a bright future. Thanks to those efforts, downtown Morgantown is undergoing a revitalization with multiple large scale investments taking place over the past several years with more on the horizon.

Investing in Downtown Morgantown



In the last five years, over $26 million was invested to enhance buildings in the downtown area, with nearly $18 million of those funds coming from two large projects: the revitalization of Hotel Morgan and the construction of High Street Commons.

"Revitalizing Downtown Morgantown is vital to our community's growth and quality of life," said Morgantown City Manager Kim Haws. "Investing in local businesses is a great way to ensure that owners keep their businesses in Morgantown and that the community members have new experiences aside from your typical chain-businesses."

Built in 1925, the 81-room, 2-suite Hotel Morgan is Morgantown's premier boutique luxury hotel and a favorite among Morgantown travelers. In 2019, the Hotel Morgan was purchased by the Thrash Group of Mississippi for $2.5 million. The Thrash Group invested roughly $7.9 million into rewiring the building, refurbishing original woodwork, replacing outdated furniture, and improving the décor of the hotel's rooms and suites.

Also in 2019, the SunCap Property Group of North Carolina purchased 461 High Street. SunCap demolished the existing building and built the High Street Commons, a three-story mixed retail and residential building. Additionally, the group purchased 485 and 469 High Street and restored the residential living areas in the upper two stories of each building. Overall, the SunCap group invested $10.6 million into the construction of the High Street Commons and the restoration of 485 and 469 High Street.

Downtown revitalization and investment efforts are taking place outside of High Street as well. Incentives such as the federal Opportunity Zone have rallied investors to the downtown area, including Pittsburgh-based developer Hardy World who began construction at its 1050 University Avenue location called The Deck in September 2021. The new building will be a multi-level building with retail and office space.

In 2018, Governor Jim Justice announced that downtown Morgantown would be designated as an official "Opportunity Zone". The Opportunity Zone program seeks to provide incentives for a broad array of investors to pool and deploy their resources in Opportunity Zones. Hardy World plans to take advantage of the Opportunity Zone incentive as it begins construction on its two-story, 15,000 square-

foot mixed use building. Overall investment into The Deck location is estimated to run to roughly $5 million.

“Continuing investment in Downtown Morgantown is critical to our ongoing growth throughout Monongalia County as it is the heart of the community,” said Russ Rogerson, president and CEO of the Morgantown Area Partnership. “The Morgantown Area Partnership is proud to be working with the City of Morgantown and Mainstreet Morgantown to further the economic vitality of Morgantown and Monongalia County.”



Traveling just across University Avenue from Hardy World’s property, the Wharf District has also seen large scale improvements. In 2020, the city completed major renovations to Hazel Ruby McQuain Park and the Walnut Street Landing totaling $4.3 million. Improvements to the park include an expansion of the amphitheater stage and seating, a sunshade over the seating area, renovations to the historic depot, a new green room, upgraded restroom facilities, and added security features. Upgrades during the project also included the addition of a new parking area and kayak launch and storage area at the Walnut Street Landing. Funding for this project was provided through a generous grant from the Hazel Ruby McQuain Charitable Trust. The city plans to continue to enhance the park to make Ruby Amphitheater one of the best outdoor live performance venues in the area. The city is preparing a robust programming schedule for the 2022 Spring/ Summer outdoor event season at Ruby Amphitheater.

Downtown Beautification

The City of Morgantown and Main Street Morgantown are assisting businesses and property owners with improving the look of downtown buildings through the Morgantown Mural Program and the Façade Improvement Program.

The Morgantown Mural Program is meant to offer the community a sense of pride and provide added beauty to the downtown area. Since the creation of the program, three building murals and six utility box murals were placed across Downtown Morgantown, and more are being planned for 2022. The most recent utility box mural project was funded in part by an Organizational Arts Grant from Your Community Foundation, City of Morgantown, Monongalia County Commission, and the Douglas H. Tanner Memorial Fund for the Arts.



The Façade Improvement Program, which began in 2018, allows building owners to apply for a grant that functions as a 50/50 deferred loan that will cover one-half of project costs between $2,000 and $10,000. The only requirement to apply is that the property be within Main Street Morgantown districts and that the project improve the façade of the building. So far, the Façade Improvement Program has disbursed over $65,918 to eligible applicants with a reported impact of $244,043.

Other improvements are also happening throughout Downtown Morgantown such as a regular power washing of the streets by the Engineering and Public Works Department, the creation of the Spruce Street pocket park, and the first outdoor dining pedlet was installed at Gibbie’s Pub & Eatery on High Street.

ARP Funds and Future Plans for Development

The City of Morgantown is set to receive $11,243,509 in American Rescue Plan 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. Approximately $1.1 million of the first installment is being directed towards projects in the downtown business district.

One of those projects is the Morgantown City Ambassador Pilot Program, which allocates $200,000 to provide services that include patrolling the Downtown and riverfront districts, removing litter and graffiti, providing safety escorts, motor vehicle assistance, security patrols, and greeting and assisting people. The program is slated to begin in 2022 and is modeled after successful ambassador programs in other cities such as Columbus, Ohio.

Other projects which are intended to have a direct impact on downtown businesses are the Small

Business Assistance Grants Program and an enhanced Façade Improvement Program. The city has allocated $500,000 of its initial ARP funds to provide 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 also include support services in cooperation with the Small Business Administration. This program is planned to begin in early 2022. The first iteration of the Façade Improvement Program was so successful that the city is allocating $200,000 of ARP funds to continue the program. The new and enhanced program will allow grants up to $20,000, with a 30 percent match, to improve building facades and interior improvements to enhance the appearance and vibrancy of the business.

The city is also working with local partners to invest in Downtown Morgantown's neighborhood connections, which are vital to its success. One of these important connectors is Richwood Avenue – connecting the Woodburn neighborhood to downtown Morgantown. At the end of 2020, Morgantown City Council approved a collaboration agreement between the Monongalia County Development Authority, the Monongalia County Commission and West Virginia University to purchase and redevelop 9.5 continuous acres of property along Richwood Avenue in the Woodburn area. The land will serve as a base for multiple types of housing including market rate housing, student housing, and workforce housing. Additionally, the land will allow for connectivity into Whitemore Park as well as improved connectivity for both pedestrian and vehicular traffic into the downtown area and the WVU campus. The project is still in the beginning stages and planning for the project is anticipated to be complete in the coming months.

"This is really about enhancing our community and its quality of life," said Haws. "Morgantown has a bright future on the horizon because of the plans and ideas that are coming to life for the continued growth and development of our downtown."



THE CITY OF
MORGANTOWN
WEST VIRGINIA

WHERE DOES MY MONEY GO?

USER FEE - $3.00/WEEK

POLICE $1.23/WEEK

In the FY 2022 budget, approximately $1.6 million, or 42%, of the Safe Streets Fee, also known as the Municipal User Fee, went toward police personnel (36%) and the purchase of police equipment (6%).



In action: Since 2016, the Municipal User Fee has allowed the Morgantown Police Department to hire 10 police officers, and purchase 20 vehicles and additional equipment such as body cameras to ensure our streets are kept safe.

STREETS $1.20/WEEK

In the FY 2022 budget, approximately $1.8 million, or 39%, of the Municipal User Fee went toward public right-of-way improvements, which include paving and ADA improvements to sidewalks.



In action: Since 2016, the Municipal User Fee has allowed the Engineering and Public Works Department to pave more than 40 miles of city streets and install over 500 ADA improvements to city sidewalks.

PUBLIC WORKS $0.57/WEEK

In the FY 2022 budget, approximately $800,000, or 19%, of the Municipal User Fee went toward Public Works personnel (14%) and the purchase of Public Works equipment (5%).



In action: Since 2016, the Municipal User Fee has allowed the Morgantown Public Works Department to hire 5 additional staff and purchase new equipment includng a street sweeper, snow plows, and paving equipment to help maintain our city.

FIRE FEE - COST VARIES

FIRE DEPT. 64%

The FY 2020 Fire Department Budget in total is $6.5 million, which is funded, in part, through the Fire Fee. Charges for residential, commercial, and university properties make up about 64%, or $4.2 million, of the Department's overall costs.



In action: The Fire Fees have helped the Morgantown Fire Department earn a Class Two rating from the Insurance Services Office. This places it within the top 3% of fire departments across the nation on its ability to protect the community.

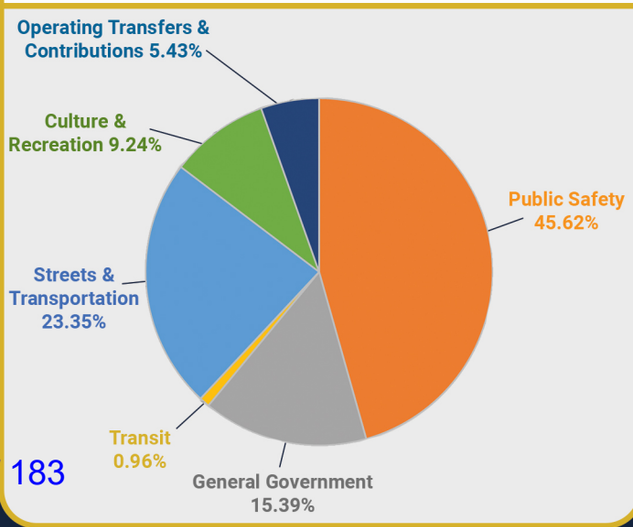
PROPERTY TAX - 11.3%

In the FY 2022 budget, property taxes are expected to generate $4.31 million. These monies are placed in the General Fund and support city operations such as personnel, public safety, streets and transportation, transit, and culture and recreation.

Top revenue sources:

1. B&O Tax	$11,500,000
2. Sales Tax	$ 6,000,000
3. Property Tax	$ 4,315,087
3. B&O Construction	$ 2,450,000
4. Utility Excise Tax	$ 1,125,000
5. Hotel Occupancy	$ 775,000

WHERE ARE THE FUNDS USED?





www.morgantownwv.gov

END OF YEAR REPORT 2021

produced by the Communications Department
430 Spruce Street • Morgantown, WV 26505