



# 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 15, 2022 at 7:00 PM

1. **CALL TO ORDER:**

2. **ROLL CALL:**

3. **PLEDGE:**

4. **APPROVAL OF MINUTES:**

**A.** January 4, 2022, Regular Meeting minutes

**B.** February 1, 2022, Special Meeting minutes

**C.** February 1, 2022, Regular Meeting minutes

5. **CORRESPONDENCE:**

6. **PUBLIC HEARINGS:**

**A.** An Ordinance annulling a portion of Campus Drive & accepting Declaration of Easement relocating Campus Drive

**B.** An Ordinance amending Article 906 - Outdoor Dining

**C.** An Ordinance authorizing a Lease Agreement with Hertz at the Airport

7. **UNFINISHED BUSINESS:**

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

**B.** Boards & Commission

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, Councilor Vega, Councilor Harshbarger, and Councilor Butcher. Next scheduled meeting: February 24, 2022, 2pm via Zoom.

**10. CONSENT AGENDA:**

- A.** Consideration of **APPROVAL** of **(Second Reading)** of **An Ordinance annulling a portion of Campus Drive & accepting Declaration of Easement relocating Campus Drive** *(First reading 2/1/2022)*
- B.** Consideration of **APPROVAL** of **(Second Reading)** of **An Ordinance authorizing a Lease Agreement with Hertz at the Airport** *(First reading 2/1/2022)*

**11. NEW BUSINESS:**

- A.** Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance authorizing an Easement Agreement for MUB access along the Caperton Trail**
- B.** Consideration of **APPROVAL** of **(First Reading)** of **An Ordinance authorizing an Easement Agreement for MUB access along the Deckers Creek Trail**
- C. Consideration of **APPROVAL** of a **BID Award for Kayak Rental Facility Construction**
- D.** Consideration of **APPROVAL** to **Purchase Digital Video Screens for Hazel Ruby McQuain Park Amphitheater**
- E.** Consideration of **APPROVAL** of **A Resolution supporting the City of Morgantown seeking a Grant from Monongalia County Commission for Funding for the Ruby Summer Concert Series and 4th of July Celebration**

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

**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 litigation.

**17. ADJOURNMENT:**

**For accommodations please call or text 304-288-7072**

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

**MINUTES**  
**REGULAR MEETING**  
**January 4, 2022**

**Regular Meeting: January 4, 2022:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, January 4, 2022, at 7:08 pm.

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

The meeting was called to order by Mayor Selin.

**Approval of Minutes:** December 21, 2021, Special Meeting minutes were approved by consensus.

**Correspondence:** None

**Public Hearing:** None

**Unfinished Business:** None

**Boards & Commissions:**

Motion by Councilor Kawecki, second by Councilor Harshbarger, to appoint, by consensus, Logan Shamberger to the Board of Zoning Appeals.

Motion by Councilor Abu-Ghannam, second by Councilor Vega, to appoint, by consensus, Gregory Dahl, to the Tree Board.

Motion by Councilor Harshbarger, second by Deputy Mayor Trumble, to appoint, by consensus, Kevin Meehan to the Board of Zoning Appeals as an alternate member.

**Public Portion:**

Mayor Selin declared the Public Portion open.

Mindy from the Monongalia County Democratic Party spoke on the importance of warming shelters being available in all seasons.

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

**Special Committee Reports:**

**Civilian Police Review & Advisory Board** – No report

**Special Committee on Unsheltered Homelessness** – Members: Mayor Selin, Deputy Mayor Trumble, Councilor Vega, Councilor Harshbarger, and Councilor Butcher. The next meeting is January 27, 2022, at 2:00 p.m. by Zoom.

**Consent Agenda:** None

**New Business:**

**Lease Revenue Bonds, Series 2022 (A) Ordinance:** The Bond Ordinance was presented for first reading.

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

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

**City Manager's Report:** shared that he hopes everyone had a wonderful holiday and New Year. Something that has continued is the process of the budget, developing the budget and that will be coming to city council soon to get their input. That's one of the areas that is the prime responsibility of city council in making sure that's the direction we want to go. He shared that he hopes they have taken all of council's input and have put that into the budget projections and expenditures.

**Report from City Clerk:** shared that the Police Civil Service Commission will be holding Police Officer Entry Level examinations on February 19 and June 11, 2022, at 9am and to please reach out to the Clerk's office if you would like information on testing. Information can also be found on our website at [www.morgantownwv.gov](http://www.morgantownwv.gov).

**Report from City Attorney:** provided an update on the outdoor dining ordinance noting that they had some more work to do with the ABCA's suggestions for our permitting types and processes. He shared that he spoke with their general counsel yesterday and that it was a very helpful conversation. He also spoke with our Development Director today about some ideas he has for that ordinance. We hope to bring that to the January Committee of the Whole and continue to work with them on making sure all permits remain as we move forward to get those changes in place. He reminded council that the Legislative Session begins on January 11th, and to please feel free to let him know if there are pieces of legislation in which they have interest.

#### **Report from Council Members:**

**Councilor Ixya Vega:** shared that she hopes everyone enjoyed their break. She stated that it is significant to reiterate the importance of getting involved in our community, shared that there are plenty of boards and commissions ready for folks to apply for and what better time to get involved than the new year. She reminded folks that covid-19 numbers are very high again, and to be sure to mask up, stay safe and get vaccinated. Councilor Vega stated that Morgantown High School's Health and Safety group is having a Period Product Drive for the month of January. She posted about it on her council page and a couple of other pages, and they did get a lot of donations. She commented that the community really did come together, however, this period of giving is not done yet. If folks are able to support our high schoolers and our young people on projects like this, it would be great, especially because it encourages them to continue to be involved.

**Councilor Kawecki:** no report

**Councilor Abu-Ghannam:** no report

**Councilor Butcher:** shared that he hopes everybody had a great holiday. He echoed Councilor Vega's comments regarding the rising covid-19 numbers and shared that he would be in agreement to move to remote again.

**Councilor Harshbarger:** shared that there are some projects that council has spoken about over the last year or so that involve safety on some of the streets in West Sabraton that he would like to provide some answers to his constituents in Sixth Ward with. They have discussed the truck traffic coming through Route 7 and the quality-of-life impact on the neighbors there. Also, there are some existing ordinances that are worth looking at that if we worked with the Police Chief, perhaps enforcing now, we don't need to enact anything new.

**Deputy Mayor Trumble:** shared that she is aware of a handful of people who are starting to test positive, who are generally vaccinated and careful about things. She commented that as one council member that elected government should be one of the last things to go virtual, and that if they wish to move back to remote, she would like to discuss ways that they will go about protecting the rest of our community and our city staff. If staff is in the office dealing with public face to face, they should be. She has received a lot of questions recently about the lower Richwood Redevelopment. An update on this matter will be provided at the quarterly Woodburn Association of Neighbors (WAN) meeting on January 19<sup>th</sup> at 7pm via zoom. If folks would like the link for that meeting, follow the WAN Facebook page or email Deputy Mayor. She encouraged everyone to take advantage of the city's Christmas tree recycling program and to call the Public Works Department at 304-291-7469 if interested. She has touched base with several city staff members about things that have been brought to her attention by various constituents over the last few weeks, so if someone is waiting for a response from her know that today was most of the city's first day back. She is looking forward to the upcoming planning meetings,

and the comprehensive planning meeting tomorrow. Lastly, she will be attending the Main Street Morgantown promotions meeting where they will be planning out some of the downtown events for the year.

**Mayor Selin:** shared the passing of the food co-op stating that it has been quite a fixture in the community for many years. As a member for many years, she has enjoyed shopping there and enjoyed watching their work in the community. Additionally, she stated that she appreciates everyone who held it together as many years as it was held together. Mayor Selin also shared a story from our local newspaper, Dominion Post, stating she wanted to give credit where credit is due. An elderly gentleman went into one of the Evansdale businesses, Boston Beanery, and seemed confused when the owner spoke to him. She found him a seat, got him something to eat, and then called the non-emergency police number and requested help. A Morgantown Police Officer responded and was able to help the man remember his name and how to contact his son. The officer continued to sit and talk with the gentleman for over an hour until his son arrived to pick him up. The officer offered to pay for the man's meal, but the owner said no, that she would like to take care of it. The officer asked that his name not be disclosed as he didn't want any personal recognition because he said he was just doing his job and he said that he firmly believed that any other officer the Morgantown Police Department had they been dispatched to the call would have responded in the same manner. The officer stated that the entire department deserved the credit, not one single officer. He shared that he would credit the response to the crisis intervention training that Chief Eric Powell had instituted throughout the department and stated that type of training has allowed himself and other officers to respond to situations such as these with the utmost professionalism and care for people. Mayor Selin shared that this is the year of planning and projects for the city. One of them is the bonding for the projects that have to do with safety and making sure we have the basics in our city hall, our public safety building, the Norwood fire station, and the garage. There will also be work on the Marilla pool this year, and the ice rink will be next year. There have been a lot of BOPARC upgrades on courts, playgrounds, and trails. She shared that the city ambassador program is coming into place, and if folks want to know more about it, please talk to our Assistant City Manager. Arts entertainment in the downtown will be a feature, downtown outdoor dining, the airport, and lots of road projects are upcoming. Also, continuing to being welcoming to all the people in our community

## **Executive Session:**

- A. Pursuant to West Virginia Code 6-9A-4(2)(B)(12) to discuss potential or pending litigation. Motion by Deputy Mayor Trumble, second by Councilor Butcher, to go into executive session. Motion carried by acclamation. Present: City Council, City Manager, Assistant City Manager, City Attorney. Time: 7:55**

**ADJOURNMENT:** There being no further business, motion by Councilor Vega, second by Deputy Mayor Trumble, to adjourn the meeting. Time: 9:20 p.m.

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

\_\_\_\_\_  
Mayor

# City of Morgantown

## SPECIAL MEETING February 1, 2022

**Special Meeting February 1, 2022:** The Special Meeting of the Common Council of the City of Morgantown was held in City Hall Council Chambers on Tuesday, February 1, 2022, at 6:04 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: 6:06 p.m.

### Health & Wellness Commission

6:00 p.m. – Sabina Nduaguba

### Civilian Police Review & Advisory Board

6:15 p.m. – Nicholas Anderson

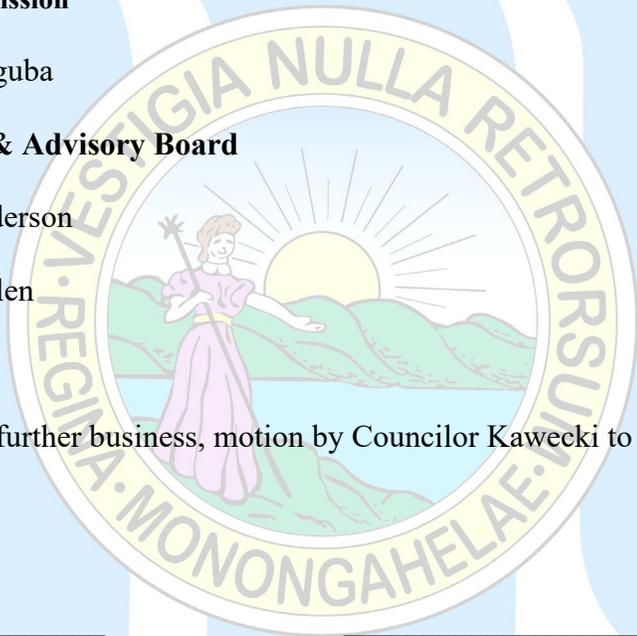
6:30 p.m. – Ronald T. Allen

### ADJOURNMENT:

There being no further business, motion by Councilor Kawecki to adjourn the meeting.  
Time: 7:08 p.m.

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

\_\_\_\_\_  
Mayor



Ordinance 2022-\_\_\_\_

**AN ORDINANCE ANNULING 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		TRACT NO.	AREA - Sq. Ft. (Unless noted otherwise)						TOTAL TAKEN	PARCEL TOTAL	REMARKS	R/W DEED RECORD		
			DEED BOOK	PAGE NO.		C/A	NON-C/A	EASEMENT		REMAINING					TOTAL	DEED BOOK	PAGE NO.
								TYPE	AREA	LEFT	RIGHT						
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	20								0	15825 (c)	NO TAKE			
			747	620													
7	11	GRANDETTO, 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	35								0	3.85 Ac. (c)	NO TAKE			
			1233	165													
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	2		0.02 Ac.			15.00 Ac.	15.00 Ac.	0.17 Ac.	15.18 Ac. (c)	CONTAINING 20 AC AS DESCRIBED IN DB5-144.			
					3		6,918										
							0.16 Ac.										
								TCE	9,989								
									0.23 Ac.								
11-7	15	WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS	1423	306								0	14,226 (c)	NO TAKE			
			1441	208													
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)	NO TAKE			
													1.37 Ac. (c)				

Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	County	Item 6A.		
W. V.	04	U331-19-13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	2	26	

07/10/2020 02/12/2021

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



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

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

**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
- Δ = 18°14'32.00" (LT)
- D = 28°30'19.31"
- T = 32.27
- L = 64.00
- R = 201.00
- E = 2.57

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**

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

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

**PROPOSED CAMPUS DRIVE**

**CURVE #4 DATA**

- PI = STA. 46+35.53
- Δ = 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
- Δ = 65°42'33.70" (LT)
- D = 52°05'13.46"
- T = 71.04'
- L = 126.15'
- R = 110.00'
- E = 20.94'

Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	County	Item 6A.
W. V.	04	U331-19-13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	15 26

07/10/2020 02/12/2021



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

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

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

SCALE : 0 20 ft.

US 19 R/W PLAN SHEET STA. 125+60 - END

**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;

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 11-10**

**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;

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.

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

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

\_\_\_\_\_  
Mayor

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

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

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

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

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: \_\_\_\_\_

\_\_\_\_\_  
Mayor

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

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

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

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

**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**

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

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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 untenable, 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 tenable condition. Until the Premises are restored to a tenable 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 untenable, or if less than fifty percent (50%) of the Premises, excluding the parking lots, is rendered untenable, the Rent will be abated *pro rata* for the portion rendered untenable.

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 untenable, the Concessionaire may terminate this Agreement by serving written notice on the City within thirty (30) days of the event rendering the Premises untenable.

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, or 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/DIFFERENT 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 or 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 or 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.

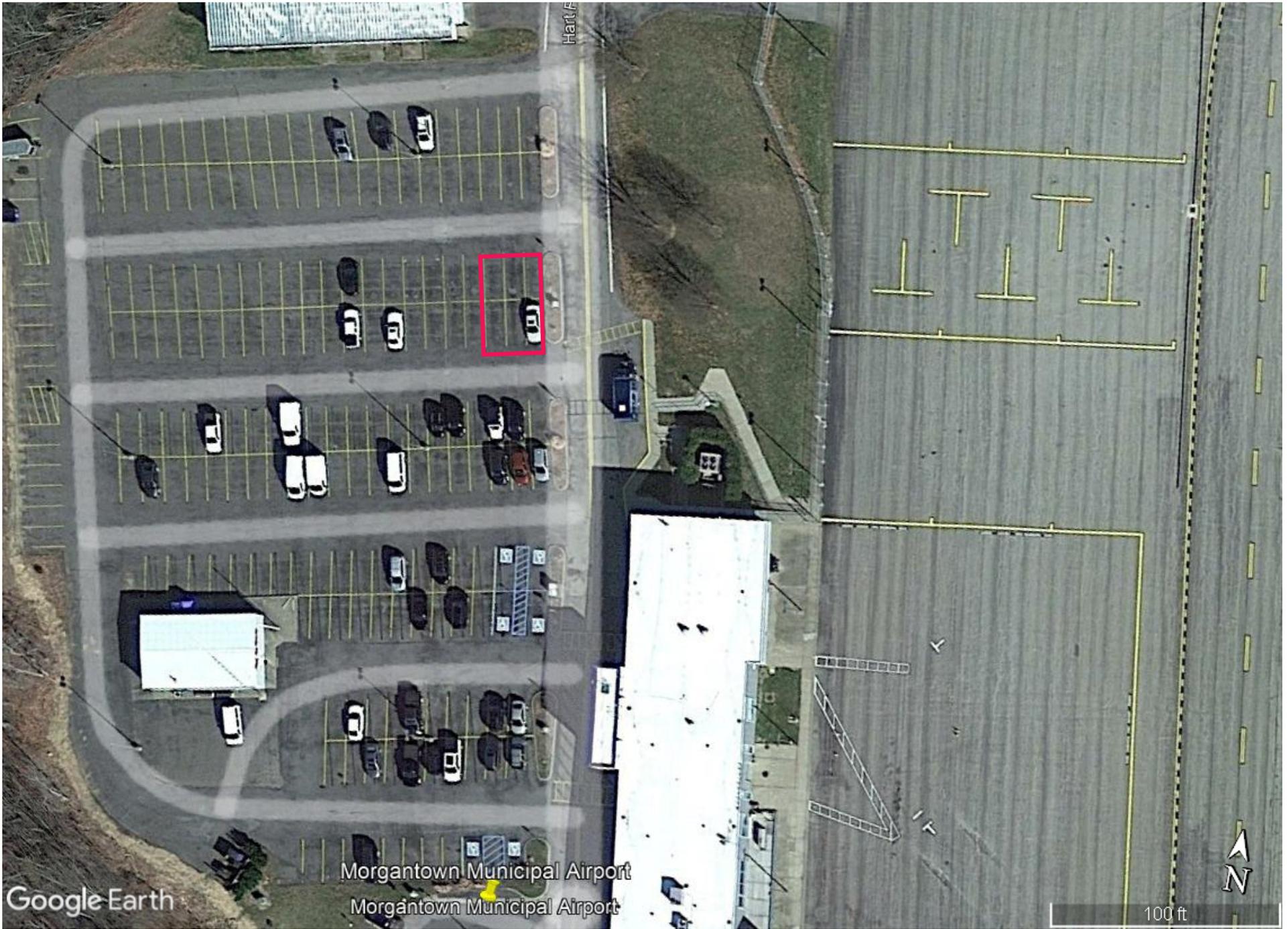
**CITY OF MORGANTOWN**

\_\_\_\_\_  
A. Kim Haws  
City Manager

**THE HERTZ CORPORATION**

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

Name: Stephen A. Blum  
Its: Senior Vice President, Real Estate & Facilities



■ Hertz Ready?Return Parking Spaces

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

\_\_\_\_\_  
Mayor

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

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

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

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

Ordinance 2022-\_\_\_\_

**AN ORDINANCE ANNULING 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		TRACT NO.	AREA - Sq. Ft. (Unless noted otherwise)					TOTAL TAKEN	PARCEL TOTAL	REMARKS	R/W DEED RECORD		
			DEED BOOK	PAGE NO.		C/A	NON-C/A	EASEMENT		REMAINING				DEED BOOK	PAGE NO.	
								TYPE	AREA	LEFT						RIGHT
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	20							0	15825 (c)	NO TAKE			
			747	620												
7	11	GRANDETTO, 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	35							0	3.85 Ac. (c)	NO TAKE			
			1233	165												
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	2		0.02 Ac.			15.00 Ac.	15.00 Ac.	0.17 Ac.	15.18 Ac. (c)	CONTAINING 20 AC AS DESCRIBED IN DB5-144.		
					3		6,918									
							0.16 Ac.									
								TCE	9,989							
									0.23 Ac.							
11-7	15	WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS	1423	306							0	14,226 (c)	NO TAKE			
			1441	208												
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)	NO TAKE			
												1.37 Ac. (c)				

Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	Count	Item 10A.		
W. V.	04	U331-19-13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	2	26	

07/10/2020 02/12/2021

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



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

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

**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
- Δ = 18°14'32.00" (LT)
- D = 28°30'19.31"
- T = 32.27
- L = 64.00
- R = 201.00
- E = 2.57

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**

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

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

**PROPOSED CAMPUS DRIVE**

**CURVE #4 DATA**

- PI = STA. 46+35.53
- Δ = 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
- Δ = 65°42'33.70" (LT)
- D = 52°05'13.46"
- T = 71.04'
- L = 126.15'
- R = 110.00'
- E = 20.94'

Public Roads Div.	State Dist. No.	State Project No.	Federal Project No.	Fiscal Year	County	Item 10A.
W. V.	04	U331-19-13.24 00	NHPP-0019 (444)D	2020	MONONGALIA	15 26

07/10/2020 02/12/2021



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

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

SCALE : 0 20 ft.

REVISION NUMBER	SHEET NUMBER	REVISION	DATE	BY

**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, 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.

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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

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: \_\_\_\_\_

\_\_\_\_\_  
Mayor

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

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

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

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

**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**

<b>TYPE OF AGREEMENT</b>	Off-Airport Rental Car Concession Agreement
<b>TENANT</b>	The Hertz Corporation
<b>REPRESENTATIVE(S)</b>	Senior Vice President, Real Estate and Facilities
<b>NOTICE ADDRESS</b>	The Hertz Corporation 8501 Williams Road Estero, Florida 33928 Attention: Real Estate Department
<b>COMMENCEMENT DATE</b>	February 1, 2022
<b>TERM</b>	Five (5) Years
<b>RENEWAL OPTIONS</b>	Month to Month
<b>TERMINATION DATE</b>	January 31, 2027
<b>LEASEHOLD/ASSIGNED PREMISES</b>	6 Parking Spaces: \$10/space / month
<b>INITIAL RENTAL RATE</b>	Ready Return Spaces: \$720 annually or \$60.00 monthly
<b>RENTAL ADJUSTMENT</b>	CPI-U
<b>OTHER FEES, RATES AND CHARGES</b>	<b>Concession Fee:</b> 10% of Gross Receipts
<b>AUTHORIZED USE(S)</b>	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 untenable, 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 tenable condition. Until the Premises are restored to a tenable 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 untenable, or if less than fifty percent (50%) of the Premises, excluding the parking lots, is rendered untenable, the Rent will be abated *pro rata* for the portion rendered untenable.

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 untenable, the Concessionaire may terminate this Agreement by serving written notice on the City within thirty (30) days of the event rendering the Premises untenable.

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, or 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 of 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/DIFFERENT 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 or 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 or 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



■ Hertz Ready?Return Parking Spaces

Ordinance No. 2022-\_\_

**AN ORDINANCE AUTHORIZING A DECLARATION OF EASEMENT FOR UTILITY PURPOSES AT THE CAPERTON TRAIL PROPERTY**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached "Right-of-Way and Easement Agreement" declaring an easement for utility purposes on and over a portion of the real estate commonly known as the Caperton Trail and more particularly described therein.

This ordinance shall be effective upon adoption.

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

\_\_\_\_\_  
Mayor

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

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

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

FILED

## RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, Grantor, and THE CITY OF MORGANTOWN, West Virginia, acting by and through the MORGANTOWN UTILITY BOARD, a public corporation of The City of Morgantown, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration hereinafter detailed, Grantor does now hereby grant and convey unto the Grantee, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing approximately **45 linear feet, more or less, of 15-inch gravity sewer line; 490 linear feet, more or less, of 8-inch force main sewer line; and a 10-foot diameter, 17-foot deep Wet Well** (the “Facilities”) within a portion of Grantor’s real estate described as the rail-trail property adjacent to Parcels 19 and 20 of Map 49, First Ward District and Parcel 1 of Map 50, First Ward District, being a part of Parcel 134 of Map 28, First Ward District, located in Morgantown, Monongalia County, West Virginia, and more particularly described in that certain deed executed by and between the West Virginia State Rail Authority, as Grantor, and The City of Morgantown, as grantee, as of April 22, 1998, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia at Deed Book 1161, page 375 (the “Real Estate”). The location of said right-of-way and easement is more particularly shown upon the drawing attached as **Exhibit 1** to this Agreement (the “Easement Area”). The Easement Area shall be a centerline easement twenty (20) feet in width. For the consideration aforesaid, Grantor does now also hereby grant and convey unto the Grantee, the right of ingress, egress, and regress to and from the Easement Area, subject to the terms and conditions of this agreement. The right of way and easement granted herein are subject to the following conditions:

- (a) all work shall be performed by Grantee as expeditiously as possible in accordance with good construction practices and so as to minimize interference with the use of the Grantor’s property;
- (b) The Facilities shall be constructed in such a manner that they do not create a hazard to users of the public rail trail. The Facilities shall at all times remain underground with appropriate covering and shall not create an obstruction that may cause trail users to trip or fall; provided that the Wet Well covering may remain aboveground no more than 12 inches from the surface. Facilities shall be constructed and maintained in accordance with the standards adopted by the American Railway Engineering and Maintenance-of-Way Association;
- (c) Grantee shall repair Grantor’s property to a condition equal to that existing prior to installation of the Facilities, (“Property Restoration Obligations”) subject to approval by the City Manager. Grantee’s duty to repair includes, without limiting the generality of the foregoing, the duty to replace and repave any portion of the paved trail impacted by installation of the Facilities, the scope of which shall be determined by the City Manager. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep the Easement Area at all times in the same condition as existed on the date of entry of this

Agreement. If Grantee shall fail to maintain or repair the Premises as required by this Agreement, Grantor shall have the right, but not the obligation, to perform such maintenance and repair at the sole cost and expense of Grantee, and all costs of such maintenance, replacement, or repair shall be due and payable to Grantor by Grantee on demand. Any surface or subsurface damage to Grantor's property caused by Grantee, or its contractors, licensees, agents, successors and/or assigns, in connection with the Facilities shall be promptly repaired by Grantee to a condition equal to that existing before installation of any such Facilities or actions were undertaken, or as directed by the City Manager; and

- (d) Whenever entry onto Grantor's property is required for construction, maintenance, or repairs, Grantee, or its contractors, licensees, agents, successors and/or assigns, shall obtain approval from an authorized representative of Grantor prior to entry, and shall conduct such entry only at such times as permitted by Grantor, except in cases of emergency requiring immediate maintenance to avoid harm to life or property, in which case Grantee shall provide written notice as soon as reasonably possible;
- (e) Grantor will not be responsible for repair or replacement of any item or material placed in the property pursuant to this Agreement, or of any item relying upon materials or items placed in the property, regardless of the cause requiring such repair or replacement, including Grantor's own operations; and
- (f) Grantee and its successor and assigns do hereby agree to defend, indemnify, hold harmless, and release the City from any and all claims, demands, lawsuits, or liability in any way related to the easement granted in this Agreement, including without limitation the installation, maintenance, repair, and/or removal of the Facilities, the function of any structure(s) placed in the easement area, and the failure to maintain the easement area, except for claims based only upon the gross negligence or willful misconduct of Grantor. In order to secure this obligation, Grantee shall name Grantor as an additional insured on its insurance policy covering the Facilities and shall provide evidence of the same upon demand by Grantor.
- (g) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s), this Right of Way and Easement Agreement shall terminate, and no additional or other use of the easement area will be permitted; provided, however, that the defense and indemnity obligations of Grantee and its successors and assigns and Grantee's Property Restoration Obligations shall survive the termination of this Agreement.

Grantor reserves and retains for itself, its successors, and assigns all rights which it may possess in the surface or aboveground areas of the Real Estate, and the right of way and easement area to the extent necessary to maintain its property without interfering with Grantee's use and enjoyment of its right of way and easement, together with any and all other rights not expressly conveyed herein. The Grantor does not warrant title to the rights granted or that the same are free and clear of liens and encumbrances. Grantee takes title to the easement solely at its own risk.

This conveyance is subject to all exceptions, reservations, easements, rights of way, conditions, covenants or restrictions as contained in prior deeds or other instruments of record or that are capable of observation. Without limiting the generality of the foregoing, this right-of-way and easement is subject to the conditions of Grantor's title to the Real Estate including the

Easement Area, including the provisions of the West Virginia Rails to Trails Program, *W. Va. Code* § 5B-1A-1 *et seq.*, and the West Virginia Railroad Maintenance Authority Act, *W. Va. Code* § 29-18-1 *et seq.*, as they may be amended. The interests and rights granted to Grantee in this Agreement shall terminate and revert to Grantor in the event that Grantee’s actions or inactions cause or could cause the reversion of Grantor’s title in the real estate including the Easement Area, or any of it. Grantor retains the right, in its sole and absolute discretion, to: (1) determine whether Grantee’s exercise of its rights under this Agreement have caused or could cause the reversion of Grantor’s title in the real estate that is the subject of this Agreement; and (2) terminate this Right of Way and Easement Agreement upon such determination.

This Agreement shall be binding upon the parties and their respective successors and/or assigns. The rights of way and easements granted herein shall be appurtenant to and run with the land thereby benefited and burdened.

**DECLARATION OF CONSIDERATION**

Under the penalties of fine and imprisonment as provided by law, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities, agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

WITNESS the following signature and seal:

**THE CITY OF MORGANTOWN**, West Virginia,  
a municipal corporation

By: \_\_\_\_\_  
A. Kim Haws  
Its: City Manager

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that A. Kim Haws, The City Manager of City of Morgantown, West Virginia, a municipal corporation, whose name is signed to the foregoing agreement, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as the free act and deed of said corporation, upon authority duly granted.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2021.

My commission expires: \_\_\_\_\_.

{SEAL}

\_\_\_\_\_  
Notary Public

Morgantown Utility Board

By:

\_\_\_\_\_  
Name:

Title:

STATE OF WEST VIRGINIA,  
COUNTY OF \_\_\_\_\_, to-wit:

I \_\_\_\_\_, a notary public of said county, do certify that \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_ who signed the writing hereto annexed, bearing date as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_

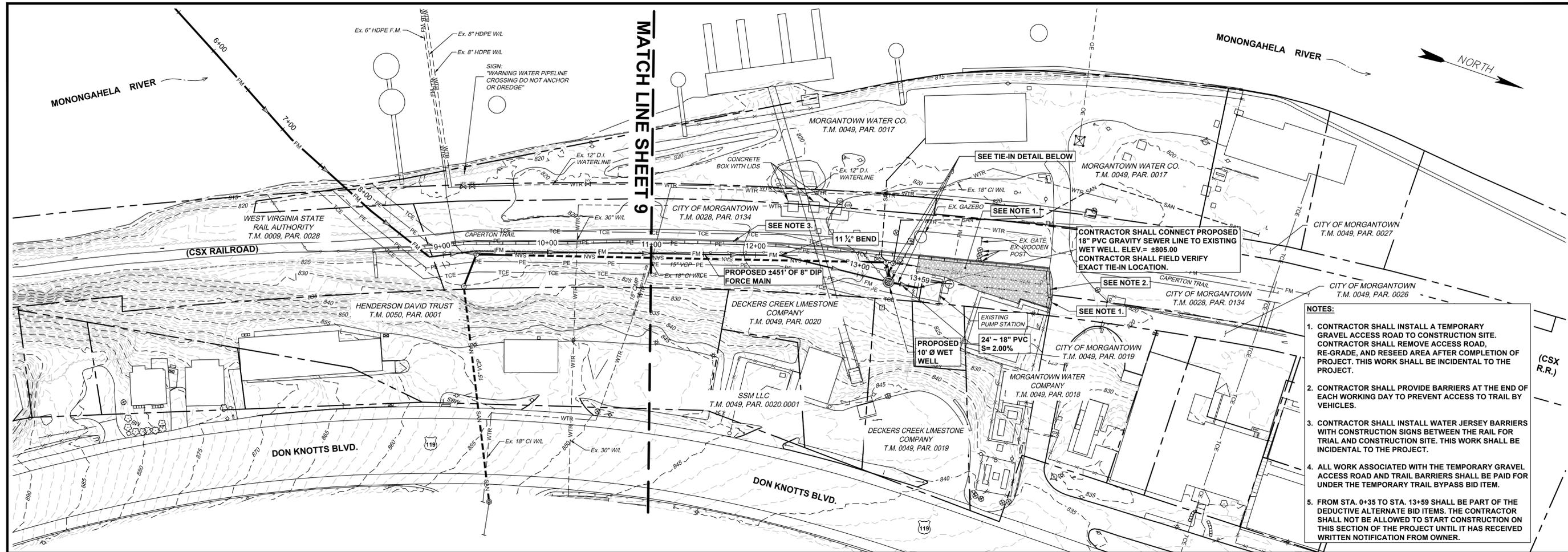
My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

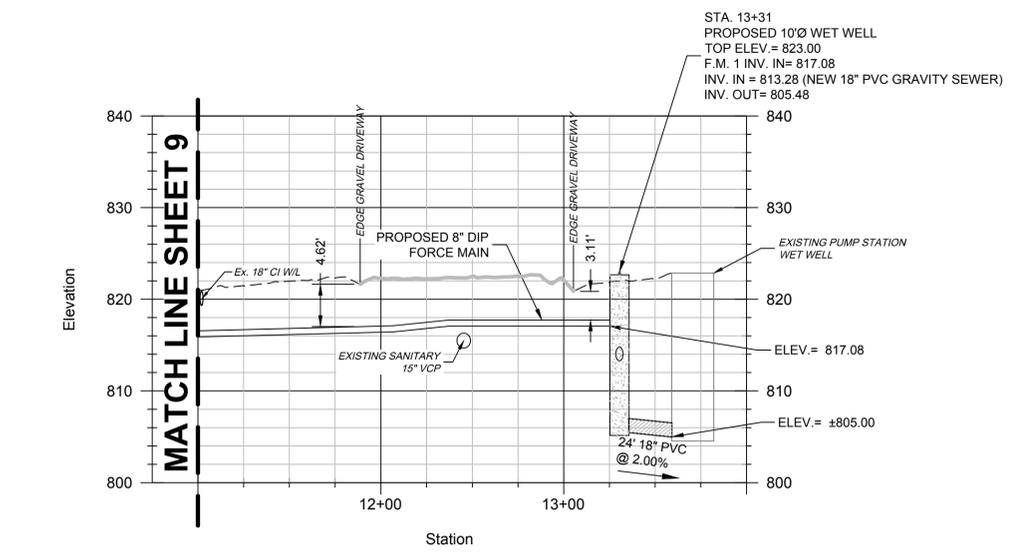
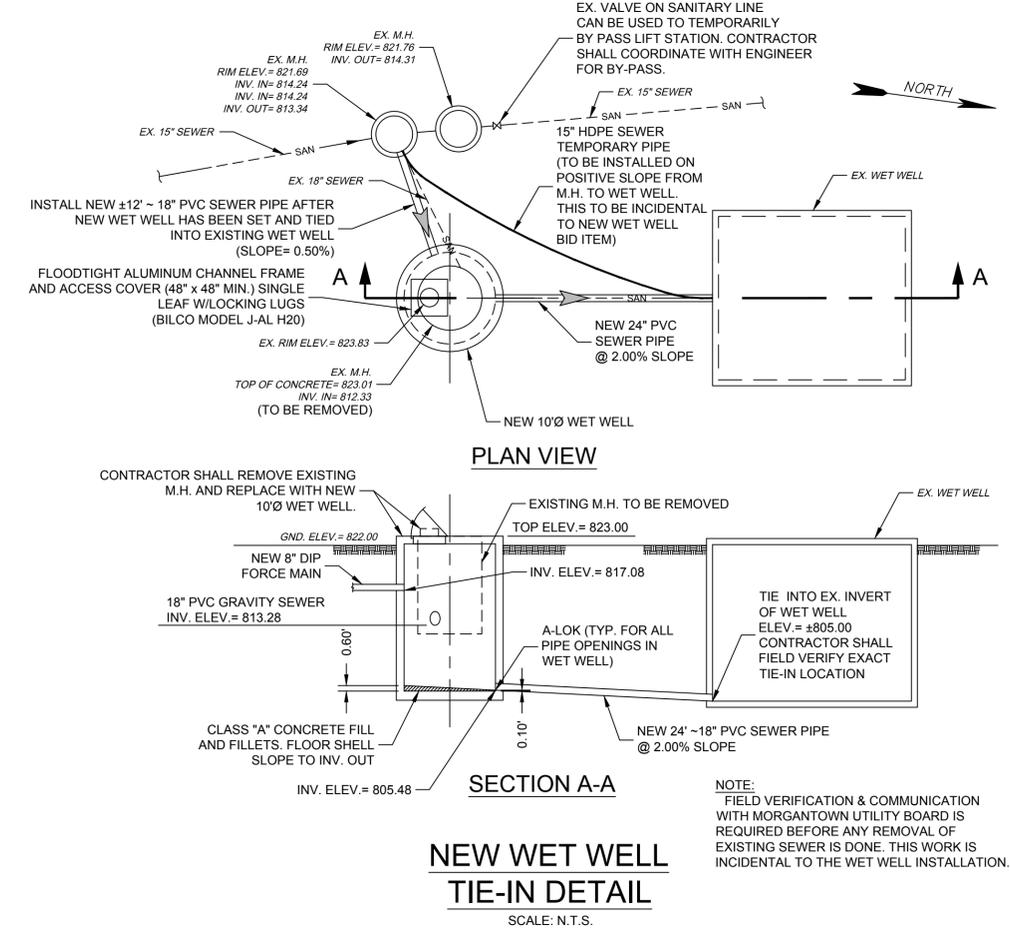
Attachments: Exhibit A – Easement Area

Prepared without title examination on behalf of Grantor by Ryan Simonton, KAY CASTO & CHANEY, PLLC, 150 Clay Street, Suite 100, Morgantown, WV 26501.

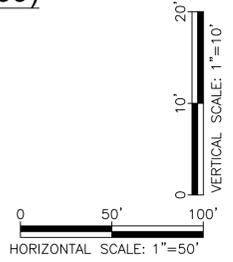


- NOTES:**
- CONTRACTOR SHALL INSTALL A TEMPORARY GRAVEL ACCESS ROAD TO CONSTRUCTION SITE. CONTRACTOR SHALL REMOVE ACCESS ROAD, RE-GRADE, AND RESEED AREA AFTER COMPLETION OF PROJECT. THIS WORK SHALL BE INCIDENTAL TO THE PROJECT.
  - CONTRACTOR SHALL PROVIDE BARRIERS AT THE END OF EACH WORKING DAY TO PREVENT ACCESS TO TRAIL BY VEHICLES.
  - CONTRACTOR SHALL INSTALL WATER JERSEY BARRIERS WITH CONSTRUCTION SIGNS BETWEEN THE RAIL FOR TRIAL AND CONSTRUCTION SITE. THIS WORK SHALL BE INCIDENTAL TO THE PROJECT.
  - ALL WORK ASSOCIATED WITH THE TEMPORARY GRAVEL ACCESS ROAD AND TRAIL BARRIERS SHALL BE PAID FOR UNDER THE TEMPORARY TRAIL BYPASS BID ITEM.
  - FROM STA. 0+35 TO STA. 13+59 SHALL BE PART OF THE DEDUCTIVE ALTERNATE BID ITEMS. THE CONTRACTOR SHALL NOT BE ALLOWED TO START CONSTRUCTION ON THIS SECTION OF THE PROJECT UNTIL IT HAS RECEIVED WRITTEN NOTIFICATION FROM OWNER.

PLANS PREPARED FOR:	MORGANTOWN UTILITY BOARD 278 GREENBANK RD MORGANTOWN, WEST VIRGINIA 26801
GRAPHIC SCALE	0 25' 50' 100'
NO.	
DATE	
REVISION	
BY	



**PROPOSED SANITARY FORCE MAIN 1 (STA. 11+00 -13+59)**



Files by: kcm  
User: p1021010\_mtd\_mountainop\_beverage\_sewer\_project/cadd/plan\_set02\_design/1021010\_plan\_and\_profile\_sheet\_10.dwg

**MOUNTAINOP BEVERAGE SEWER**

**PLAN & PROFILE SHEET**

PROJECT NUMBER	1021010
DATE	10/26/2021
SHEET NUMBER	10

Ordinance No. 2022-\_\_

**AN ORDINANCE AUTHORIZING A DECLARATION OF EASEMENT FOR UTILITY PURPOSES AT THE DECKERS CREEK TRAIL PROPERTY**

The City of Morgantown hereby ordains that the City Manager is authorized to execute the attached "Right-of-Way and Easement Agreement" declaring an easement for utility purposes on and over a portion of the real estate commonly known as the Deckers Creek Trail and more particularly described therein.

This ordinance shall be effective upon adoption.

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

\_\_\_\_\_  
Mayor

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

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

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

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

## RIGHT-OF-WAY AND EASEMENT AGREEMENT

THIS RIGHT-OF-WAY AND EASEMENT AGREEMENT, made and executed this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between THE CITY OF MORGANTOWN, West Virginia, a municipal corporation, party of the first party, Grantor, and THE CITY OF MORGANTOWN, West Virginia, acting by and through the MORGANTOWN UTILITY BOARD, a public corporation of The City of Morgantown, party of the second part, Grantee.

WITNESSETH: That for and in consideration of the payment of One Dollar (\$1.00), cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration hereinafter detailed, Grantor does now hereby grant and convey unto the Grantee, a non-exclusive right-of-way and easement for the laying, relaying, constructing, reconstructing, placing, replacing, repairing, maintaining, and removing approximately **a storm water line; two Type G inlets with pedestrian safe grate; a concrete headwall, and two deposits of rip-rap stone** as depicted on Exhibit A (the “Facilities”) within a portion of Grantor’s real estate described as a portion of the rail-trail property, a part of Parcel 137 of Map 28, at Parcel ID 09 28013700000000, First Ward District, located in Morgantown, Monongalia County, West Virginia, which adjoins Parcel ID 13 29006100000000 (13-29-61) owned by O-Max Coal Co, Inc., and more particularly described in that certain deed executed by and between the West Virginia State Rail Authority, as Grantor, and The City of Morgantown, as grantee, as of April 22, 1998, and of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia at Deed Book 1161, page 375 (the “Real Estate”). The location of said right-of-way and easement is more particularly shown upon the drawing attached as Exhibit A to this Agreement (the “Easement Area”). The Easement Area shall be a centerline easement twenty (20) feet in width. For the consideration aforesaid, Grantor does now also hereby grant and convey unto the Grantee, the right of ingress, egress, and regress to and from the Easement Area, subject to the terms and conditions of this agreement. The right of way and easement granted herein are subject to the following conditions:

- (a) all work shall be performed by Grantee as expeditiously as possible in accordance with good construction practices and so as to minimize interference with the use of the Grantor’s property;
- (b) The Facilities shall be constructed in such a manner that they do not create a hazard to users of the public rail trail. The Facilities shall at all times remain underground with appropriate covering and shall not create an obstruction that may cause trail users to trip or fall; provided that the concrete headwall and two deposits of rip-rap stone may remain aboveground in such a manner and with such markings or identifications as are designed to avoid any hazard to users of the public rail trail. Facilities shall be constructed and maintained in accordance with the standards adopted by the American Railway Engineering and Maintenance-of-Way Association;
- (c) Grantee shall repair Grantor’s property to a condition equal to that existing prior to installation of the Facilities, (“Property Restoration Obligations”) subject to approval by the City Manager. Grantee’s duty to repair includes, without limiting the generality of the foregoing, the duty to replace and repave any portion of the paved trail impacted by installation of the Facilities, the scope of which shall be determined by the City Manager. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep

the Easement Area at all times in the same condition as existed on the date of entry of this Agreement. If Grantee shall fail to maintain or repair the Premises as required by this Agreement, Grantor shall have the right, but not the obligation, to perform such maintenance and repair at the sole cost and expense of Grantee, and all costs of such maintenance, replacement, or repair shall be due and payable to Grantor by Grantee on demand. Any surface or subsurface damage to Grantor's property caused by Grantee, or its contractors, licensees, agents, successors and/or assigns, in connection with the Facilities shall be promptly repaired by Grantee to a condition equal to that existing before installation of any such Facilities or actions were undertaken, or as directed by the City Manager; and

- (d) Whenever entry onto Grantor's property is required for construction, maintenance, or repairs, Grantee, or its contractors, licensees, agents, successors and/or assigns, shall obtain approval from an authorized representative of Grantor prior to entry, and shall conduct such entry only at such times as permitted by Grantor, except in cases of emergency requiring immediate maintenance to avoid harm to life or property, in which case Grantee shall provide written notice as soon as reasonably possible;
- (e) Grantor will not be responsible for repair or replacement of any item or material placed in the property pursuant to this Agreement, or of any item relying upon materials or items placed in the property, regardless of the cause requiring such repair or replacement, including Grantor's own operations; and
- (f) Grantee and its successor and assigns do hereby agree to defend, indemnify, hold harmless, and release the City from any and all claims, demands, lawsuits, or liability in any way related to the easement granted in this Agreement, including without limitation the installation, maintenance, repair, and/or removal of the Facilities, the function of any structure(s) placed in the easement area, and the failure to maintain the easement area, except for claims based only upon the gross negligence or willful misconduct of Grantor. In order to secure this obligation, Grantee shall name Grantor as an additional insured on its insurance policy covering the Facilities and shall provide evidence of the same upon demand by Grantor.
- (g) Upon either the removal of the subsurface structure(s) placed in the easement area or the cessation of use of such structure(s), this Right of Way and Easement Agreement shall terminate, and no additional or other use of the easement area will be permitted; provided, however, that the defense and indemnity obligations of Grantee and its successors and assigns and Grantee's Property Restoration Obligations shall survive the termination of this Agreement.

Grantor reserves and retains for itself, its successors, and assigns all rights which it may possess in the surface or aboveground areas of the Real Estate, and the right of way and easement area to the extent necessary to maintain its property without interfering with Grantee's use and enjoyment of its right of way and easement, together with any and all other rights not expressly conveyed herein. The Grantor does not warrant title to the rights granted or that the same are free and clear of liens and encumbrances. Grantee takes title to the easement solely at its own risk.

This conveyance is subject to all exceptions, reservations, easements, rights of way, conditions, covenants or restrictions as contained in prior deeds or other instruments of record or that are capable of observation. Without limiting the generality of the foregoing, this right-of-way

and easement is subject to the conditions of Grantor's title to the Real Estate including the Easement Area, including the provisions of the West Virginia Rails to Trails Program, *W. Va. Code* § 5B-1A-1 *et seq.*, and the West Virginia Railroad Maintenance Authority Act, *W. Va. Code* § 29-18-1 *et seq.*, as they may be amended. The interests and rights granted to Grantee in this Agreement shall terminate and revert to Grantor in the event that Grantee's actions or inactions cause or could cause the reversion of Grantor's title in the real estate including the Easement Area, or any of it. Grantor retains the right, in its sole and absolute discretion, to: (1) determine whether Grantee's exercise of its rights under this Agreement have caused or could cause the reversion of Grantor's title in the real estate that is the subject of this Agreement; and (2) terminate this Right of Way and Easement Agreement upon such determination.

This Agreement shall be binding upon the parties and their respective successors and/or assigns. The rights of way and easements granted herein shall be appurtenant to and run with the land thereby benefited and burdened.

### **DECLARATION OF CONSIDERATION**

Under the penalties of fine and imprisonment as provided by law, the undersigned hereby declares that the transfer involved in the document to which this Declaration is appended is a transfer to or from the State of West Virginia, or to or from any of its instrumentalities, agencies or political subdivisions, and therefore is not subject to West Virginia excise tax and is exempt under the provisions of Chapter 11, Article 22, Section 1 of the West Virginia Code, 1931, as amended.

[SIGNATURE PAGE FOLLOWS]

WITNESS the following signature and seal:

**THE CITY OF MORGANTOWN**, West Virginia,  
a municipal corporation

By: \_\_\_\_\_  
A. Kim Haws  
Its: City Manager

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, TO-WIT:

The undersigned, a Notary Public in and for the County and State aforesaid, does hereby CERTIFY that A. Kim Haws, The City Manager of City of Morgantown, West Virginia, a municipal corporation, whose name is signed to the foregoing agreement, has this day sworn to, affirmed, subscribed and acknowledged the same before me in said County, as the free act and deed of said corporation, upon authority duly granted.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires: \_\_\_\_\_.

{SEAL}

\_\_\_\_\_  
Notary Public

Morgantown Utility Board

By:

\_\_\_\_\_

Name:

Title:

STATE OF WEST VIRGINIA,  
COUNTY OF \_\_\_\_\_, to-wit:

I \_\_\_\_\_, a notary public of said county, do certify that \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_ who signed the writing hereto annexed, bearing date as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, has this day in my said county, before me, acknowledged the same to be his act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_

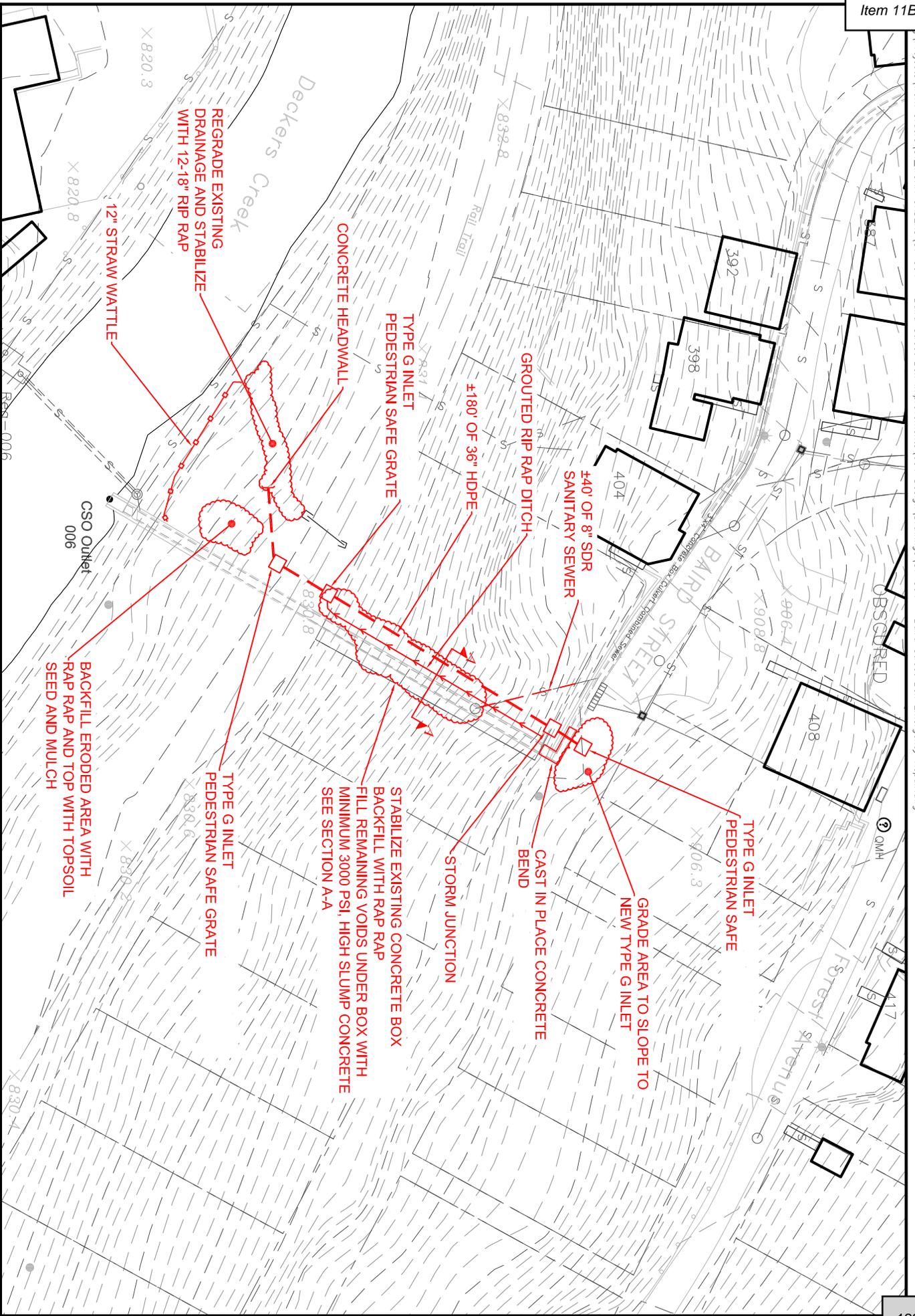
My commission expires: \_\_\_\_\_.

Notary Public

(NOTARIAL SEAL)

Attachments: Exhibit A – Easement Area

Prepared without title examination on behalf of Grantor by Ryan Simonton, KAY CASTO & CHANEY, PLLC, 150 Clay Street, Suite 100, Morgantown, WV 26501.



DESIGNED BY: Kenneth R. Hocker	DATE: 12/1/2021	REVISION:	DATE:
CHECKED BY: Kenneth R. Hocker	DATE: 12/1/2021		
APPROVED BY:	DATE:		
SCALE: 1" = 50'			

MORGANTOWN • UTILITY • BOARD  
 278 Owenby Road • Post Office Box 852 • Morgantown, WV 26507-0852 • 304-292-8443

DRAWING TITLE: BAIRD STREET COMBINED SEWER BOX EMERGENCY REPAIR	PROJECT NUMBER: ST-504	DRAWING NUMBER: SHT. 1 OF 2
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THE CITY OF  
**MORGANTOWN**  
WEST VIRGINIA

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

## MEMORANDUM

Date: January 31, 2022  
To: Kim Haws – City Manager  
Through: Emily Muzzarelli – Assistant City Manager  
From: Vincent E. Kitch - Director *Vincent E. Kitch*  
RE: Digital Video Screen Purchases for Ruby Amphitheater

The Arts & Cultural Development Department is requesting authorization to purchase digital video screen components that will be used 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 provides nationally leveraged and competitively solicited purchasing contracts. This project is fully funded from a recent grant made by the Hazel Ruby McQuain Charitable Trust

Ruby Amphitheater Seating Replacement     \$108,802.00

An impressive and needed technology upgrade for the park is a digital video wall such as the Chauvet components pictured below. This purchase would provide a 9’X16’ electronic video wall, cases, laptops, and all related equipment that would be used not only to enhance concert experiences, but also allow us to provide movie nights and other activities even during daylight hours.



From the Desk of:  
**Vincent E. Kitch**  
Director of Arts & Cultural Development

**RESOLUTION SUPPORTING THE CITY OF MORGANTOWN SEEKING A GRANT FROM MONONGALIA COUNTY COMMISSION FOR FUNDING FOR THE RUBY SUMMER CONCERT SERIES AND 4<sup>TH</sup> OF JULY CELEBRATION**

**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 is coordinating the 2022 Ruby Summer Concert Series and 4<sup>th</sup> of July Celebration at Hazel Ruby McQuain Park; and

**WHEREAS,** an application for funding support from Monongalia County Commission would provide the City and Department of Arts & Cultural Development additional financial support for a program benefitting the entire region;

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 Monongalia County Commission for financial support for summer programming at Hazel Ruby McQuain Park.

\_\_\_\_\_  
Mayor

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

**MONONGALIA COUNTY COMMISSION  
GRANT FUNDING APPLICATION  
Fiscal Year 2022-2023**

Name of organization requesting grant funding:

Address:

Phone:

Email address:

Name of CEO/President/Executive Director:

Financial Contact Name:

Phone:

Email:

Name, address, phone number and email of person completing this application:

Amount of grant funding requested:

Provide a brief profile of the organization requesting grant funding:

Name of project:

State the reason for the request highlighting the project and the benefit to the citizens of Monongalia County:

How many individuals are expected to benefit from the project?

If other organizations are collaborating on the project, provide the name(s) of organization(s) and a brief description of the collaboration. \* If no collaboration, please type "none"

Do you envision this project as a continuing, long-term project with future financial needs?    
If yes, how do you plan to fund in the future?

How many volunteers will contribute time to the project?

Anticipated date of project completion:

Anticipated budget for the project (include funds received or requested from other sources):

Construction

Materials/Supplies

Other:

Total Cost of Project: 0

Have you requested and/or received funding from another organization or foundation for the project?    
If yes, please list:

Does your organization have an annual audit?

Is your organization designated by the IRS as a NON-PROFIT?    
If yes, what date did you receive IRS approval?

What are the expected outcomes from the project and how will they be measured?

What is the target population for the project?

What geographic area will this project serve?

Additional comments: