

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”), dated and effective September 7th, 2017, is between the **WEST VIRGINIA DEVELOPMENT OFFICE**, a Division of the West Virginia Department of Commerce, located at State Capitol Complex, Building 3, Suite 600, Charleston, WV 25305 (“WVDO”), and **ROXUL USA Inc.** with headquarters located at 4594 Cayce Rd., Byhalia, MS 38611 (“Roxul”). WVDO and Roxul are each a “Party” and are collectively the “Parties.”

RECITALS

WHEREAS, Roxul is considering numerous locations in the Eastern United States on which to develop, construct, equip, and operate a new manufacturing facility to support its North American operations (the “Facility”);

WHEREAS, Roxul has identified the Jefferson Orchards site in in Ranson, West Virginia, as its preferred site to locate and develop the Facility (the “West Virginia Site”). A copy of a map depicting the West Virginia Site is attached to this MOU as **Exhibit 1**;

WHEREAS, Roxul has represented to the WVDO that a final investment decision to construct and operate the Facility at the West Virginia Site will require a commitment to expend approximately \$150,000,000 (USD), and employ approximately 140 full-time equivalent employees (“Final Investment Decision”);

WHEREAS, the state of West Virginia has identified certain economic development assistance it will make available to Roxul if Roxul makes and fully implements the Final Investment Decision, all subject to the terms and conditions described in this MOU; and

WHEREAS, the Parties desire to execute this MOU to clarify their respective representations, requirements, and commitments to facilitate the Final Investment Decision by Roxul.

NOW THEREFORE, in consideration of the mutual promises contained herein, the investment by Roxul, and the economic assistance provided by the WVDO, the Parties hereby agree as follows:

1. Commitment of the Parties. The WVDO will provide, or facilitate the provision of, the economic development assistance described in this MOU to Roxul, and Roxul will satisfy the Project Thresholds described in this MOU.

2. Project Thresholds. On or before the Full Operation Date, as hereinafter defined, Roxul will:

- a. Employ approximately 140, and in no event less than 120, full-time equivalent employees at the Facility who earn an average annual salary or wage of \$46,000 excluding paid benefits not subject to West Virginia income taxes (the "Employment Threshold");

Document that Roxul has caused the expenditure of approximately \$150,000,000 (USD) or more to expand, construct, equip, and operate the Facility.

3. Definitions.

- a. "Full-time equivalent employee" means a direct employee who receives paid benefits and works at least 140 hours per month; or, for part-time work, an employee who receives paid benefits and works at least 20 hours per week for at least six consecutive or non-consecutive months per year. The term "full-time equivalent employee" does not mean independent contractors who work for Roxul at the West Virginia Site.
- b. "Independent contractor" means any natural person or business entity that provides goods or services to another person or entity in accordance with terms specified in a contract or other agreement and who is subject to the control of any other party to such contracts or agreements only as to results. An independent contractor is independently licensed to do business in West Virginia, has an independent proprietary interest in its business operations, has an independent opportunity for profit or loss because of the provision of goods or services pursuant to such contracts or agreement, independently invests in the facilities by which its goods or services are provided, directs and controls the details of work and operations performed, regarding hours of work, and the order, sequence and manner in which work is completed for the provision of goods and services in fulfillment of such contracts or agreement, or supplies the tools, equipment and materials used to fulfill the requirements of such contracts or agreements. Independent contractor does not include any natural person or entity that has any employees in common with any other party to such contracts or agreements. For purposes of this provision, the status of any person or entity as an "employee" shall be determined in accordance with United States Internal Revenue Code section 3121, such that the person or entity does not have common ownership, common control, common operation or common management with any other party to such contracts or agreements. For purposes of this provision, "common ownership, common control, common operation or common management" means that two or more business entities are owned, controlled, operated or managed by the same person or group of persons.

Ownership includes, but is not limited to ownership as determined, in accordance with the attribution and stock ownership rules of Internal Revenue Code section 267 or Internal Revenue Code section 318 or both, as applicable, and the rules and regulations pertinent thereto. Applicability of any Internal Revenue Service requirement or rule regarding the issuance or receipt of an Internal Revenue Service Form 1099 with relation to any payment or transaction consummated under any such contract or agreement is not determinative of independent contractor status for purposes of this provision.

4. Construction Date and Full Operation Date. Roxul anticipates that it will adhere to the following schedule for commencement of construction activities and operations at the West Virginia Site:

- a. Construction of the Facility will begin within 90 days of receipt of acceptable Prevention of Significant Deterioration (“PSD”) air permit from the West Virginia Department of Environmental Protection (WVDEP), or the following May 1st, whichever is later.
- b. Full Operation of the Facility will occur five years from the issuance of the certificate of occupancy or June 1st, 2024, whichever is sooner (the “Full Operation Date”).

5. Performance-Based Forgivable Loan. The State of West Virginia will issue a forgivable loan to Roxul in the principal amount of \$2,200,000.00 (USD). The forgiveness of the loan will be subject to Roxul meeting or exceeding the Employment Threshold set forth in paragraph 2 a of this MOU (the “Forgivable Loan”). The Forgivable Loan will be subject the following general terms:

- a. The WVDO will facilitate the Forgivable Loan in coordination with the West Virginia Economic Development Authority, the local economic development authority, and/or the West Virginia Infrastructure and Jobs Development Council (the “Lending Authority”).
- b. WVDO and Roxul will mutually agree on a draw schedule. No draw will be available until receipt of an acceptable PSD air permit. The full-amount of the loan may be drawn upon receipt of the PSD air permit and, the earlier of, construction commencement or 90 days of receipt of PSD air permit.

- c. Roxul may cause the proceeds of the Forgivable Loan to be used to purchase or lease land, building, or equipment, or any combination thereof, to complete the Facility (the "Facility Assets").
- d. Roxul will grant the Lending Authority at least a second priority security interest in and lien upon the Facility Assets or such portion thereof necessary as collateral to secure the Forgivable Loan.
- e. Roxul will not be obligated to make any payment on the Forgivable Loan prior to the Full Operation Date.
- f. If Roxul meets or exceeds the Employment Threshold at or before the Full Operation Date, the Lending Authority will forgive the Forgivable Loan in its entirety at that time.
- g. If Roxul fails to meet or exceed the Employment Threshold at or before the Full Operational Date, Roxul will repay the Forgivable Loan to the Lending Authority on a pro rata basis (the "Prorated Repayment"). The Prorated Repayment is equal to the proportion that new Full Time Equivalent jobs at the Facility failing to meet the Employment Threshold bears to the Forgivable Loan. For example, if Roxul directly employs only 100 new employees at the Facility on the Full Operation Date, the calculation would be:

$$(1 - (100/120)) \times 2,000,000 = \$333,333.33 \text{ (Prorated Repayment)}$$

6. **Sewer Service.** The WVDO, or a related state agency, will provide sufficient funding to the City of Ranson, West Virginia to provide adequate sewer service to the property line of the West Virginia Site, at no cost to Roxul. A copy of the WVDO's letter to the City of Ranson demonstrating this commitment and the MOU between the State of West Virginia and City of Ranson are attached in this MOU as **Exhibit 2**. Roxul will provide notice to the City of Ranson and the State of West Virginia as to the progress of the PSD air permit by September 30th, 2017.

7. **Water Service.** The WVDO, a related state agency, and/or the Jefferson County Economic Development Authority will provide sufficient funding to Jefferson Utilities Corporation ("Jefferson Utilities") to provide adequate water service to the property line of the West Virginia Site, at no cost to Roxul. A copy of the WVDO's letter to the Jefferson Utilities demonstrating this commitment and the MOU between the State of West Virginia and Jefferson Utilities are attached in this MOU as **Exhibit 3**. Roxul will provide notice to the Jefferson Utilities and the State of West Virginia as to the progress of the PSD air permit by September 30th, 2017.

8. Extension of Additional Utilities. The WVDO is aware of commitments on behalf of certain utility providers, including First Energy (electric transmission service), Mountaineer Gas (natural gas service), and Frontier Communications (telecommunications service) to extend additional utilities reasonably necessary to service the West Virginia Site. The WVDO will work with Roxul and these providers, as necessary and if appropriate, to ensure that these additional utilities are extended to the West Virginia Site. A copy of letters from these utility providers demonstrating their commitment to extend these utilities to the West Virginia Site is attached to this MOU as **Exhibit 4**.

9. PILOT Agreement. The WVDO will support the Jefferson County Economic Development Authority, the West Virginia Economic Development Authority, and/or any other community entity, including the Jefferson County Commission, Jefferson County School Board, or the Jefferson County Assessor, as necessary and if appropriate, to facilitate the Payment in Lieu of Tax Agreement (“PILOT”) acceptable to Roxul and Jefferson County, West Virginia. A copy of the PILOT Agreement attached to this MOU as **Exhibit 5**.

10. Ingress and Egress. The West Virginia Department of Transportation, Division of Highways (“DOH”), will administer the design, construction, and necessary funding to address reasonable access modifications along the State Highway System to provide ingress and egress to the West Virginia Site. A copy of the DOH’s letter to Secretary Thrasher specifying this commitment is attached to this MOU as **Exhibit 6**.

11. Workforce Training. The Governor’s Guaranteed Work Force Program (“GGWP”) offers training grants up to \$2,000 per employee for eligible companies that create a minimum of 10 new jobs within a 12-month period. If Roxul makes the Final Investment Decision, the WVDO will provide Roxul with a \$2,000 workforce training grant under the GGWP for each new employee it hires and employs at the West Virginia Site during the first three consecutive years the Facility is operational at the West Virginia Site. These flexible training grants may be used by Roxul to offset the cost of employee recruitment, pre-employment assessment, workplace development, structured on-the-job training and development, expenses for traveling to/from training, trainer salaries, cost of trainers, training materials and/or workplace education. Roxul would qualify for \$240,000 in any one year based on 120 jobs and could qualify for more than \$240,000 based on any additional employment over 120 employees under the GGWP. For purposes of this paragraph, the term “year” means the state of West Virginia’s fiscal year which begins on July 1 and ends on June 30.

12. Tax Benefits. Based on the mutual covenants, promises, and agreements described in this MOU, Roxul will qualify for various tax credits, entitlements, exemptions, and assistance

under West Virginia law (including, statutory sales tax exemptions for the purchase of tangible personal property and services directly used in manufacturing, which shall extend to purchases of building materials and process equipment by Roxul's suppliers and contractors and other parties purchasing on behalf of Roxul in furtherance of the construction of the Facility at the West Virginia Site). The direct use in manufacturing exemption shall also be available to Roxul for purchases of tangible personal property and services directly used in manufacturing, including, but not limited to, purchases of raw materials and process equipment directly used in manufacturing. The WVDO will work with Roxul to facilitate the Company's understanding and access to these benefits and incentives. A copy of the West Virginia Tax Departments forms TSD 110 and TSD 300 explaining tax credits and exemptions is attached to this MOU as **Exhibit 7**.

13. 5 for 10. Provided ROXUL can meet all statutory conditions of WV Code 11-6F-1 *et. seq.*, the WVDO shall cooperatively work with ROXUL to help ROXUL access all the benefits associated with this statutory incentive.

14. Contingencies. The Final Investment Decision is made expressly contingent upon the occurrence of the following conditions precedent ("Project Contingencies"), the failure of any of which will entitle Roxul to unilaterally terminate this MOU without any penalty or obligation:

- a. Site Acquisition: Roxul shall close on the West Virginia Site no later than January 15, 2018 ("Site Closing") and upon terms and conditions acceptable to Roxul, including, but not limited to, Roxul being able to obtain acceptable representations, warranties, covenants, indemnities, and title for the West Virginia Site and contingent upon the completion of the subdivision and rezoning of the parcel by the seller;
- b. Zoning and Land Use: Roxul, or designated third party, shall obtain and secure all lot changes, zoning changes, deed restrictions, permits, including PSD air permits, and/or any other land use approvals necessary to use and operate the Facility at the West Virginia Site in accordance with its intended plans;
- c. Voluntary Remediation Program: The West Virginia Site shall be eligible to participate in the West Virginia Voluntary Remediation Program (the "Remediation Program") and obtain or receive a Certificate of Completion under the Remediation Program from the WVDEP that provides Roxul acceptable immunity from liability as determined by Roxul in its sole discretion;

- d. Board Approval. Roxul shall obtain and secure necessary approval from its Board of Directors to make the Final Investment Decision to construct and operate the Facility at the West Virginia Site within 180 days of fully executing this MOU;
- e. Third Party Commitments. Roxul shall negotiate independent agreements and/or memorandums of understanding with the city of Ranson and the County of Jefferson acceptable to Roxul prior to the Site Closing.

15. Binding Commitment. The obligations and covenants set forth in this MOU are intended to be binding subject to the occurrence of the conditions that Roxul (i) expends approximately \$150,000,000.00 (USD) to acquire, construct, equip, and operate the Facility at the West Virginia Site, and (ii) Employs approximately 140, and in no event less than 120, full-time equivalent employees at the Facility and administers a payroll of at least \$6,700,000, inclusive of benefits, per year for a minimum of three (3) years (which may or may not be consecutive years), with the first year of meeting such threshold being within five (5) years of the start of production at the Facility as that term is defined in the Facility's PSD air permit.

16. Irrevocable. This MOU, until accepted and executed by Roxul, shall constitute an offer by the WVDO, which shall remain open for a period of ninety (90) days from the effective date hereof. Upon acceptance and execution by the Roxul, this MOU shall become a legally enforceable contract.

17. Access to Data. Upon request, Roxul will provide the WVDO with access to certain data necessary to reasonably verify the level of investment and economic impact of the Facility. Such data shall include without limitation, as applicable, relevant West Virginia business tax information; total capital investment in real property, personal property, materials, equipment, and/or machinery; total capital lease costs or costs to lease a new building; total construction costs; levels of direct employment of new or saved employees or non-qualifying employees; average salaries or wages; base salaries or wages; total construction employment of full-time equivalent employees and related salary or wage data; and any indirect employment data related to or associated with the Facility.

18. Notice. All notices which are permitted or required in this MOU shall be in writing and deemed valid and received if delivered personally; by registered or certified mail, return receipt requested; or by special carrier (such as Federal Express or UPS), with signature required, to the WVDO or Roxul as follows, unless otherwise agreed by the Parties in a signed writing:

To WVDO:

West Virginia Development Office
Attn: Director of Business and Industrial Development
1900 Kanawha Blvd. East
Capitol Complex, Building 3, Suite 600
Charleston, WV 25305

To Roxul:

Roxul USA, Inc.
Attn: Ken Cammarato
Vice President, General Counsel
Roxul USA Inc.
4594 Cayce Rd.
Byhalia, MS 38611

19. Further Assurances. Each of the Parties hereto shall, from time to time at the request of the other party, without any additional consideration, furnish the other Party such further information or assurances, execute and deliver such additional documents, instruments and conveyances, and take such other actions and do such other things, as may be reasonably necessary in the opinion of counsel to the requesting party to carry out the provisions of this MOU.

20. Confidentiality. The Parties will maintain all documentations and communications provided to the other Party related to this project to construct the Facility and/or verifying the economic impact of the Facility at the West Virginia Site, as confidential, subject to the laws of the state of West Virginia, as applicable. The Parties will mark, or otherwise indicate in writing to the other Party, any documents or communications deemed confidential or proprietary.

21. Authority. The WVDO represents and warrants that the WVDO is the proper agency or instrumentality of the State of West Virginia to commit the economic development assistance set forth herein, and that the Director of WVDO is vested with the full legal authority and is duly authorized to execute this MOU on behalf of the WVDO and the State of West Virginia.

22. Amendments or Modifications. This MOU may only be amended or modified by a signed writing executed by authorized representatives of the Parties.

23. Severability. If any provision of this MOU shall for any reason be held illegal, invalid or unenforceable, then the other provisions of this MOU shall not be rendered invalid or

otherwise affected thereby, and shall continue in full force and effect to the maximum extent permitted by applicable law.

24. Subcontracting. Neither Party may assign or subcontract any of its obligations or duties under this MOU, without the prior written consent of the other Party, which consent shall be in the sole determination of the Party with the right to consent.

25. Assignment. No party shall have the right to assign this Agreement or any portion hereof, or any of its respective rights or obligations hereunder, without the prior written consent of the other party; provided however, that Roxul shall be permitted to assign this Agreement or any portion hereof, or any of its rights or obligations hereunder, to any affiliate of Roxul without the prior consent of the WVDO, however, Roxul will still remain ultimately responsible and liable for the performance of any such assignee's obligations hereunder.

26. Force Majeure. Neither Party shall be responsible for any delay or failure in performance of any part of this MOU if such delay or failure is caused by fire, flood, explosion, war, act of terror, embargo, national economic crisis, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Party in writing within ten (10) days after the beginning of any such Force Majeure event. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Party receives notice under this paragraph, the non-affected party may, without any liability to the other Party, terminate this MOU; provided, however, that Roxul will repay the Forgivable Loan described in paragraph 5, or such portion thereof that fairly and equitably reflects the difference between the draw on the Forgivable Loan and Roxul's actual investment in the Facility, if Roxul terminates the MOU pursuant to a Force Majeure event covered by this provision. Further, if Roxul provides notice of a Force Majeure event which results in a delay of the performance of its obligations set forth in paragraph 5, Roxul's performance obligations shall be extended by the period of the Force Majeure delay up to an extension of one (1) year.

27. Available Workforce. The State acknowledges that the workforce available to Roxul in the State, County, and surrounding vicinity is a critical reason for Roxul's decision to locate at the West Virginia Site. Should Roxul be able to demonstrate that its ability to recruit a competitive workforce has been adversely impacted by the WVDO providing more advantageous terms, conditions, or economic incentives than those provided to the Company within five (5) years from the execution of this MOU, then the WVDO agrees to work in good faith with Roxul to determine if same, or similar, terms, conditions, or economic incentives may also be available to Company; provided, however, that this clause is not intended to interfere with the WVDO's ability to enhance economic opportunities on behalf of the state of West Virginia; provided, further, that

the WVDO shall have the ability, in its sole discretion, to determine whether the disclosure of such terms, conditions, or economic incentives is possible and/or appropriate or permitted under West Virginia law or the terms of an applicable non-disclosure agreement, if any; and provided, further, that the WVDO shall be under no obligation to advise Roxul of any development prospects and/or projects that may be engaged with the WVDO to investigate investment opportunities in West Virginia.

28. Ombudsmen. The dedicated point-of-contact for the Parties to ensure that the obligations set forth in this MOU are implemented, documented, and achieved are as follows:

- a. WVDO: Todd Hooker, Deputy Director
Todd.E.Hooker@wv.gov
(304) 558-2234

- b. Roxul: Ken Cammarato, Vice President, General Counsel
ken.cammarato@roxul.com
(662) 851-4734

If Todd Hooker is unable to serve in this position, Roxul will have the right to participate in a mutually agreed upon selection of who replaces Todd Hooker as Ombudsman to Roxul.

29. Press Releases. Neither party shall issue any press releases or make public announcements relating to this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that nothing in this Section shall impair either party's compliance with law or regulation generally or with any requirements of the Securities and Exchange Commission or of any national securities exchange or other stock market on which such party's securities are traded.

30. Future Expansion. If at any time Roxul anticipates a substantial expansion of its operations in the State of West Virginia beyond the scope currently planned for the Facility, and has met or exceeded the Project Thresholds described above, the State will review such expansion plans with the intent to provide additional economic development incentives to Roxul but shall not have an obligation to provide any incentives to Roxul with respect to such expansion.

31. Governing Law. This MOU shall be governed by the laws of the State of West Virginia.

Memorandum of Understanding
Roxul USA, Inc.
September 7, 2017

The Parties sign:

Roxul USA, Inc.

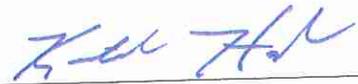
BY: 

NAME: Trent Ogilvie

ITS: President

Date: 9/7/17

West Virginia Development Office

BY: 

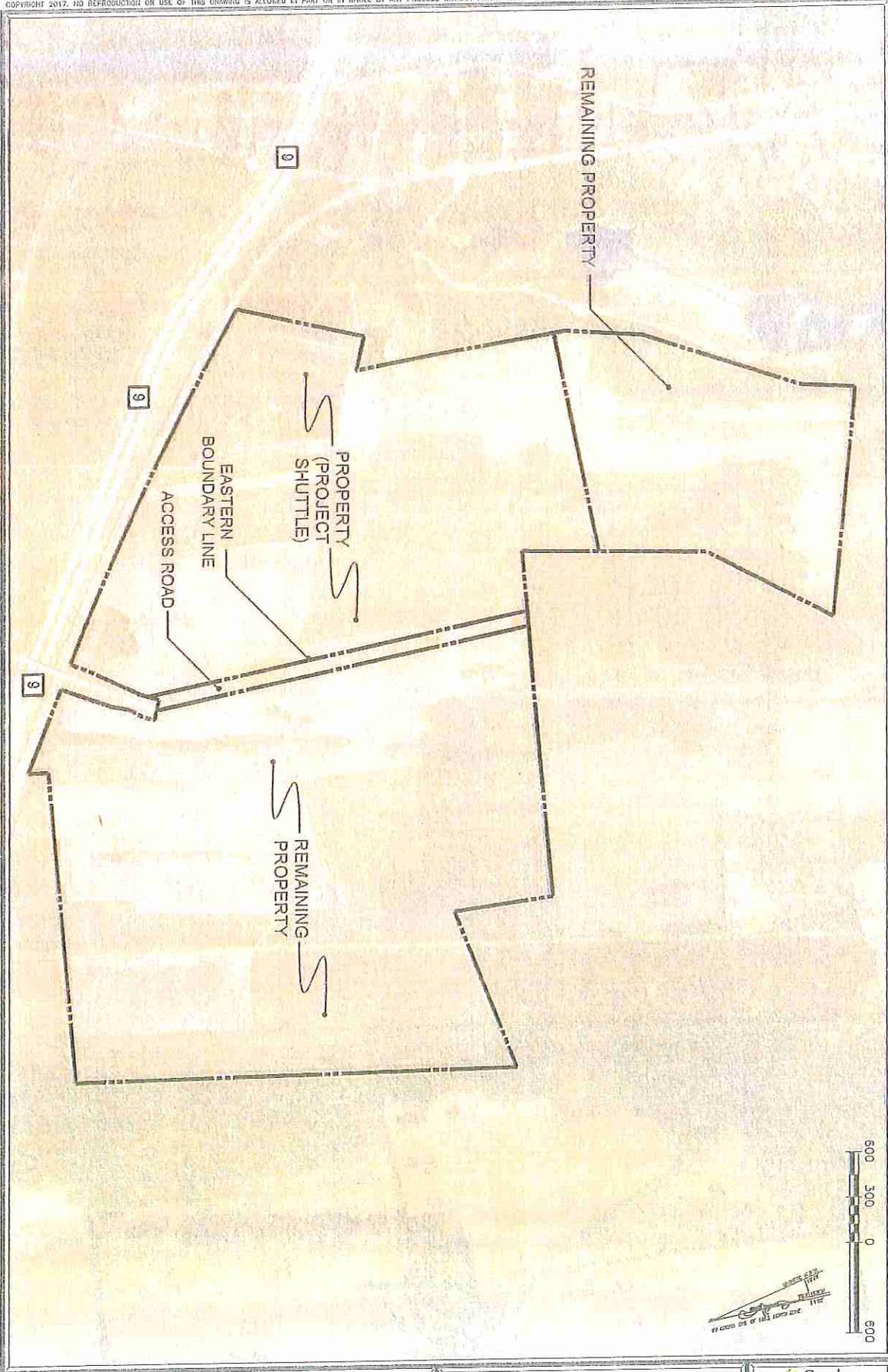
NAME: Kristopher Hopkins

ITS: Executive Director

Date: 9/7/17

EXHIBIT 1

Site Maps



JEFFERSON ORCHARDS
CITY OF RANSON, WEST VIRGINIA

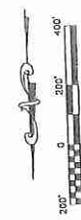
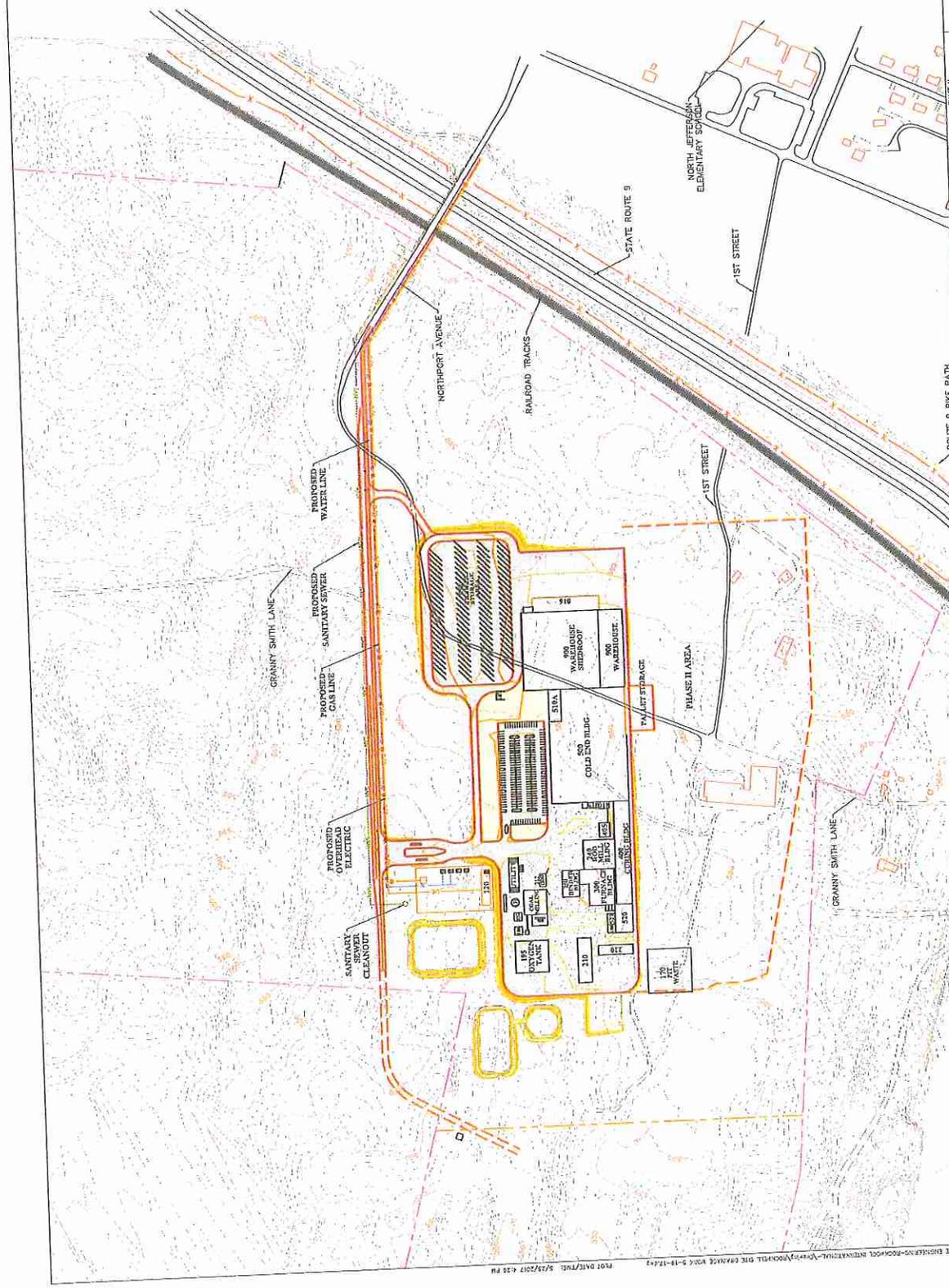
PARCEL EXHIBIT

Gordon
PLANNING & PLANNING-LEVEL ENGINEERING,
LANDSCAPE ARCHITECTURE, SURVEY & MAPPING,
SCULPTURE CONSULTING
ESTABLISHED 1962

SHEET
1 / 1

PLAN LEGEND

- PROPERTY LINE
- PROPOSED CONTOURS MAJOR / MINOR
- EXISTING CONTOURS MAJOR / MINOR
- PROPOSED GAS LINE (GOURNANER GAS)
- PROPOSED SEWER (CITY OF RICHMOND)
- PROPOSED WATER (JEFFERSON UTIL. INC. (FIRST ENERGY))
- PROPOSED OVERHEAD ELECTRIC (FIRST ENERGY)
- PROPOSED OVERHEAD ELECTRIC (RISCONS)
- PROPOSED FULL SLOPE
- PROPOSED CUT SLOPE
- PROPOSED EDGE OF ROAD
- REAR TIRE PATH
- FRONT TIRE PATH
- CENTERLINE TRUCK PATH
- ASPHALT AREA
- CONCRETE AREA
- GREEN SPACE
- UNPAVED AREA



<p>ROXUL</p> <p>NOT FOR CONSTRUCTION 2017-05-02</p>		<p>THRASHER THE ENGINEERING GROUP, INC.</p> <p>ENVIRONMENTAL CONSULTING FIELD NO. 2000 600 ROUTE 1034, SUITE 100, FAY (202) 619-7871</p>		<p>ROXUL USA INC. CONCEPTUAL SITE PLAN LAYOUT JEFFERSON COUNTY, WEST VIRGINIA UTILITIES</p>
SCALE	DATE	PLATE NO.	SHEET NO.	
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2000 ft

Extend CR 9/68

Northport Ave

Route 9 Bike Path

CR 9/68

1st St

9

48/3

Google earth

2176 Highway 15, Maryland
21765



EXHIBIT 2

WVDO Letter to City of Ranson



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

April 21, 2017

Andrew Blake, Esq.
City Manager
City of Ranson
312 South Mildred Street
Ranson, WV 25438

Re: Commitment to support extension of sewer service to Jefferson Orchards Site

Dear Mr. Blake:

Please allow this letter to serve as a commitment by the State of West Virginia to provide the City of Ranson with funding sufficient to ensure that adequate sewer service is extended to the Jefferson Orchards site in Ranson, West Virginia. The availability of sewer service to this site is critical to support an industrial prospect that desires to construct a new manufacturing facility in that location.

The city of Ranson has represented to the West Virginia Development Office ("WVDO") that the approximate cost to extend adequate sewer service to the Jefferson Orchards site is \$6 million. The WVDO will facilitate the delivery of this funding through the Economic Development Bond fund that is administered by the WVDO and the West Virginia Infrastructure and Jobs Development Council (IJDC) and the. This will be done through an alternate mainline extension agreement between the City of Ranson and the IJDC.

Thank you for your cooperation on this important project. If you have any questions or need any additional information, please contact Todd Hooker, our Deputy Director of Business and Industrial Development, at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris N. Hopkins".

Kris N. Hopkins
Executive Director

KNH/teh

EXHIBIT 3

Water Letter and Water MOU



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

May 16, 2017

John Reisenweber
Executive Director
Jefferson County Development Authority
PO Box 237
Charles Town, WV 25414

Re: Commitment to support extension of water service to Jefferson Orchards Site

Dear Mr. Reisenweber:

Please allow this letter to serve as a commitment by the State of West Virginia to provide Jefferson Utilities, Inc. with funding sufficient to ensure that potable water service is extended to the Jefferson Orchards site in Ranson, West Virginia. The availability of water service to this site is critical to support an industrial prospect that desires to construct a new manufacturing facility in that location.

Jefferson Utilities, Inc., has represented to the West Virginia Development Office ("WVDO") that the approximate cost to extend potable water service to the Jefferson Orchards site is \$3.1 million. The WVDO will facilitate the delivery of this funding through the Economic Development Bond fund that is administered by the WVDO and the West Virginia Infrastructure and Jobs Development Council. The term of the loan would be 38 years with an interest rate not to exceed 1%. At the appropriate time, the WVDO will contact you to coordinate the loan paperwork and documentation.

Thank you for your cooperation on this important project. If you have any questions or need any additional information, please contact Todd Hooker, our Deputy Director of Business and Industrial Development, at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris N. Hopkins".

Kris N. Hopkins
Executive Director

KNH/teh

cc: Lee Snyder, Jefferson Utilities, Inc.



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

July 6, 2017

John Reisenweber
Executive Director
Jefferson County Development Authority
PO Box 237
Charles Town, WV 25414

Re: Commitment to support extension of water service to Jefferson Orchards Site

Dear Mr. Reisenweber:

Please allow this letter to serve as a commitment by the State of West Virginia to provide Jefferson Utilities, Inc. with funding sufficient to ensure that potable water service is extended to the Jefferson Orchards site in Ranson, West Virginia. The availability of water service to this site is critical to support an industrial prospect that desires to construct a new manufacturing facility in that location.

Jefferson Utilities, Inc., has represented to the West Virginia Development Office ("WVDO") that the approximate cost to extend potable water service to the Jefferson Orchards site is \$3,250,000. The WVDO will facilitate the delivery of this funding through the Economic Development Bond fund that is administered by the WVDO and the West Virginia Infrastructure and Jobs Development Council. The term of the loan would be 38 years with an interest rate not to exceed 1%. At the appropriate time, the WVDO will contact you to coordinate the loan paperwork and documentation.

Thank you for your cooperation on this important project. If you have any questions or need any additional information, please contact Todd Hooker, our Deputy Director of Business and Industrial Development, at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris N. Hopkins".

Kris N. Hopkins
Executive Director

KNH/teh

cc: Lee Snyder, Jefferson Utilities, Inc.



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

August 23, 2017

John Reisenweber
Executive Director
Jefferson County Development Authority
PO Box 237
Charles Town, WV 25414

Re: Commitment to support extension of water service to Jefferson Orchards Site

Dear Mr. Reisenweber:

Please allow this letter to serve as a commitment by the State of West Virginia to provide Jefferson Utilities, Inc. with funding sufficient to ensure that potable water service is extended to the Jefferson Orchards site in Ranson, West Virginia. The availability of water service to this site is critical to support an industrial prospect that desires to construct a new manufacturing facility in that location.

Jefferson Utilities, Inc., has represented to the West Virginia Development Office ("WVDO") that the approximate cost to extend potable water service to the Jefferson Orchards site is \$3,250,000. The WVDO will facilitate the delivery of this funding through the Economic Development Bond fund that is administered by the WVDO and the West Virginia Infrastructure and Jobs Development Council. The term of the loan would be 38 years with an interest rate not to exceed 1%. At the appropriate time, the WVDO will contact you to coordinate the loan paperwork and documentation.

Thank you for your cooperation on this important project. If you have any questions or need any additional information, please contact Todd Hooker, our Deputy Director of Business and Industrial Development, at (304) 558-2234.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kris N. Hopkins".

Kris N. Hopkins
Executive Director

KNH/teh

cc: Lee Snyder, Jefferson Utilities, Inc.

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“MOU”) dated as of this ____ day of _____ 2017, by and among the _____, a _____ (the “Company”), the Jefferson County Development Authority, a public corporation of the State of West Virginia (the “JCDA”), and Jefferson Utilities, Inc., a West Virginia corporation (“JUI”) (singularly, each a “Party,” and collectively, the “Parties”).

W I T N E S S E T H:

WHEREAS, the Company is a _____;

WHEREAS, the JCDA is a public corporation of the State of West Virginia created by The County Commission of Jefferson County pursuant to Chapter 7, Article 12, of the West Virginia Code for the express purpose, among others, of promoting, developing and advancing business prosperity and economic welfare of Jefferson County, its citizens and its industrial complex;

WHEREAS, JUI is a privately-held corporation certificated by the Public Service Commission of West Virginia (the “PSC”) as a public utility to provide potable water service to approximately 3,000 customers in areas of Jefferson County, West Virginia, through the utility’s potable water treatment, storage and distribution system (collectively, the “JUI Water System”);

WHEREAS, there is an approximately 400-acre tract of real property located in Jefferson County, West Virginia, in the vicinity of West Virginia State Route 9 that is commonly known as Jefferson Orchards (the “Jefferson Orchards Site”), as shown on Exhibit A attached hereto;

WHEREAS, the Company plans to acquire, construct, own and operate a manufacturing facility (the “Facility”) on a parcel of real property comprising approximately 130 acres which is a part of the Jefferson Orchards Site (the “Real Property”);

WHEREAS, the Real Property is located within the service territory of JUI, however, potable water service is not currently available at the Real Property;

WHEREAS, the Parties have held discussions concerning the design, acquisition, construction and equipping of the necessary additions, betterments and improvements to the JUI Water System to provide potable water service to the Real Property and, thus, the Facility;

WHEREAS, the Company has stated that, in order to acquire, construct, equip and operate the Facility, the Company will initially require not less than 160,000 gallons of water per day (“gpd”) through the construction period for the Facility, expected to be 12 months, subsequently increasing to not less than 320,000 gpd of water, together with fire protection service, all of which JUI shall provide in accordance with the requirements of the PSC, including, but not limited to, the provisions of the PSC’s *Rules for the Government of Water Utilities*, W. VA. CODE R. §§ 150-7-1, *et seq.*;

WHEREAS, the additions, betterments and improvements to the JUI Water System required to provide potable water service to the Facility in the amounts required by the Company include, but are not limited to, approximately 10,800 linear feet of 16-inch water line and a 660,000 gallon water storage tank, and all necessary appurtenances (collectively, the “Water Line Extension”);

WHEREAS, in order to access loan monies from the West Virginia Infrastructure and Jobs Development Council (the “WVIJDC”), based on the recommendation of the West Virginia Development Office (“WVDO”), with the West Virginia Water Development Authority (“WVWDA”) providing a loan at the direction of the WVIJDC, at the most favorable interest rate and other terms, the Parties have determined, and JCDA has agreed, that the JCDA will (i) acquire, construct and equip the Water Line Extension; (ii) borrow from the WVWDA the

necessary funds to finance the portion of the costs associated with the acquisition, construction and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000 (as further defined herein); and (iii) enter into an Operation and Maintenance Agreement with JUI (the "O & M Agreement") whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the Facility, and pay a monthly Use Fee to JCDA, as further defined herein;

WHEREAS, in recognition of the substantial investment required for the Water Line Extension, the Company has agreed that it will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source, for a term of ten (10) years commencing on the first day of the first month the Facility begins commercial operations;

WHEREAS, the Company will be charged under the same tariff as all water customers of JUI;

WHEREAS, neither JCDA nor the Company intend to become a public utility subject to regulation by the PSC as a result this transaction, and the Parties agree to structure this transaction and make all modifications necessary in order to ensure and protect the JCDA and Company from any requirement to become a public utility subject to regulation by the PSC; and

WHEREAS, the Parties desire to enter into this MOU to memorialize the understanding of the Parties and provide the terms upon which the Parties may rely in taking the further actions, and incurring costs, required for the implementation of the arrangement outlined herein;

NOW, THEREFORE, in consideration of the premises and representations set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Company Responsibilities.

a. Company has provided the following water demand requirements with respect to the Facility:

i. Company has requested that potable water service for construction purposes in the amount of not less than 160,000 gpd be available at the Real Property not later than six (6) months after JCDA closes on the WVWDA Loan, and that potable water service in the amount of not less than 320,000 gpd together with fire protection service be available at the Real Property not more than twelve (12) months after construction of the Water Line Extension begins.

b. Company will execute a User Agreement, the form of which is attached as Exhibit B.

c. Company will pay for water service at JUI's tariff rates and charges, as approved by the PSC from time to time.

d. Company agrees that it will satisfy all potable and non-potable water needs at the Facility and Real Property through water purchased from JUI and will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source, for a term of ten (10) years commencing on the first day of the first month the Facility begins commercial operations.

2. JUI Responsibilities.

a. JUI will plan, design and obtain required permits for the Water Line Extension. JUI agrees that the Water Line Extension will be planned, designed and permitted to

connect with the Facility in a manner and at a location agreed to by the Parties on property described in Deed Book 284 at Page 460 and designated as Map 12 and Parcel 1 on the tax maps of record in the Office of the Assessor of Jefferson County, West Virginia, and as shown on the map attached as Exhibit C. With regard to the location of JUI's connection with the Facility, the Parties agree to locate JUI's connection with the Facility through the existing casings (Option A) under West Virginia State Route 9 and the CSX Transportation railroad, as shown on the map attached as Exhibit C. If the existing casings (Option A) are determined not to allow JUI to properly provide water service to the Facility, JUI will locate its connection with the Facility through the new casings (Option B) under West Virginia State Route 9 and the CSX Transportation railroad, as shown on the map attached as in Exhibit C.

b. JUI agrees that the Water Line Extension will be planned, designed and permitted to provide the Facility, initially, with water service of not less than 160,000 gpd and, upon the completion of acquisition, construction and equipping of the Water Line Extension, not less than 320,000 gpd and fire protection service. The water service capacity required for the Facility and fire protection service shall be available not more than 15 months after JCDA closes on the WWDA Loan.

c. JUI will provide, at its cost, all engineering, design, permits, and rights-of-way and easements for the Water Line Extension, as well as the water meter and telemetry required for the Water Line Extension, up to an aggregate maximum cost of \$330,000 as reflected on the preliminary project budget attached hereto as Exhibit D.

d. JUI will provide water that meets any of the current or future applicable standards established by the West Virginia Department of Health and Human Resources, Bureau

for Public Health, the United States Environmental Protection Agency, or any other water quality laws, rules or regulations applicable to potable water in West Virginia.

e. JUI will use its best efforts to obtain the rights-of-way and easements needed for the acquisition, construction and equipping of the Water Line Extension.

f. JUI and JCDA shall enter into an O & M Agreement, alternate main line extension agreement and/or other form of agreement whereby JUI will agree to operate and maintain the Water Line Extension for a period of forty (40) years from the date of substantial completion of the Water Line Extension, and pay a "Use Fee" during the forty (40) year period to JCDA each month in an amount equal to \$2.88 per thousand gallons of water sold in the month immediately prior to all customers located and/or served on the Jefferson Orchards Site, specifically including, but not limited to, the Facility.

g. JUI shall have the right to provide potable water service to other customers from the Water Line Extension that are not located on the Jefferson Orchards Site, provided, however, that in providing such service to any additional customer(s) from the Water Line Extension, JUI agrees to maintain the capacity to deliver not less than 500,000 gpd to the Jefferson Orchards Site.

3. JCDA Responsibilities.

a. JCDA has obtained a preliminary commitment from the WVDO to recommend to the WVIJDC that a loan be made by the WVWDA on behalf of the WVIJDC to finance the acquisition, construction and equipping of the Water Line Extension in an amount sufficient to pay for all costs to construct the Water Line Extension (less the contribution of JUI) and having terms satisfactory to the JCDA (the "WVWDA Loan"). A copy of the preliminary commitment for the WVWDA Loan is attached as Exhibit E.

b. JCDA will coordinate with JUI on the acquisition, construction and equipping of the Water Line Extension per the plans and specifications provided by JUI.

c. JCDA will use its best efforts to obtain the rights-of-way and easements needed for the acquisition, construction and equipping of the Water Line Extension.

d. JCDA and JUI will enter into an O & M Agreement, alternate main line extension agreement and/or other form of agreement whereby JUI will agree to (i) operate and maintain the Water Line Extension for a period of forty (40) years (or until the principal of, and accrued interest (if any) on the WWWDA Loan is paid in full) from the date of substantial completion of the Water Line Extension, and (ii) pay a Use Fee, as defined hereinabove, to JCDA. At the termination of the O & M Agreement, alternate main line extension agreement and/or other form of agreement, or at such earlier time as the WWWDA Loan is paid in full, the Water Line Extension shall be conveyed by JCDA to JUI for the sum of \$1.00, and the obligation to pay the Use Fee shall terminate. JCDA shall not convey the Water Line Extension to JUI as provided for in the previous sentence until the WWWDA Loan is paid in full.

4. Conditions Precedent.

a. The MOU shall expire and be of no force and effect in the event that:

i. The Company fails or refuses to execute the User Agreement prior to the start of construction of the Water Line Extension;

ii. JCDA does not close on the WWWDA Loan;

iii. JCDA and JUI fail to enter into the O & M Agreement, alternate main line extension agreement and/or other form of agreement;

iv. The WVWDA Loan does not include terms and conditions providing, among other things, that the monthly debt service for the WVWDA Loan shall be equal to the Use Fee paid by JUI to JCDA, as hereinabove described;

v. JUI or JCDA fail to obtain all required permits, right-of-ways and easements, and approvals for the Water Line Extension; or

vi. The O & M Agreement, alternate main line extension agreement or other form of agreement, WVWDA Loan or the Water Line Extension are not approved by the PSC.

5. Counterparts. This MOU may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MOU may also be executed and delivered by facsimile signature and in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. Entire Agreement. This MOU (including any exhibits and schedules hereto) constitutes the full and entire understanding and agreement between the Parties with respect to the subject matter hereof. The Parties may enter into such other agreements they deem necessary to carry out the provisions of this MOU.

7. Amendment; Waiver. This MOU may be amended, modified or terminated and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by the Parties hereto. No waivers of or exceptions to any term, condition or provision of this MOU, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of the Parties.

9. Severability. The invalidity or unenforceability of any provision of this MOU shall in no way affect the validity or enforceability of any other provision.

10. Governing Law. This MOU and any controversy arising out of or relating to this MOU shall be governed by and construed in accordance with the laws of the State of West Virginia as to matters within the scope thereof, without regard to conflict of law principles that would result in the application of any law other than the law of the State of West Virginia.

11. Forum Selection. The Parties agree that any controversy arising out of or relating to this MOU, or the matters to which this MOU refers, shall be heard in The Circuit Court of Jefferson County, West Virginia.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their respective duly authorized representatives as of the day and year first above written.

_____ [COMPANY]

By: _____
Its: _____

JEFFERSON COUNTY ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
Its: Chairman

JEFFERSON UTILITIES, INC.

By: _____
Its: President

EXHIBIT A

Jefferson Orchards Site



Jefferson Orchard Property



16" Waterline Extension to Jefferson Orchard Property

- Proposed Waterlines
- - - Existing Waterlines
- Hydrant

EXHIBIT B

Form of User Agreement

WATER USER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____ 2017, by and among Jefferson Utilities, Inc., a West Virginia corporation (“JUI”), the Jefferson County Development Authority, a public corporation of the State of West Virginia (the “JCDA”), and _____, a _____ (the “Customer”) (collectively, the “Parties”).

W I T N E S S E T H:

WHEREAS, the JCDA is a public corporation of the State of West Virginia created by The County Commission of Jefferson County pursuant to Chapter 7, Article 12, of the West Virginia Code, for the express purpose, among others, of promoting, developing and advancing business prosperity and economic welfare of Jefferson County, its citizens and its industrial complex;

WHEREAS, JUI is a privately-held corporation certificated by the Public Service Commission of West Virginia (the “PSC”) as a public utility to provide potable water service to approximately 3,000 customers in areas of Jefferson County, West Virginia through the utility’s potable water treatment, storage and distribution system (the “JUI Water System”);

WHEREAS, there is an approximately 400-acre tract of real property located in Jefferson County, West Virginia, in the vicinity of West Virginia State Route 9 that is commonly known as Jefferson Orchards (the “Jefferson Orchards Site”);

WHEREAS, the Company plans to acquire, construct, own and operate a manufacturing facility (the “Facility”) on a parcel of real property comprising approximately 130 acres which is a part of the Jefferson Orchards Site (the “Real Property”);

WHEREAS, the Real Property is located within the service territory of JUI, however, potable water service is not currently available at the Real Property;

WHEREAS, the Parties have held discussions concerning the design, acquisition, construction and equipping of the necessary additions, betterments and improvements to the JUI Water System to provide water service to the Real Property, and thus, the Facility;

WHEREAS, the Company has stated that, in order acquire, construct equip and operate the Facility, the Company will initially require 160,000 gallons of water per day (“gpd”) through the construction period, expected to be 12 months, increasing to 320,000 gpd of water, together with fire protection service;

WHEREAS, the additions, betterments and improvements to the JUI Water System required to provide potable water service to the Facility in the amounts required by the Company include, but are not limited to, approximately 10,800 linear feet of 16-inch water line and a 660,000 gallon water storage tank, and all necessary appurtenances (collectively, the “Water Line Extension”);

WHEREAS, in order to access loan monies from the West Virginia Infrastructure and Jobs Development Council (the "WVIJDC"), based on the recommendation of the West Virginia Development Office ("WVDO"), with the West Virginia Water Development Authority ("WVWDA") providing a loan at the direction of the WVIJDC, at the most favorable interest rate and other terms, the Parties have determined, and JCDA has agreed, that the JCDA will (i) acquire, construct and equip the Water Line Extension; (ii) borrow from the WVWDA the necessary funds to finance the portion of the costs associated with the acquisition, construction and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000 (as further defined herein); and (iii) enter into an operation and maintenance agreement with JUI whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the Facility, and pay a monthly Use Fee to JCDA; and

WHEREAS, in recognition of the substantial investment required for the Water Line Extension, the Company has agreed that it will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source for a term of ten (10) years commencing on the first month the Facility begins commercial operations.

NOW THEREFORE, in consideration of the Parties mutual obligations and interests, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

1. JUI shall plan, design, and obtain the required permits for the Water Line Extension, which extension will be planned, designed and permitted to provide the Facility, initially, with water service of not less than 160,000 gpd and, upon the completion of acquisition, construction and equipping of the Water Line Extension, not less than 320,000 gpd and fire protection service. JUI agrees that the Water Line Extension will be planned, designed and permitted to connect with the Facility on property described in Deed Book 284 at Page 460 and designated as Map 12 and Parcel 1 on the tax maps of record in the Office of the Assessor of Jefferson County, West Virginia. JUI shall have available water service for construction purposes to the Real Property not later than six (6) months after JCDA closes on the WVWDA loan, and it shall have available water service to the Facility and fire protection no sooner than fifteen (15) months after JCDA closes on the WVWDA loan. JUI will provide water that meets any of the current or future applicable standards established by the West Virginia Department of Health and Human Resources, Bureau for Public Health, the United States Environmental Protection Agency, or any other water quality laws, rules or regulations applicable to potable water in West Virginia.

2. After closing on the WVWDA loan, JCDA shall proceed with acquiring, constructing and equipping the Water Line Extension, provided, however, the Parties agree that JCDA shall have no obligation to begin acquiring, constructing and equipping the Water Line Extension until Customer provides JUI with the required easement(s) specified in Section 3 of this Agreement.

3. In exchange for the acquiring, constructing and equipping of the Water Line Extension, Customer agrees to the following:

(a) Customer shall provide to JUI an easement(s) for the installation, operation, maintenance, repair, and removal of water lines and facilities on the Real Property; and

(b) Company agrees that it will satisfy all potable and non-potable water needs at the Facility through water purchased from JCDA and will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source for a term of ten (10) years commencing on the first month the Facility begins commercial operations.

4. Upon substantial completion of the Water Line Extension, Customer agrees it shall become a water customer of JCDA. Customer agrees it shall remain a water customer and purchase all of its water requirements from JCDA for a period of at least ten (10) years from and including the date on which the Customer begins taking water from the Water Line Extension for use at the Facility.

5. Customer agrees to pay for water service at JCDA's tariff rates and charges as they may be approved by the PSC from time to time, which rates and charges shall be the same as the rates and charges of JUI.

6. The JUI shall be responsible for the operation and maintenance of the water facilities extended to serve the Facility that are upstream of the meter(s) that will serve the Facility, while Customer agrees that it shall be responsible for any facilities that are downstream of the meter(s) that will serve the facility. Neither JUI nor JCDA shall be liable for any damage or failure to pipelines, pumps, water distribution system or any other equipment or facilities Customer constructs or installs downstream of the meter(s) that will serve the Facility.

7. Customer agrees that it will not resell water provided under this Agreement to any other entity without the prior written consent of JUI and JCDA.

8. The term of this Agreement shall be forty (40) years from and including the date on which JUI begins delivering water to the Facility ("Initial Term"). Customer agrees that it may not terminate this Agreement during the Initial Term. After expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods unless and until terminated by either party by providing the other party ninety (90) days written notice by certified mail, return receipt requested.

9. In recognition of the fact that the rights and obligations of the Parties hereunder are individually negotiated and specific to the Parties, this Agreement shall not be assignable by either party without the consent of the other party, which consent shall not be unreasonably withheld.

10. All notices or other communications provided for or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Any such notice shall be given or served by United States certified mail, postage pre-paid, return receipt

requested. Notice given in accordance herewith shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if such addressee refused delivery thereof). A party's address may be changed by written notice to the other party, but shall not become effective until such notice is actually received. Notices given by counsel for a party shall be deemed given by that party.

Jefferson Utilities, Inc.
Attn: B. Lee Snyder, President
270 Industrial Boulevard
Kearneysville, West Virginia 25430

Jefferson County Economic Development Authority
Attn: Executive Director
Post Office Box 237
Charles Town, West Virginia 25414

11. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, express or implied. This Agreement may be modified or supplemented only by a written document signed by an authorized representative of each party.

12. This Agreement shall be governed in all respects by the laws of the State of West Virginia.

13. This Agreement may be signed in counterparts, which together shall constitute one agreement. If this Agreement is signed in counterparts, the Parties shall be bound until each of them has duly executed, or caused to be duly executed, a counterpart of this Agreement.

14. The Parties acknowledge that their respective counsel have reviewed and revised this Agreement and hereby agree that the normal rule of construction—to the effect that any ambiguities are to be resolved against the drafting party—shall not be employed in interpretation of this Agreement or any exhibits or amendments hereto.

15. The failure by either of the Parties to enforce against the other any term or provision of this Agreement shall not be deemed a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

[Signature Page Follows]

In witness hereof, the Parties have signed this Agreement as of the day and year first written above.

JEFFERSON UTILITIES, INC.

Its: President

**JEFFERSON COUNTY DEVELOPMENT
AUTHORITY**

Its: Chairman

[CUSTOMER]

By: _____
Its: _____

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2017, by _____, who is the _____ of _____.

My commission expires: _____.

Notary Public

[SEAL]

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by _____, who is _____.

My commission expires: _____.

Notary Public

[SEAL]

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2017, by _____, who is the _____ of _____.

My commission expires: _____.

Notary Public

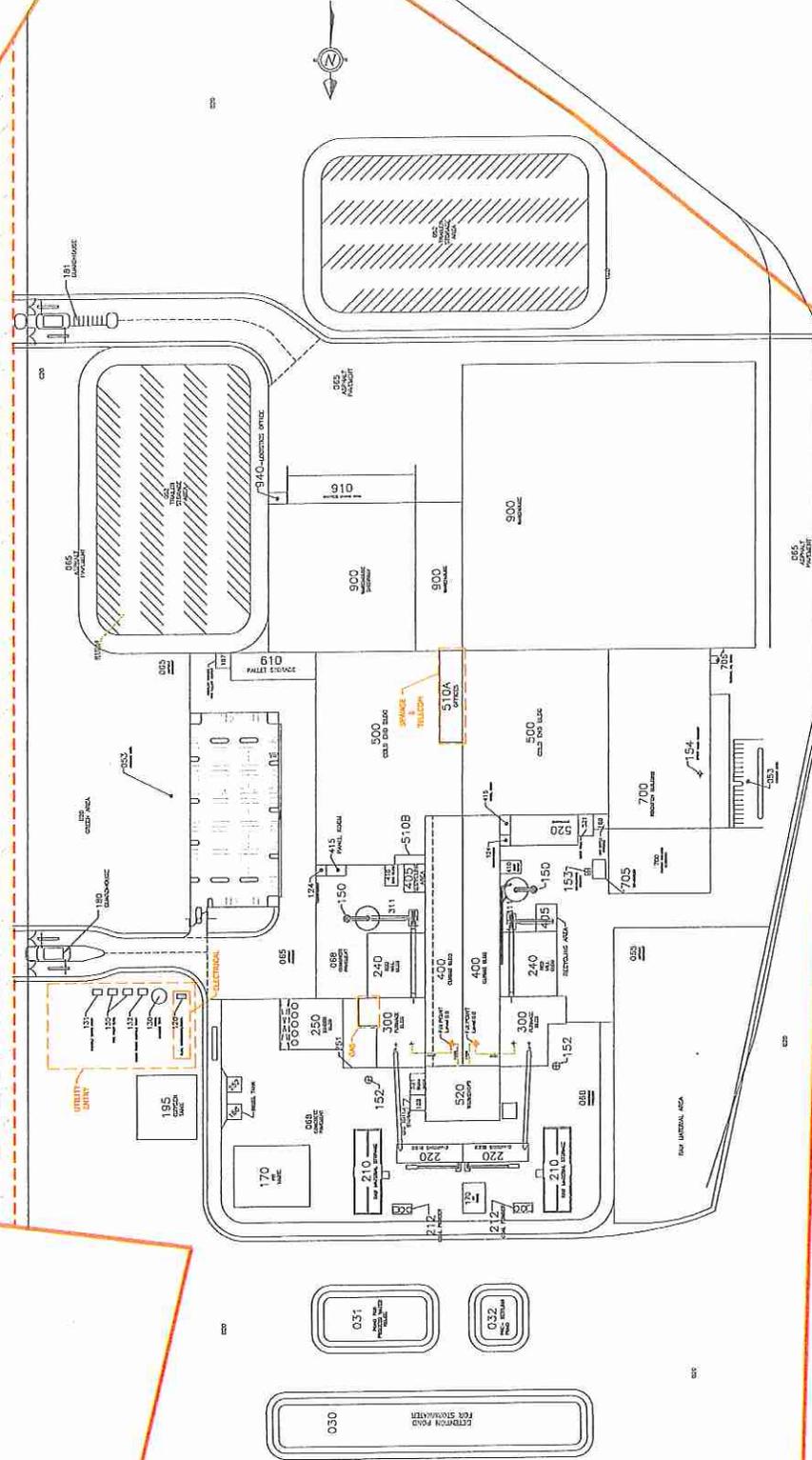
[SEAL]

EXHIBIT C

Facility Map

EXHIBIT A: CONFIDENTIAL
 (SUBJECT TO CHANGE WITH
 APPROVAL TO CHANGE FROM ALL
 PARTIES)
 WATERLINE LEGEND
 PROJECT SHUTTLE
 WATERLINE & ESMIT
 PROPOSED FUTURE
 WATERLINE & ESMIT

Area =
 81758m²
 8,1758ha
 20.2 acre



SHUTTLE
 ROCKWOOL
 FIRESAFE INSULATION
 Building numbers and areas
 Jefferson Orchard
 L0398-9012X

EXHIBIT D

Project Budget

JEFFERSON COUNTY ECONOMIC DEVELOPMENT AUTHORITY
 Waterline for Project Shuttle

DRAFT 5/15/17

PROJECT COSTS	Total	JUI	JCEDA
1 Total Construction			
Contract No. 1	2,529,950.00	0.00	2,529,950.00
Contingency 10%	252,995.00	0.00	252,995.00
2 Technical Services			
a. Preliminary Design	65,000.00	65,000.00	
b. Final Design	20,000.00	20,000.00	
c. Bidding & Negotiation	12,500.00		12,500.00
d. Construction Management	17,500.00		17,500.00
e. RPR/Inspection	60,000.00		60,000.00
f. Special Services			
Funding Applications/Meetings	7,500.00		7,500.00
Environmental Assessment/Impact Statement	17,500.00		17,500.00
Engineering & Topographic Surveys	5,000.00		5,000.00
Geotechnical Engineering	25,000.00		25,000.00
Land Surveys & Easement Preparation	15,000.00		15,000.00
Land Planning & Partioning Activities	7,500.00		7,500.00
Expert Witness Before Agencies	25,000.00		25,000.00
3 JUI Capital Investment			
a. Telemetry	15,000.00	15,000.00	
b. Meters	40,000.00	40,000.00	
4 JUI Accounting (Griffith)	52,000.00	52,000.00	
5 JUI Legal Fees			
a. Project Attorney (S&J)	52,000.00	52,000.00	
b. Land & ROW Attorney	25,000.00	25,000.00	
6 Administration	65,000.00		65,000.00
7 Lands & ROWs			
a. Acquisition/ROW Costs	33,000.00	33,000.00	
b. Easement plat and recordation	7,000.00	7,000.00	
8 Miscellaneous			
a. DOH permit	3,000.00	3,000.00	
c. Bureau of Public Health permit	3,000.00	3,000.00	
d. Other	15,000.00	15,000.00	
e. Project Contingency/Other	9,555.00		9,555.00
9 Total of Lines 1 through 8	3,380,000.00	330,000.00	3,050,000.00
COST OF FINANCING			
10 Funded Reserve	0.00	0.00	0.00
11 JCEDA Legal Counsel	30,000.00	0.00	30,000.00
12 Total Cost of Financing (line 10 through 12)	30,000.00		
13 Total Cost of Project (line 9 plus line 12)	3,410,000.00		
SOURCE OF OTHER FUNDS			
14 JUI Contribution	330,000.00		
15 State Grants			
16 Other Sources			
17 Total Non-WVIJDC Sources	330,000.00		
18 Size of WVIJDC Financing (Line 13 minues Line 17)	3,080,000.00		

Jefferson County Economic Development Authority

Date

[Engineer]

Date

Jefferson Orchard Extension Project

Location: Wiltshire Boulevard to Jefferson Orchard

Start Date: TBD

Engineering, Permitting & Easements	Estimate Net Price	Estimate Quantity	Estimate
Accounting, legal, PSC filings	\$ 150,000.00	LS	\$ 150,000.00
Geotechnical Study	\$ 25,000.00	LS	\$ 25,000.00
Waterline Engineering	\$ 88,400.00	LS	\$ 88,400.00
Waterline Permitting	\$ 6,000.00	LS	\$ 6,000.00
Easements	\$5 / ft	10,600	\$ 53,000.00
Easement plat & recordation	\$ 7,000.00	LS	\$ 7,000.00
Subtotal			\$ 329,400.00

Material for 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
16 C909 PVC PIPE ULTRA BLUE	\$ 20.89	7400	\$ 154,586.00
16 C909 PVC PIPE ULTRA BLUE (onsite)	\$ 20.89	3200	\$ 66,848.00
12 C909 PVC PIPE ULTRA BLUE	\$ 16.50	200	\$ 3,300.00
16 MJ 11-1/4 BEND(I)CP DI C153	\$ 336.65	6	\$ 2,019.90
16 MJ 22-1/2 BEND(I)CP DI C153	\$ 318.22	6	\$ 1,909.32
16 MJ 45 BEND (I) CP DI C153	\$ 331.77	6	\$ 1,990.62
16 MJ 90 BEND (I) CP DI C153	\$ 501.55	7	\$ 3,510.85
16X16 MJ TEE (I) CP DI C153	\$ 651.07	6	\$ 3,906.42
16X12 MJ TEE (I) CP DI C153	\$ 513.85	1	\$ 513.85
12" GV W/ACC DI	\$ 1,618.49	1	\$ 1,618.49
12" FOSTER ADPT W/ACC	\$ 313.05	1	\$ 313.05
16 FOSTER ADPT 16FABC W/MJ AC	\$ 388.18	28	\$ 10,869.04
UFR1500-CA-16-I RETAINER W/ACC	\$ 170.39	72	\$ 12,268.08
16 MJ BUTTERFLY VALVE O/L	\$ 1,584.78	17	\$ 26,941.26
564-S VLV BOX WTR COMP IMP	\$ 64.63	17	\$ 1,098.71
VBFA-KFLO-16 VALVE BOX ADAPTER	\$ 102.47	17	\$ 1,741.99
6X1000' NON-DET TAPE-WTR LINE	\$ 25.71	8	\$ 205.68
6X1000' NON-DET TAPE-WTR LINE (onsite)	\$ 25.71	4	\$ 102.84
12GA X 500' BLUE SOLID WIRE	\$ 0.27	7400	\$ 1,998.00
12GA X 500' BLUE SOLID WIRE (onsite)	\$ 0.27	3200	\$ 864.00
TRACER WIRE ACCESS BOX	\$ 35.00	14	\$ 490.00
Above Ground Storage Tank (445,000 gal)	\$ 559,709.00	1	\$ 559,709.00
Above Ground Storage Tank (300,000 gal)	\$ 366,000.00	1	\$ 366,000.00
Concrete Slab	\$ 15,000.00	2	\$ 30,000.00
8" Dectecto Check Meter & Vault	\$ 40,000.00	1	\$ 40,000.00
Stone Dust delivered	\$ 24.00	5772	\$ 138,528.00
Seed	\$ 50.00	194	\$ 9,700.00
Straw	\$ 5.00	1003	\$ 5,015.00
Fertilizer	\$ 18.00	287	\$ 5,166.00
Subtotal			\$ 1,451,214.10

Installation of 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
Foreman/truck	\$ 75.00	310	\$ 23,250.00
Operator-2	\$ 36.00	310	\$ 11,160.00
Operator-3	\$ 36.00	310	\$ 11,160.00
Operator-4	\$ 36.00	310	\$ 11,160.00
Laborer-1	\$ 29.00	310	\$ 8,990.00
Laborer-2	\$ 29.00	310	\$ 8,990.00

Installation of 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
Seed/Straw Laborer	\$ 58.00	150	\$ 8,700.00
Automatic Traffic Signals/hauling	\$ 30.00	310	\$ 9,300.00
Lead Excavator (330 Size Machine)	\$ 125.00	310	\$ 38,750.00
Backfilling excavator (200 JD)	\$ 100.00	310	\$ 31,000.00
330 w/breaker	\$ 257.00	150	\$ 38,550.00
Roller/bucket combo	\$ 75.00	310	\$ 23,250.00
Wheel Loader	\$ 50.00	100	\$ 5,000.00
Skid Steer 333D	\$ 42.00	310	\$ 13,020.00
Dump Truck hauling off debri and dirt	\$ 60.00	310	\$ 18,600.00
Dump Truck hauling in of stone bedding	\$ 60.00	310	\$ 18,600.00
bedding box	\$ 40.00	100	\$ 4,000.00
Drilling & Blasting for line	\$ 16.50	10600	\$ 174,900.00
Subtotal			\$ 458,380.00

Bore	Estimate Net Price	Estimate Quantity	Estimate
New Bore Locations (bores under Rt 9 and RR)	\$ 598,350.85	1	\$ 598,350.85
Bore and Jack Locations	\$ 410.00	220	\$ 90,200.00
Permitting	\$ 25,000.00	1	\$ 25,000.00
Stone Dust delivered	\$ 24.00	40	\$ 960.00
Seed/Straw	\$ 10.00	50	\$ 500.00
Subtotal			\$ 715,010.85

Subtotal			\$ 2,954,004.95
Contingency Overage		10% overage	\$ 295,400.50
Total Project Cost			\$ 3,249,405.45

EXHIBIT E

Binding Commitment for Funding

EXHIBIT 4

Utility Commitment Letters



Lucas I. Cede
Senior Economic Development Advisor

10602 Bower Avenue
Williamsport, MD 21785

March 21, 2017

Mr. John Reisenweber
Executive Director
Jefferson County Development Authority
P.O. Box 237
Charles Town, WV 25414

Re: Project Shuttle – Electric Service – Jefferson Orchard Site - MOU

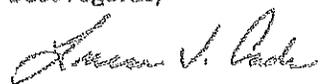
Dear John:

Per your email request of 20 March, please find the following statements relating to proposed electric service for the referenced project and site.

- Potomac Edison believes it can meet an in-service date for *June 1, 2019*; however, final commitment is dependent on the results of the Detailed Load Study (DLS) and when the customer provides formal notice to proceed by signing an Electric Service Agreement (ESA).
- Potomac Edison will provide a Dual Feed 34.5 kV overhead (OH) service to the customer's property line. Per the Potomac Edison WV Line Extension tariff, Potomac Edison will install the first line extension at its expense provided the total estimated installed cost of the extension does not exceed nine (9) times the customer's estimated annual net revenue. The full cost of the second line extension will be paid by the customer. Detailed costs to +/- 20% will be provided upon completion of the Detailed Load Study (DLS).
- Potomac Edison will provide capacity equal to the requested initial service of 15 MW, with the potential to increase as the operations expand.
- Potomac Edison's service from the Kearneysville 138 kV – 34.5 kV Substation is excellent. There has been no service interruptions on the source 138 kV lines for at least 5 years, and only two momentary blips on the 34.5 kV line in the same time period. Any customer who would have had a second 34.5 kV service would not have been affected by the two momentary outages.
- If any underground (UG) service is chosen at any point along the service extension, the customer is responsible for all trenching, conduit, and backfilling on both the first and second lines. Per the Line Extension tariff, the extension costs for the first line would be covered by the revenue screen, while the costs for the second line extension would be fully paid for by the customer.

I trust this document meets your client's informational needs at this time. Should you have any questions or comments, do not hesitate to contact me at your convenience.

Best regards,

A handwritten signature in cursive script, appearing to read "Allison V. Code".

Lucas Code

Senior Economic Development Advisor

FirstEnergy



April 3, 2017

John Reisenweber, Executive Director
Jefferson County Development Authority
P.O. Box 237
Charles Town, WV 25414

Dear Mr. Reisenweber:

Mountaineer Gas Company (Mountaineer) has been made aware of a potential industrial customer (Project Shuttle) that is interested in the development of a facility at the Jefferson Orchards site in Jefferson County, WV. The facility will require an average total daily gas consumption of 1.61 MMSCF per day at a minimum of 20 psig. Mountaineer provides natural gas distribution service in the Martinsburg, WV area just west of the Jefferson Orchards site. A distribution main line extension of approximately 16,000 feet will be required to reach the proposed site. Based on the assumption that Project Shuttle will commit to taking natural gas utility service from Mountaineer under its LGS rate schedule as approved by the WV Public Service Commission, Mountaineer can commit to constructing the pipeline extension and providing service to Project Shuttle with no contribution in aid of construction required from Project Shuttle. This construction will require approximately 4-6 months for planning and completion. This process will begin upon written commitment from the customer to begin service within 2 months after completion. Therefore Mountaineer can guarantee availability of service 6 months following commitment from the customer. The utility main line extension will provide service to the Jefferson Orchards site as indicated on the attached site plan at or near the utility entrance pad or at any mutually agreeable location on the site plan subject to permitting, constructability, and coordination with other utilities. The LGS rate schedule and General Transportation Service tariffs are also attached. The current LGS transportation rate is \$1.72 per MCF and the fixed monthly customer charge is \$534.11. There are other applicable rates as detailed in the attached tariffs depending on the customer's choice of service.

Mountaineer is currently working on multiple distribution system projects in the Martinsburg, WV area. The need for optimal service including increased pressure and

capacity to the Project Shuttle site will be considered by Mountaineer as a priority and such improved service will be made available to Project Shuttle as soon as possible depending on regulatory approval, permitting approval, and final construction.

Please let me know if additional information is required. I can be reached at 1-888-420-4427 extension 88654. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Westfall', with a long horizontal flourish extending to the right.

Thomas D. Westfall
Director of Gas Supply and
Technical Services

SLA Guidelines

Conditions under which Frontier shall provide Service Level Commitments and Service Credits to Ethernet Customers

- The Customer must request Service Response Credit [SRC] in writing within 30 days of the last day in the calendar month in which the failure occurred.
- This SLA is only applicable to those Customer sites where the applicable Frontier service and technology exist, and where Frontier is permitted by law to provide service.
- This SLA does not apply to outages or service degradation during scheduled maintenance or outages caused by customer action, force majeure, or service problems caused by third party providers on meet-point circuits or by alternate carriers under direct contract with the customer. This SLA also does not apply to outage periods that are extended pending reply from customers.
- This SLA does not apply to services provided over third party facilities, through a carrier hotel, or over Frontier facilities which terminate through a meet point circuit with a third party carrier. EXCEPTION: Ethernet SLAs apply equally to EvPL solutions from in-franchise locations to Out-of-Franchise (OOF) locations through EReach NNIs and access circuits.
- This SLA does not cover TDM services [DS1, NxDS1 and/or DS3 services].
- For cascading failures, only the primary or causal failure is used in determining Service Levels and associated consequences. Only one Service Level Component metric can be used for determining Service Credits.
- In the event of the failure of Frontier to meet multiple Service Level Component metrics in a one-month period, the highest Service Credit will apply, not the sum of multiple Service Credits.
- The total amount credited to a Customer in any given month is limited to 25% of Customer's monthly fee for the affected service. EXCEPTION: SLA below 95% Availability = 50% credit.
- The final determination of whether Frontier has or has not met SLA metrics will be based on Frontier's methodology for assessment of compliant performance.

Methodology for Performance Measurement

These formulas specify the means of calculating operational and performance SLA measurements to determine compliance. Where the measurements demonstrate that Frontier's maintenance support or the company's network performance do not meet criteria set forth in our standard Ethernet Service Level Agreement (SLA), the customer will be entitled to a Service Response Credit [SRC] as specified in that SLA.

Operational SLAs

Availability

For a site to be deemed operational, the customer must be able to send and receive data from the ingress Network Interface Device [NID] at the customer premise to the customer destination egress NID or to the Frontier Internet Port. Service to the customer site is compliant if data delivery meets the SLA

thresholds for Latency, Packet Loss, and Jitter. Jitter performance is primarily for Real Time QoS service and does not apply to Internet services.

Availability of service to a customer site is calculated on a monthly basis. The measurement is based on minutes of outage during the applicable month. The service credit formula is the number of minutes during a calendar month that the Customer's Ethernet/DIA ingress port is operational divided by the total minutes in that same calendar month. Calculation is based on the Stop-Clock Method referenced by date-time of the customer-reported trouble ticket for service interruption and ends when Frontier re-establishes compliant port operation. Credits are awarded within a 30 day period after eligibility for the SRC has been verified.

Monthly network availability (%):

1-(Total minutes of outage per month)/(Days in the month x 24 hours x 60 minutes)×100=Percent Availability

Mean Time to Repair [MTTR]

MTTR SRCs are provided based on the average active (open) duration of all trouble tickets over the period of one month. The time to repair [TTR] is measured on a stop-clock basis measured according to the following terms and conditions:

- TTR is measured from the date-time a customer-reported trouble ticket is opened by the company to the date-time the service is returned to SLA-compliant operation, and such ticket is closed by Frontier Communications.
- In measuring the TTR, any stop-clock time or adjusted duration associated with the trouble ticket will be subtracted from the TTR. Stop-clock time refers to:
 - Periods when customer testing occurs
 - Periods when the company is waiting customer authorization or access to facilities necessary for diagnosis, repair, or test
 - Periods when the ticket is held open by the customer to ensure the trouble is resolved
- MTTR shall be measured on a calendar month basis and shall be calculated by adding the TTR for all interruptions and dividing that sum by the total number of trouble tickets opened for interruptions during that month.

Performance SLAs

Latency

The customer is entitled to a Latency SRCs based on measurement of delay in milliseconds for round-trip transport of a packet from the ingress NID (Network Interface Device) to the egress NID and return to the ingress NID. Latency measurement is limited to data frames compliant with the subscribed CIR profile. The round trip delay includes ONLY the time the packet is transiting the Frontier network. The latency measurement is confined to transport delay measurement including link insertion delays, propagation delays, and queuing delays in the network. Credits are based on actual, average, monthly roundtrip latency. Credits will be approved for all affected customer ports.

Packet Loss

The Packet Delivery Service Level for Ethernet Service is for On-Net traffic between Frontier NIDs at customers premises. Packet delivery is the average number of packets which transit the Frontier network and are delivered to intended egress NIDs during a one month period. Packet Loss measurements are restricted to service frames that are compliant with the subscribed CIR profile. Interruptions caused by MTTR activity shall be excluded from the monthly Packet Loss measurement.

Packet Loss calculation yields the delivery efficiency of the network in terms of percent.

The calculation is:

$(\text{Total Packets forwarded} - \text{Total Packets received}) / (\text{Total Packets forwarded}) \times 100 = \text{Percent Packet Loss}$

Frame Jitter

Jitter is defined as the variation of the packet arrival rate or frame delay in milliseconds between ingress and egress NIDs. The Jitter definition is limited to compliant service frames within the subscribed Committed Information Rate (CIR) profile. The Jitter performance commitment does not apply to Internet service.

Service Response Credit [SRC] Hierarchy

In certain conditions, a specific SLA variance may take precedence over another SLA. In all cases, service credits are approved on a site-by-site basis. Where a problem might affect an entire five-node network, the customer may qualify for credits for service to all five locations.

OPERATIONAL SRCs: Specific determination of service credits for multiple Operational SLAs to multiple locations will be approved based on the following conditions:

- SRCs are approved on a site-by-site basis. For customers with LAN solutions having multiple circuits, determination of service credits will be measured and approved on the measurements of non-compliant service packets to individual customer sites. Non-compliant service packets are data packets that fall outside the performance guarantees in the Frontier SLA.
- Operational SLAs take precedence over Performance SLAs. During a period of service unavailability for any reason, no measurements can be taken on those network elements and thus, no Performance SLA SRCs can be approved to those sites. Service Credits will be approved based on the Operational SLA depending on availability and MTTR service commitments.
- The customer may qualify for multiple Operational SLA SRCs to a specific site. If a service outage continues beyond the MTTR as specified above in the MTTR standard, the customer will qualify for both the Port Availability service credit and MTTR credit in accordance with MTTR calculation methodology.

PERFORMANCE SRCs: Specific determination of service for multiple Performance SLAs to multiple locations will be approved based on the following conditions:

- The service performance delivered to a specific customer site is eligible for ONE Performance service credit per trouble ticket. Packet Loss, Latency, or Frame Jitter should be reported on a single trouble ticket. Credit will be awarded in accordance with the above measurement standards and SRC MRC amounts.



This Frontier Services Agreement ("FSA") is effective as of _____, 20____, by and between Frontier Communications of America, Inc. on behalf of itself and its affiliates which provide Equipment and Services identified in the Schedules ("Frontier"), and Fill in Customer's legal name here, whose primary address is Fill in Customer's full address here w/city, state, zip ("Customer").

1. Provision of Services and Equipment

a. Frontier will provide and the Customer agrees to pay for the communications, installation and maintenance services (collectively "Service"), and/or purchase or lease equipment ("Equipment"), described in this FSA and Schedules executed by Customer.

b. Customer acknowledges that certain Services may be governed by tariff or price schedule filed with the Federal Communications Commission and/or the state public utilities commission. In the event of any inconsistencies between this FSA and an applicable tariff, the tariff shall control except with respect to pricing, early termination charges or cancellation charges for which this FSA shall control.

c. Frontier will provide, maintain and repair the Frontier owned facilities and equipment used to provide the Services ("Frontier's Network"), up to and including the point at which Frontier's Network is made available for interconnection to Customer's premises equipment or inside wiring. Customer shall provide Frontier reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging, repairing or removing any Frontier Network components, including obtaining approvals, permits or licenses from third parties as necessary. Customer will cooperate in good faith and provide all reasonable information and authorizations required by Frontier for the purpose of installing Services and/or Equipment, performing routine network grooming, maintenance, upgrades, and addressing emergencies, including but not limited to design layout records of any Customer or third party network elements to be connected to the Services and Letters of Agency allowing Frontier to act on the Customer's behalf related to the Services and auxiliary third party services.

d. Only authorized agents and representatives of Frontier may perform maintenance work with respect to Frontier's Network. Any repair, alteration, configuration or servicing of Frontier's Network, Services or Equipment by Customer or third parties without the written consent of Frontier is a material breach of this FSA and cause for termination at Frontier's option.

e. If Frontier is unable to commence performance hereunder due to circumstances within Customer's control, any related costs incurred by Frontier, including but not limited to travel at normal rate and overtime labor rate expenses, will be reimbursed by Customer. Customer will reimburse Frontier for all costs incurred for installation, maintenance and repair if: (i) Frontier's Network is altered, maintained or repaired by any party other than Frontier, without Frontier's prior written consent, (ii) the malfunction of the Service or Equipment is the result of mishandling, abuse, misuse, improper operation, improper storage, or improper installation by anyone other than Frontier (including use in conjunction with equipment electrically or mechanically incompatible); or (iii) if the problem originated from a source unrelated to Frontier's Network.

f. Customer will provide (i) suitable building facilities (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of Frontier's Network in accordance with manufacturer's documentation and Frontier's installation standards, more fully described in the applicable Schedule; and (ii) a well-lighted and safe working area that complies with all local safety standards and regulations.

g. The Services or Equipment may be connected with the services or facilities of other carriers. Frontier may, when authorized by Customer and as may be agreed to by Frontier, act as Customer's agent for ordering facilities provided by other carriers to allow such connection of Customer's locations to Frontier's Network or to the network of an underlying carrier or service.

h. Customer is responsible for all charges billed by other carriers or third parties. Frontier shall not be responsible for the installation, operation, repair or maintenance or performance of equipment, facilities, software or service not provided directly by Frontier. Customer is responsible to provide equipment compatible with the Service or Equipment and Frontier's Network; and any wiring required to extend a communications termination and/or demarcation at the Customer premises. Customer will provide suitable building facilities for the provision of Services in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes, and Frontier's installation standards.

i. Customer is solely responsible for the selection, implementation and maintenance of security features for protection against unauthorized or fraudulent use of the Services and Equipment. Customer is solely responsible for ensuring that all of Customer's data are adequately secured, documented and backed-up at all times. Frontier and its contractors are not responsible or liable for data loss for any reason.

j. Frontier will manage the Frontier Network in Frontier's sole discretion, and reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Services or provisioning the Equipment. Frontier will endeavor to provide reasonable notice prior to any scheduled maintenance, planned enhancements or upgrades, which may result in a degradation or disruption in Service. Frontier reserves the right to suspend Service for emergency maintenance to Frontier's Network without notice to Customer. Customer shall designate a primary contact for receipt of such notice.

k. Customer represents and warrants that its use of the Service and Equipment will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this FSA and Customer will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities with respect to such use.

l. Except as expressly identified in a Schedule, Customer and its employees shall be the only permitted end-user of the Services and leased Equipment. Customer shall not resell or bundle the Services or leased Equipment, nor permit any third party to access the Services or leased Equipment in exchange for compensation of any kind.

2. Term

The term of this FSA will commence as of the date identified in the introductory paragraph above or the date the FSA is executed by both Parties, whichever is later (the "Effective Date") and will continue through the Service Term with respect to any Service or Equipment provided pursuant to this FSA. Customer will purchase the Services, or lease Equipment, identified in each Schedule for the period of time stated in the Schedule (the "Service Term"). Unless otherwise stated in the Schedule, the Service Term and billing for the Service, will begin upon the earlier of (i) Customer's use of the applicable Service(s) or Equipment or (ii) five (5) days following Frontier's installation of such Service(s) or Equipment, and such date is deemed the commencement of the applicable Service Term. If neither party provides the other with written notice of its intent to terminate a Service at least sixty (60) days prior to expiration, the Service Term of each Service will automatically renew for additional one-year periods, subject to the terms and conditions of this FSA and at the then applicable one-year term rate, excluding promotional rates. If the parties agree to negotiated renewal

terms, such terms will not be effective unless and until documented in writing and executed by both parties.

3. Payment

a. Customer shall pay all charges set forth in the Schedules and in applicable tariffs during the Service Term. Frontier will invoice Customer any non-recurring charges ("NRC"), monthly recurring charges ("MRC"), and usage based charges.

b. In addition to the applicable charges set forth in the tariffs and Schedules, Customer shall pay all applicable federal, state or local sales, use, privilege, gross receipts, utility, value added, excise or other taxes (excluding taxes based on Frontier's net income), or any charges in lieu thereof, and any applicable surcharges or fees, whether government mandated or Frontier initiated including but not limited to Primary Interexchange Carrier Charge, Federal Pre-Subscribed Line Charge, Carrier Cost Recovery Surcharge, E-911, and Universal Service and Local Number Portability, in the amounts applicable at the time of billing. Customer shall also be responsible for third party charges and penalties incurred as a result of Customer's use of the Services or Equipment.

c. All payments shall be due within thirty (30) days of the invoice date and, in addition to and not in lieu of any other remedies Frontier may have hereunder or under the law as a result of Customer's failure to pay, late payments shall be subject to a late payment fee of the lesser of one and one-half percent (1.5%) per month or the maximum allowed by law. In the event Customer disputes any invoiced amount, Customer will pay all charges not disputed, and notify Frontier of the dispute in writing, providing an explanation of the basis for the dispute. If Frontier does not receive notice of a payment dispute by Customer within ninety (90) calendar days after the date of an invoice, such invoice will be final and not subject to further challenge. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. Frontier reserves the right to immediately suspend or terminate any or all Services or the installation or lease of any or all Equipment if Customer is overdue more than thirty (30) days for payments that have not been disputed in good faith.

4. Cancellation and Early Termination Charges

a. If Customer cancels any Service or Equipment prior to delivery of any Equipment or installation of the Service or Equipment, Customer shall pay a cancellation charge equal to the NRC and one (1) month of MRC for the Service, plus the total costs and expenditures of Frontier in connection with establishing the Service prior to Frontier's receipt of notice of cancellation, including but not limited to any Equipment restocking fees.

b. Following installation, Customer may terminate a Service or Equipment by providing at least thirty (30) days prior written notice to Frontier. All unpaid amounts shall be due upon termination of any Service identified in a Schedule for any reason. In addition, and unless otherwise specifically provided in the applicable Schedule, if any Service or Equipment is terminated by Customer for any reason other than breach by Frontier or by Frontier due to Customer's breach, then Customer shall pay Frontier a termination charge equal to the applicable MRC and all related taxes and surcharges multiplied by the number of months remaining in the Service Term. Partial months shall be prorated.

c. Customer agrees that Frontier's damages in the event of early termination will be difficult or impossible to ascertain, and that the charges identified in this Section are intended, therefore, to establish liquidated damages in the event of termination and are not intended as a penalty.

5. Limitation of Liability and Warranty Provisions

a. The liability of Frontier and its affiliates related to this FSA or the Service or Equipment provided under this FSA, shall in no event exceed the limitations of liability set forth in the applicable tariffs, or regulatory rule or order. If there is no applicable tariff, regulatory rule or order, the total amount paid for the applicable Service or Equipment during the prior 12 months. In cases of an Outage, Frontier's liability

shall be limited to 1/720 of the MRC for each hour after Frontier is notified of the Outage. An "Outage" is an interruption in Service or use of the Equipment caused by a failure of Frontier's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside Frontier's direct control. Notwithstanding the above, Frontier will not be liable to Customer for interruptions in Services or Equipment caused by failure of hardware or software, failure of communications services, power outages, or other interruptions not within the complete control of Frontier. In addition, there will be no credits, reductions or set-offs against charges for Services or Equipment, or for interruptions of Services or Equipment, except as expressly set forth herein.

b. IN NO EVENT WILL FRONTIER OR ITS AFFILIATES BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. FRONTIER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS, LOSS OF USE, COST, CLAIM OR EXPENSE EXPERIENCED OR INCURRED BY CUSTOMER OR THIRD PARTIES RESULTING FROM THE USE OF THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO DAMAGE, LOSS OR LOSS OF USE OF CUSTOMER DATA OR FRAUD BY THIRD PARTIES.

c. Frontier warrants that Frontier's Network will be maintained in good working order. If any Service does not function substantially in accordance with applicable Service specifications as a result of Frontier's failure to maintain Frontier's Network (excluding degradation related to the acts or omissions of Customer or anyone using the Services, a force majeure event, or scheduled maintenance), Frontier's sole obligation is to repair the affected Service at Frontier's expense. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND FRONTIER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO FRONTIER'S NETWORK, SERVICES OR EQUIPMENT PROVIDED PURSUANT TO THESE TERMS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FUNCTION. FRONTIER DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT OR ACCESS OR OPERATION OF THE SERVICES OR EQUIPMENT WILL MEET CUSTOMER'S NEEDS, OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.

d. This FSA shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by Frontier. Customer agrees that Frontier has not made, and that there does not exist, any warranty, express or implied, that the use by Customer of Frontier's Services and/or the Equipment provided under this FSA will not give rise to a claim of infringement, misuse, or misappropriation of any intellectual property right.

e. Customer agrees that the Services and Equipment, and Frontier's performance hereunder are subject to the terms, conditions and restrictions contained in any applicable agreements (including software or other intellectual property license agreements) between Frontier and Frontier's vendors.

f. No action, regardless of form, arising out of this FSA or the Schedules may be brought more than two (2) years after the cause of action has arisen or charges have been billed whichever is earlier. The parties hereby waive the right to invoke any different limitation on the bringing of actions provided under applicable law.

6. Indemnification

Customer shall indemnify, defend and hold Frontier and its affiliates, and their respective directors, officers, employees, successors, assigns and agents, harmless from and against any and all claims, loss, damage, cost or expense (including reasonable attorneys' fees) to the extent arising out or relating to any claim, action or proceeding brought by any third party based upon: (i) Customer's breach of this FSA; (ii) Customer's

negligence or willful misconduct in the performance of its obligations under this FSA; (iii) use of the Equipment or Services, including but not limited to the content of communications transmitted thereby; (iv) any infringement of intellectual property or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right arising from Customer's or any other person's use of the Equipment or Services, any combination of the Equipment or Services with other products or services not provided by Frontier, or any modification of the Equipment or Services by anyone other than Frontier; (v) any bodily injury (including illness or death) or property damage caused by Customer or anyone within its control. The obligations under this Section 6 are independent of any other obligation under this FSA.

7. Confidentiality

a. Both parties agree that all terms and conditions set forth in this FSA shall be considered confidential, and that details of the terms of this FSA, shall not be disclosed to third parties, other than affiliates, employees, agents or contractors who have a need to know such information in the scope of their employment or engagement, without the prior written consent of the other party, unless required by law.

b. Customer and Frontier may disclose to each other information that is confidential in nature. In order to receive confidential treatment, all such information (hereafter "Information") shall be either (i) clearly marked as confidential if written, or clearly identified as confidential if oral or (ii) reasonably understood by the recipient, based on the nature of the Information or the circumstances of disclosure, to be confidential or proprietary to the discloser. Except as required by law or regulation, Customer and Frontier agree not to disclose any Information to any third party and to keep Information in a secure place available only to employees, affiliates, contractors or agents who are subject to obligations of confidentiality no less restrictive than those set forth herein, and who need to know the Information for purposes of the business dealing between Customer and Frontier, and to use Information only in connection with such business dealings. This Section is enforceable by injunction.

c. Information will lose its confidential status if obtained legitimately from a third party without restriction or upon the expiration of five (5) years from delivery of each item of Information. Information shall remain the property of the disclosing party and shall be returned to such party on request or upon termination of the business dealing between Customer and Frontier.

d. Notwithstanding anything herein to the contrary, Frontier shall have the right to include Customer's name in a public list of current customers who use Frontier's services, provided Frontier does not make any representation with respect to Customer and does not attribute any endorsements to Customer, without Customer's prior written consent. In addition, Frontier may publicly identify Customer as a new customer of Frontier or an existing customer obtaining expanded or additional services from Frontier, as the case may be.

8. Breach

a. **Breach by Customer:** If Customer fails to make any payment when due and such failure continues for five (5) days after notice, or Customer fails to comply with any other term or condition of this FSA or any Schedule and such failure continues for thirty (30) days after notice, then Frontier may either suspend the applicable Schedule (or any portion thereof) until the breach is remedied; terminate the applicable Schedule (or any portion thereof), or terminate this FSA and all Schedules. Notwithstanding the foregoing, Frontier may immediately suspend Services and, after giving notice to Customer with an opportunity to respond appropriate to the circumstances and Customer's failure to respond, Frontier may terminate any or all Services, retrieve Frontier Network elements from the service location and Equipment for which title has not transferred to Customer, in the following circumstances: (i) in the event of unauthorized, unlawful or improper use or abuse of the Frontier Network or Service; (ii) if, in the reasonable judgment of Frontier, Customer's use of the Frontier Network or Service has or will damage or have an adverse effect on Frontier's Network, its personnel, property or

service; (iii) such action is necessary to meet the exigencies of an emergency; or (iv) a court or other governmental authority having jurisdiction issues an order prohibiting Frontier from furnishing the Equipment or Services to Customer.

b. **Breach by Frontier:** If Frontier has not remedied any breach within thirty (30) days after Frontier's receipt of written notice from Customer of such breach (providing reasonable detail), Customer may terminate the Service which is the subject of such breach. This is Customer's exclusive remedy for a breach by Frontier.

9. Force Majeure

In no event will Frontier or its affiliates be liable for any delay in performance directly or indirectly caused by events beyond their control, including, but not limited to: acts or omissions of Customer, its agents, employees or contractors; acts of God; acts of the public enemy; acts of the United States, a state or other political subdivision; fire, floods or other natural disasters; accidents; wars; terrorism; cyber security events; labor disputes or shortages; and inability to obtain material, power, equipment or transportation.

10. Assignment

This FSA may not be assigned by either party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed, except that Frontier may assign this FSA to any successor to the business of Frontier by merger, consolidation or sale of assets or to any corporation controlling, controlled by or under common control with Frontier. Frontier may subcontract portions of the work to be performed hereunder to provision the Services or Equipment.

11. Work Site Conditions

a. If asbestos, or material containing asbestos, or any other hazardous or toxic materials are discovered during work pursuant to this FSA, Frontier will suspend its work for a reasonable period of time to permit Customer to engage a qualified firm to remove and dispose of the asbestos or other toxic or hazardous materials from the site. Such suspension may result in an equitable adjustment to the charges identified in the related Schedule, based on any increase in costs incurred by Frontier.

b. Customer agrees to release, indemnify, defend and hold harmless Frontier from and against any damages, losses, claims, demands or lawsuits arising out of or relating to the presence, removal or disposal of asbestos or any other hazardous or toxic material from the Customer's premises or location where Services or Equipment will be installed.

12. Title and Risk of Loss

a. Risk of loss or damage for Frontier Network elements installed at a Customer designated service location shall pass to Customer at time of delivery to Customer.

b. Any Frontier Network elements or Equipment installed at Customer's premises or location where Services or Equipment will be installed (which is leased or for which title has not transferred to Customer) remain the personal property of Frontier or Frontier's assignee, notwithstanding that it may be or become attached to or embedded in realty, and upon termination of this FSA or any Schedule (in whole or in part), all Frontier property shall be returned to Frontier in the same condition as installed, normal wear and tear excepted. Customer will not tamper with, remove or conceal any Frontier identifying plates, tags or labels. In the event Frontier property is not returned to Frontier in accordance with this Section, Customer will be billed for and pay to Frontier an amount equal to the retail value of the Frontier property, except to the extent such failure is caused by the negligence or willful misconduct of Frontier or its agents.



13. Competition

Customer recognizes the availability of competitive alternatives for receiving the Services and Equipment provided under this FSA, and has freely elected to enter into this FSA in order to receive the benefits it offers.

14. Government Regulation

To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, this FSA shall at all times be subject to changes, modifications, orders and rulings by the FCC and/or state public utilities commission or other regulatory agency. Frontier reserves the right to suspend, modify or terminate any Service without liability where any statute, regulation and/or ruling, including modifications thereto, by any regulatory agency (including the FCC), legislative body or court of competent jurisdiction, (i) prohibits, restricts or otherwise prevents Frontier from furnishing such Service, or (ii) has a material negative impact on Frontier's performance hereunder or the benefits provided by this FSA.

15. Governing Law

This FSA shall be governed by and construed according to the laws of the State in which Services or Equipment are being provided hereunder without regard to its conflicts of laws provisions. Any related litigation may be brought in any State or Federal courts of competent jurisdiction within such State. Customer and Frontier consent to personal jurisdiction in such courts.

16. No Waiver

If either party fails, at any time, to enforce any right or remedy available to it under this FSA, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

17. Severability

A declaration by any court, or other binding legal source, that any provision of this FSA or any Schedule is illegal and void, will not affect the legality and enforceability of any other provisions of this FSA, unless the provisions are mutually dependent.

18. Notice

All notices provided pursuant to this FSA will be in writing and delivered by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, or by regular mail and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of certified US Mail), or on the next day after the sending of the notice if sent overnight mail, or three (3) days after mailing if by regular mail to the address of the party designated to receive such notice.

19. Independent Relationship

Each party understands and agrees that it and its personnel are not employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times.

20. Dispute Resolution

Except as otherwise specifically provided in or permitted by this FSA, all disputes arising in connection with this FSA shall first be resolved through good faith negotiation. If, after negotiating in good faith for a period of ninety (90) calendar days or any agreed further period, the parties are unable to resolve the dispute, then each party may seek resolution by exercising any rights or remedies available at law or in equity. Customer and Frontier agree that each may only bring claims against the other in an individual capacity and not as a plaintiff or class member in any purported class, representative, or private attorney general proceeding.

21. Authorization and Entire Agreement

Each party represents that the person executing this FSA is authorized to enter into this FSA on its behalf. This FSA and any Schedules executed by the parties constitute the entire agreement between the parties pertaining to the subject matter herein and supersedes all prior oral and written proposals, correspondence and memoranda with respect thereto. This FSA may not be modified, amended or supplemented except by written agreement signed by an authorized representative of each party. Notwithstanding anything otherwise stated, a Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and of no effect or application toward this FSA.

Signature and information table for Frontier Communications of America, Inc. and Customer. Includes fields for Signature, Printed Name, Title, Date, and Contractual Notice.



Project Shuttle Team,

We appreciate the opportunity to help Project Shuttle with their data networking needs. Shentel is pleased to submit our response via the following proposal. Upon review, we hope you determine that our solution as well as our organization is designed to address both your current and future needs. Our solution will provide a flexible platform to ensure that York County can grow as their network needs change in the future.

Shentel is uniquely positioned to build a fiber-based network solution on behalf of Project Shuttle. We have long been providing commercial based solutions to key customers in our footprint with locally based offices and support staff. Shentel has a long and storied history of working with a wide array of fiber customers such as government entities, colleges and universities as well as large commercial clients. Based on our past experience, we feel we understand your needs as related to critical network infrastructure and stand ready to meet and exceed your requirements.

Shentel is a public company (NASDAQ: SHEN) operating from a position of financial strength that will provide York County the confidence needed to ensure we meet our commitment of not just today, but also in the future.

We believe you will find this proposal to be creative, cost effective and more than sufficient to meet your current and long term plans. Your questions and comments are welcome and we look forward to working with you.

Thank you for your consideration,
The Shentel Team



Shentel Overview

Shentel is a publicly traded company (NASDAQ: SHEN) that has been serving our customers since 1902. We offer a comprehensive suite of voice, data and video services for both residential and business customers. Shentel first deployed fiber optic services in 1983 and we now manage over 5,000 miles of fiber throughout Virginia, West Virginia, Maryland and Pennsylvania. We are headquartered in Edinburg, VA with local NOC operations and technical/support personnel.

Shentel Quote

Service: 25mb DIA

This circuit is scalable to a 100G (we can scale at roughly \$1.15 per mb)

A Location: Granny Smith Rd

Term 36 months: \$1325

Term 60 months: \$925

Installs have been waived

Estimated time to complete this build is 110 business days from Time of Signature. Please note will need space and power at customer location. Will need 4U of space (approximately 6 inches of rack space)

The network is built on a Fiber backbone resilient in its design. We have architected our fiber backbone is a Loop which allows for the SLA to be at 99.995.

Service Support

Shentel's Network Operations Center provides 24x7x365 network support and monitoring and will escalate any issues to the appropriate technical teams. Our technicians, with up to 20 years of experience, are led by a NOC manager with over 25 years of experience.

Bolstered by our combined team's experience and focus, we are excited to be considered to provide this critical service offering.

As set forth in the MSA we operate under an SLA of 99.995

Service Deployment

Shentel's Account team will provide business support during and after the project implementation. With many years of experience in commercial fiber services, they will strive to ensure complete satisfaction.



Shentel's Project Management Team ensures that all project objectives are met in a timely and efficient manner. The installation project manager assigned will be a single point of contact to ensure effective project management, direction, administration, quality assurance and control of the project. Our project management team averages over 10 years of experience in providing on-time fiber solutions and services.

Shentel's Data Network and Engineering teams will plan, design and engineer the network to meet York County's requirement. After construction, they will test and do final deployment of all services to your complete satisfaction. Our team of engineering professionals average over 15 years of experience designing and deploying customer solutions.

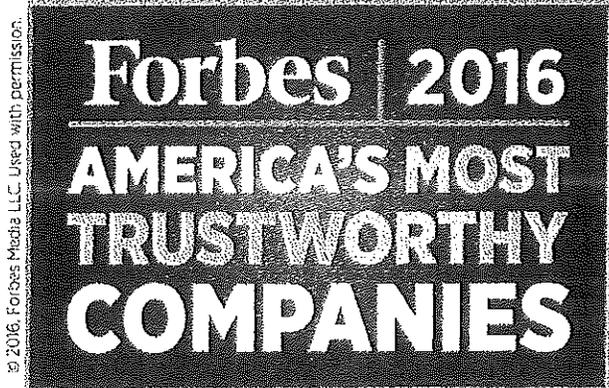
To ensure service is delivered professionally and accurately, Shentel will follow the processes briefly outlined below.

- Project Initiation – Within 10 business days of final agreement signature, you will receive a 'kick-off' call from our Project Management Team to discuss project information and answer any initial questions
- Site Survey – A Shentel Engineer will perform a more thorough site survey to determine point of entry, fiber/cable route, space for equipment and power requirements. Timeline to complete this task is approximately 2 weeks after project start.
- Engineering – Shentel will need to extend services to your location. This often requires coordination with many external organizations and agencies. The Shentel Engineering group will determine the best route to reach your location and obtain the necessary permits and/or easements from private landowners, department of transportation, railroad and other utilities. Timeline to complete this task may take up to 75 business days, depending on the number of external agencies required for permitting.
- Construction – Once the Shentel Engineering group has completed all requirements, the Shentel Construction group will commence with construction. This includes ensuring that all construction by Shentel is in compliance with local and state laws. Timeline to complete this task is 25-35 business days.
- Operations – Finally, the Shentel Operations group will contact you to setup installation, testing and turn-up. In most cases, these will be completed the same day. A representative from your organization will be requested to be on-site for the installation, testing, and turn-up. The representative will be requested to verify by signature that all work is completed satisfactory. Once these steps have been completed, you will be emailed a welcome letter with details on your new service(s). Timeline to complete this task is typically 15-20 days.

References



Shentel has been named as one of the 100 most trustworthy companies in America again for the 3rd time in the last 4 years. We were the only telecommunications carrier listed.



2013, 2014, and 2016

<http://www.forbes.com/sites/kathryndill/2016/04/08/the-100-most-trustworthy-companies-in-america-2/2/#3995422e19de>



Service Order

500 Shentel Way, P.O. Box 459, Edinburg, VA 22824

Customer Name: Project Shuttle Shentel Service Account No. _____

Billing Address: Granny Smith Lane

City, State, Zip: Ranson WV 25430

Term: 60 Months Desired Due Date: Jan 2018

Contacts
Technical Contact:
Billing Contact:
Maintenance/Outage Notification Contact:

Service Description	Monthly Recurring Charge
A Location: Granny Smith Lane 25mb DIA	\$925

Non-Recurring Charges
Waived

Total Service Charges	\$55,500
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Notes
The estimated time to complete this project is a 110 business day due to the construction needed. Will need space and power on customer premise
Services will be provided to Project shuttle at Telco closet on premise. Note site is under construction no location is determined at current time

Acceptance		
My signature hereunder acknowledges that I have read and do understand the terms and conditions stated above and those in the Master Service Agreement dated _____ between the parties identified herein ("MSA").		

Customer	Title	Date
_____	_____	_____
Shentel	Title	Date
_____	_____	_____



Customer Acceptance Form

500 Shentel Way, P.O. Box 459, Edinburg, VA 22824

**SHENTEL Communications LLC
MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT (the "Agreement") is entered into on this ____ day of _____, _____ (the "Effective Date") by and between <Shentel Communications>, a Virginia _____ ("Provider"), and Project Shuttle _____, a _____ ("Customer").

1. **SCOPE OF AGREEMENT:** In accordance with the terms and conditions of this Agreement, Provider shall provide certain telecommunications services to Customer as specified in any Service Order executed by the parties (the "**Service(s)**"). Orders for different types of Service shall be placed on separate Service Orders such that this Agreement may have one or more Service Orders that may be in effect at any one time. Such Service Orders shall form a part of this Agreement. In addition, the following attachments are incorporated into the Agreement by reference: Attachment 1 is a form of Service Order and service-specific terms and conditions ("**Service Order**") and Attachment 2 is a form of Customer Acceptance. Provider reserves the right to modify and update these attachments.
2. **TERM OF AGREEMENT:** The term of this Agreement commences on the Effective Date and continues for a period of five (5) years (the "**Term**"). Upon the expiration of the Term, the Agreement shall continue in effect on a month-to-month basis until terminated by either party upon thirty (30) days' prior written notice. Should the parties have in effect any Service Orders at the expiration or termination of this Agreement, the rights and obligations of the parties with regard to any such Service Orders shall continue to be governed by the terms of this Agreement.
3. **ORDERS FOR SERVICE:**
 - 3.1. Service Orders. Upon the parties' mutual agreement, the parties shall execute a Service Order (on such form(s) as may be designated by Provider from time to time) identifying at a minimum: (i) the specific Service to be provided; (ii) an Initial Term (as defined below) for the Service Order; (iii) a Requested Service Date; (iv) the applicable Service Charges (as defined below) for the Service; and (v) such other terms and conditions as may be appropriate. Provider will notify Customer of Service completion. Customer shall provide Provider with a written Customer Acceptance form accepting Service, or reject the Service by specifying the defect or failure in the Service testing that is the basis for such rejection. If Customer fails to notify Provider of its acceptance or rejection of the Service within ten (10) days following Customer's receipt of notice of Service completion, Customer shall be deemed to have accepted the Service. In the event of any good faith rejection by Customer, Provider shall take such action as reasonably necessary, and as expeditiously as practicable, to correct or cure such defect or failure. The foregoing notwithstanding, if Customer uses the Service prior to acceptance by Customer, such use shall constitute acceptance of the Service. The date of such notice of acceptance or deemed acceptance by Customer of the Service shall be the "**Service Date**". The "**Initial Term**" set forth on each Service Order shall be for the period identified in the Service Order and shall begin on the Service Date. At the expiration of the Initial Term specified in each Service Order, the Service Order shall continue in effect on a month-to-month basis upon the same terms and conditions unless terminated by either party upon thirty (30) days' prior written notice. In the event that the terms of the Service Order conflict with the terms of this Agreement, the terms of the Service Order shall govern.
 - 3.2. Requested Service Date. On written notice to Provider not less than thirty (30) days prior to the Requested Service Date set forth in the Service Order, Customer may delay the Requested Service Date for up to thirty (30) days from the original Requested Service Date set forth in the Service Order, without payment of any penalty or fee. The foregoing right to delay the Requested Service Date shall be available only once per Service. Provider agrees to use reasonable efforts to ensure that each Service is tested and available for Customer's use on or before the applicable Requested Service Date; provided, however, Provider's inability or failure to deliver any ordered Service by the Requested Service Date shall not be a Default (as defined below) under this

Agreement, and Provider shall not be liable to Customer or any third party for any damages as a result of Provider's inability or failure to deliver any such service.

4. CUSTOMER RESPONSIBILITIES:

4.1. Use of Service by Customer.

Customer shall not, nor permit others to, use any Service for any unlawful purpose or in any unlawful manner and further warrants that its and its customers' use of Service and any related information or communications made available, displayed or transmitted in connection with a Service will at all times comply with all applicable laws, regulations and Provider's written and electronic instructions for use. Customer shall be solely responsible for, and accordingly be solely liable for, obtaining and maintaining in Customer's own name and at its own expense, throughout the Term, all rights, licenses, permits, consents, authorizations or other rights required for the use of Service and for ensuring compliance with any regulatory or other requirements whether at law or otherwise. Without limiting the generality of the foregoing, if Customer elects the "music on hold" feature offered in connection with the Service, Customer shall obtain all rights and licenses required to use Customer's chosen music ("Music Performance Rights"). Provider may, at its option, terminate or suspend Service if: (i) any such unauthorized use occurs or (ii) Provider has reason to believe that use of Service by Customer, its agents, employees or end users, may or does violate any laws or regulations.

Services provided by Provider under this Agreement may be used by Customer only in furnishing service to Customer's retail customers or employees (i.e., Customer's end users), and for operational and administrative purposes directly related to the provision of Customer's services.

4.2. Customer Equipment: Interference. Customer shall, at its own expense, procure and maintain any circuits, facilities, equipment, hardware or software necessary to implement or receive Service ("**Customer Equipment**"), unless Provider specifies otherwise in writing. Customer shall ensure that all such Customer Equipment shall perform according to published technical specifications for such Customer Equipment and Provider's interface specifications and otherwise complies with Provider's specifications for Service. Customer further warrants and agrees that Customer Equipment used by Customer or Customer's agents, employees or end users in connection with any Service shall not: (i) interfere with or impair service over any such facilities and equipment of Provider or (ii) create hazards to the employees of Provider or the public. Promptly upon notice from Provider, Customer shall eliminate any hazard, interference or Service obstruction that any such Customer Equipment is causing or reasonably may cause. Provider reserves the right to suspend Service if such any such Customer Equipment does not comply with the foregoing provisions of this Section. In such event Provider will, to the extent practicable, notify Customer of such suspension in advance; provided, however, where prior notice is not practicable, nothing contained in this Agreement shall be deemed to preclude Provider from suspending use of Service by Customer. During any such suspension, no Service Interruption (as defined below) shall be deemed to have occurred for purposes of this Agreement. Provider may make upgrades to its network infrastructure periodically, which may require Customer hardware and/or software to be upgraded in order to continue service. In the event of network upgrades, Provider will give no less than 30 days' notice to Customer if upgrades or changes to Customer's hardware and/or software will be necessary in order to avoid disruption of service. Provider is not responsible for degradation or disruption of service should Customer not make such upgrades or changes.

4.3. Provider Equipment.

Provider shall be solely responsible for the maintenance of equipment and facilities owned or otherwise controlled by it and shall use reasonable efforts to maintain facilities and equipment that it provides to Customer. Customer shall not, nor permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by Provider, except upon the written consent of Provider. Customer shall not use any such equipment or facilities for any purpose other than that for which its use is intended, nor rearrange any such equipment or facilities at any time.

Customer shall furnish or arrange to have furnished to Provider, at no charge, any space, equipment and/or electrical power required by Provider to provide any Service under this Agreement at the points of termination of such Service, as specified in a Service Order, should those points be located on premises of Customer or of its end user(s). Customer shall make all necessary arrangements in order that Provider will have timely access to such space at reasonable times and to the extent reasonably required by Provider for installing, inspecting, repairing and/or removing equipment and facilities of Provider. Provider shall have no right to place equipment or facilities in space owned or controlled by Customer or its end user(s) without the prior consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed. Provider shall not incur any liability of any kind for any delays or inability to install a Service based on acts or omissions of Customer. If Provider is not able to obtain on reasonable terms and conditions, as determined by the Provider, any right of way, easement, permit, or license, including pole attachment rights, required for the installation or provision of the Service, Provider may terminate the portion of the Service Order applicable to such Service upon notice to Customer and with no further obligation to Customer.

Customer agrees to allow Provider to remove all equipment and facilities from Customer's premises: (i) upon termination or expiration of this Agreement (or after termination of Service in connection with which the facilities were used in the case of Service Orders that continue beyond the Term); and (ii) for repair, replacement or otherwise as Provider may determine is necessary, but Provider shall use reasonable efforts to minimize disruptions to Service caused thereby. At the time of such removal, such equipment and facilities shall be in the same condition as when installed, reasonable wear and tear excepted. Customer shall promptly and equitably reimburse Provider for any damage to, or the cost of repair of, any equipment or facilities not in such condition.

As between Provider and Customer, all equipment and facilities provided by Provider shall be and remain its personal property at all times during the Term. At Provider's request, Customer shall prominently affix identifying plates, tags, or labels on any such equipment and facilities showing the ownership interest of Provider and shall not tamper with, remove or conceal such identifying plates, tags or labels. In addition, Customer shall, from time to time, take additional actions and execute and deliver such further documents as Provider may reasonably request in order to confirm and protect Provider's title to and ownership of any such equipment or facilities. Customer shall reimburse Provider for any damages to Provider's equipment or facilities caused by: (i) any improper use of, or breach of this Agreement with respect to, any such equipment or facilities by Customer, its employees, agents or end users; (ii) improper use of Service by Customer, its employees, agents or end users; (iii) malfunction of any equipment or facilities not provided by Provider and used by Customer or Customer's employees, agents, or end users in connection with any Service provided hereunder; or (iv) by fire, theft or other casualty on the premise of Customer (or of its agents or end users). Upon reimbursement for any such damages and at Customer's expense, Provider will cooperate with Customer in prosecuting a claim against the person or entity causing such damage, and Customer shall be subrogated to the right of recovery of Provider for such damages to the extent of Customer's payment. In the event Customer causes damage to facilities or equipment other than that owned by Provider, and such facilities or equipment are physically, optically and/or electrically associated with those of the Provider, Customer shall reimburse the owner for, and indemnify and hold Provider harmless from any and all claims arising from, damage to any such facilities or equipment.

5. PAYMENT TERMS:

- 5.1. Service Charges. Customer shall pay all monthly fees and non-recurring charges (e.g., installation charges, construction fees, extended demarcation fees, facility entrance fees, cross-connect fees and/or expedite fees) ("Charges") at the rates set forth on each Service Order promptly, and in any event within thirty (30) days after the receipt of the invoice by Customer therefor. Any Charges that are not paid as set forth herein shall be subject to an interest charge on delinquent amounts at the rate of 1 1/2% per month or the maximum lawful rate allowable under applicable law, whichever is lower.

- 5.2. Credit, Advance Payments and Deposits. Customer shall provide Provider with credit information as requested, and delivery of Service is subject to Provider's credit approval in its sole discretion. Provider may require Customer to make an advance payment before Service is provided. Any advance payment will be credited to Customer's initial invoice. Provider may, at any time during the Term as a condition to Provider's acceptance of any Service Order or as a condition to Provider's continuation of Service, also require Customer to: (i) make a deposit; (ii) provide a letter or credit from a commercial bank or trust company acceptable to Provider; or (iii) provide another assurance of payment acceptable to Provider (a "Deposit" or "Credit Assurance"). The Deposit/Credit Assurance will not exceed Customer's estimated Service Charges for three (3) months of Service). At such time as the provision of Service to Customer is terminated, the amount of any cash Deposit will be credited to Customer's account and any credit balance which may remain will be refunded, together with any interest on such cash Deposit at the prevailing rate required by law.
- 5.3. Additional Charges. Any applicable federal, state, local or foreign use, excise, sales, gross receipts or privilege taxes, charges or surcharges (however designated), value-added and other taxes, duties or similar liabilities, chargeable to or against Provider because of Service provided to Customer shall be charged to and payable by Customer in addition to the Service Charges; provided, however, if Customer believes it is exempt from any such taxes, Customer will provide Provider with an exemption certificate evidencing such claimed exemption. Customer shall indemnify, defend and hold harmless Provider against any damages, losses, claims or judgments arising out of any exemption claimed by Customer, including, without limitation, any liens, attachments, fines or penalties. If any entity other than Provider imposes charges on Provider because of Service provided to Customer, such charges shall be charged to and payable by Customer in addition to the Service Charges.
- 5.4. Disputed Bills. In the event that Customer disputes any portion of a Provider invoice, Customer must pay the undisputed portion of the invoice as of its Due Date and submit a written claim for the disputed amount. All claims must be submitted to Provider within sixty (60) days from the Due Date of the invoice that includes the disputed amount. If Customer does not report a dispute with respect to an invoice within the sixty (60) day-period, Customer is deemed to have waived its dispute rights for that invoice and to have agreed to pay that invoice. If Customer has provided sufficient detail for investigation of the dispute, Provider will use reasonable efforts to resolve and communicate its resolution of the dispute within thirty (30) days of its receipt of the dispute notice. If the dispute is resolved in Provider's favor, any amounts to be paid by Customer shall be subject to the late payment charges under Section 5.1 retroactive to the Due Date of the disputed invoice and payable by Customer on the next Due Date. Disputed amounts resolved in Customer's favor shall be credited on Customer's next invoice.

6. **DEFAULT AND REMEDIES:**

- 6.1. Default. A "Default" shall occur under this Agreement upon: (i) Customer's failure to pay any invoice and such failure remains uncorrected for ten (10) days after receipt of written notice that a payment is past due; (ii) Customer's failure to pay any advance payment or Deposit or to provide any Payment Assurance when due; (iii) Customer's insolvency, apparent inability to pay debts as they become due, or any filing of bankruptcy by or against Customer or a general assignment for the benefit of its creditors; (iv) Customer's violation of any applicable laws, statutes, ordinances, codes or other legal requirements with respect to any Service that are not remedied within ten (10) days after written notice thereof (or such shorter period as may be required by law); or (v) either party fails to perform or observe any material term or condition of this Agreement and such failure remains uncured for more than thirty (30) days from the date of the non-breaching party's written notice thereof.

6.2. Remedies Following Default.

Upon a Default by Provider affecting any Service Order(s), Customer may terminate the affected Service Order(s) if the Default is not cured after the required notice and thirty (30)-day cure period

set forth herein by providing written notice of termination to Provider not less than five (5) business days following the expiration of such cure period.

Upon any Default by Customer of this Agreement not cured after expiration of any applicable notice and/or cure period set forth herein, Provider may, in its sole discretion and without waiving any other rights or remedies available to it, do any or all of the following: (i) suspend Service to Customer (either completely or only with respect to any affected Service Order) or the processing Service Orders until such time as Customer has corrected such noncompliance, including paying any amounts owed hereunder; (ii) terminate Service (either completely or only with respect to any affected Service Order) or this Agreement; and/or (iii) apply or enforce any Deposit/Payment Assurance and/or enforce any security interest provided by Customer. If Provider suspends Service pursuant to this Section, in addition to any other charges due hereunder, Customer shall pay Provider any reconnection fees or other costs imposed on or incurred by Provider to reconnect Service. If Customer fails to cure any Customer Default within any applicable cure period provided herein, Customer shall be deemed to have cancelled Service for the purposes of Section 7 and shall remain liable for all early cancellation charges applicable to the Service. During any temporary suspension, and upon any termination of Service in accordance with this Section, no Service Interruption (as defined in Section 8) shall be deemed to have occurred for the purposes of this Agreement.

7. **TERMINATION FOR CONVENIENCE:** If Customer cancels a Service Order with a one-year term at any time during that term, Customer shall pay, as liquidated damages and not as a penalty, an amount equal to one hundred percent (100%) of the remaining Service Charges for the unexpired portion of such twelve (12) month period. For Service Orders in which the stated term is more than one (1) year, Customer shall pay the aggregate amount of all Service Charges that would be due for the remainder of the first three (3) years of the term plus one-half of the aggregate amount of the Service Charges that would be due for the term remaining under the Service Order subsequent to the third year. The cancellation charges payable hereunder are in addition to all other amounts due hereunder for Service provided prior to the Cancellation Date of the Service Order, including, without limitation, installation charges, construction fees, extended demarcation fees, facility entrance fees, cross-connect fees and/or expedite fees. Provider may terminate the Agreement without cause upon 30 days prior written notice to Customer, in which case a pro-rata refund of the Service Charges paid by Customer for that Term shall be made.

Unless specifically permitted above, termination under this Section 7 does not entitle Customer to any refunds or relieve Customer from the obligation to pay all amounts due and payable to Provider. Customer's other obligations under the Agreement, including but not limited to those under Section 13.3 and 13.13, shall survive to the extent necessary to ensure their full performance.

8. **ALLOWANCE FOR INTERRUPTION OF SERVICE:**

8.1. Service Interruption. An "Interruption" means any two (2) second interval with a complete interruption of transmission or a bit error rate worse than 1×10^{-9} for a particular communications path for a Service. In the case of dedicated Internet access, customer co-location, or other peering arrangements, this allowance applies only to facilities and cross-connects provided and monitored by Provider. Both Provider and Customer agree to promptly work in a cooperative manner to identify the causes of any Service Interruptions, and Provider agrees to promptly take commercially reasonable steps to restore Service upon being made aware of any Service Interruption; provided, however, in no event shall any Service Interruption be an event of Default by Provider under this Agreement.

8.2. Credit Allowance. Unless otherwise stated in any applicable Service Order or for other reasons stated herein, in the case of any Service Interruption, Customer shall be entitled to a credit allowance for the period of Service Interruption as follows: No credit shall be allowed for any Service Interruption of one (1) hour or less. For Service Interruptions of greater than one (1) hour, Customer shall be credited at the rate of 1/1440 of the Service Charges (as specified in the Service

Order) applicable to the Service which is subject to the Service Interruption for each half-hour or major fraction thereof that a Service Interruption continues; provided, however, the maximum credit for all Service Interruptions during any thirty (30) day period shall not exceed the Service Charges due Provider from Customer for such period. Each Service Interruption is to be measured from the time Customer notifies Provider that a Service Interruption has occurred to the time of restoration of Service, as determined by Provider.

When Service provided by Provider includes more than one communication path, the Service Interruption allowance applies only to the path interrupted.

- 8.3. Routine Maintenance. System maintenance normally will not result in Service Interruptions. In the event that system maintenance should require a Service Interruption, to the extent practicable, Provider shall use reasonable efforts to perform system maintenance during non-peak hours (midnight to 6:00 a.m.), or at other times after prior notification to Customer.
- 8.4. Emergency Maintenance. Provider reserves the right to perform emergency maintenance on its system, network, equipment or facilities at any time and, to the extent practicable, will provide Customer with prompt notice thereof.
- 8.5. Limitations on Allowances. No credit allowances for Service Interruptions shall be made for Service Interruptions arising from or relating to: (i) any acts or omissions of an entity other than Provider, including, but not limited to, Customer, Customer's agents, employees, end users or other service providers connected to Provider's Services, system, network, equipment or facilities; (ii) Customer's noncompliance with this Agreement; (iii) any emergency or routine maintenance; any failure of any Off-Net Service (including, without limitation, any non-Provider equipment or facilities used in connection with the affected Service); (v) any period in which Provider is not given full access to its equipment or facilities for the purpose of investigating and correcting a Service Interruption; (vi) any period in which Customer continues to use Service on an impaired basis or releases Service to Provider for maintenance purposes or for implementation of a Customer Service Order; or (vii) circumstances or causes beyond Provider's reasonable control as described in Section 13.1 below.

9. WARRANTIES; LIMITATION OF LIABILITY:

- 9.1. Exclusion of Warranties. THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT CONSTITUTE THE ONLY WARRANTIES WITH RESPECT THIS AGREEMENT AND SERVICE PROVIDED HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY OR CONTRACTUAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR FOR A PARTICULAR USE OR NON-INFRINGEMENT.
- 9.2. Limitation of Liability. NOTWITHSTANDING ANY CONTRARY PROVISION HEREIN, PROVIDER'S TOTAL AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DELAYS IN INSTALLATION, COMMENCEMENT OR RESTORATION OF SERVICE, MISTAKES, ACCIDENTS, OMISSIONS, SERVICE INTERRUPTIONS, ERRORS OR DEFECTS IN TRANSMISSION IN THE PROVISION OF SERVICE, SHALL NOT EXCEED THE AMOUNT OF THE CREDIT ALLOWANCE, IF ANY, AVAILABLE UNDER SECTION 8. WITHOUT LIMITING THE FOREGOING, PROVIDER SHALL HAVE NO OBLIGATION TO PROVIDE ALTERNATIVE ROUTING WITH RESPECT TO ANY SERVICE PROVIDED PURSUANT TO THIS AGREEMENT. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY LIABILITIES (AS DEFINED BELOW) ARISING OUT OF THE FAULT OF FACILITIES OR EQUIPMENT UTILIZED BY CUSTOMER, OR ITS AGENTS, SUBCONTRACTORS, INDEPENDENT CONTRACTORS OR ANYONE ACTING ON BEHALF OF CUSTOMER OR FOR ANY ACT OR OMISSION OF CUSTOMER IN FURNISHING ITS SERVICES TO OTHERS.
- 9.3. No Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RELATING TO OR ARISING FROM THE PROVISION OF SERVICE TO BE PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE RELATING TO

THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF REVENUES, PROFITS, BUSINESS INTERRUPTIONS OR BUSINESS OPPORTUNITIES, WHETHER OR NOT PROVIDER OR CUSTOMER HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED.

10. INDEMNIFICATION:

10.1. Indemnification. Customer agrees to indemnify Provider, its affiliates, successors and assigns, and their members, shareholders, directors, officers, and employees ("Provider Indemnified Persons"), and hold them harmless from, any loss, cost, damage or expense (including, without limitation, attorneys' fees and expenses) relating to or arising out of any claims, lawsuits or actions ("Claims") resulting from Customer's use of any Service, or any feature of any Service, or any network, newsgroup or service to which Provider provides access. Without limiting the generality of the foregoing, Customer specifically indemnifies the Provider Indemnified Persons against Claims relating to Customer's failure to obtain necessary Music Performance Rights. Subject to the terms and conditions of this Agreement, each party ("**Indemnitor**") agrees to defend, hold harmless, and indemnify the other party, its employees, directors, officers and agents ("**Indemnitee(s)**") from and against all claims, actions, damages, and/or liabilities, together with any and all losses, fines, penalties, costs, and expenses, including, without limitation, attorneys' fees and expenses or penalties imposed by governmental entities (collectively, the "**Liabilities**") proximately caused by the gross negligence or willful misconduct of Indemnitor, or of Indemnitor's directors, officers, employees and agents, in the performance of Indemnitor's obligations under this Agreement; provided, however, that Indemnitor's liability to an Indemnitee under this Section shall be reduced to the extent, and in the proportion, that such Liabilities have been proximately caused by any Indemnitee's negligence, gross negligence, or willful misconduct.

10.2. Indemnification Procedures. With respect to third-party claims, the following procedures shall apply:

Promptly after receipt by any entity entitled to indemnification under this Section 10 of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the Indemnitee will seek indemnification pursuant to any such Section, the Indemnitee shall notify the Indemnitor of such claim in writing. No failure to so notify an Indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) business days following receipt of written notice from the Indemnitee relating to any claim (but in no event later than five (5) business days prior to the due date of any answer or other papers required to be filed in response to a complaint, petition or other papers filed by the third party that initiated the action proceeding), the Indemnitor shall notify the Indemnitee in writing if the Indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").

If the Indemnitor delivers a Notice of Election relating to any claim within the required notice period, the Indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided that: (i) the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the Indemnitor shall obtain the prior written approval of the Indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the Indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph, the Indemnitor shall not be liable to the Indemnitee for any legal expenses incurred by the Indemnitee in connection with the defense of that claim. In addition, the Indemnitor shall not be required to indemnify the Indemnitee for any amount paid or payable by the Indemnitee in the settlement of any claim for which the Indemnitor has delivered a timely Notice of Election if such amount was agreed to without the written consent of the Indemnitor.

If the Indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the Indemnitee shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnitor. The Indemnitor shall promptly reimburse the Indemnitee for all such costs and expenses.

11. **INSURANCE:** Both parties shall procure Commercial General Liability and, if necessary, Commercial Umbrella Liability insurance, including, but not limited to contractual liability coverage from an insurer reasonably satisfactory to the other party, in the amount of at least One Million Dollars (\$1,000,000.00) each occurrence. Both parties shall provide Certificates of Insurance for such insurance to the other party within ten (10) days after the Effective Date of this Agreement.
12. **MATERIAL CHANGE IN LAW:** If the Federal Communications Commission, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental entity issues a rule, regulation, law, order or decision that has the effect of canceling, changing or superseding any material term or provision of this Agreement (collectively, "**Regulatory Requirement**"), then this Agreement will be deemed modified in such a way as the parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with the Regulatory Requirement. If the parties cannot agree to modifications necessary to comply with a Regulatory Requirement within thirty (30) days after the Regulatory Requirement is effective, then either party may terminate this Agreement and/or any Service Order impacted by the Regulatory Requirement effective as of the date of notice by providing written notice to the other party.
13. **MISCELLANEOUS PROVISIONS:**
- 13.1. Force Majeure. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, explosion, vandalism, cable cuts, storms or other similar catastrophes; any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over either of the parties, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; national emergencies; acts of terrorism, insurrections, riots, wars, or strikes, lockouts, work stoppages or other labor disputes or difficulties. Notwithstanding anything to the contrary set forth herein, Customer agrees that payment obligations for Services provided hereunder shall be absolute and not subject to delay due to any event of force majeure.
- 13.2. Unanticipated Barriers to Construction. The provisioning of services to a customer may require construction of new facilities or augmentation of existing facilities. In the event Provider encounters unanticipated barriers to this construction or augmentation that could not be reasonably anticipated or estimated in advance of construction, including but not limited to rock formations, costs associated with drilling into rock, excessive utility make-ready work, and pole replacement, Provider will as soon as possible, but in no event later than five (5) days from its discovery of the unanticipated barrier to construction present a proposed revised amount for special construction at the site in question that reflects the estimated additional costs that will be incurred for which it will seek reimbursement prior to performing additional work in the form of a revised Service Order. Customer will then have five (5) days to determine whether it will agree to the revised Service Order. Once the Parties have agreed and executed a revised Service Order, construction activities shall resume. If the parties cannot agree to an acceptable alternative revised Service Order, Provider may terminate the agreement.
- 13.3. Assignment. Customer shall not assign or transfer its rights or obligations under this Agreement without the prior written permission of Provider, which consent shall not be unreasonably withheld. Any act in violation of the foregoing shall be null and void; provided, however, that any such act shall not relieve the Customer of its obligations under the Agreement. Provider may assign the Agreement or delegate any or all of its duties under the Agreement to a subsidiary or related company at any time.
- 13.4. Licensing. No license, under patents or otherwise, is granted by Provider to Customer or shall be implied in Customer's favor with respect to any circuit, apparatus, system or method used by Provider in connection with any Service provided under this Agreement.

Notwithstanding the foregoing, any Provider software provided to Customer to enable Customer to connect to Provider is licensed, not sold, to Customer for its use only under the Agreement. Customer may make one copy of the Provider software solely for backup purposes. Provider software is protected by United States copyright law. Customer may not distribute copies of the Provider software to others; electronically transfer the Provider software; decompile, reverse engineer, or otherwise reduce the Provider software to a human-perceivable form; or modify, adapt, translate, incorporate into other works, rent, loan, resell, distribute or create derivative works based on the Provider software or any part thereof. Upon expiration or termination of the Agreement, Customer shall either return the Provider software to Provider or destroy it. Software of third parties is subject to separate license agreements.

- 13.5. No Joint Undertaking. Notwithstanding any other provision of this Agreement, this Agreement applies only to Services provided to Customer, and does not constitute the joint undertaking with Customer for the furnishing of any service to Customer's end users. None of the provisions of this Agreement shall apply or extend directly to the Customer's end users. Provider does not undertake to transmit messages or offer any telecommunications services to end users under this Agreement. Provider shall be responsible only for the installation, operation and maintenance of its facilities used in providing Service, as specified herein.
- 13.6. Limitations on Benefits of Agreement. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.
- 13.7. Publicity. Neither party may use the name, logos, trademarks, service marks or other proprietary identifying symbols of the other party in any press release, public statement, advertising, signage, marketing materials or other publicity materials in any medium without the other party's prior written consent.
- 13.8. Confidentiality. As used in this Agreement, Confidential Information means information not generally known to the public, whether of a technical, business or other nature, that is disclosed as a result of the parties' communications and discussions, and that should reasonably have been understood by the receiving party to be proprietary and confidential to the disclosing party because of legends or other markings, the circumstances of disclosure or the nature of the information itself. The parties agree that a disclosing party's Confidential Information, in either written, oral, electronic or other form will not be: (a) used by the receiving party for any purpose other than the performance of such party's obligations under this Agreement, or (b) disclosed by the receiving party either directly or indirectly by any means to any third person(s) without the express written permission of the disclosing party, unless otherwise required by governing authority or law. Notwithstanding the foregoing, Customer hereby consents to the release of information relating to its recurring monthly charges under this Agreement to individuals or entities involved in referring Customer to Provider (a "Lead Provider"). This information will be used solely for the purpose of calculating the referral fee to be paid to the Lead Provider. The Lead Provider shall not be considered a party to this Agreement.
- 13.9. Order of Precedence. In the event of any ambiguity and/or inconsistency between this Agreement and any governmental authority order covering any Services provided under this Agreement, the following descending order of precedence will control: (i) any tariff of Provider governing delivery of Service by Provider, and use of Service by Customer under this Agreement; (ii) this Agreement and any amendments thereto; and (iii) exhibits to this Agreement, including Service Orders. No Service Order shall alter or amend the parties' obligations under Sections 8, 9, or 10 of this Agreement, unless the Service Order expressly modifies such Sections and such alterations and amendments are countersigned by authorized officers of the parties.
- 13.10. Service Subject to Availability. The furnishing of Service is subject to the availability thereof on a continuing basis, and is limited to the capacity of Provider to provide Service as well as the capacity which Provider may obtain from other carriers to furnish Service from time to time as

required at the sole discretion of Provider. Whenever transmission capacity provided by Provider under this Agreement is connected to facilities provided by another person or entity, the regulations, terms and charges of such other person or entity shall apply for the facilities provided by such other person or entity. Nothing in this Agreement shall be construed to obligate Customer to submit, or Provider to accept, Service Orders.

- 13.11. Waiver. The failure of either party to give notice of Default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.
- 13.12. Attorneys' Fees. In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement, to collect any amounts due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees (including, without limitation, the allocable costs of in-house counsel), court costs, costs of investigation and other related expenses incurred in connection herewith.
- 13.13. Amendments. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought.
- 13.14. Notices. All notices, demands, requests, or other communications which may be, or are required to be, given or served, or sent by any party to any other party pursuant to this Agreement shall be in writing and will be deemed to have been duly delivered or given when: (i) delivered by hand (with written confirmation of receipt) before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day); (ii) sent by facsimile before 5:00 p.m. EST on a business day (or otherwise on the next succeeding business day) and a written confirmation of the transmission is received by the sender; or (iii) the next business day after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express. All written notices required under the Agreement shall be sent to the following:

To PROVIDER:

With a copy to:

To CUSTOMER:

Each party may designate by notice in writing a new address, to which any notice, demand, request or communication may thereafter be so given, served or sent.

- 13.15. Severability. Except as otherwise provided for in this Agreement, Service provided by Provider as set forth in each Service Order attached hereto is severable, and upon termination of Service with respect to any Service Order, Services provided under other Service Orders shall continue unaffected. Similarly, if any part or provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part or provision shall be ineffective to the extent of such

invalidity only, without in any way affecting the remaining parts or provisions of this Agreement and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part or provision to the extent necessary to render the Agreement valid and enforceable.

- 13.16. Entire Understanding. This Agreement constitutes the entire understanding between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.
- 13.17. Binding Effect. Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 13.18. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.
- 13.19. Headings. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the
- 13.20. Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.
- 13.21. Choice of Law. This Agreement shall be interpreted in accordance with the substantive and procedural laws of the Commonwealth of Virginia. Each party hereby expressly and irrevocably (i) submits to the jurisdiction of such courts for the purpose of any litigation as set forth above and irrevocably agrees to be bound by any final and non-appealable judgment rendered thereby in connection with such litigation; and (ii) waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.

The undersigned parties have read and agree to the terms and conditions set forth in this Master Services Agreement.

"Provider"

"Customer Project Shuttle"

SHENTEL Communications LLC

Signature

Signature

Name

Name

Title

Title

Date

Date

Attachment 1

See attached Service Order
(Insert Service Order after this page)

assignments/allocations as necessary. Should that result in IP space that is not being used, Provider will reclaim the space. Provider cannot guarantee the assignment of contiguous net blocks.

- 5.6. Customer must maintain proper reverse DNS records for all assigned or allocated addresses.
- 5.7. Customer will not be given address space for administrative convenience.
- 5.8. Provider assigns IPv6 net blocks upon request. A single direct network will be assigned a /64, a network with a routed connection will receive a /56. Any request for a /48 must explain why more than 356 /64 blocks is necessary.
- 5.9. Provider supports Provider Independent (PI) space, which is required to multi-home with IPv6; however these /48 net blocks must be requested directly from ARIN.
- 5.10. Request for IP address space greater than /27 may require additional customer documentation and justification.
- 5.11. Additional information regarding ARIN is available at <http://www.arin.net/>. Specific information on ARIN Policies is available at <https://www.arin.net/policy/nrpm.html>
6. Security. Customer understands that Provider does not own or control the telecommunications lines or facilities or other facilities to which it may provide access, except those specifically identified as belonging to Provider. Accordingly, Provider shall not be responsible for user/access security. Provider shall not be liable for any inability, failure or mistake in detecting or identifying unauthorized or inappropriate network access. If Customer detects an unauthorized disclosure of its IDs or passwords, it shall notify Provider immediately.
7. Agreement to Pay Service Charges. Customer agrees to pay the Nonrecurring and Monthly Recurring Charges set forth in the Service Order. Service Charges are independent of the amount of traffic or system access by legitimate users at the Customer's location. The Service Charge may be affected by tariffs or regulatory agencies and accordingly Provider reserves the right to change the Service Fee during the Initial Term or any Renewal Terms of the Agreement. Provider will give Customer 60 days prior notice of any mid-term increase in the Service Fee. Customer agrees to pay the new Service Charge from and after the effective date of the new Service Charge, unless Customer has terminated the Agreement in accordance with the MSA. In the event Customer extends the Agreement for an additional year, Customer agrees to pay the then-current annual Service Charge.
8. Other Charges. Customer is responsible for (i) its own network charges incurred in accessing Provider, and (ii) payment for any merchandise or services it or its users order or obtains through the networks to which Provider provides access. Unless otherwise set forth in the Service Order, Provider is providing Customer only with Internet access and is not in any way involved with, and specifically disclaims any liability for, product or service selection, purchase, payment, warranties, delivery, maintenance, or related matters.
9. Acceptable Use Policy. Customer agrees to abide by Provider's Acceptable Use Policy, found on its website at www.shentel.com, which may be changed from time to time in Provider's sole reasonable discretion.

Service-Specific Terms

In addition to the terms of the Master Services Agreement ("MSA"), the following terms and conditions shall apply to the services identified below as indicated in each Service Order.

Terms and Conditions Specific to Internet Access Services:

1. Dedicated Internet Access. Provider shall provision Customer with (i) a link to the Provider's Point of Presence ("POP") or other designated POP, by arranging for installation of the requisite facilities to Customer's site, and (ii) routing to the Provider's Internet Peering Location(s). Unless otherwise agreed by Provider in writing, Customer is responsible for providing necessary cabling, equipment, and manpower to distribute telecommunications facilities from the standard telco demarcation point ("demarc") to the Customer's equipment location, if necessary.
2. Relocating the Circuit. If Customer relocates (sometimes referred to as "re-terminating") the demarcation point of the circuit at Customer's premises used to provide access to Provider, Customer shall pay any fees incurred by Provider in connection therewith. Provider shall not be responsible for any service disruptions related to relocating the demarc.
3. Technical Support. Provider may provide Customer with limited support on integration of the service into the Customer's network. Provider shall monitor operation of the service between the Provider's network and the demarcation point at the Customer's premises. Customer is responsible for any administrative, technical, emergency or support personnel at Customer's site necessary for dealing with Provider and for providing, installing, and maintaining Customer's own equipment.
4. Domain Name Service. Provider shall, at Customer's request, (i) provide primary or secondary domain name service (DNS) for one registered domain. DNS for additional domains or secondary DNS may be requested, but Provider is under no obligation to provide. Provider disclaims all liability and responsibility for any loss, damage, claim or expense arising out of or related to the registration of Customer's domain name, its usage in network registrations or directories, or the failure of any third parties to register or use Customer's domain name. Notwithstanding any provision of this paragraph, Provider shall not be liable to Customer for failing to obtain any specific domain name(s) requested by Customer.
5. IP Address Allocation for Internet access agreements. Provider abides by the policies and regulations of the American Registry for Internet Numbers (ARIN). ARIN provides the IP space that Provider distributes to its customers. In order for Provider to acquire IP address space from ARIN, Provider must follow ARIN's policies for allocating assignments to its customers and enforcing efficient utilization of all IP addresses. For this reason, Provider's customers are required to justify their IP requirements in detail utilizing the IP Justification Form.
 - 5.1. ARIN: ARIN requires all IP assignments be documented via SWIP, RWHOIS or with internal databases. Provider utilizes an internal database for all assignments, except where SWIP assignment is necessary. Large IP address customers will also be required to maintain and provide upon request a spreadsheet worksheet of how their addresses are assigned internally. This will be requested when additional IP space is requested by the customer via the IP Justification Form.
 - 5.2. Disclosure: All information disclosed to Provider during this process is confidential, with one exception. If requested, Provider is required to provide ARIN with the same IP assignment information provided by the customer. This information may be requested when Provider requests additional IP space from ARIN for assignment to customers.
 - 5.3. Provider typically does not provide aggregate IPv4 allocations larger than /24. Customers requiring allocations larger than /24 are encouraged to request space directly from ARIN. Provider's standard assignment is a /29.
 - 5.4. Provider typically does not provide allocations or assignments to customers who already have direct allocation(s) from ARIN.
 - 5.5. Provider will not provide additional allocations or assignments until all previous net blocks have reached an 80% utilization rate. A usage figure of 80% must be achieved within 90 days after allocation/assignment, or the addresses will be withdrawn. (80% usage is based on SWIP records and a scan run against all assigned net blocks). Provider reserves the right to change customer

EXHIBIT 5

PILOT Agreement

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT is made and entered into this the 3rd day of October, 2017, by ROXUL USA Inc. (herein "Company "); THE COUNTY COMMISSION OF JEFFERSON COUNTY, West Virginia (herein the "Commission"); the BOARD OF EDUCATION OF THE COUNTY OF JEFFERSON, West Virginia (herein the "County Board"); the SHERIFF OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the "Sheriff"); the ASSESSOR OF JEFFERSON COUNTY, WEST VIRGINIA, (herein the "Assessor") and the RANSON CITY COUNCIL, West Virginia, (herein City of Ranson).

RECITALS

1. Company desires to develop a heavy industrial manufacturing facility (the "Facility") on an approximately one hundred and thirty acre (130) acre parcel of land (the "Land") located in the City of Ranson, Jefferson County, West Virginia, and more particularly described in Exhibit A attached hereto and made a part hereof, which Land may be purchased by Company pursuant to a letter of intent it holds.
2. The Land and the Facility, and the cost of equipping the Facility, including the acquisition and installation of new machinery and equipment therein (the "Equipment"), are collectively referred to herein as the "Project").
3. Pursuant to this Agreement legal title in the Project will be acquired by JCDA from Company for JCDA to hold starting with the conclusion of the construction period which is expected to be three (3) years from Company's acquisition of the Land, subject to a repurchase option reserved by Company.
4. Also pursuant to this Agreement, the Project will be leased by JCDA back to Company pursuant to a Lease Agreement to be entered into upon completion of construction of the Project ("the Lease").
5. Pursuant to the Lease, Company will be required to pay, as additional advance rent, all costs in connection with the acquisition and construction of the Facility and the installation of the Equipment, which additional advance rent will be paid by Company's remittance directly to the contractors and vendors of such sums it may owe them for providing the same.
6. During the term of the Lease, JCDA will own the real and personal property which comprises the Project, subject to the Lease and other rights and interests aforesaid.
7. Pursuant to the Lease, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, subject to the Lease and the other rights and interests, immediately become vested in JCDA without further action on its part.

8. During the term of the Lease, JCDA's freehold interest in the real and personal property which comprise the Project, and which is covered by the Lease, will be, by law, exempt from ad valorem property taxes.

9. Company has agreed to make payments of certain amounts in lieu of ad valorem property taxes and the Commission, the County Board and City of Ranson have agreed to the acquisition, construction and equipping of the Project.

NOW, THEREFORE WITNESSETH, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
REPRESENTATIONS AND WARRANTIES, ETC.

Section 1.01. Commission Representations, Warranties, Agreements and Findings.

The Commission hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The Commission is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia (the "State"), validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The Commission has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Jefferson County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Commission at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Commission were present and acting. The Commission's agreement to the acquisition, construction and equipping of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on August 3, 2017.

Section 1.02. County Board Representations, Warranties, Agreements and Findings.

The County Board hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The County Board is a public corporation of the State of West Virginia and has the power and authority to enter into the transaction contemplated by this Agreement.

(b) The County Board has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in

fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the public school students in Jefferson County.

(c) The agreement to the acquisition, construction and equipping of the Project, and the authorization for the execution of this Agreement, by the County Board are embodied in a Resolution adopted on Sept. 25, 2017

Section 1.03. Sheriff Representations, Warranties, Agreements and Findings.

The Sheriff hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code §§ 11A-1-1 et. seq., he is the officer responsible for collecting ad valorem property taxes levied in Jefferson County, West Virginia, and for disbursing the payments provided for in this Agreement.

(b) The Sheriff has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Sheriff, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Sheriff is required as a condition precedent to the execution, delivery or performance of this Agreement by the Sheriff or as a condition precedent to the performance by the Sheriff of his duties contemplated hereby.

Section 1.04. Assessor Representations, Warranties, Agreements and Findings.

The Assessor hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code § 11-3-1 et seq., he is the officer responsible for assessing properties in Jefferson County, West Virginia, for ad valorem property tax purposes.

(b) The Assessor has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Assessor, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Assessor is required as a condition precedent to the execution, delivery or performance of this Agreement by the Assessor or as a condition precedent to the making of the findings by the Assessor of the matters regarding the assessment of property for taxation purposes contemplated hereby.

Section 1.05. City of Ranson Representations, Warranties and Agreements.

The City of Ranson hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The City of Ranson is a public corporation, acting on behalf of the County of Jefferson, a political subdivision of the State of West Virginia (the "State"), validly created and existing

under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The City of Ranson has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Jefferson County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Ranson City Council at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Ranson City Council were present and acting. The Ranson City Council's agreement to the acquisition, construction and equipping of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on July 18, 2017.

Section 1.06. Company Representations, Warranties and Agreements.

Company represents, warrants and agrees that:

(a) It is a Delaware Corporation duly organized, validly existing and in good standing under the laws of Delaware, and is duly qualified and authorized to conduct affairs or do or transact business in the State of West Virginia, with full power and legal right to enter into this Agreement and to perform its obligations hereunder.

(b) The making and performance of this Agreement and all documents, agreements and instruments in connection herewith, on Company's part, are not prohibited under and have been duly authorized in accordance with, and will not violate the terms and provisions of, Company's organizing documents, and are not prohibited by, and will not violate or conflict with or constitute a default under, any statute, order, governmental rule or regulation, agreement, instrument or document by which Company or any of its properties are bound.

ARTICLE II

AD VALOREM PROPERTY TREATMENT OF THE
PROJECT DURING THE CONSTRUCTION PERIOD
AND WHILE JCDA LEASES IT TO COMPANY

Section 2.01. JCDA's Freehold Interest in Property Comprising the Project Shall be Exempt
from Property Taxes.

During the term of the Lease, the freehold interest of JCDA, in all of the real and personal property which comprise the Project, shall not be subject to any ad valorem property taxes, the same being exempt by operation of law.

Section 2.02. Leasehold Interest Assessed and Taxed at Nominal Value.

Except as described in this Section 2.02, the leasehold interest of Company created by the Lease, and of any assignees or sub-lessees thereunder, shall be subject to assessment, and shall be entered accordingly on the property books of Jefferson County, provided however, that the assessed values of such interests shall be the nominal value of only One Dollar (\$1.00) for each such interest under the Lease or any sublease or interest thereunder, it being the understanding, agreement and finding of the parties that: (i) the rents, to be paid under the Lease by Company (which rents shall include, without limitation, sums sufficient to fully construct and equip the Facility and all costs of maintaining and insuring the Project), constitute rental payments that equal, or significantly exceed, fair market rental payments for such property during the entire term of the Lease; (ii) under the Lease, the leasehold interest of Company is not freely assignable; and (iii) the Lease does not constitute a "bargain lease" to Company which would increase any assessment of the said leasehold interest above the said nominal value.

ARTICLE III

ACQUISITION AND CONSTRUCTION
OF THE PROJECT AND PAYMENT IN LIEU OF TAX

Section 3.01. Acquisition, Construction and Equipping of the Facility.

The Commission, County Board, and the City of Ranson each hereby agrees to the acquisition, construction, and equipping of the Project pursuant to this Agreement, provided that Company shall be solely responsible for such acquisition, construction and equipping of the Project.

Section 3.02. Tax Exemption.

The Commission, Commission, the City of Ranson, and the County Board recognize that under West Virginia law, all real and personal property owned by JCDA which is part of the Project, is exempt from ad valorem property taxation.

Section 3.03. Payment in Lieu of Taxes.

Once actual, physical construction of the Facility is concluded and the Facility is conveyed to JCDA, Company shall make only the payments in of lieu of taxes in the amounts, if any, shown on Attachment A, PILOT Payment Schedule attached hereto and made a part hereof, during the period that this Agreement remains in effect as provided in Section 4.02 below. The amount of the payments due under this Agreement will be based on increasing percentages of estimates of the taxes that would be imposed, as if the Facility were fully taxable on its real estate (starting with 0% for the first five years), and, after the first seven years, on the ad valorem property taxes that would be imposed on the salvage value of the Equipment and any other tangible personal property situate at the Facility, the taxable value of which to be determined by multiplying the book value of the Equipment and other tangible personal property, determined according to accounting standards applied by the Company in the maintenance of its regular books of account for financial reporting purpose, by five percent (5%), and designated as

"Salvage Value," and which taxes that would be imposed thereon being hereinafter designated as "Equivalent Personal Property Tax," all as shown in Attachment A, PILOT Payment Schedule.

Company hereby agrees to make each annual payment in lieu of taxes, if and when shown to be due on Attachment A, to the Sheriff who shall distribute each such payment to the Commission, the City of Ranson and the County Board in proportion to the applicable combined levy rates (including regular and special levies, if any), for each tax year during the term of this Agreement in which such payments are made.

Section 3.04. Payment in Lieu of Tax Payable in Installments.

Company may pay each payment in lieu of tax payable under Subsection 3.03 in two equal installments per year, the first installment of which shall be paid by each March 1 and the second installment of which shall be paid by each September 1, as shown on Attachment A, or Company may pay the entire annual payment amount due in a particular calendar year on or before March 1, provided however, that the final payment in lieu of tax, shall be payable in full on or before March 1 of the year in which that payment is due.

Section 3.05. Events of Default; Remedies.

If Company shall fail to pay any payment in lieu of taxes to the Sheriff at the times and in the amounts as prescribed herein, and such failure to pay continues for a period of 30 days after written notice thereof has been sent to Company, then and in such event, the County Commission may take whatever action at law or in equity may appear necessary or desirable to enforce its rights, the rights of the County Board and the rights of the City of Ranson under this Agreement, including, without limiting the generality of the foregoing, immediately terminating this Agreement, conveying the Project to Company and causing the assessment and collection by the Assessor and Sheriff of ad valorem taxes thereon. The County Commission shall not be obligated to do any of the acts hereinabove authorized, but, in the event that the County Commission elects to do any such act, all costs and expenses incurred by the County Commission in doing any such act shall be owed by Company hereunder. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time, as often as may be deemed expedient.

ARTICLE IV
GENERAL AND MISCELLANEOUS PROVISIONS

Section 4.01. Expenses and Costs.

Each party will bear its own respective legal and other costs and expenses associated with this Agreement and all documents, instruments and agreements in connection herewith, and the consummation of the transactions set forth herein and therein.

Section 4.02. Term of This Agreement.

Unless terminated sooner by the express provisions hereof, this Agreement shall remain in effect for (a) a period of nine (9) years from the date Company completes construction of the

Facility, (b) for the entire term of the Lease, and any renewals thereof, or (c) until the date that this final payment in lieu of tax is paid, in accordance with Attachment A, whichever is the shortest period of time. Until the first tax year as to which the JDCA holds title to the Facility and, then, beginning with the first tax year after to termination hereof, and as to which JCDA does not hold title to the Facility, and for each tax year thereafter, so long as Company has an interest in the Facility, it shall pay the full amount of the ad valorem property taxes on the real and personal property which comprise the Facility, as determined by applicable law, regardless of whether it held fee simple title to the Project. This provision shall survive the termination of this Agreement.

Section 4.03. Notices.

All notices to Company, the Commission, the City of Raison, and the County Board, the Sheriff and the Assessor with respect to this Agreement, shall be deemed to be completed upon mailing by registered or certified mail, postage prepaid, addressed as follows or to such other address as shall be furnished in writing by any party to the remaining parties hereto:

- a) If to Company, as follows:
Kenneth J Cammarato
Vice President, General Counsel
ROXUL USA Inc.
4594 Cayce Rd.
Byhalia, MS 38611
- b) If to the Commission, as follows:
President, Jefferson County Commission
P. O. Box 250
Charles Town, West Virginia 25414
- c) If to the Assessor, as follows:
Assessor of Jefferson County
104 E. Washington Street
Charles Town, West Virginia 25414
- d) If to the Sheriff, as follows:
Sheriff of Jefferson County
P. O. Box 9
Charles Town, West Virginia 25414
- e) If to the County Board, as follows:
Superintendent, Jefferson County Schools
110 Mordington Avenue
Charles Town, West Virginia 25414

f) If to the City of Ranson, as follows:

Mayor, Ranson, West Virginia
312 South Mildred Street

Ranson, West Virginia 25438

Section 4.04. Credit for Payments Made.

In the event that any amounts are paid by Company, its successors or assigns, as ad valorem property taxes levied by the Commission or the County Board on their leasehold interests in the Project, such amounts shall be fully credited against and reduce the payments in lieu of taxes otherwise due pursuant to Article III herein, and Company, its successors or assigns, shall, likewise, be entitled to a refund of the same by virtue of any overpayment thereof resulting from such credit and reduction.

Section 4.05. Use of Payments in Lieu of Taxes.

Company shall not have any responsibility or liability for the application or expenditure by the Sheriff, the County Board, the City of Ranson, or by the Commission of any amount paid to the Sheriff by Company pursuant to this Agreement. The Sheriff alone shall be responsible for the proper disposition of any amount paid in lieu of tax by Company, and of any ad valorem property taxes determined to be due with respect to the Project. Subject to the Constitution and laws of the State of West Virginia, Company is hereby indemnified and held harmless, by the other parties hereto, from any lawsuit or legal action, and any liability, arising from or relating to the manner in which the Sheriff distributes or the County Board or the Commission or City of Ranson applies or expends or otherwise distributes or disposes of any such amount paid by Company under this Agreement.

Section 4.06. Construction.

It is the intention of the parties in entering into this Agreement to provide for certainty in the assessment of ad valorem property taxes with respect to the Project, to provide an inducement for Company to invest in the Project in Jefferson County, West Virginia, to clarify ambiguities as to the appropriate assessment of leasehold interests in the Project during the period it is leased by JCDA to Company, and to provide for payments in lieu of taxes as an inducement for the Commission, the County Board, the City of Ranson, the Sheriff and the Assessor to enter into this Agreement. It is the intention of the parties that this Agreement be construed liberally in order to effect the aforesaid intent of the parties.

Section 4.07. Miscellaneous.

Neither this Agreement nor any provision hereof may be amended, modified, waived, discharged or terminated orally, except by an instrument in writing signed by the parties hereto. With the written consent of the Commission, which consent shall not be unreasonably withheld or delayed, this Agreement may be assigned by Company and the provisions of this Agreement

shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. The captions in this Agreement are for the convenience of reference only and shall not define or limit the provisions hereof.

Section 4.08. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 4.09. Severability.

The parties hereby agree that in the event one or more portions of this Agreement shall be declared to be invalid by appropriate authority, the remaining provisions of this Agreement shall continue in full force and effect, provided, however, that should the aggregate ad valorem property taxes charged to Company, its successors or assigns, by the Sheriff, with respect to the Project, or the leasehold interests in it, in any one year after the tax year 2020, exceed the payments in lieu of taxes provided for in Article III herein (prior to the adjustment as provided in Section 4.04 herein), for that year, then, at the election of Company, in its sole discretion, this Agreement may be canceled and rendered void and of no further force and effect from and after the earlier of the dates on which such taxes are paid to the Sheriff or the ownership interest of JCDA is terminated.

Section 4.10. Condition to Agreement Becoming Effective.

Notwithstanding any other provision herein, this Agreement shall not become effective unless and until Company acquires the Land and title, constructs the Project and transfers ownership in and to the Project to the JCDA. In the event that Company does not acquire the Land, or construct the Project, or transfer ownership of the Project to the JCDA, it is expressly agreed that this Payment in Lieu of Taxes Agreement shall terminate and be null and void.

Section 4.11. Force Majeure

No Party shall be responsible for any delay or failure in performance of any part of this Agreement if such delay or failure is caused by fire, flood, explosion, war, act of terror, embargo, economic crisis, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Parties in writing within ten (10) days after the beginning of any such Force Majeure event. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Parties receives notice under this paragraph, the non-affected Parties may, without any liability to the other Parties, terminate this agreement.

Section 4.13 Press Release

Neither party shall issue any press releases or make public announcements relating to this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that nothing in this Section shall impair either party's compliance with law or regulation generally or with any requirements

of the Securities and Exchange Commission or of any national securities exchange or other stock market on which such party's securities are traded.

Section 4.14. Expansion Operations.

If at any time, the Company anticipates a substantial expansion of its operations in the County beyond the scope currently planned for the Project, and has met or exceeded the Project thresholds, the County will review such any expansion plans with the intent to provide additional economic development incentives to the Company but shall not have an obligation to provide any particular incentives to the Company in respect of such expansion.

Section 4.15 Contingencies

This Agreement is made expressly contingent upon the occurrence of the following conditions precedent ("Project Contingencies"), the failure of any of which will entitle Company to unilaterally terminate this Agreement without any penalty or obligation:

- a) Site Acquisition: Company shall close on the Land within 180 days of fully executing this Agreement ("Site Closing) and upon terms and conditions acceptable to Company, including, but not limited to, Company being able to obtain acceptable representations, warranties, covenants, indemnities, and title for the Land and contingent upon the completion of the subdivision and rezoning of the parcel by the seller;
- b) PSD air permit: Company shall obtain an appropriate PSD air permit from the West Virginia Department of Environmental Protection no later than the second quarter of 2018.
- c) Zoning and Land Use: Company, or designated third party, shall obtain and secure all lot changes, zoning changes, permits, including PSD air permits, and/or any other land use approvals necessary to use and operate the Facility at the West Virginia Site in accordance with its intended plans.
- d) Voluntary Remediation Program: The Land shall be eligible to participate in the West Virginia Voluntary Remediation Program (the "Remediation Program") and obtain or receive a Certificate of Completion under the Remediation Program from the West Virginia Department of Environmental Protection ("WVDEP") that provides Roxul acceptable immunity from liability as determined by Company in its sole discretion;
- e) Board Approval. Company shall obtain and secure necessary approval from its Board of Directors to make the Final Investment Decision to construct and operate the Facility at the West Virginia Site within 180 days of fully executing this Agreement.
- f) Third Party Commitments. the Company shall negotiate independent agreements and/or memorandums of understanding with the City of Ranson and the State of West Virginia acceptable to Company prior to the Site Closing.

Section 4.16. Indemnification.

Company agrees, whether or not the transactions contemplated by this Agreement or the Lease shall be consummated, to protect, indemnify and save JCDA, the Commission, the County Board, the City of Ranson, the Sheriff and the Assessor (hereinafter individually called "Indemnified Party" and collectively called the "Indemnified Parties") harmless from and against all liability, losses, damages, costs, reasonable expenses (including reasonable counsel fees), taxes, causes of action, suits, claims, demands and judgments of any nature or form, by or on behalf of any person arising in any manner from the transactions of which this Agreement is a part or arising in any manner in connection with the Project, and, without limiting the generality of the foregoing, arising from (i) this Agreement [except the representations, warranties, and obligations expressly made and undertaken by the Indemnified Parties hereby], (ii) the design, acquisition, construction, installation, operation, use, occupancy, maintenance, ownership or leasing of the Project; (iii) any written statements or representations made or given by Company or any of its officers, employees or agents to any person, with respect to Company, the Project, and any financing therefor, including, but not limited to, statements or representations of facts, financial information or corporate affairs; (iv) damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; (v) any breach or default on the part of Company in the performance of any of its obligations under this Agreement; (vi) any violation of contract, agreement or restriction by Company relating to the Project; or (vii) any violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof.

In the event that any action or proceeding is brought against any of the Indemnified Parties by reason of any such claim, such action or proceeding shall be defended against by counsel to such Indemnified Party or Indemnified Parties or by Company, as the Indemnified Party or Indemnified Parties, upon advice of counsel, shall determine. In the event such defense is by counsel to the Indemnified Party or Indemnified Parties, Company shall indemnify the Indemnified Party or Indemnified Parties for reasonable costs of counsel allocated to such defense and charged to the Indemnified Party or Indemnified Parties. Company, upon notice from an Indemnified Party, shall resist and defend such an action or proceeding on behalf of such Indemnified Party.

The provisions of this Section shall apply to any claim or liability not resulting from an Indemnified Party's own negligence, but shall not apply to any claim or liability resulting from an Indemnified Party's negligence, bad faith, fraud or deceit or for any claim or liability which Company was not given the opportunity to contest. The provisions of this Section 4.16 shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

ROXUL USA Inc

By: _____

Its: _____

THE COUNTY COMMISSION OF
JEFFERSON COUNTY, WEST VIRGINIA

By: _____

Its: _____

Jacqueline C. Shadle
Clerk of the County Commission
of Jefferson County, West Virginia

CITY OF RANSON, WEST VIRGINIA

By: _____

Its: _____

ASSESSOR OF JEFFERSON COUNTY,
WEST VIRGINIA

By: _____

SHERIFF OF JEFFERSON COUNTY,
WEST VIRGINIA

By: _____

THE BOARD OF EDUCATION OF
JEFFERSON COUNTY, WEST VIRGINIA

By: _____

Its: _____

ACKNOWLEDGMENTS

State of Mississippi

County of DeSoto

Signed or attested before me on 10/3/2017

by Christina F. Swindle

(Notary Public)

My Commission Expires 02/08/2019



State of West Virginia

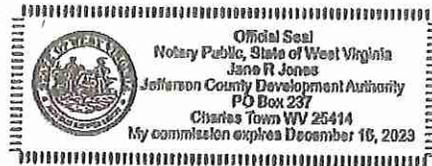
County of Jefferson

Signed or attested before me on August 22, 2017,

by Peter Onoszko.

Jane R. Jones
(Notary Public)

My Commission Expires December 16, 2023.



State of West Virginia

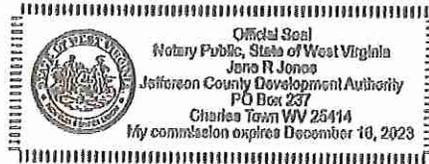
County of Jefferson

Signed or attested before me on August 25, 2017,

by Jacqueline C. Shadle, Peter J. Dougherty,
Keith D. Pierson and Angela L. Banks.

Jane R. Jones
(Notary Public)

My Commission Expires December 16, 2023.



State of West Virginia

County of Jefferson

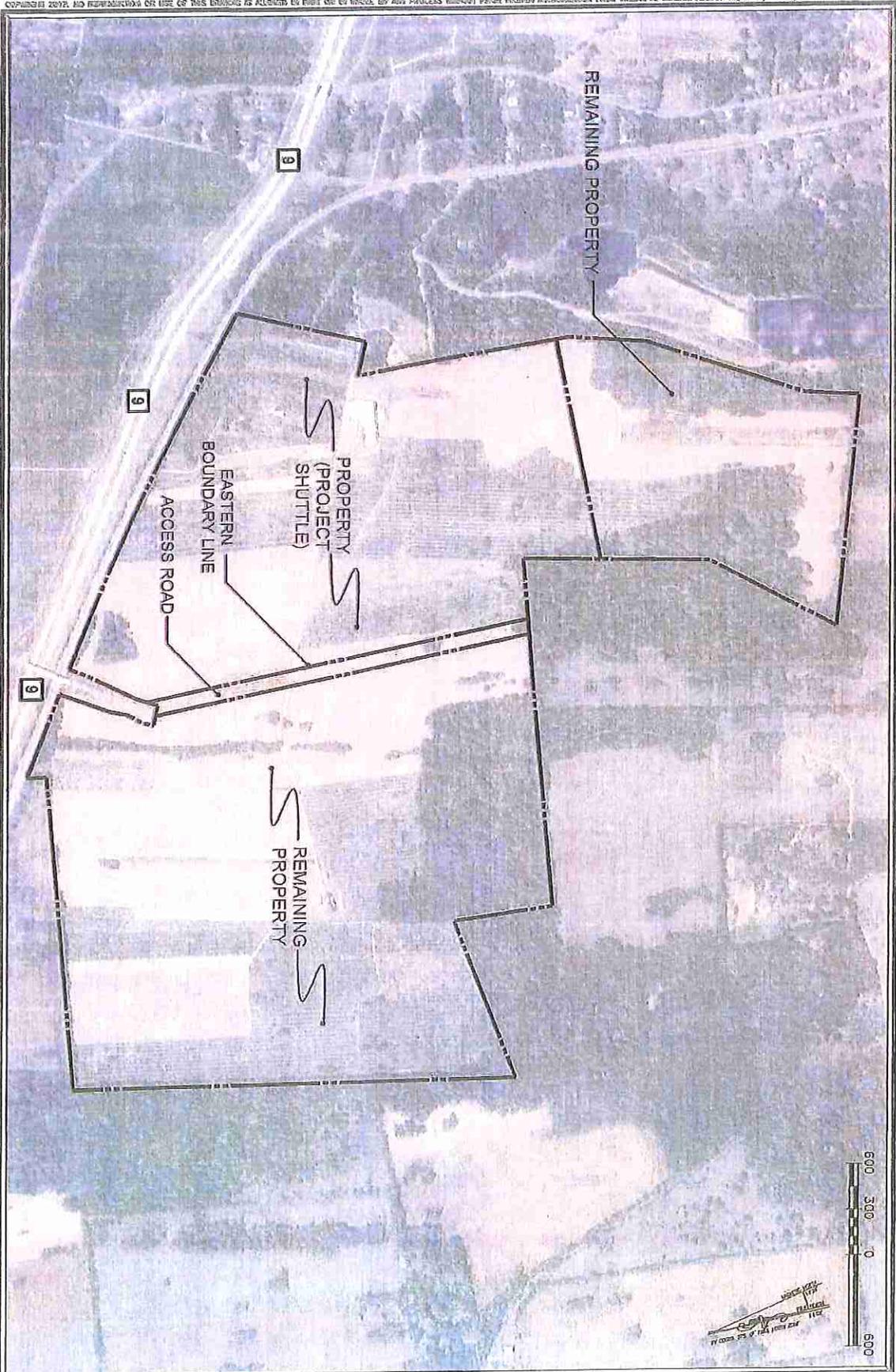
Signed or attested before me on Sept 25, 2017

by Janet L. Hadden

A. Scott Sudduth
(Notary Public)

My Commission Expires April 4, 2020





1
1
SHEET

JEFFERSON ORCHARDS
CITY OF RANSON, WEST VIRGINIA

PARCEL EXHIBIT

Gordon
PROFESSIONAL SURVEYING & CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE - SURVEYING & MAPPING
1220 SOUTH MAIN STREET
MARTINSBURG, WV 26101
(304) 293-4444

Attachment A - PILOT Payment Schedule

<u>Payment Date</u>	<u>Real Estate</u>	<u>Personal Property</u>
September 1, 2018	N/A	N/A
September 1, 2019	N/A	N/A
September 1, 2020	\$225,000	N/A
September 1, 2021	\$0	\$0
September 1, 2022	\$0	\$0
September 1, 2023	\$0	\$0
September 1, 2024	\$0	\$0
September 1, 2025	\$0	\$0
September 1, 2026	\$90,000	\$0
September 1, 2027	\$180,000	\$0
September 1, 2028	\$725,000	EPPT**
September 1, 2029	\$815,000	EPPT**

** - Equivalent Personal Property Tax (EPPT) which shall be equal to the amount of *ad valorem* property tax chargeable against the tangible personal property of the Project were it fully taxable and appraised at salvage value based on 5% of its book value.

EXHIBIT 6

DOH Commitment Letter



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Jim Justice
Governor

Thomas J. Smith, P. E.
Secretary of Transportation/
Commissioner of Highways

April 26, 2017

Mr. H. Wood Thrasher
Cabinet Secretary
West Virginia Department of Commerce
Capitol Complex Building 6
Charleston, West Virginia 25305

Dear Secretary Thrasher:

The Division of Highways (DOH) is appreciative of your efforts to secure for the State of West Virginia the "Project Shuttle" development, for which the Jefferson Orchards site adjacent to WV 115 and CR 9/68, in Jefferson County is under consideration. It is my understanding that the \$140 million development project would be anticipated to result in an additional 50-100 trucks per day and as many as 150 employees, distributed over two work shifts. The Jefferson Orchards site currently is served by CR 9/68, which extends from WV 115 to the site, and includes a bridge spanning WV 9 and the rail line.

As noted previously by the DOH, if this site is selected as the location of this economic development opportunity that brings to West Virginia the number of new jobs and the level of industrial investment indicated, the DOH would administer the design and construction, and provide funding, to address the reasonable access modifications along our State Highway System (SHS) that would be anticipated to be necessary. Specifically, the DOH would:

- construct a left-turn lane providing at least 250 feet of storage, with an appropriate taper, along WV 115 approaching CR 9/68;
- implement, if determined to be necessary, radius modifications and other minor modifications associated with the existing WV 9 interchanges to the east (Bardane) and to the west (Kearneysville) of the site; and
- extend CR 9/68 into the development site, from its current terminus to the primary loading/unloading area (conceptually illustrated in the enclosed image), which may involve an extension of as much as a half mile, based on our understanding of the current site layout.
 - o The DOH will coordinate with the representatives of the site as part of our design of the roadway extension so that DOH can accommodate the site development layout of the Shuttle site.
 - o Once we are provided the proposed access locations for the site and the site grading/elevations, we would make every appropriate effort to design the roadway to meet those locations and elevations.

Mr. H. Wood Thrasher
April 26, 2017
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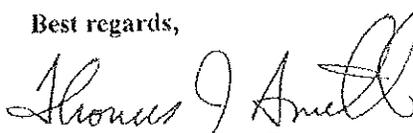
Barring any unforeseen circumstances, and assuming the site selection announcement is made within the next few weeks, the DOH anticipates the design phase associated with these modifications could commence this spring and we would anticipate initiating construction during the 2018 construction season, with the intent of completing construction by early summer 2019. As you are aware, highway paving typically cannot occur during the winter months in West Virginia. We would expect the total cost of the DOH work would be about \$2.5-\$3 million. Any new roadway constructed or funded by the DOH would become part of our SHS and would be maintained by the DOH.

As appropriate, the DOH would coordinate with federal, state, county, and municipal officials concerning the implementation of the access modifications. If desired, DOH may also be able to install utility conduits or include other utility work as part of the DOH construction, with the understanding that utility items included in a DOH construction contract would need to be funded by other sources. The DOH will coordinate with the site representatives and utility providers, with respect to design of the access extension and the utility corridor. If the utility providers desire to obtain separate utility easements, outside the proposed DOH right-of-way, and install utilities prior to the road construction, the DOH would coordinate our design and construction to address those utilities once the locations of the utilities and easements are provided to the DOH.

The DOH is willing to provide assistance, as appropriate, to the West Virginia Development Office to further enhance our opportunity to be selected as the site of this very attractive industrial proposal. Mr. David E. Cramer, P. E., of our Commissioner's Office of Economic Development, is available to meet with you and discuss any transportation aspect of this proposal, including highway, rail, and public transit issues.

Thank you for your continued efforts to provide employment opportunities for West Virginia's citizens. Should additional information be needed, please contact Mr. Cramer at (304) 558-9211 or David.E.Cramer@wv.gov.

Best regards,



Thomas J. Smith, P. E.
Secretary of Transportation/
Commissioner of Highways

TJS:Cb

Enclosure

EXHIBIT 7

TAX FORMS



WEST VIRGINIA TAX CREDITS

The purpose of this publication is to provide a brief overview of West Virginia's current tax credits. This publication provides general information. It is not a substitute for tax laws or regulations. A list of tax credit forms and schedules is on the last page of this publication.

ECONOMIC DEVELOPMENT CREDITS

ECONOMIC OPPORTUNITY TAX CREDIT

(WV/EOTC-A, SCHEDULE EOTC-1, SCHEDULE EOTC-PIT)

- The Economic Opportunity Tax Credit is available to qualified businesses that make a qualified investment in a new or expanded business facility in West Virginia and, as a result of this investment, create at least 20 new jobs. Qualified businesses include only those engaged in the activities of:
 - Manufacturing;
 - Information processing;
 - Warehousing;
 - Non-retail goods distribution;
 - Qualified research and development;
 - The relocation of a corporate headquarters; or
 - Destination-oriented recreation and tourism.
- A qualified business creating at least 20 new jobs within three tax years is allowed a credit equal to 20% of its qualified investment. This percentage may increase with the number of new jobs created. A business creating at least 280 new jobs is allowed a credit equal to 25% of its qualified investment, and a business creating at least 520 new jobs can claim 30% of its qualified investment.

New WV Jobs Total At Least	New Jobs %
520	30%
280	25%
20	20%
15	10%
Corporate headquarters relocation only (more)	
10	10%
Small business only (more)	

- If a project has qualified investment of \$20 million or more and is constructed using construction labor and mechanics numbering 75 or more employees or equivalent employees, who are paid an average wage of at least prevailing wage, the new jobs percentage for the 20 to 520 employee range is increased by 5 percentage points.
- The Economic Opportunity Tax Credit is pro-rated over a 10-year period at a rate of 10% per year. For example, a Credit of \$200,000 attributable to \$1 million of qualified investment made in 2013 is applied at a rate of \$20,000 per year for the 2013-2022 period.
- The amount of qualified investment is determined by multiplying the net cost of eligible property by its applicable useful life percentage based on the projected actual economic useful life of the asset. The following percentages apply:

Useful Life in WV	Useful Life %
Less than 4 years	0%
4 years or more but less than 6 years	33 ⅓%
6 years or more but less than 8 years	66 ⅔%
8 years or more	100%

For example, if a Taxpayer purchases a machine for \$25,000, for use in a new industrial facility, and the machine has a useful life of 6 years, the qualified investment is \$16,666.66. The \$25,000 investment is multiplied by the applicable useful life percentage of 66.66% to arrive at \$16,666.66 in qualified investment.

- The credit can offset a portion of the tax attributable to qualified investment for the business and occupation tax (electric power generation taxes only), corporation net income tax and personal income tax (tax on flow-through business profits only), in the order stated.
- If the annual median compensation of qualified new employees exceeds the statewide average non-farm payroll wage (as determined annually by the West Virginia Bureau of Employment Programs),

the Taxpayer may use the available credit to offset up to 100% of each of the above taxes attributable to qualified investment. All other qualified Taxpayers may use the available credit to offset up to 80% of each of the above taxes attributable to qualified investment.

- The following is a summary of the Statewide Average Nonfarm Payroll Wage values by year:

Calendar Year	Statewide Average Nonfarm Payroll
2010	\$35,985
2011	\$36,895
2012	\$37,701
2013	\$39,091
2014	\$39,721
2015	\$40,198
2016	\$41,093

Annual updates may be found in the Administrative Notices section at www.tax.wv.gov.

- The amount of tax attributable to qualified investment is generally determined by use of a payroll factor. The Taxpayer multiplies total tax liability by a fraction, the numerator of which is the compensation paid to the employees hired as a result of the new qualified investment, and the denominator of which is the compensation paid to all West Virginia employees of the Taxpayer. The result of this computation is tax attributable to qualified investment.
- Excess credit remaining after applying the credit against current year taxes may be carried forward for up to twelve years following the year of initial credit claim attributable to the placement of qualified investment into service. The year of initial credit claim is either the tax year qualified investment was first placed into service, or at the Taxpayer's election, the next succeeding tax year.
- A Taxpayer wishing to qualify for the Economic Opportunity Tax Credit must apply for the credit on Form WV/EOTC-A. The application is due no later than the due date of the Taxpayer's annual state income tax return (corporate or personal) for the tax year the investment was placed into service or use, including lawful extensions of time to file. Any Taxpayer failing to timely file the credit application form loses up to 50% of the value of any Economic Opportunity Tax Credit sought for the time periods during which the failure to file the application continues. Note that one application Form WV/EOTC-A must be filed for each year qualified investment is placed in service or use.
- To claim the Economic Opportunity Tax Credit against the West Virginia personal income tax, a Taxpayer must file Schedule EOTC-PIT with the annual return. Taxpayers must file Schedule EOTC-1 to claim this credit on other annual tax returns.

ECONOMIC OPPORTUNITY TAX CREDIT FOR CORPORATE HEADQUARTERS RELOCATION

(WV/EOTC-A, SCHEDULE EOTC-1, SCHEDULE EOTC-PIT)

- A Taxpayer that moves its corporate headquarters to West Virginia from outside of West Virginia may be entitled to an Economic Opportunity Tax Credit, if the relocation creates at least 15 new West Virginia jobs.
- If the relocation creates at least 15, but less than 20 new jobs, the amount of credit is equal to 10% of the Taxpayer's adjusted qualified investment.
 - The "adjusted qualified investment" means the qualified investment of the Taxpayer in real and tangible personal property purchased for the corporate headquarters, plus the cost of the reasonable and necessary expenses incurred by the Taxpayer to relocate the corporate headquarters from its out-of-state location to West Virginia.
- Generally, the credit may be used to offset tax liabilities in the same manner as described above for the general Economic Opportunity Tax Credit. The only significant difference concerns a slightly different application against the corporation net income tax. At a minimum, the Economic Opportunity Tax Credit for a corporate headquarters relocation may be used to offset the sum of 100% of tax on allocated corporate net income and 80% of the tax attributable to qualified investment on apportioned corporate net income.
- Taxpayers must file both Application Form WV/EOTC-A no later than the due date of the Taxpayer's Annual State Income Tax Return (corporate or personal) for the tax year the investment was placed into service or use, including lawful extensions of time to file, and Schedule EOTC-1 to claim this credit on an annual return. Schedule EOTC-PIT is required to claim the credit against personal income tax.

ECONOMIC OPPORTUNITY TAX CREDIT FOR "SMALL BUSINESS"

(WV/EOTC-A, SCHEDULE EOTC-1, SCHEDULE EOTC-PIT)

- Certain small businesses may also be entitled to an Economic Opportunity Tax Credit.
- The term "small business" means a business or a controlled group of foreign and domestic affiliated businesses with annual gross sales of not more than an amount set by statute and adjusted for inflation on January 1st of each year. This constraint must be met by the small business only during the year qualified investment is first placed into service or use.
- The following is a summary of the applicable inflation-adjusted small business credit constraint by tax year:

Year	Maximum Gross Receipts
2011	\$8,507,850
2012	\$8,714,300
2013	\$8,938,250
2014	\$9,089,800
2015	\$9,233,450
2016	\$9,275,150

Annual updates may be found in the Administrative Notices section at www.tax.wv.gov.

- An eligible small business Taxpayer is allowed a credit in the manner described above for the general Economic Opportunity Tax Credit, except that the small business must create at least 10 new West Virginia jobs within twelve months (rather than 20 new jobs within three years).
- If the qualified small business creates at least 10 qualified new jobs, the small business may receive a credit equal to 10% of its qualified investment.
- Taxpayers must file both Application Form WV/EOTC-A no later than the due date of the Taxpayer's Annual State Income Tax Return (corporate or personal) for the tax year the investment was placed into service or use, including lawful extensions of time to file, and Schedule EOTC-1 to claim this credit on an annual return. Schedule EOTC-PIT is required to claim the credit against personal income tax.

ECONOMIC OPPORTUNITY TAX CREDIT FOR HIGH TECHNOLOGY MANUFACTURERS

- This credit is available to specified high technology manufacturing businesses. A "high technology manufacturing business" is a business classified as having a North American Industry Classification System Code (NAICS Code) as follows:

NAICS Code	Manufacturing Activity
<i>Computer & Peripheral Equipment</i>	
334111	Electronic Computers
334112	Computer Storage Devices
<i>Electronic Components</i>	
334411*	Electron Tubes
334414*	Electronic Capacitors
<i>Semiconductors</i>	
334413	Semiconductor & Related Devices
333295*	Semiconductor Machinery

*These codes do not exist in NAICS versions 2012 and 2017.

- The credit is based on the qualified Taxpayer's qualified investment that results in the creation of at least 20 new jobs within 12 months after placing the qualified investment in service.
- The credit is 100% of business and occupation tax, corporation net income tax and personal income tax, (on flow-through business profits only), in the order stated, that is attributable to the qualified investment.
- The credit is allowed each year for a 20-year credit period. The credit is taken beginning with the tax year in which the qualified investment is placed in service, unless the Taxpayer elects to delay to the next succeeding tax year. The Tax Commissioner may require a Taxpayer intending to claim this credit to file a notice of intent to claim this credit before the Taxpayer begins reducing monthly or quarterly installment payments of estimated tax.

- The median compensation of the new jobs must be greater than an annually adjusted value. The following is a summary of the applicable inflation-adjusted median compensation constraint for the new jobs by year:

Year	Median Compensation
2010	\$47,000
2011	\$47,650
2012	\$48,850
2013	\$50,100
2014	\$50,950
2015	\$51,750

Annual updates may be found in the Administrative Notices section at www.tax.wv.gov.

ECONOMIC OPPORTUNITY TAX CREDIT FOR JOBS CREATION (WV/EOTC-A)

- An eligible business (i.e. manufacturing, warehousing, information processing, goods distribution, destination tourism, and research and development) creating fewer than 20 new jobs for a regular business, and fewer than 10 new jobs for a qualified small business, may receive a tax credit of \$3,000 per year, for a period of 5 years, for each new job created. The new jobs must be full-time, pay a minimum salary set by statute, and offer health benefits.
- There is no carry forward or carry back for this credit. If the number of new jobs decreases, the tax credit amount is forfeited for each net job loss. This credit is first applied to the business and occupation tax, then the corporation net income tax and finally the personal income tax. Before claiming this credit, the application (**Form WV/EOTC-A**) must be submitted to the Tax Department for approval.
- The minimum annual salary of the new jobs for purposes of the Economic Opportunity Tax Credit for Jobs Creation is adjusted annually for inflation. The following is a summary, by tax year, of the applicable inflation adjusted minimum salary for the qualifying new jobs.

Tax Year	Minimum Salary
2010	\$32,000
2011	\$32,450
2012	\$33,250
2013	\$34,100
2014	\$34,650
2015	\$35,200

Annual updates may be found in the Administrative Notices section at www.tax.wv.gov.

MANUFACTURING INVESTMENT TAX CREDIT

(WV/MITC-A, SCHEDULE MITC-1)

- Manufacturers that make qualified investments for industrial expansion or industrial revitalization in West Virginia may be eligible for the Manufacturing Investment Tax Credit.
- The term "manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System (NAICS) code number of 31, 32, or 33, or the six-digit code number 211112.
- Eligible investments include real property, improvements to real property and tangible personal property constructed or purchased for use as a part of a new or expanded or revitalized business facility of a qualified industrial Taxpayer. Eligible investments may also include replaced or refurbished buildings, equipment, machinery and other tangible personal property used in the operation of a qualified facility. Eligible investment may also include real or tangible personal property acquired by written lease for a primary term of ten years or longer, if used as a component part of a new, expanded or revitalized industrial facility.
- The credit is equal to 5% of the Taxpayer's qualified investment pro-rated over a ten-year period at a rate of 10% per year. The calculation of qualified investment for this credit is the same as the calculation for the Economic Opportunity Tax Credit, using the 4-year, 6-year and 8-year Useful Life table set forth above.
- Certain requirements for qualification of leased property are different between the Economic Opportunity Tax Credit and the Manufacturing Investment Credit.

$$\begin{aligned} \text{Qualified Investment} \times 5\% &= \text{Total Credit} \\ \text{Total Credit} \div 10 &= \text{Annual Credit} \end{aligned}$$

Annual Credit is the amount of credit that can be applied in each tax year for 10 years.

- All Taxpayers wishing to qualify for the Manufacturing Investment Tax Credit must apply for the credit on Form WV/MITC-A on or before the due date of the personal income tax return or corporation net income tax return filed for the tax year the investment was placed in service or use, including lawful extensions of time to file. Any Taxpayer failing to timely file the credit application form loses up to 50% of the value of any Manufacturing Investment Tax Credit sought for the period in question. Note that an application Form WV/MITC-A must be filed for each year the qualified investment is placed in service or use.
- Manufacturing Investment Tax Credit may be used to offset up to 60% of the Taxpayer's annual liability for severance tax and corporation net income tax for a period of 10 years. Any portion of a particular year's annual credit that remains after application against these taxes for the taxable year is forfeited. Taxpayers must file Schedule MITC-1 to claim this credit.
- The maximum offset of the Manufacturing Investment Tax Credit is 60% of state tax liability. The Manufacturing Investment Tax Credit, of 5% for capital investments, greatly reduces the effective corporation net income tax rate for West Virginia manufacturing.

EXAMPLE:

If a manufacturer makes a \$10 million investment in new plant and equipment in a West Virginia facility, the Manufacturing Investment Tax Credit generally equals 5% of that investment, or \$500,000 prorated over a ten-year period at a rate of \$50,000 per year. If this manufacturer's net apportioned and allocated income is \$1 million, the pre-credit West Virginia corporation net income tax liability would be \$65,000 or 6.5% of \$1 million in 2015. After applying the \$39,000 (60% maximum offset) Manufacturing Investment Tax Credit, West Virginia corporation net income tax liability drops to \$26,000 or an amount equal to just 2.6% of net income.

**MANUFACTURING
PROPERTY TAX
ADJUSTMENT
CREDIT**

(SCHEDULE MPTAC-1)

- Manufacturers may claim a non-refundable tax credit against corporation net income tax equal to the amount of local property taxes paid on West Virginia manufacturing inventory.
- The credit amount is the amount of ad valorem property tax paid on the value of manufacturing inventory of the eligible Taxpayer during the tax reporting year.
- The credit does not carry forward or carry back.
- To claim this credit, an annual schedule showing the amount of property tax paid on eligible inventories for the taxable year and the amount of the allowable credit (Schedule MPTAC-1) must be submitted with the corporation net income tax return.

**INDUSTRIAL
EXPANSION &
INDUSTRIAL
REVITALIZATION
CREDIT FOR
ELECTRIC POWER
PRODUCERS**

(SCHEDULE I-EPP)

- Electric power generation companies that make eligible investment(s) for industrial expansion or industrial revitalization within West Virginia may be eligible for the Industrial Expansion and Revitalization Credit.
- Eligible investments for industrial expansion include real property, improvements to real property and tangible personal property constructed or purchased for use as a part of a new or expanded electric power generation facility. Eligible investments for industrial revitalization include replaced or refurbished facilities, equipment, machinery and other tangible personal property used in the operation of an electric power generation facility. Eligible investment may also include real or tangible personal property acquired by written lease for a primary term of ten years or longer, if used as a component part of a new, expanded or revitalized electric power generation facility.
- The credit is equal to 10% of the Taxpayer's qualified investment. The calculation of qualified investment for this credit is the same as the calculation for the Economic Opportunity Tax Credit, using the 4-year, 6-year and 8-year multiplier table set forth above. However certain requirements for qualification of leased property are different between the two credits. Industrial Expansion and Revitalization Credit may be used to offset up to 50% of the Taxpayer's annual liability for business and occupation tax for a period of 10 years.
- Any portion of a particular year's annual credit that remains after application against these taxes for the taxable year is forfeited. Taxpayers must file Schedule I-EPP to claim this credit.

**COAL LOADING
FACILITIES CREDIT**

- This credit is available to Taxpayers subject to severance tax that purchase real or personal property, or a combination thereof, to build or construct a new or expanded coal loading facility, or Taxpayers that revitalize an existing coal loading facility.

(SCHEDULE C or
Schedule CL for Coal
Severance)

- A qualifying coal loading facility is limited to any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility, or from a coal storage facility, or both, or from any means of rail or barge transportation used to move coal, including land that is directly associated with and solely used for the coal loading facility. This credit is available for investment in such property only when the property is to be used in the transfer of coal to any means of rail or barge transportation; it is specifically not available for investment in property to be used in the transfer of coal (or other material) to any other form of transportation.
- The calculation and application of credit is similar to the calculations and applications for the Industrial Expansion and Revitalization Credit.

For example, the credit is equal to 10% of calculated qualified investment and is applied over a 10-year period to offset up to 50% of annual tax liability for business and occupation tax and severance tax.
- Taxpayers must file Schedule C or Schedule CL (for Coal Severance only) to claim this credit.

CREDIT RECAPTURE

- There are special recapture provisions for the Economic Opportunity Tax Credit, Manufacturing Investment Tax Credit, Industrial Expansion and Revitalization Credit, Coal Loading Facilities Credit and the Strategic Research and Development Tax Credit.
- Credit recapture occurs when the actual useful life of qualified investment property or the period of actual use of qualified investment property within West Virginia falls short of the projected useful life in the applicable percentage category used in the original credit calculations. Credit attributable to property that ceases to be used in West Virginia before the end of its categorized useful life must be recalculated for all tax years according to the actual useful life or period of use in West Virginia.

EXAMPLE: Manufacturing Investment Tax Credit Recapture

Company A invests \$10 million in equipment with a designated useful life of 8 years in 2009.

Investment in assets is determined to be "qualified" based on the useful life of the particular asset according to a percentage multiplier table as follows:

Useful Life in WV	Useful Life %
Less than 4 years	0%
4 years or more but less than 6 years	33 ⅓%
6 years or more but less than 8 years	66 ⅔%
8 years or more	100%

Company A's Manufacturing Investment Tax Credit is equal to 5% of its qualified investment. Because all of Company A's investment is in capital assets that have useful lives of 8 years, 100% of its \$10 million investment is qualified investment. Thus, the credit for Company A is calculated to equal \$500,000 or \$50,000 per year for 10 years.

$(\$10,000,000 \times 100\%) \times 5\% = \$500,000$ Total Credit
 $\$500,000 \text{ Total Credit} \div 10 \text{ Years} = \$50,000$ Per Year Annual Credit

However, Company A moves this equipment to New York in 2014. Therefore, the equipment's useful life or actual period of use in West Virginia is reduced to only 5 years. The corresponding credit is reduced according to the above table from \$500,000 to \$166,667, or \$16,667 per year for 10 years.

$(\$10,000,000 \times 33 \frac{1}{3}\%) \times 5\% = \$166,666.67$ Total Credit
 $\$166,667 \text{ (Rounded)} \div 10 \text{ years} = \$16,667$ Per Year Annual Credit

A reconciliation statement for 2009 through 2014 reflecting an over-utilization of credit must be filed with payment of any additional tax, interest and penalties owed.

- Recapture provisions apply for the Economic Opportunity Tax Credit whenever the Taxpayer fails to maintain the required number of new jobs upon which the credit is based. Except for the "Small Business" version of the Economic Opportunity Tax Credit, recapture generally occurs immediately after the Taxpayer's jobs re-determination year (the second tax year following the tax year when qualified investment was first placed into use or service).
- If the actual number of new jobs falls below the projected new job threshold, the Taxpayer must file amended returns with the payment of any additional tax, interest and penalties owed due to an over-

utilization of credit. A Recapture Tax applies whenever the number of new jobs falls below a minimum threshold (set forth in the table below) after the initial re-determination period.

New WV Jobs Total At Least	New Jobs %
520	30%
280	25%
20	20%
15	10%
Corporate headquarters relocation only (more)	
10	10%
Small business only (more)	

Job levels are determined on an annual basis for 10 years for the "Small Business" version of the Economic Opportunity Tax Credit.

- Recapture does not apply to the small business tax credit. A Taxpayer entitled to the small business tax credit determines the number of jobs 12 months after qualified investment is placed in use or service, and at the end of each tax year thereafter. If the number of jobs attributable to the qualified investment equals or exceeds 10, the Taxpayer is entitled to the tax credit. If the number of new jobs falls below 10, the Taxpayer loses the small business credit for that tax year. Entitlement to the tax credit can be reestablished for any year within the original 10-year credit period if the number of new jobs again equals or exceeds 10.

ENVIRONMENTAL CREDITS

ALTERNATIVE-FUEL MOTOR VEHICLES CREDIT & REFUELING INFRASTRUCTURE CREDIT

(SCHEDULE WV/AFTC-1)

- A Taxpayer is eligible for the alternative fuel vehicle credit if it buys, converts or retrofits a motor vehicle to operate on compressed natural gas, liquefied natural gas, or liquefied petroleum gas.
 - Credit cannot be claimed, however, if the conversion is required under federal or state law, policy, or regulation.
 - The maximum credit is determined using vehicle weight, and a maximum credit limitation.
 - Credit must be claimed over a five-year period.
 - The credit can be applied against corporation net income tax or personal income tax.
- A Taxpayer is eligible for the alternative fuel refueling infrastructure credit if it makes certain qualified investments in public refueling infrastructure.
 - The maximum alternative fuel refueling infrastructure credit is 20% of qualified costs, up to \$400,000 per facility.

ENVIRONMENTAL AGRICULTURAL EQUIPMENT CREDIT

(SCHEDULE WV/AG-1)

- Taxpayers purchasing and installing qualified agricultural equipment for use in agricultural operations can claim the Environmental Agricultural Equipment credit.
- For purposes of the credit, agricultural operations means only the commercial production of food, fiber, or woodland products (not timbering activity) by means of cultivation, tillage of the soil or by the conduct of animal, livestock, dairy, apiary, equine, or poultry husbandry, aqua-cultural activity, horticultural activity, or any other plant or animal production activity and all farm practices related, usual or incidental to the operations. Production is classified as "commercial production" if the producer has annual sales of at least \$1,000 of the producer's agricultural products.
- Agricultural equipment and structures that qualify for this credit include the following:
 - Advanced technology pesticide and fertilizer application equipment;
 - Conservation tillage equipment;
 - Dead poultry composting facility;
 - Mortality incinerator;
 - Nutrient management system;
 - Stream-bank and shoreline protection system;
 - Stream channel stabilization system;
 - Stream crossing or access plan;
 - Waste management system;
 - Waste storage facility; and
 - Waste treatment lagoon
- The Taxpayer must demonstrate that it purchased and installed qualified equipment, and provide written certification by the Commissioner of Agriculture that each item purchased is qualified agricultural equipment.

- The amount of credit is 25% of the price of all certified expenditures, but may not exceed \$2,500 or the total amount of the Taxpayer's liability under either the corporation net income tax or personal income tax. The excess may be carried over and applied as a credit in each of the next five years unless used sooner. Carried forward credit must be claimed before applying any new credit.
- Agricultural equipment credit may be used by only one business entity, may not be assigned and is limited to the tax liability attributable to agricultural operations within West Virginia.

EMPLOYMENT CREDITS

MILITARY INCENTIVE CREDIT (FORMERLY VETERANS EMPLOYMENT CREDIT)
(SCHEDULE J)

- The purpose of the West Virginia Military Incentive Program Act of 1991 is to encourage the employment of members of the National Guard and reserve forces, disadvantaged Vietnam era and Korean conflict veterans and disabled veterans generally.
- For economically disadvantaged veterans hired, the credit available to the employer is 30% of the first \$5,000 in wages or compensation actually paid the employee. For disabled veterans, the credit is the percentage of disability multiplied by the first \$5,000 in wages. For members of the National Guard and reserve forces, the credit is 25% of the first \$5,000 in wages.
- The veteran must have been certified as eligible by WorkForce West Virginia (formerly the WV Dept. of Employment Security), and have been employed for a continuous period of at least one year.
- Taxpayers must file Schedule J to claim this credit.

NATURAL GAS JOBS RETENTION ACT CREDIT

(SCHEDULE WV/NGRET-1)

- The Natural Gas Industry Jobs Retention Act provides a credit of \$1,000 per qualified full-time employee for businesses subject to the natural gas storage provisions of the Business and Occupation Tax.
- A full-time employee is defined as one who works on a work site or is on paid vacation leave or other paid leave at least fifteen hundred (1,500) hours per year. The number of jobs required for a business to receive the credit must be at least 60% of the number of jobs existing with the business as of January 1, 1996. A qualified jobs ratio is calculated by using a total of pre-existing jobs and new jobs divided by those jobs existing on January 1, 1996.
- The amount of credit may not exceed the business and occupation tax attributable to the natural gas storage activity, and may not be taken against any other component of business and occupation tax liability.
- The credit may not be carried forward or back to another tax year.

OTHER CREDITS

TELEPHONE UTILITIES RATE REDUCTION CREDIT

(SCHEDULE K)

- Taxpayers that provide telephone service at special reduced rates to certain low-income residential customers may claim this credit.
- The West Virginia Public Service Commission certifies the annual amount of the revenue deficiency resulting from the provision of qualifying reduced-rate service. The amount of the credit is the cost of providing the service to qualified customers, less any reimbursement received through any other means. The Public Service Commission must certify the level of revenue deficiency, and a copy of the certification order must be attached to the return on which the credit is claimed. The credit is claimed against the West Virginia corporation net income tax.
- Unused credits may not be carried over to another tax year. In no event may the total credit claimed exceed 100% of the certified revenue deficiency.

ELECTRIC, NATURAL GAS, AND WATER UTILITIES RATE REDUCTION CREDIT

(SCHEDULE L)

- Public utilities that provide electric, natural gas, and water utility service at special reduced rates to low-income residential customers may claim the credit.
- The West Virginia Public Service Commission determines the annual revenue deficiency resulting from the reduced rates, and certifies the amount of allowable credit.
- The credit is first claimed against the West Virginia business and occupation tax liability, then against West Virginia corporation net income tax liability.

- Any unused credit may be carried over to the next year's business and occupation tax liability and is applied before any other credit for that year. There is no provision for carryover for the corporation net income tax.
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**NONFAMILY
ADOPTION CREDIT**
(SCHEDULE WV/NFA-1)

- This is a one-time credit that may be applied to personal income tax upon the adoption of a child or children by the Taxpayer(s). The child or children must be under the age of eighteen years at the time of adoption and cannot be related to the Taxpayer(s) by blood or marriage.
 - The credit for each adoption is \$4,000 and may be taken in the year the child is adopted. This credit may, at the Taxpayer's option, be taken over a period of three years.
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**NEIGHBORHOOD
INVESTMENT
PROGRAM CREDIT**
(SCHEDULE WV/NIPA-2)

- The West Virginia Neighborhood Investment Program Act provides credit to individuals and private sector businesses that make eligible contributions to community-based nonprofit organizations that establish projects to assist neighborhoods and local communities. These projects provide services such as health care, counseling, emergency assistance, crime prevention, education, housing, job training, and physical and environmental improvements.
 - Project eligibility is determined pursuant to the filing of an application with the West Virginia Development Office and the Neighborhood Investment Advisory Board by one of two approaches.
 1. Qualification based on contributions destined for a certified economically disadvantaged area, or
 2. Qualification by need (regardless of location)
 - Eligible contributions include cash, tangible personal or real property (at fair market value) and contributions of in-kind professional services (at 75% of fair market value.) The maximum credit that can be taken by any Taxpayer is \$100,000 per taxable year, for eligible contributions to one or more certified project plans. Total maximum credit that can be allowed by the West Virginia Development Office during any fiscal year is \$3,000,000. The minimum contribution of a Taxpayer that would qualify for the credit during a year is \$500, and the maximum contribution is \$200,000.
 - To be eligible, the Taxpayer must be subject to the corporation net income tax or personal income tax.
 - The amount of credit is 50% of the eligible contribution, and credit may be taken over a five-year period.
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**HISTORIC
REHABILITATED
BUILDINGS
INVESTMENT CREDIT**
(SCHEDULE RBIC)

- The Historic Rehabilitated Buildings Investment Credit equals 10% of the qualified expenditures for the rehabilitation of residential and nonresidential buildings designated by the National Park Service, United States Department of the Interior, as "certified historic structures," and further defined as a "qualified rehabilitated structure."
 - To qualify for the credit, the building or area must be located within West Virginia, and rehabilitation expenditures must be reviewed and approved by the West Virginia Department of Culture and History.
 - The credit may offset up to 100% of the Taxpayer's liability for personal income tax or corporation net income tax. Taxpayers may transfer, sell or assign any unused tax credits after first obtaining a certificate of approval from the Division of Culture and History to transfer, sell or assign the stated amount of unused tax credit. Excess credit may also be carried over for one year back and twenty years forward.
 - Taxpayers must file Schedule RBIC to claim this credit on annual tax returns.
 - Application procedures for the rehabilitated buildings investment credits are the same as those required in the federal regulations for the Preservation Tax Incentive. The certification process is in three parts. Part I certifies that the building is a historic structure. Part II describes the work to be done, and Part III is the actual certification of the Secretary of the Interior's Standards for Rehabilitation. The reviews are completed at the State Historic Preservation Office then forwarded, with recommendations, to the National Park Service for final determination.
 - Successful certification by the National Park Service of a certified rehabilitation automatically qualifies the applicant for this tax credit.
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**CREDIT FOR
QUALIFIED
REHABILITATED**

- The Credit for Qualified Rehabilitated Residential Building Investment equals 20% of the qualified expenditures for the rehabilitation of residential homesteads designated by the West Virginia Department of Culture and History as "certified historic structures," and further defined as a "qualified

**RESIDENTIAL
BUILDING
INVESTMENT**

(SCHEDULE RBIC-A)

rehabilitated structure." The building or area must be located within West Virginia and rehabilitation expenditures must be reviewed and approved by the West Virginia Department of Culture and History to qualify for the credit.

- The credit may offset up to 100% of the Taxpayer's liability for personal income tax. Taxpayers may transfer, sell or assign any unused tax credits after first obtaining a certificate of approval from the Division of Culture and History to transfer, sell or assign the stated amount of unused tax credit. Excess credit may also be carried forward for five years.
- Taxpayers must file Schedule RBIC-A to claim this credit on annual tax returns.

**APPRENTICESHIP
TRAINING TAX CREDIT**

(SCHEDULE WV/ATTC-1)

- A credit is allowed for properly-registered Taxpayers for wages paid to apprentices in the construction trades. The credit is \$2.00 per hour multiplied by the total number of hours worked during the tax year, but the credit may not exceed the lesser of \$2,000.00 or 50% of the actual wages paid for the apprenticeship.
- The apprenticeship training program must consist of at least 2,000 hours but not more than 10,000 hours of on-the-job training.
- Any unused credit is forfeited and no carry forward or carry back to prior tax years is allowed.

**FILM INDUSTRY
INVESTMENT TAX
CREDIT**

(SCHEDULE WV/FIIC-1)

- This credit is intended to encourage economic growth through the production of motion pictures and other commercial film and audiovisual projects in this State.
- The Film Tax Credit is a nonrefundable credit based on a percentage of the direct production expenditures made in West Virginia and the post production expenditures made in West Virginia that are directly attributable to the production of a commercial film or audiovisual product.
- The base allowance is 27%. An additional 4% is available if 10 or more West Virginia residents are full-time employees working in the State, or apprentices working in the State. No more than \$5,000,000 of credits may be allocated in any fiscal year. The credit may not be claimed for expenditures for which the production company claimed an exemption from sales tax or use tax.
- There are specific requirements in order to claim the credit. The phrase "Filmed in West Virginia" must appear in the closing credits. The West Virginia Film Office must approve a Taxpayer's application for the credit.
- The credit is applied to the corporation net income tax and the personal income tax. The credit may not be applied against employer withholding taxes. Any unused credit is applied against the applicable taxes in the order specified for succeeding tax years until the full amount of excess credit is used or the expiration of the second tax year after the tax year in which the expenditures occurred, whichever comes first. Any remaining credit is forfeited. No carry back to prior tax years is allowed.
- In order to claim this credit, Schedule WV/FIIC-1 must be enclosed with the tax return on which the credit is being claimed.

**ASSISTANCE OR
ADDITIONAL
INFORMATION**

- For assistance or additional information, you may call a Taxpayer Service Representative at:

1-800-WVA-TAXS
(1-800-982-8297)

Or visit our website at:

www.tax.wv.gov

**CREDIT SCHEDULE
ORDER FORM**

- On the following page is a listing of tax credit schedules and forms that can be downloaded.



West Virginia Tax Credits – Forms and Schedules

ECONOMIC DEVELOPMENT CREDITS

Economic Opportunity Tax Credits

- General Economic Opportunity Tax Credit
- Corporate Headquarters Relocation Tax Credit
- Small Business Credit
- High Technology Manufacturers Credit
- Jobs Creation Tax Credit

All these require Application Form WV/EOTC-A for Investments Placed in Service on or After January 1, 2003 and either EOTC-1 or EOTC-PIT

Application Form WV/EOTC-A for Investments Placed in Service on or After January 1, 2003

<http://tax.wv.gov/Documents/TaxForms/eotca.pdf>

Schedule EOTC-1 (For periods after January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/2015/eotc1.pdf>

Schedule EOTC-1 (For periods before January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/eotc1.pdf>

MITC-1 Instructions

<http://tax.wv.gov/Documents/TaxForms/2015/mitc1.instructions.pdf>

Schedule EOTC-PIT

<http://tax.wv.gov/Documents/TaxForms/eotcpit.pdf>

Manufacturing Investment Tax Credits

Application Form WV/MITC-A

<http://tax.wv.gov/Documents/TaxForms/mitca.pdf>

Schedule MITC-1 (For periods after January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/2015/mitc1.pdf>

Schedule MITC-1 (For periods before January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/2014/mitc1.pdf>

MITC-1 Instructions

<http://tax.wv.gov/Documents/TaxForms/2015/mitc1.instructions.pdf>

Industrial Expansion and Revitalization Credit for Electric Power

Schedule I-EPP

<http://tax.wv.gov/Documents/TaxForms/schedule.I-EPP.pdf>

I-EPP Instructions

<http://tax.wv.gov/Documents/TaxForms/schedule.I-EPP.instructions.pdf>

Strategic Research and Development Tax Credit – Only available for qualified investment or expenditure after January 1, 2003 and before January 1, 2014

Application Form WV/SRDTC-A

<http://tax.wv.gov/Documents/TaxForms/srdtca.pdf>

WV/SRDTC-A Instructions

<http://tax.wv.gov/Documents/TaxForms/srdtca.instructions.pdf>

Schedule SRDTC-1

<http://tax.wv.gov/Documents/TaxForms/2015/srdtc1.pdf>

SRDTC-1 Instructions

<http://tax.wv.gov/Documents/TaxForms/2015/srdtc1.instructions.pdf>

Coal Loading Facilities Credit

Schedule C – Business and Occupation Tax

<http://tax.wv.gov/Documents/TaxForms/schedule-C.pdf>

Schedule CL – Coal Severance Tax

<http://tax.wv.gov/Documents/TaxForms/ScheduleCL.pdf>

Manufacturing Property Tax Adjustment Credit

Schedule WV/MPTAC-1 (For periods after January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/2015/mptac1.pdf>

Schedule WV/MPTAC-1 (For periods before January 1, 2015)

<http://tax.wv.gov/Documents/TaxForms/mptac1.pdf>

ENVIRONMENTAL CREDIT

West Virginia Environmental Agricultural Equipment Credit

Schedule WV/AG-1

<http://tax.wv.gov/Documents/TaxForms/ag1.pdf>

WV/AG-1 Instructions

<http://tax.wv.gov/Documents/TaxForms/ag1.instructions.pdf>

EMPLOYMENT CREDITS

West Virginia Military Incentive Credit

Schedule J

<http://tax.wv.gov/Documents/TaxForms/schedule-J.pdf>

Natural Gas Jobs Retention Act Credit

Schedule WV/NGRET-1

<http://tax.wv.gov/Documents/TaxForms/ngret1.pdf>

OTHER CREDITS

Telephone Utilities Rate Reduction

Schedule K

<http://tax.wv.gov/Documents/TaxForms/schedule-K.pdf>

Electric, Natural Gas, And Water Utilities Rate Reduction

Schedule L

<http://tax.wv.gov/Documents/TaxForms/schedule.L.pdf>

Nonfamily Adoption Credit

Schedule WV/NFA-1

<http://tax.wv.gov/Documents/TaxForms/nfa1.pdf>

Neighborhood Investment Program Credit

Schedule WV/NIPA-2 (For periods after January 1, 2012)	http://tax.wv.gov/Documents/TaxForms/2015/nipa2.pdf
Schedule WV/NIPA-2 (For periods after January 1, 2012)	http://tax.wv.gov/Documents/TaxForms/2014/nipa2.pdf
WV/NIPA-2 Instructions	http://tax.wv.gov/Documents/TaxForms/2015/nipa2.instructions.pdf
Visit West Virginia Development Office for more information	http://www.wvcommerce.org/people/communityresources/communityrevitalization/neighborhoodinvestmentprogram/default.aspx
Historic Rehabilitated Buildings Investment Credit	
Schedule RBIC	http://tax.wv.gov/Documents/TaxForms/schedule-RBIC.pdf
Residential Historic Rehabilitated Building Qualified Investment Credit	
Schedule RBIC-A	http://tax.wv.gov/Documents/TaxForms/schedule-RBIC-A.pdf
Apprenticeship Training Tax Credit	
Schedule WV/ATTC-1 (For periods after January 1, 2012)	http://tax.wv.gov/Documents/TaxForms/2015/attc1.pdf
Schedule WV/ATTC-1 (For periods before January 1, 2012)	http://tax.wv.gov/Documents/TaxForms/2011/attc1.pdf
Film Industry Investment Tax Credit	
Schedule WV/FIIA-TCS	http://www.wvcommerce.org/App_Media/Assets/pdf/businessandworkforce/wvfilm/FORM%20TCS.pdf
Visit West Virginia Film Office for more information	http://www.wvcommerce.org/business/industries/wvfilm/incentives/incentiveforms.aspx
Alternative Fuels Tax Credit	
Schedule WV/AFTC-1 (For periods after January 1, 2015)	http://tax.wv.gov/Documents/TaxForms/2015/aftc1.pdf
Schedule WV/AFTC-1 (For periods before January 1, 2015)	http://tax.wv.gov/Documents/TaxForms/aftc1.pdf
WV/AFTC-1 Instructions	http://tax.wv.gov/Documents/TaxForms/2015/aftc1.instructions.pdf
Commercial Patent Incentives Tax Credit	
Schedule WV/CPITC-1	http://tax.wv.gov/Documents/TaxForms/2015/cpitc1.pdf

This list is not all-inclusive. Specific tax returns may indicate credits available that are not included here. Visit our website at www.tax.wv.gov for more information.