

WVU UPPER KANAWHA VALLEY COLLABORATION AGREEMENT

This WVU UPPER KANAWHA VALLEY COLLABORATION AGREEMENT (“Agreement”) is dated December [], 2015 and is between the West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia (“University”); the County Commission of Kanawha County, a public corporation and governing body of Kanawha County, a political subdivision under the laws of the State of West Virginia (“Kanawha County”); the County Commission of Fayette County, a public corporation and governing body of Fayette County, a political subdivision under the laws of the State of West Virginia (“Fayette County”); the Town of Montgomery, a municipal corporation under the laws of the State of West Virginia (“Montgomery”); and the Town of Smithers, a municipal corporation under the laws of the State of West Virginia (“Smithers”).

RECITALS

- A. **WHEREAS**, the West Virginia University Institute of Technology (“WVU Tech”) has a rich and distinguished history of more than one hundred and twenty years of providing vital educational opportunities, particularly in undergraduate engineering and technology;
- B. **WHEREAS**, since the founding of WVU Tech as a preparatory school in 1895, WVU Tech has undergone multiple changes in governance, structure, and mission, functioning as a trade school, junior college, independent baccalaureate granting institution, regional campus of the University, and a full-integrated division of the University;
- C. **WHEREAS**, WVU Tech has been located in Montgomery, West Virginia, since the founding of WVU Tech and it has been an integral part of Montgomery the surrounding areas of Fayette and eastern Kanawha County (“Upper Kanawha Valley”);
- D. **WHEREAS**, in 2009, the West Virginia Legislative Auditor completed a report indicating that WVU Tech had barriers to enrollment growth, including, but not limited to, significant infrastructure problems;
- E. **WHEREAS**, in 2011, the West Virginia Legislature adopted legislation calling for a WVU Tech Revitalization Report;
- F. **WHEREAS**, the WVU Tech Revitalization Report made over fifty recommendations, including that WVU Tech needed to increase its enrollment from 1,100 to 1,800 and concluded that unless the State and the University could commit to “a five to seven million dollar investment for each of the next five years, the revitalization legislation of 2011 will be seen merely as an exercise in futility;”
- G. **WHEREAS**, significant infrastructure issues remain at WVU Tech despite the State and the University making significant investments at WVU Tech over the past several

years, including \$11 million in capital improvements made by the University and approximately \$25 million in additional funding by the State;

- H. **WHEREAS**, in June of 2015, the University acquired a campus in Beckley, West Virginia (“WVU Beckley Campus”);
- I. **WHEREAS**, on September 1, 2015, the University announced its intent that the University and WVU Tech begin offering courses in the Fall of 2016 on the WVU Beckley Campus and that WVU Tech be operational solely on the WVU Beckley Campus beginning in the Fall of 2017, and is pursuing all authorizations and actions necessary to complete such intentions;
- J. **WHEREAS**, Fayette County, Kanawha County, Montgomery, and Smithers (the “UKV Governments”) have insisted that the University set forth a plan for the maintenance and upkeep of the buildings and properties owned by the University in Montgomery (“Facilities”), for the University to attempt to identify and pursue, in good faith, alternative uses for the Facilities, and for assistance on economic, academic, and community development activities for the Upper Kanawha Valley;
- K. **WHEREAS**, the University has expressed its intention and desire to collaborate, work, and partner with the UKV Governments on a plan for the maintenance and upkeep of the Facilities, for the University to attempt to identify and pursue alternative uses for the Facilities, and for assistance on economic and community development activities for the Upper Kanawha Valley;
- L. **WHEREAS**, on October 22, 2015, Kanawha County, and on October 28, 2015, Fayette County, each in open session in a regular scheduled public meeting, unanimously voted not to be a participant in litigation against the University related to the relocation of WVU Tech and instead Kanawha County expressed a desire to partner with the University, and the other UKV Governments, on a multitude of efforts for the long-term benefit of the Upper Kanawha Valley;
- M. **WHEREAS**, Montgomery and Smithers, have likewise expressed a desire not to pursue litigation against the University, and instead are determined to focus on a collaborative plan for the future development of the Kanawha Valley;
- N. **WHEREAS**, although the parties recognize that the relocation of WVU Tech from Montgomery to Beckley will have a significant loss and impact on the Upper Kanawha Valley, the parties also recognize that the current financial situation relating to WVU Tech is not sustainable and that the parties with this agreement intend to achieve far more working together to identify economic and community development opportunities that will benefit the Upper Kanawha Valley over the long term.

In consideration of the recitals, premises, and the mutual covenants in this agreement, the Parties therefore agree as follows:

1. **WVU Implementation Team.** On the effective date of the Agreement, the University shall designate a WVU Implementation Team, including a leader of the WVU Implementation Team, to work with the UKV Governments to identify areas for University subject matter experts to assist the Upper Kanawha Valley, including experts from the WVU Extension Service, the Land Use and Sustainable Development Law Clinic (“Land Use Clinic”), the Brownfields Assistance Center, the BrickStreet Center for Entrepreneurship and Innovation, the WV Redevelopment Collaborative, and the Bureau for Business and Economic Research (“BBER”). The University through the WVU Implementation Team shall provide a reasonable amount of services from the subject matter experts at no cost until at least July 1, 2019 and shall seek grant funding to enable the continued provisions of services by the Implementation Team at no cost beyond that time. The parties shall in good faith develop scopes of work for these endeavors.
2. **UKV Collaboration Team.** Within two weeks of the effective date of the Agreement, the UKV Governments shall each appoint one person to serve on a team to discuss items for collaboration with the University (“UKV Collaboration Team”). Within two weeks of the effective date of the Agreement, the University shall provide at least four representatives to serve on the UKV Collaboration Team, including at least one representative from Extension Services, the President of WVU Tech (or equivalent title) and one Associate Vice President (or equivalent title or higher) of the University. The UKV Collaboration Team shall meet at least quarterly, in meetings noticed and open to the public, through July 1, 2020. The WVU Implementation Team shall provide support and report to the UKV Collaboration Team on its efforts in the Upper Kanawha Valley.
3. **Initial Tasks to be Managed by the Implementation Team:**
 - a. **Economic Growth Analysis.** The University shall either undertake or provide a reasonable amount of funding, in the University’s discretion, for the development of an economic growth analysis study for the Upper Kanawha Valley that will analyze capabilities relating to economic opportunities, workforce, innovation, capital, logistics, governance, and quality of life (“UKV Blueprint”). The development of the UKV Blueprint shall include stakeholder and community outreach, baseline analyses, identification of potential economic clusters, and a proposed action plan for implementation.
 - b. **Economic Impact relating to WVU Tech.** The University, through the BBER, shall undertake a study relating to the economic impact of WVU Tech on the Upper Kanawha Valley. The BBER shall strive to complete this study on or before January 30, 2016.
 - c. **Comprehensive Plan for Montgomery.** The University, through the Land Use Clinic, shall develop a Comprehensive Plan in accordance with Chapter 8A of the West Virginia Code for the City of Montgomery. The Land Use Clinic will assist with the formation of a Planning Commission, train the Planning

Commission on the required elements of the Comprehensive Plan, develop a vision statement, identify key stakeholders, develop public input procedures, develop an existing and future land use map using GIS data, solicit public input through community surveys and open houses, develop goals, objectives, an action plan and an implementation plan, and assist with the formal adoption of the plan. The University shall also discuss and offer to provide such services to Smithers and the Upper Kanawha Valley.

- d. **Grant Application and Funding Assistance.** Until July 1, 2019, the University through the WVU Implementation Team shall provide at no cost a reasonable amount of technical and subject matter expertise to assist the UKV Governments in identifying and pursuing federal and state grants or appropriations that would benefit the Upper Kanawha Valley. The University shall seek grants that would permit the provisions of additional assistance at no cost beyond July 1, 2019.
 - e. **Health Care Initiatives.** WVU has recognized that economic development and education are closely tied and dependent on the overall health of communities and it is working on several initiatives designed to facilitate and foster improvement of the healthcare of citizens in West Virginia. Representatives from the WVU Health Sciences Center shall work with the WVU Implementation Team to investigate and facilitate similar initiatives in the Upper Kanawha Valley.
 - f. **Other Tasks.** Other tasks as agreed to by WVU and the UKV Collaboration Team.
4. **Extension Services and Economic Development.** The University shall provide resources to serve the Upper Kanawha Valley, including an economic development specialist, community development specialist, or an extension agent serving locally in some form in Montgomery until at least July 1, 2020. The Parties shall negotiate in good faith concerning the exact presence in Montgomery.
 5. **Maintenance of the Facilities.** The University acknowledges that it owns and is obligated to provide a reasonable and commensurate level of maintenance, upkeep, and security for the Facilities for so long as it owns the Facilities. Additionally, for so long as the University owns the Facilities or July 1, 2025 whichever occurs first, the University shall in good faith and with reasonable efforts:
 - a. Provide security to keep the Facilities safe for normal and reasonably foreseeable uses, including appropriate exterior lighting;
 - b. Keep the Facilities, including sidewalks and related exterior features, clean and free from all accumulations of debris, garbage, or other refuse;
 - c. Maintain trees, shrubbery, grass, and other landscaping related to the Facilities in a manner consistent with normal and reasonably foreseeable uses;

- d. Maintain a level of heat in the Facilities to preserve the Facilities to be used for normal and reasonably foreseeable uses;
- e. Monitor the Facilities to identify any electrical, water, or other hazards that could affect the Facilities and take reasonable steps to reduce or eliminate such hazards that will allow for normal and reasonably foreseeable uses; and
- f. Otherwise preserve the Facilities in sufficient order to allow for the University to potentially attract other entities to appropriately use the Facilities, which may include efforts such as mothballing or conserving parts of the Facilities until other uses of the Facilities are identified.

The University shall in good faith negotiate with Montgomery and Smithers to enter into an agreement of approximately three years in length, beginning July 1, 2017, whereby the University shall compensate Montgomery and Smithers in exchange for Montgomery and Smithers assisting the University in completing the University obligations in this section. The University may also contract with third parties or lessees of the Facilities to undertake these obligations. In fulfilling the requirements of this section, the University is not required to undertake or address any major Facilities costs, any unforeseen or unanticipated capital expenditures or repairs, or any of the deferred maintenance or related issues relating to the Facilities.

6. **Disposition of the Facilities.**

- a. The University shall in good faith seek alternative uses for the Facilities, including working with local individuals and entities, including local, state and Federal government, academic institutions, and for profit and not-for profit entities, to identify such uses, including the disposition of all or parts of the Facilities for use or ownership by local entities.
- b. The University has indicated that the former WVU Tech Football Field is not currently safe or usable for official high school events. The UKV Governments have expressed a desire to take actions necessary that would permit Valley High School and other community entities to use the former WVU Tech Football Field for athletic events. The University shall meet with representatives of the UKV Governments, Valley High School, and the Fayette County Board of Education to identify and review potential solutions and use terms for restoring and utilizing the WVU Tech Football Field for community use.

7. **Collaboration with BridgeValley Community and Technical College.** For so long as BridgeValley Community and Technical College (“BridgeValley”) retains its current accreditation and BridgeValley is willing to do so, the University shall maintain its current articulation agreement with BridgeValley and shall in good faith work with the leadership of BridgeValley to determine whether BridgeValley would have needs to use portions of the Facilities. The University shall also seek to develop methods for

ensuring that students have significant opportunities to take courses at WVU Tech and BridgeValley.

8. **Collaboration with Montgomery General Hospital.** The University shall seek to meet with representatives of Montgomery General Hospital to explore ways in work to which WVU Tech and Montgomery General Hospital can continue to partner in the facilitation of WVU Tech providing students and qualified nurses through WVU Tech's nursing programs, and whether any other collaborative opportunities exist between Montgomery General Hospital.
9. **UKV Governments Obligations.** The UKV Governments shall not initiate or otherwise support litigation, legislation, or administrative action that would in any manner seek to prevent the University, its agents, affiliates, or related parties, from:
 - a. offering University or WVU Tech courses and academic programming in locations other than Montgomery;
 - b. discontinuing the provision of courses and academic programming in Montgomery;
 - c. relocating the headquarters of WVU Tech from Montgomery to other locations and seeking appropriate legislation in connection with such relocation;
 - d. selling, leasing, or otherwise disposing of property in the Upper Kanawha Valley; or
 - e. taking any other action related to the items authorized in the resolution passed by the Board of Governors on September 1, 2015 as attached hereto as Exhibit A.
10. **Conditions Subsequent.** The University is relieved of any obligation under this Agreement and this Agreement terminates, without any further action, if any court issues a final order or the Legislature takes any action which would prohibit the University from:
 - a. offering University or WVU Tech courses and academic programming in locations other than Montgomery;
 - b. discontinuing the provision of courses and academic programming in Montgomery;
 - c. relocating the headquarters of WVU Tech from Montgomery to other locations and seeking appropriate legislation in connection with such relocation;
 - d. selling, leasing, or otherwise disposing of property in the Upper Kanawha Valley; or

- e. taking any other action related to the items authorized in the resolution passed by the Board of Governors on September 1, 2015 as attached hereto as Exhibit A.

11. **Termination.**

- a. If not terminated sooner pursuant to the provisions of this Agreement, this Agreement terminates on the first day of July, 2025.
- b. If either party breaches any provision of this agreement and if such breach is not cured within sixty (60) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this Agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately on receipt.

12. **Status and Relationship between the Parties.** Nothing in this Agreement shall be construed as creating a relationship of joint venturers, partners, employer/employee or agent between the Parties. No Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action which shall be binding on the other Party, except as may be explicitly provided for in this Agreement or authorized in writing by the other Party. Each Party shall be solely responsible for the manner in which it carries out its part of the collaborative activities under this Agreement.

13. **Notices.** All notices to be given under this Agreement must be in writing and sent to the address or fax number of the intended recipient set out hereinafter, or to any other address or fax number which the intended recipient may designate by notice given in accordance with this Article. Any notice may be delivered personally or sent by first class pre-paid registered mail or by fax, and it will be deemed to have been served: if by hand, when delivered; if by first class registered mail, 48 hours after posting; and if by fax when dispatched provided the sender's fax machine produces automatic receipt of error free transmission to the intended recipient's fax number.

[NOTICE BLOCK]

14. **Force Majeure.** Should any of the Parties be delayed in or prevented, in whole or in part, from performing any obligation or condition required by this Agreement by reason of a Force Majeure Event, that Party shall be excused from performing that obligation or condition for so long as the Party is delayed or prevented from performing, and for a period of thirty calendar days thereafter, and any affected deadlines shall be similarly extended.

15. **Counterparts.** This Agreement may be executed in any number of separate counterparts and by each of the Parties in separate counterparts, each counterpart

constituting an original, and all such counterparts constituting but one and the same Agreement.

16. **Governing Law.** This Agreement shall be governed by and construed according to the laws of West Virginia, without regard to the application of its conflict of law provisions.
17. **Modifications.** Any modifications or amendments to this Agreement must be in writing and signed by all the Parties.
18. **Severability.** If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or application of that provision to any persons or entities or circumstances other than those as to which it is unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.
19. **Amendment.** This agreement may be amended or modified only by a writing executed by all parties.
20. **Assignment.** No party to this Agreement may assign any right, responsibility, or obligation under this Agreement to any other person or entity.
21. **Entire Agreement.** This Agreement and any exhibits hereto, represents the entire agreement between the parties with respect to the matters address herein and supersedes any prior oral or written understandings.

The parties are signing this Agreement on the date stated in the introductory clause.

[INSERT SIGNATURE BLOCK]