

For “in-person” meetings, persons who are not on the agenda but wish to address the governing body must register to speak at least 15 minutes prior to the start of the meeting. For Zoom meetings, the Mayor will canvas attendees for those wishing to speak. Time limits will be imposed. Written comments and/or questions to be addressed at the meeting, must be submitted to jimauxer@yahoo.com 24 hours before the meeting. Requests for copies of documents related to agenda items must be made in writing at least 24 hours in advance of the meeting, not during the meeting. NOTE: Council members are elected to represent citizens of the Corporation of Shepherdstown, please contact them regarding any questions or comments you may have about the agenda items. This Council follows Robert’s Rules of Order (Revised).

THE MEETING IS STREAMED ON THE TOWN’S FACEBOOK PAGE
“SHEPHERDSTOWN, WEST VIRGINIA”

TOWN COUNCIL MEETING AGENDA

Tuesday, July 11, 2023

6:30 p.m.

TOWN HALL

104 NORTH KING STREET

MASK WEARING IS OPTIONAL

1. Call to order
2. Approval of Town Council Meeting Minutes of June 13, 2023
3. **Public Comment Period**
 - a. Persons who have registered to address Town Council.
4. **Public Hearings**
 - a. Second Reading To An Ordinance Re-Enacting Section 9-902 XIV., Entitled “Project Permit Fee Schedule” To Add A Fee For The Publication Of Legal Notices.
 - b. Public Hearing for the consideration of a lease between the Corporation of Shepherdstown and The Jefferson County Convention and Visitor’s Bureau. The lease agreement pertains to the Town leasing to the Jeffeson County Convention and Visitor’s Bureau the Old Market House Building at 100 East German Street, Shepherdstown, WV. Adoption of resolution to enter into lease for Old Market House Building.

5. Visitors

- a. Officer Michael Moats - retirement announcement
- b. Officer Austin Simms – new officer
- c. Event Request – Boo Fest – Mary Buffington
- d. Shentel Franchise Agreement – Bryan Byrd
- e. Hoy Shingleton – Agreement between the Department of Army and the Corporation of Shepherdstown - See under 10. B. "Water and Sanitary Board"

6. Unfinished Business

- a. Market House Update
- b. Comprehensive Plan Update – Andy Beall/Phil Bakershenk
- c. Website Update
- d. Shepherdstown Grant Guidelines

7. Old Business

8. New Business

9. Reports of Committees

A. Finance Committee

1. No meeting in June 2023
2. Recommendations: NONE
3. Review and approval of General Fund financials

B. Parking Committee

1. No meeting in June 2023
2. Recommendations: NONE

C. Police Committee

1. No meeting in June 2023
2. Recommendations: NONE

D. Public Works Committee

1. Meeting minutes of June 2023 – not available
2. Recommendations: NONE

E. Parks and Recreation Committee

1. Meeting minutes of June 2023
2. Recommendations: NONE

F. Grants Committee

1. No meeting in June 2023
2. Recommendations: NONE

G. Age Friendly Committee

1. Meeting minutes of June 2023
2. Recommendations: NONE

H. Personnel Committee

1. No meeting in June 2023
2. Recommendations: NONE

10. Report of Commissions and Boards

A. Tree Commission

1. Meeting minutes of June 2023
2. Recommendations: NONE
3. Ratification of the First Energy Tree Proposal

B. Water and Sanitary Board

1. Meeting minutes of June 2023
2. Recommendations: NONE
3. Ratification of Agreement between the Department of Army and the Corporation of Shepherdstown for Design and Construction Assistance for the Shepherdstown Water Works Distribution System Improvements

C. Historic Landmarks Commission

1. Meeting minutes of June 2023
2. Recommendations: NONE

D. Planning Commission

1. No meeting in June 2023
2. Recommendations: NONE

E. Board of Appeals

11. Mayor's Report

Shepherdstown Town Council Meeting Minutes

Tuesday, June 13, 2023

Town Hall

104 North King Street

6:30 p.m.

Mask Wearing is Optional

**Also being streamed on the town's Facebook page "Shepherdstown,
West Virginia"**

DRAFT

Present: Jim Auxer (Mayor), Lori Robertson (Recorder), Jenny Haynes, Leah Rampy via call-in on speaker, Cheryl Roberts, and Marty Amerikaner.

Absent: Chris Stroeck

Staff: Town Clerk Amy Boyd, Town Administrator Stephanie Grove, and Director of Public Works Frank Welch.

Visitors: Courtney Bell (Chronicle), Rachael Meads, and John Meeker.

**Agenda Items 1 and 2-Call to order/approval of Town Council Minutes
(vote required):**

Call to order by Mayor Auxer at 6:30 p.m.

Approval of the Town Council Meeting Draft Minutes of May 9, 2023.

J. Haynes - move to approve Town Council Draft Minutes of May 9, 2023. Second by C. Roberts. No objections noted.

Agenda Item 3 – Public Comment Period:

- Persons who have registered to address Town Council.

Mayor Auxer took a moment to recognize the recent passing of Cindy Schott and her public service, who, in the past, served as Recorder for the Corporation of Shepherdstown.

Shepherdstown Street Fest - Update - J. Meeker - everything is going great. They have their insurance, permits from the Health Department, and ABC is good to go as well. They still need some more volunteers. They have 85 and would like 100 - please go to the website - www.shepherdstownstreetfest.org.

We have lots of community sponsors and will be donating to two super charities - Shepherdstown Fire Department and Stars That Shine.

L. Robertson asked that they remind visitors on the website and FB page to not park in residential parking. It will be strictly enforced that day.

Agenda Item 4 – Public Hearings:

a. Second Reading To An Ordinance Re-Enacting Section 11-601 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Define Types Of Refuse.

L. Robertson - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-601 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Define Types Of Refuse. Second by M. Amerikaner. No objections noted.

b. Second Reading To An Ordinance Re-Enacting Section 11-604 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify County Landfill Entity.

J. Haynes - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-604 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify County Landfill Entity. Second by I. Robertson. No objections noted.

c. Second Reading to An Ordinance Re-Enacting Section 11-605 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Tenant Responsibilities.

M. Amerikaner - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-605 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Tenant Responsibilities. Second by C. Roberts. No objections noted.

d. Second Reading To An Ordinance Re-Enacting Section 11-606 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Owner And Tenant Responsibilities.

C. Roberts - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-606 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Owner And Tenant Responsibilities. Second by M. Amerikaner. No objections noted.

e. Second Reading To An Ordinance Re-Enacting Section 11-607a Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Revise Refuse Container Size And Material Requirements.

L. Robertson - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-607a Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Revise Refuse Container Size And Material Requirements. Second by M. Amerikaner. No objections noted.

f. Second Reading To An Ordinance Re-Enacting Section 11-608 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Revise Refuse Storage Requirements.

M. Amerikaner - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-608 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Revise Refuse Storage Requirements. Second by C. Roberts. No objections noted.

g. Second Reading To An Ordinance Re-Enacting Section 11-609 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Permitting Entity.

L. Robertson - move to approve the Second Reading To An Ordinance Re-Enacting Section 11-609 Of Chapter 6 Of Title 11 Of The Code Of Shepherdstown, West Virginia, To Clarify Permitting Entity. Second by L. J. Haynes. No objections noted.

h. First Reading To An Ordinance Re-Enacting Section 9-902 XIV., Entitled “Project Permit Fee Schedule” To Add A Fee For The Publication Of Legal Notices.

L. Robertson - move to approve the First Reading To An Ordinance Re-Enacting Section 9-902 XIV., Entitled “Project Permit Fee Schedule” To Add A Fee For The Publication Of Legal Notices. Second by C. Roberts. No objections noted.

Agenda Item 5 - Visitors:

Visitor's comments, if any, are logged in under the specific agenda items.

Agenda Item 6 – Unfinished Business:

a. Market House Update – S. Grove - sent the ordinance to Annette to get her comments and she got them back. The fabric of the lease didn't change-handling of the renovations was removed. Once all of Annette's comments are incorporated, it will be ready to schedule for a public hearing, then a resolution. Annette wants the required square footage for the library space removed. Included will be a station for the library for a book drop - not a pick-up. Also, the ADA bathroom to be included unless the contractor states it is not feasible. She wants to meet as needed or at the request of the council, and will give her best effort to work with the local Shepherdstown groups.

Mayor - the bid package is done for the inside work and to be paid for by the town with hotel/motel tax. The costs will be a couple of hundred thousand dollars.

b. Comprehensive Plan Update –

Mayor - Andy Beall, Phil Baker-Schenk, and Karen Motivans - attended the presentation May 9th to the Jefferson County Planning Commission. They are on the agenda, tonight, May 13th. Discussed will be annexation, design standards, and the MOU request. Andy and Phil will address the us at the July council meeting..

Marty - this group is to make recommendations, not update the comprehensive plan.

Mayor - they are tasked with actually updating it.

c. Website Update -

A. Boyd - the website is moving along moving old content to the new site. In 4-weeks we should have a new URL.

Agenda Item 7 – Old Business:

_____ a. None

Agenda Item 8 – New Business:

_____ a. None

Agenda Item 9 – Reports of Committees:

A. Finance Committee:

1. No Meeting May 2023

2. Recommendations:

a. Review and approval of General Fund financials

Mayor - he thanked Stephanie Grove for all of her hard work.
The financials look great and are so much easier to read now.

S. Grove - the next month will include even more detail.

**C. Roberts - move to approve the Corporation Financials.
Second by M. Amerikaner. No objections noted.**

B. Parking Committee:

1. No meeting in May 2023

2. Recommendations: None

C. Police Committee:

1. No meeting in May 2023
2. Recommendations: None

D. Parks and Recreation Committee:

1. Meeting minutes of May 2003 - not available
2. Recommendations: None

C. Roberts gave an update on Bookmark The Park - held this past weekend at Cullision Park. There was a guest speaker that read poetry with a good turnout. The walking path there is being utilized. The next event is at Bane Harris Park July 22.

E. Public Works Committee:

1. Meeting minutes of May 2023
2. Recommendations: None

F. Path Advisory Committee

1. No meeting May 2023
2. Recommendations: None

G. Grants Committee

1. Meeting minutes of May 2023 - not available
2. Recommendations:
 - a. None

H. Age Friendly Committee

1. Meeting minutes of June 2023 - not available
2. Recommendations: None

I. Personnel Committee

1. Meeting minutes of May 2023
2. Recommendations: None

Agenda item 10 – Report of Commissions, Authority and Boards:

A. Historic Landmarks Commission:

1. Meeting minutes of May 2023 – not available
2. Recommendations: None

B. Planning Commission:

1. Meeting minutes of May 2023 – not available
2. Recommendations: None

C. Tree Commission

1. Meeting minutes of May 2023 - not available
2. Recommendations: None

D. Water and Sanitary Board:

1. Meeting minutes of May 25, 2023 - not available
2. Recommendations: None

E. Board of Appeals

1. None scheduled.

Agenda Item 11 - Mayor's Report:

- * Encouraged the council and public to visit the Shepherdstown Museum and to become a docent. They need the help and can stay open longer if they have more docents. The museum is only open on the weekends now.
- * A. Boyd - requested that those writing minutes to please get them in sooner so she can prepare the agenda and packets. She needs any recommendations made in said meetings.
- *. The town council and water/sewer board members have to meet with the auditors. The date set is Wednesday, June 28th at 5 p.m.. The audit for 2019 & 2020 will be included.
- *. J. Haynes - we should recognize Woody Coe's recent achievement again. L. Robertson read the congratulations to Woody from the the previous month's minutes into the record.
- * Mike "Doc" Moats will be retiring from the Shepherdstown Police Department with his last day being July 12, 2023.
- * Please reach out to residents, especially the east and west ends of town, to inform people of any forthcoming projects.
- * New Library - there is no sign on the bypass letting people know where it is.
- * 4th of July Parade - slated to start at 11 a.m. with line-up starting on Church Street at 10 a.m.. After the parade everyone is welcome to attend the festivities at Morgan's Grove Park from 12-3 p.m.
- * M. Amerikaner - please take a look at the proposed bike route.

L. Robertson – move to adjourn at 7:17 p.m. Second by J. Haynes. No objections noted.

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.

**AN ORDINANCE RE-ENACTING
SECTION 9-902.XIV OF CHAPTER 9 OF TITLE 9 OF THE
CODE OF SHEPHERDSTOWN, WEST VIRGINIA,
TO ADD LEGAL NOTICE FEES**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 9 of Title 9 of the Shepherdstown Code is hereby amended by amending and re-enacting Section 9-902.XIV., entitled “Project permit fee schedule” to add a fee for the publication of legal notices. Accordingly, there is re-enacted Section 9-902.XIV of Chapter 9 of Title 9 to read as follows:

Section 9-902.

XIV. Project permit fee schedule

In order to defray the expense of administering this title, a fee is adopted in the following categories:

Category I: Minor projects such as painting (change in color only), awnings, porch railings, window boxes, satellite dishes, solar panels, propane tanks, signs, or other minor changes and permit extensions. \$35.00.

Category II: Accessory buildings, sidewalks, decks, fences, driveways, garages, storage buildings, carports. \$50.00.

Category III: Single family dwelling major changes excluding additions but including window and roof replacement, non-profit tax exempt organizations. \$150.00 (Plus \$1.50 per \$1,000.00 value over \$50,000.00).

Category IV: Additions, commercial-industrial, multi-family residences. \$400.00 (Plus \$1.50 per \$1,000.00 value over \$50,000.00).

Category V: Demolition.

\$50.00 Accessory Buildings.

\$150.00. Non Contributing Structures.

\$500.00 Contributing Structures.

Category VI: Publication of Legal Notice. \$15.00.

The Planning Commission shall categorize any request not specifically listed in the above categories.

Fees shall be paid to the Town Treasurer/Clerk and must accompany the application. If work begins without the required permit, double the cost of said permit would be charged.

Authority: W. Va. Code § 8A-9-1; W. Va. Code § 8-26A-7.

_____(Mayor)

_____(Recorder)

First Reading: June 13, 2023

Second Reading: _____

Adopted: _____

PUBLIC HEARING NOTICE

A public hearing will be held on Tuesday, July 11, 2023, at 6:30 p.m. at Town Hall (104 North King Street, Shepherdstown, WV) for the purpose of considering a lease agreement between the Corporation of Shepherdstown and The Jefferson County Convention and Visitors' Bureau. The lease agreement pertains to the Town leasing to The Jefferson County Convention and Visitors' Bureau the Old Market House Building, at 100 E. German Street, Shepherdstown, WV, and further designated as Parcel 38, on Tax Map 3A, in Shepherdstown Corporation District, Jefferson County, West Virginia. The term of the lease is ten years. The annual rental is one dollar. The draft lease agreement can be viewed at Town Hall, 104 North King Street, Shepherdstown, WV or on our website www.shepherdstown.us on the homepage.

Amy L. Boyd, Town Clerk

For the Corporation of Shepherdstown

**LEASE BETWEEN THE CORPORATION OF SHEPHERDSTOWN
AND THE JEFFERSON COUNTY CONVENTION & VISITORS' BUREAU**

THIS LEASE made and entered into this ____ day of _____ 2023, by and between the CORPORATION OF SHEPHERDSTOWN (hereafter "Lessor"), a West Virginia municipal corporation, party of the first part, and the JEFFERSON COUNTY CONVENTION & VISITORS BUREAU (hereafter, "Lessee"), a non-profit corporation, party of the second part.

RECITALS

1. Lessee seeks to occupy the Old Market House building for the purpose of operating a convention, visitors, and travel bureau welcome center for the benefit of Shepherdstown and the surrounding community.
2. Both Lessor and Lessee acknowledge that the Old Market House building, a historic structure, dates from the early 19th century, and that the building does not meet current fire, electrical, Americans with Disabilities Act ("ADA"), and other standards.
3. Lessee intends to provide oversight of the project to restore and renovate the existing structure and bring it up to current fire, electrical, ADA, and other standards, which project will be financed by the Lessor.
4. Both the Lessor and Lessee acknowledge that the building needs to be accessible to all individuals, regardless of race, religion, color, national origin, ancestry, sex, age, blindness, or disability.
5. The parties acknowledge that this Lease is for the benefit of the community and public, and that, given the charitable nature of this agreement, an annual rent of One Dollar (\$1.00) is fair and adequate consideration.

6. Both Lessor and Lessee acknowledge that for the purposes of this Lease, the term "property" refers to the leased, let, and demised premises described in Paragraph One (1) below.
7. On the ____ day of _____, 2023, at the regular monthly meeting of the governing body of the Corporation of Shepherdstown, the Shepherdstown Town Council granted a ten (10) year lease to the Lessee of all of the Town's right, title and interest in and to the entire existing building, the terms of such lease to be set forth in a written lease agreement.

WITNESSETH

In consideration of the premises, these agreements and other good and valuable considerations, it is herewith and hereby agreed by and between the Lessor and Lessee as follows:

1. **PREMISES:** Pursuant to West Virginia Code § 8-12-18, the said Lessor does hereby demise, lease, and let to the Lessee, and the Lessee hereby hires, takes, and rents from the Lessor the following property:

That certain parcel of real estate and building and improvements situate thereon, located in the Corporation of Shepherdstown, Jefferson County, West Virginia, designated as Parcel 38, on Tax Map 3A, and more particularly known and designated as the Old Market House and Town Hall.

2. **TERM:** The Lessee will have and hold the premises, subject to the provisions hereof, for the term of ten (10) years from the 1st day of July 2023, and ending at midnight on the 30th day of June 2033, renewable automatically for successive periods of ten (10) years unless either party shall notify the other in writing not less than one (1) year before the date of the expiration of such period, of the intent of that party not to renew this Lease. The entire lease period, including all successive periods, shall not exceed fifty (50) years without the formation of a new lease agreement, unless West Virginia law at that time specifies otherwise. Further, in the event the

subject property is not used or needed by Lessee for the purposes provided in Paragraph Four (4) below, then the Lease shall be terminated by either party giving the other three (3) months' written notice, without further obligation by either party to the other. If this Lease is canceled or terminated as provided herein, possession and use of the property shall revert back to the Lessor.

3. **RENT:** The Lessee shall pay the Lessor rent of One Dollar (\$1.00) payable upon execution of this Lease and, thereafter, One Dollar (\$1.00) per year payable, without demand, on July 15th of each fiscal year during the term of this Lease. The Lessor shall acknowledge receipt of the payment of One Dollar (\$1.00) due upon execution of this Lease.

4. **CONSIDERATION:** The Lessee agrees to provide the following as consideration for the lease of the Market House:

(A) To utilize the leased premises for the promotion of tourism, primarily for Shepherdstown, with the secondary goal of cross-promoting Jefferson County as a whole. To that end, Lessee agrees to use its best efforts to work with local groups, organizations, and businesses to promote events and services within the corporate limits.

(B) To provide reasonable space for use by the Shepherdstown Library, which space may be used for a book drop.

(C) To meet with the Shepherdstown Council as necessary or when requested by the Council during duly scheduled public meetings to advise Council regarding marketing and use of the leased premises.

(D) To provide oversight of the project to renovate and restore the existing structure, subject to the provisions contained in Paragraphs Nine (9) and Ten (10).

Given that this Lease is for the benefit of the community and public, and that, given the charitable nature of this agreement, an annual rent of One Dollar (\$1.00) is fair and adequate consideration.

5. **PURPOSE:** The Lessee shall use, operate and maintain the property as a convention, visitors, and travelers' bureau visitor center for the purposes of promoting tourism within the town limits of Shepherdstown and the surrounding areas of Jefferson County, and for all such other related activities. Upon the completion of such buildings and improvements provided for in Paragraph 10 below, the Lessee shall keep the premises accessible to all individuals, regardless of race, religion, color, national origin, ancestry, sex, age, blindness, handicap or other disability.

6. **WARRANTY OF TITLE AND POSSESSION:** Lessor covenants that it is vested with the legal title to the property and has the right to make this Lease, and that Lessor will put Lessee in complete and exclusive possession of the property. In addition to the aforesaid covenant, Lessor will provide to Lessee such further and additional proof of its right to lease or sell the property as Lessee reasonably demands.

7. **TAXES:** The property is currently exempt from ad valorem taxation. Lessee shall use the property for non-profit purposes. If for any reason the property is taxed and such taxation is upheld, then the Lessee shall pay all taxes assessed.

8. **UTILITIES AND ASSESSMENTS:** During the term of this Lease, Lessee shall pay for all utilities furnished to the property, including without limitation water, sewer, garbage, electricity, and telephone. Lessee shall also pay for all assessments against the property, including without limitation fire service fees and ambulance service fees.

9. **REPAIRS AND MAINTENANCE:** With the exception of maintenance and repair to of the plumbing, electrical, heating systems, and structural repairs, the Lessee shall be responsible

for the general upkeep and maintenance of the demised premises, and the Lessee shall make all repairs necessary for the general upkeep and maintenance of the subject property, at its expense, during the term of this Lease. Lessor shall allow Lessee to make such alterations, changes, renovations, expansions, and additions, beyond normal repair and maintenance, to any part or in any part of the property Lessee occupies, as the Lessee finds necessary for its purposes, at Lessee's own expense, provided that such improvements do not injure the building, are done in a skillful and satisfactory manner, are approved by the Town Council of Shepherdstown prior to any such improvements being made, and comply with all applicable state, county, and local rules, regulations, ordinances, and statutes. All such improvements shall become a part of the property and shall be subject to the same terms and conditions of this Lease. If, in the course of any such repairs, upkeep, maintenance or improvements of the demised premises, Lessee discovers any additionally required structural repairs, such improvements shall be made in accordance with Paragraph Ten (10) below. Lessor shall be responsible for the maintenance and repair of all plumbing, electrical, and heating systems, and for all structural repairs to the improvements on the demised premises.

10. **BUILDINGS AND IMPROVEMENTS:** All improvements to the property during the term of this Lease, whether made by the Lessor or Lessee, shall become the property of the Lessor. Lessor agrees to fund such renovations and improvements as are necessary to restore and renovate the existing property structure and bring it into compliance with current building standards, with the Lessee providing oversight of the efforts to restore and renovate the property. The specific obligations of the Lessor and Lessee concerning the renovation of the building will be detailed and agreed upon in a separate written Memorandum of Understanding. As part of the renovation project, Lessee agrees to work with the property contractor to install and provide reasonable access to one ADA restroom, assuming the contractor agrees that an ADA accessible restroom can be installed without

interfering with the historic integrity of the building. If the property cannot meet all necessary ADA requirements, then contractor shall verify such circumstances in writing. Lessor shall own any and all improvements on or to the property without compensation to Lessee at the expiration of this Lease. Lessee shall keep all improvements in and to the property in good condition and repair.

11. **LIENS:** In the event the Lessee causes to be made or makes any additions, repairs, alterations, or improvements of the property, the Lessee shall pay for all labor performed, materials furnished in or about any construction, repairs, alterations, or improvements, and the Lessee shall keep the property at all times free and clear from all liens for labor or materials furnished in or about any construction, repairs, alterations, or improvements. Lessee shall defend at its own cost and expense each and every lien asserted or claim filed against the premises or improvements thereto, or any part thereof for labor claimed to have been so performed, or any material claimed to have been so furnished, and Lessee shall pay each and every judgment made or given against the property or improvements thereto, or against the Lessor or the Lessee on account of any such lien, and indemnify and save harmless the Lessor from all and every claim and action on account of such claim, lien, or judgment arising out of or connected with such action or omission to the Lessee, its successors or assigns, or any of Lessee's agents, employees, or contractors in or about any construction, repairs, alterations, or improvements.

12. **LESSOR HELD HARMLESS:** Lessee shall save Lessor, its successors, and assigns, harmless and free from any loss, costs, damage, or expense arising out of any accident or any other occurrence causing injury to any person or property and due to the use or occupancy of said property by Lessee. Lessee shall save Lessor, its successors, and assigns free from any loss,

damage, or expense if the Lessee fails to comply with or breaches the requirements and provisions of this Lease.

13. **INSURANCE:**

(A) Hazard Insurance: Lessor shall keep the building on said premises insured against damage by fire, lightning, and other risks from time to time included under extended coverage endorsements on the Lessor's blanket policy for the sole protection of Lessor's interests. Lessee shall be responsible for maintaining insurance for the protection of Lessee's property and interests to include loss and damage by fire, lightning and other risks. In the event Lessor does not deem it reasonably prudent to repair the said building after it is damaged or destroyed, this Lease shall be terminated, without further obligation by either party.

(B) General Liability: Lessee at all times shall maintain general liability and casualty insurance on the demised premises with minimum liability limits of one million dollars (\$1,000,000) with a responsible insurance agency licensed in West Virginia, shall timely pay all premiums for said insurance, and will provide proof of insurance to the Lessor annually upon renewal of the prescribed policy and name the Corporation of Shepherdstown as an additional insured under the policy

14. **NO ASSIGNMENT OR SUBLEASE:** Lessee may not assign, transfer or sublease its rights under this lease.

15. **TERMINATION IN CASE OF DEFAULT OR BREACH:** If the Lessee fails to pay the whole or part of any rent, taxes, charges, assessments, or any part or installment thereof in this

Lease provided to be paid by Lessee when the same shall fall due under the provisions hereof, and such default shall continue for the space of thirty (30) days after such rents, taxes, charges, or assessments, or any part thereof, shall become payable under the terms of this Lease, or if the Lessee shall make default in the performance of any covenant or agreements on the part of the Lessee to be performed other than those relating to the payment of the rents, taxes, and assessments, the Lessor, in addition to all other remedies provided by this Lease, or now or hereafter provided by law, may at its option give the Lessee notice in writing that it declares this Lease, and all rights thereunder granted to the Lessee, terminated unless the Lessee shall make the payment or payments or perform the covenants or agreements in respect of which the Lessee shall then be in default within thirty (30) days. Said notice shall be written by the Lessor, or its agent, and shall specify the sum or sums of money on account of the nonpayment of which declaration or termination shall be made, or the covenant or agreement on account of the nonperformance of which such declaration or termination shall be made, and shall also specify the time after the service of such notice when such termination shall occur; and at the expiration of said time after the service of such notice this Lease and all rights of the Lessee hereunder shall be terminated and ended, and all improvements to said property shall remain attached thereto and be a part of and become the property of the Lessor, and the Lessor shall have the right of immediate re-entry upon the property and to have and enjoy the same, together with all improvements thereto as fully as if this Lease had never been made, unless within the specified time after the service of said notice the Lessee shall (a) pay the sum or sums for the nonpayment of which such termination shall have been declared, including all interest and penalties assessed as a result of such nonpayment; (b) perform each and every covenant or agreement for the nonperformance of which such termination

shall have been declared; and (c) pay the sum or sums not specified in said notice becoming due and payable by the Lessee to the Lessor under the provisions of this Lease after the service of said notice and before the expiration of the time specified in said notice.

16. **CHANGES, MODIFICATIONS, OR ADDENDUMS:** The Lessor and Lessee agree that none of the covenants, terms, or conditions of this Lease will in any manner be altered, waived, changed, or abandoned except by written instrument, signed, sealed, acknowledged, and delivered by the parties hereto, and not otherwise, and no act or acts, omission or omissions, or series of acts or omissions, or waiver, acquiescence, or forgiveness by the Lessor as to any default in or failure of performance either in whole or in part by the Lessee as to any of the covenants, terms, or conditions of this Lease, will be deemed or construed to be a waiver by the Lessor of the right at all times in the future to insist upon the full and complete performance by the Lessee of each and all the covenants, terms, and conditions thereafter to be performed according to the provisions of this Lease in the same manner and to the same extent as the same are covenanted to be performed by the Lessee.

17. **ENTIRE AGREEMENT.** The Lessee and Lessor agree that this Lease replaces, terminates, and supersedes all other written or oral agreements between the parties regarding use and occupation of the Old Market House.

18. **SERVICE OF NOTICE:** All notices, demands, or other writings in this Lease to be given or sent, which may be given or made or sent, by either party hereto to the other, will be deemed to have been fully given or made or sent when made in writing and hand delivered or deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To Lessor:	104 North King Street
	P.O. Box 248

Shepherdstown, WV 25443-0248

To Lessee:

Jefferson County CVB
c/o Annette Gavin-Bates
37 Washington Street
Harpers Ferry, WV 25425

The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by either party as above provided.

19. **INSPECTION:** The Lessor or its duly authorized agent may enter upon and view at any reasonable hour the said premises, and each part thereof, and examine and ascertain the condition of all buildings, structures, and improvements thereon. Lessor shall give Lessee reasonable notice at the time of or prior to an inspection.

20. **RECORDING OF LEASE AGREEMENT:** This Lease agreement may be recorded among the land records in the office of the Clerk of the County Commission of Jefferson County, West Virginia.

21. **SECTIONS:** The captions appearing under the paragraph number designations of this Lease are for convenience and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

WITNESS the following signatures:

LESSOR:

Corporation of Shepherdstown,
a West Virginia municipal corporation,

BY: _____
Arthur J. Auxer, III, Mayor

LESSEE:

Jefferson County Convention & Visitors
Bureau

BY: _____
Christian Asam, its President

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Arthur J. Auxer, III, Mayor of the Corporation of Shepherdstown, a West Virginia municipal corporation, on behalf of said corporation.

My commission expires:

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Christian Asam, President of the Jefferson County Convention & Visitors Bureau, on behalf of said Jefferson County Convention & Visitors Bureau.

My commission expires:

Notary Public

Document Prepared By:

Charles F. Printz, Jr., Esq.
Bowles Rice LLP
101 S. Queen Street
Martinsburg, WV 25401

RESOLUTION TO LEASE THE OLD MARKET HOUSE

At a duly called regular meeting of the Town Council of the Corporation of Shepherdstown, held in accordance with all applicable legal requirements, including open meeting laws, on the 11th day of July 2023, the following resolution was introduced and adopted by the Town Council.

WHEREAS, the Corporation of Shepherdstown seeks to lease the Old Market House, at 100 E. German Street, Shepherdstown, WV, and further designated as Parcel 38, on Tax Map 3A, in Shepherdstown Corporation District, Jefferson County, West Virginia, to the Jefferson County Convention & Visitors Bureau; and

WHEREAS, The Jefferson County Convention and Visitors' Bureau seeks to occupy the Old Market House building for the purpose of operating a convention, visitors, and travel bureau for the benefit of Shepherdstown and the surrounding community; and

WHEREAS, The Corporation of Shepherdstown and The Jefferson County Convention and Visitors' Bureau seek to enter into a Lease Agreement for the Old Market House for a renewable term of ten (10) years, an annual rental of one dollar, and other provisions governing the repair, maintenance, upkeep, and protection of the said historic structure.

NOW, WHEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL AS FOLLOWS:

1. The Corporation of Shepherdstown may enter that Lease Agreement with The Jefferson County Convention and Visitors' Bureau for the Old Market House for a term of ten (10) years.

2. The Mayor is hereby authorized and directed to execute and deliver any and all documents necessary and/or desirable to effectuate the granting of the Lease.

Dated this 11th day of July 2023.

By: _____
Arthur J. Auxer, III, Mayor

Attest: _____
Lori Robertson, Town Recorder

From: [Michael Moats](#)
To: [Amy Boyd](#); [Bryce Dickens](#); [David Kelvington](#); [Christine Barnes](#); [Jim Auxer](#); [John Jeffries](#); [Mike King](#); [Randall Yonkers](#); [Randy Young](#); [Robert Seeders](#); [Ryan Kolb](#); [Stephen Alemar](#); [Teri Rouse](#); [Therese Bason](#); [Stephanie Grove](#)
Subject: Retirement
Date: Friday, June 9, 2023 8:51:38 AM

This is to inform you that on July 14, 2023 at 1700hrs. I will be retiring from the police department! I will be willing to stay on part time if I will continue to be paid at the hourly wage that I'm leaving at. Thank you for all the friendship and support over the years. Doc!

Shepherdstown Police Department

Michael "Doc" Moats #803

Patrolman First Class

Firearms Instructor/Director

104 N. King St.

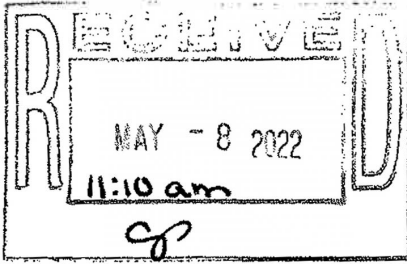
PO Box 237

Shepherdstown, WV 25443

304-876-6036 ext.202

304-702-2303 Cell

mmoats@shepherdstown.us



Corporation of Shepherdstown



Event/Park Request Form

Applications and fees are due at least ninety (90) days prior to the event unless otherwise noted.

Any form of advertising of this event, prior to approval by Town Council, is done at applicant's own risk.

Please read and complete entire application. An incomplete application may result in denial or delay of request. The Corporation of Shepherdstown reserves the right to approve or deny any event request.

Organization:	Experience Shepherdstown
Contact Name:	Mary Buffington
Mailing Address:	845 Whitmer Rd
City, State, Zip:	Shenandoah Junction, WV 25442
E-mail Address:	experience.shepherdstown@gmail.com
Daytime Phone:	(304) 582-1883
Evening Phone:	" "
Cell Phone:	" "

1.) Name and Complete Description of Event including location if other than one of our Parks: <i>attach on separate sheet if necessary</i>	Halloween in Shepherdstown	
2.) Has this event been held in Shepherdstown in the past?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, on a separate sheet, please provide event dates (last three years) and describe any scheduling conflicts with other events that occurred in prior years or potential conflicts for the current requested event</i>	
3.) Is this a "one-time" event?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Annual</i>	
4.) Date and Time of Event:	From:	To:
<i>10/15/23, 10/29/23, 10/31/23</i>		
4a.) Set Up Time	<i>10/15 + 10/29</i> <i>Close N. King St (in front of alley) 8 AM - 5 PM</i> <i>town hall to alley</i>	
4b.) Tear Down Time	<i>10/31 - 5 PM - 8³⁰ PM</i> <i>King St at High + New German St at Duke St. to Princess St. Church St at High + New (local traffic only)</i>	

5.) Park Requested, if applicable:	<input type="checkbox"/> Bane-Harris \$100	<input type="checkbox"/> Cullison \$100	<input type="checkbox"/> Rumsey \$500	<input type="checkbox"/> Viola-Devonshire \$100
6.) Are street closures requested?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please provide, on the attached map, streets that need to be closed. If having a parade, provide parade route. Alleys must be kept open. (No Exceptions)</i>			
7.) Is event open to the public?	<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No	
8.) What are the parking arrangements?				
<i>Please explain.</i>				
9.) Will entertainment be involved?	Any entertainment must be approved by the Town Council.			
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, give details w/# groups, type of music, time of performance(s) etc. See Noise Ordinance</i>	<input type="checkbox"/> Live Band	<input type="checkbox"/> DJ	<input type="checkbox"/> Radio/CD Player	<input type="checkbox"/> Other: Explain
10.) Will other equipment be used? (i.e. generator, tents, inflatables, etc.) If yes, give details.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Vendors 10/15 + 10/29</i>			
11.) Are you a non-profit organization? <i>If yes, provide certification of non-profit status.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
12.) Will vendors be at the event? <i>If yes, give details including complete list of vendors and contact information.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
13.) Will event participants be charged a fee? <i>If yes, what is the cost?</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
14.) Will admission be charged for the event? <i>If yes, what is the cost?</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Cost _____			
15.) Number of people expected to attend:	<input type="checkbox"/> less than 50	<input type="checkbox"/> 51-100	<input type="checkbox"/> 101-150	<input checked="" type="checkbox"/> more than 150
16.) Name & contact info. for two (2) people with authority that will be present at event:	Name: <i>Mary Buffington</i>		Phone: <i>304-582-1883</i>	
	Name: <i>Steve Pearson</i>		Phone: <i>703-328-9200</i>	
17.) Check any Town assistance needed:	<input checked="" type="checkbox"/> Electric		<input checked="" type="checkbox"/> Police	
	<input checked="" type="checkbox"/> Recycling		<input type="checkbox"/> Other	
<input type="checkbox"/> Public Works				
18.) Will alcoholic beverages be served?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<i>If yes, the Shepherdstown Open Container Ordinance must be suspended by action of the Town Council for this day's event.</i>	<i>If yes, you must contact the WV Alcohol Beverage Control Commission to obtain a "one day" license.</i>			
<i>Will bring visitors & tourist to town & support local businesses</i>				

19.)How will this event benefit Shepherdstown?	
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Requirements:

- All event requests must be applied for at least 90 days prior to the event date.
- For park events, notification of the event must be provided, in writing, to all neighbors within two blocks of the event location (a copy of this notification must be provided to the Town)
- If this is a parade, walk or run, give details including map of route to be taken.
- General liability insurance coverage of no less than one million dollars (\$1,000,000) reflecting the Corporation of Shepherdstown as additionally insured.
- If assistance from the Police or Public Works Department is needed for the event, you will be responsible for contacting the respective departments.
- Payment of costs incurred during the event must be paid within one week following the event (i.e. Assistance from the Police Department or Public Works Department).
- All required information must be submitted at least two weeks prior to the Town Council meeting.

Corporation of Shepherdstown

It is hereby agreed and understood that _____ is reserved, as specified, for the use of the above named organization and/or individual. The Facility reserved is subject to inspection by any authorized representative of the Corporation of Shepherdstown in order to assure proper use of Town property. This permit must be in the possession of the organization and/or individual to whom it is issued and shown upon request to any authorized Town Official.

The organization and/or individual assumes personal liability and responsibility for any and all costs of cleanup of the premises, loss, breakage, damage to or removal of Town property and further assumes liability and responsibility for the conduct and good order of the group and its invitees and guests.

The organization and/or individual shall be responsible for any and all loss, damage or injury to any and all personal property that it or its agents, representatives, invitees or guests, may bring to, store at, or leave at the facility, and shall indemnify and hold harmless the Corporation of Shepherdstown and any department, agent, official and/or employee thereof for any personal injury incurred during, or as a result of such use. The organization and/or individual further agrees to abide by all procedures, policies, and rules governing use of the above-mentioned facility.

☒ I have read and agree to these responsibilities.

Signature of Organization and/or Individual: _____

Date: 4/28/13

Any individual under the age of 21 must have the signature of a parent or guardian who shall assume any and all responsibility and liability as set forth above and the person signing must be in attendance at the rental event.

Parent/Guardian: _____

Date: _____

Printed Name: _____

Phone: _____

PLEASE NOTE APPROVAL IS REQUIRED FOR USE OF THE PARK FACILITIES. Once approved, this permit will be issued.

FOR OFFICE USE ONLY

<p>Rental Fee: \$ _____ <input type="checkbox"/> Cash</p> <p>Date Paid: _____ <input type="checkbox"/> Check</p> <p><input type="checkbox"/> Approved</p> <p>Approved by: _____</p> <p>Title: _____ Date: _____</p>	<p><input type="checkbox"/> Denied</p> <p>Comments:</p> <p>_____</p> <p>_____</p> <p>_____</p>
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Checklist

(To be completed by the Corporation of Shepherdstown)

- ☐ Complies with 90 day notice
- ☐ Insurance certificate provided
- ☐ Police or Public Works Department fees paid (if applicable)
- ☐ Park fee paid (if applicable)
- ☐ Open Container Ordinance Suspended (if applicable)
- ☐ Amplified Sound Use (if applicable)
- ☐ Vendor's list (if applicable)
- ☐ Date approved by Town Council _____

AGREEMENT

CABLE TELEVISION FRANCHISE IN THE CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA

Agreement made this ____ day of _____, 2023, by and between the **THE CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA**, hereinafter referred to as the Town, party of the first part, and **SHENANDOAH CABLE TELEVISION, LLC**, a Virginia limited liability company, hereinafter referred to as the Company, party of the second part.

WHEREAS, the Company wishes to renew and continue to conduct a community antenna television system (CATV) to furnish all types of services usually furnished or which can be furnished by such a system in all areas of the Corporation of Shepherdstown, West Virginia, through distribution and transmission equipment, cables, and/or wires, other transmission equipment or other means, commonly called a CATV system; and

WHEREAS, the CATV system will be attached to poles or constructed underground and its cables, wires or other equipment would cross over or exist under the streets, sidewalks, public lands, highways and right-of-way in the Town; and

WHEREAS, the Company has requested of the Town that it be granted a nonexclusive franchise to operate a CATV system within the Corporation of Shepherdstown, West Virginia, and the Town, after giving public notices and holding public hearings as required by West Virginia Code 24D-1-7 and the rules thereunder, has agreed to grant to the Company, a nonexclusive franchise to operate a CATV system within the Corporation of Shepherdstown, West Virginia, pursuant to the following terms and conditions.

WITNESSETH: That for and in consideration of the mutual covenants herein contained the parties do hereby agree as follows:

(1) GRANT OF AUTHORITY: The Town grants to the Company the nonexclusive right and privilege, within all areas of the Corporation of Shepherdstown, West Virginia, as described in Attachment A hereto, to construct, maintain, and operate in, or, over and under the present and future public streets, alleys, rights-of-way and public places within the Town, such as towers, poles, lines, cables, wiring and all related equipment for the purpose of receiving, amplifying and distributing television, radio, audio, video or any other telecommunications signal or service within said Town and to inhabitants hereof. The Company shall have further right to enter into arrangements for the attachment onto or use of facilities owned or operated by public utilities operating within the Town. The Company shall provide to the Town, upon request, copies of all such agreements between the Company and any public utility operating within the Town for the use by the Company of any facilities owned or operated by said public utilities.

(2) TERMS OF AGREEMENT: The nonexclusive franchise granted herein shall be for a term of twenty (20) years, commencing on the 1st day of July, 2023, and terminating at midnight on the 30th day of June, 2043 .

(3) CONDITIONS OF STREET AND ROAD OCCUPANCY AND SYSTEM CONSTRUCTION:

(a) Use: All transmission and distribution structures, lines and equipment erected by the Company within the Town shall be located as to cause minimum interference with other proper use of the public streets, alleys, ways and places located within the Town, and as to cause a minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public streets, alleys, ways, or places. The use of public highways and other public places shall be subject to:

1. All applicable state statutes, municipal ordinances and all applicable rules and orders of the West Virginia Public Service Commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

2. For Town streets, all applicable rules adopted by the governing body of the Town in which the streets are situated; and

3. For state or federal-aid highways, all public welfare rules adopted by the West Virginia Department of Transportation, Highways Division.

(b) Restoration: In cases of any disturbance of pavements, sidewalks, lawns, roadways, or other surfacing, the Company shall, at its own expense and in a manner approved by the Town, replace and restore such places or disturbed to as good a condition as before said work was commenced. The Company shall also be required to consult with the Highways Division regarding any disturbance of pavement, roadway or other rights-of-way as may be under the jurisdiction and control of the Highways Division.

(c) Relocation: In the event that at any time during the period of this agreement, the Town or the Highways Division shall lawfully elect to change the grade or location of any public street, alley, way, or place, the Company, upon reasonable notice by the Town or the Highways Division, as the case may be, shall remove, re-lay and re-locate its equipment at its own expense. All such alterations shall be subject to the approval of the Town and the Highways Division.

(d) Placement of Fixtures: The Company shall not place any fixtures or equipment where the same shall interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures or equipment, and the location by the Company of its lines and equipment shall be in such manner as to not interfere with the usual travel on said public streets, alleys, ways, and places, and the use of the same for gas, electric, communications, fire alarms, sewer and water lines, fixtures and equipment.

(e) Easements: In the use of easements dedicated to compatible uses, the Company shall ensure:

1. That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for the cable system;

2. That the cost of the installation, construction, or operation of facilities is

borne by the Company or subscribers, or a combination of both; and

3. That the owner of the property is justly compensated by the Company for any damages caused by the installation, construction, operation or removal of facilities by the Company, its employees or contractors.

(4) SERVICES TO BE PROVIDED BY THE COMPANY:

(a) Services shall be made available to all inhabitants of the Town who reside in the area described in Attachment A who desire such service within one (1) month of the date of their request, provided that the following conditions have been met:

1. The location is serviceable. A location is serviceable when:

A. The inhabitant is located in an area where it is economically feasible to provide such service, and such area is unserved by another cable system. Such condition of economic feasibility is met where an average of at least thirty (30) residences are passed within one plant mile of cable line laid; calculated from the existing cable system owned by the Company to the end of the proposed service extension; or

B. The distance from existing distribution lines to the home or building is not more than two hundred feet ("maximum drop length");

2. Inhabitant complies with the Company's regulations governing the conduct of its business; and

3. The Company is able to obtain any private rights-of-way required to extend its facilities at a reasonable cost.

(b) The company shall provide and maintain basic service for one single standard outlet upon request to any school or institution of higher education, fire station, and public library located within the service area, and within a reasonable distance of an existing distribution line of the Company. The recipients of service under this paragraph shall not be charged for basic cable service; provided however, that the service is not to be delivered to a residence.

(c) The company shall provide the Town, upon appropriate authorization (and payment), facilities and equipment for transmission of information relating to law enforcement, fire protection, rescue services or all other public emergencies as may be necessary or desirable for the safety and welfare of the citizens of the Town to the Office of the County Emergency Services or as directed by the Town. The facilities to be provided include access to one PEG channel without charge for the transmission of information relating to law enforcement, fire protection, rescue services, or other public safety messages. The Company shall comply with the regulations of the Federal Communications Commission (FCC) for the operation of the Emergency Alert System as set forth under 47 C.F.R. Section 11.

(d) The Company shall offer to all customers within the Town service of signal and viewing quality that is in compliance with all FCC technical standards.

(e) The Company shall conduct its business with its subscribers in accordance with all FCC Customer Service Standards.

(f) The Company shall designate at least ten percent of all its channels for public,

educational or governmental (PEG) use, provided, however, that the company shall not be required to designate more than 3 such channels for such public, educational or governmental use. At least one such designated channel is to be carried as part of the basic service tier. The Company shall abide by all rules and procedures adopted by the Town as franchise authority for activation of designated PEG channels currently in use for non-PEG purposes.

(g) The maximum number of channels the system(s) will initially be capable of providing is at least 319. The number of channels to be initially activated to provide programming to subscribers is 329.

(h) The number of channels to be initially offered as part of the basic tier of service is 34.

(i) The Company agrees that it will not abandon areas presently served by this cable system(s) without the agreement of the Town, unless such areas and residents therein are being served by another cable system, or unless unreasonable costs are imposed for the continued use of a private right-of-way necessary for providing service to such areas.

(5) CONDITION OF EQUIPMENT: The Company shall maintain all of its lines, rights-of-way and equipment in good and safe condition and shall at all times construct and maintain its fixtures of equipment in compliance with the requirements of the National Electrical Safety Code and the National Electrical Code.

(6) PROCEDURES FOR RESTORING INTERRUPTED SERVICE AND IMPROVING SUBSTANDARD SERVICE:

(a) The Company, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable system.

(b) The Company shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless (1) service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service, (2) the interruption was caused by an act of nature or (3) the Company is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the Public Service Commission of West Virginia indicating that service has been restored and explaining the nature of the extenuating circumstances.

(7) CREDIT OR REFUND FOR INTERRUPTED SERVICE:

(a) If cable service to a subscriber is interrupted for more than twenty-four continuous hours for any reason such subscriber shall, upon request, receive a credit or refund within 60 days from the Company in an amount that represents the proportionate share of such service not received in a billing period, provided that such interruption was not caused by the subscriber.

(b) The Company shall comply with any viewing time reliability standards for cable operators established by the Public Service Commission of West Virginia.

(8) OFFICE OPERATING REQUIREMENTS; OFFICE HOURS: The Company shall operate a business office in or near the service area, or as otherwise approved by the franchising authority or by the Public Service Commission of West Virginia. The office shall be open during normal business hours. The Company shall operate sufficient telephone lines, including a publicly and locally listed toll-free number or any other free calling option, staffed by a company customer service representative during normal business hours.

(9) NOTICE TO SUBSCRIBERS REGARDING QUALITY OF SERVICE AND BILLING:

- (a) Annually, the Company shall mail to each of its subscribers a notice which:
1. Informs subscribers how to communicate their views and complaints to the cable operator and to the Public Service Commission of West Virginia
 2. States the responsibility of the Public Service Commission to receive and act on consumer complaints other than channel selection, programming and rates, concerning the operation of a cable system; and
 3. States the policy regarding the method by which subscribers may request pro rata credit as described in section seven of this agreement.
 4. States the policy regarding billing practices, late fees, and other service charges.

(b) The notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before the thirtieth day of January of each year, the operator shall certify to the franchising authority and the Public Service Commission that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

(10) RECORDING OF SUBSCRIBER COMPLAINTS:

(a) The Company shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with customers and similar matters as may be prescribed by the Public Service Commission of West Virginia. The records shall be maintained for a period of two years.

(b) The record or log shall contain the following information on each complaint received:

1. Date, time, nature of complaint;
2. Name, address, telephone number of complainant;
3. Investigation of complaint; and
4. Manner and time of resolution of complaint.

(c) Consistent with the subscriber privacy provisions contained in 47 U.S.C. section 551 or as otherwise provided by federal law, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the Public Service Commission of West Virginia and the franchising authority, upon request during normal business hours for

on-site review.

(11) INDEMNIFICATION BY THE COMPANY OF THE TOWN:

(a) The Company, its successors and assigns, shall indemnify and hold harmless the Town from any liability whatsoever for any damage or injury caused to any person or property by the actions or omissions of the Company on account of the franchise granted by this agreement. The Company shall take out and maintain during the term of this agreement general liability insurance with the following minimum coverage limits:

1. One Million Dollars (\$1,000,000) per occurrence.
2. Two Million Dollars (\$2,000,000) aggregate.
3. One Million Dollars (\$1,000,000) automobile liability per occurrence.

Where the insurance provides separately for personal injury and property damage, the combined limits of the two coverages shall be no less than the per occurrence and aggregate limits set forth above. The Company shall protect the Town from claims for said damages arising out of the exercise of rights and privileges and operations under this agreement. Prior to the exercise of any rights under this agreement, Certificates of Insurance shall be filed and deposited with the Clerk of the Town.

(b) Upon receipt of notice in writing from the state, county and/or municipality, the Company shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities or omissions of the Company in the installation, operation or maintenance of its cable system.

(12) FRANCHISE FEE: In consideration the granting of this franchise by the Town to the Company, said grantee shall be liable to pay to the Town/City a franchise fee as follows:

(a) The sum of \$250.00 shall be paid by the Company to the Town upon the execution of this agreement by the Company. (Such sum to be treated as a franchise fee or portion thereof.)

(b) The Company shall pay to the Town five percent (5%) of the gross revenue derived from the operation of the cable system during the preceding quarter. If the above agreed to sum certain exceeds the limit permissible under law, the maximum amount so allowed will be paid.

(c) The amount of the franchise fee to be paid to the Town shall be reviewable upon the third, sixth, ninth and twelfth anniversary dates of the date of the granting of the franchise, and upon such date the Town shall have the right to change the amount and method of calculating the franchise fee; provided however, that such changes are in conformity with federal and state law.

(d) The imposition and collection of any franchise fee under this agreement shall not affect the collection of the annual fee or document fees by the West Virginia Public Service Commission as set forth in West Virginia Code 24D-1-20 and 24D-1-25 and rules thereunder. Further, the franchise fee set forth in this agreement together with any state annual fee, document fee, or other fee considered under federal law to be a franchise fee shall never exceed the maximum

amount prescribed by federal or state law.

(e) Nothing contained herein shall prevent the Company from collecting any or all such franchise fee as an addition to its regular charges, by listing them as a separate line on its invoiced to the customer.

(13) NON-LIABILITY OF TOWN: The Town shall not be liable for interrupting the Company's service caused by employees of the Town in the proper performance of their duties.

(14) RATES:

(a) The Company shall file with the Town and keep current a schedule of its rates charged, or where no such rates are yet charged then its initially proposed rates, for each tier or cable service. The rates charged to all subscribers for the same service shall be equal and uniform throughout each cable system; excepting that this does not prohibit promotional or group rates when such rates are offered throughout the franchise area.

(b) The Company shall inform the Town of the charge for any connection fee, any reconnection fee, and any fee for an unwarranted service technician visit. In addition, the Company agrees that it will bill monthly and calculate any late payment charge in conformity with 150 CSR 26.17 regardless of whether credit has been extended. Such fees will be levied as follows:

(1) A connection fee will be charged when service is connected at a subscriber's location.

(2) A reconnection fee will be charged when service was disconnected due to a failure to pay for service

(3) An unwarranted service visit charge will be made if the customer's equipment or inside wiring is the cause of the customer's trouble.

(4) A late payment fee will may be charged when any outstanding undisputed balance due that remains after the due date appearing on the bill.

(c) To the extent permitted by federal law, the Public Service Commission of West Virginia shall regulate basic cable service rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

(d) The Company shall not raise rates or add new channels and increase charges to subscribers without first providing 30 days written notice to subscribers and providing its subscribers the option to cancel service without penalty within that 30 day period.

(15) REMOVAL OF PROPERTY AT TERMINATION OF AGREEMENT: In the event this franchise agreement is terminated for any reason, or if the Company, or its successors, cease to exercise its rights and privileges pursuant to the terms of this agreement , then, in such event, all poles, lines, cables, wiring and other apparatus erected, installed or deposited by the Company or

its successors within the Town shall be properly removed at the Company's own expense unless otherwise agreed to by the parties. Further, unless otherwise agreed to, property not removed within six months of termination will be considered abandoned and the Company shall be liable for the cost of removal.

(16) REVOCATION, ALTERATION, OR SUSPENSION OF CABLE FRANCHISE; PENALTIES:

(a) This cable franchise may be revoked, altered or suspended by the Town following reasonable notice and public hearing for the following reasons:

1. For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the franchising authority;
2. For repeated failure to maintain signal quality under the standards prescribed by the Public Service Commission of West Virginia;
3. For any sale, lease, assignment or other transfer of its cable franchise without the consent of the franchising authority;
4. Except when commercially impracticable, for unreasonable delay in construction or operation, as well as for unreasonable withholding of the extension of cable service to any person in the franchise service area;
5. For material violation of the terms of its cable franchise;
6. For failure to substantially comply with WVA. Code 24D-1-1 et seq. or any rules, regulations or orders prescribed by the Public Service Commission of West Virginia;
7. For substantial violation of its filed schedule of terms and conditions of service; and
8. For engaging in any unfair or deceptive act or practice.

(b) In lieu of, or in addition to, the relief provided by subsections (a) or (b) hereof, the Town may fine a cable operator, for each violation under the provisions of this section, in an amount not less than fifty dollars nor more than five thousand dollars for each violation. Each day's continuance of a violation may be treated as a separate violation.

(17) RENEWAL OF CABLE FRANCHISE: This cable franchise may be renewed by the Town upon approval of the Company's application or proposal therefor and in accordance with the provisions of state and federal law. The form of the application or proposal shall be prescribed by the Public Service Commission of West Virginia. The application or proposal shall be the same fee prescribed for franchise applications, and the periods of renewal shall be not less than five nor more than twenty years each, unless otherwise prescribed by state or federal law. The Town shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities.

(18) ASSIGNMENT OR TRANSFER OF CABLE FRANCHISE: This franchise including the rights, privileges and obligations thereof may not be assigned, sold, leased, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the Town. The form of application for transfer shall be prescribed by the Public Service Commission of West Virginia.

(19) NON-DISCRIMINATION: As a condition to receiving a franchise from the Town, the Company covenants and agrees that it shall not discriminate in any employment matter or any other matter against any person on account of age, race, religion, sex, physical handicap or country of natural origin.

(20) REVIEW OF EQUIPMENT AND RECORDS:

(a) Throughout the term of this agreement the Town shall have the right, during normal business hours, to inspect all lines, equipment, fixtures and facilities owned or operated by the Company pursuant to the terms of this agreement. The Town shall also have the right, during normal business hours, to inspect all records and reports maintained by the Company and either under the control or direction of the Company or any of its agents, employees or affiliates, wherever said agreements, contracts, records and reports may be located; subject to the subscriber privacy provisions of the Cable Communications Act of 1984, applicable federal law, and excepting proprietary and confidential information contained in programming contracts when rates are not regulated. With the exception of salaries and wages of employees of the Company, which shall be paid by the Company, all expenses incurred in conducting such inspections and reviews of the equipment and records of the Company shall be at the expense of the Town.

(b) The Company shall file with the Town, upon request, copies of all reports of its financial technical and operational condition and its ownership required by state or federal law. The reports, as required to be filed with federal and state agencies and authorities shall be kept on file open to the public.

(c) The Town or its designated agent(s) shall have access to all books of account and records of the company, its affiliates, parent(s) or subsidiary(ies) through which expenses or revenues may flow. Such access shall be for the purpose of ascertaining the accuracy of any and all reports, accounts or payments due or made to the Town, or for purposes deemed necessary by the Public Service Commission of West Virginia.

(21) CANCELLATION

(a) The Company shall have the right to annul and rescind this agreement only in the event that the operation of the system herein provided for is prohibited by law.

(b) This franchise is granted upon the express condition that if the Company shall neglect, refuse or fail to do, perform or observe any of the material conditions, agreements, provisions, in terms, as set forth herein, including, but not limited to the timely payment of the franchise fee as fixed and assessed in accordance with this agreement, and such neglect, failure or default shall continue for a period of thirty (30) days after written notice thereof shall have been given to the Company, then, and in such event, the Town shall have the right, and does hereby reserve the right, at its option, after reasonable notice and public hearing, to terminate all of the rights and privileges granted herein, and any additions to or amendments hereof, unless such performance of the provisions is being contested before a Court of competent jurisdiction by the Company, and declare the same at an end, without prejudice to any remedies the Town may have.

(22) MISCELLANEOUS:

(a) If any provision of this agreement or the application thereof to any person, firm or corporation is held invalid by any Court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this agreement and to this end the provision of this agreement are declared to be severable.

(b) This agreement shall be interpreted according to the laws of the State of West Virginia.

(c) The franchise grantee agrees to abide by all applicable state and federal laws, rules, and regulations.

(d) The terms of the Addendum attached hereto as Attachment B have been negotiated and agreed upon between the Town and the Company, are applicable and incorporated herein by this reference, and are not meant to contradict any term in the body of this franchise.

(23) NOTICE: All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the Town:
P.O. Box 248
Shepherdstown, WV 25443

Attn: Mayor

To the Company:
Shenandoah Cable Television, LLC
Shentel Way
Edinburg, VA 22824
Attn: VP Industry Affairs & Regulatory

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused their respective Officials to set their hands, their secretaries to attest, and their seals to be affixed hereto.

Passed and adopted this _____ day of _____, 2023, subject to applicable federal, state and local law.

CORPORATION OF SHEPHERDSTOWN,
WEST VIRGINIA

By: _____

Name: Arthur J. Auxer III, Mayor

ATTEST

Accepted this _____ day of _____, 2023, subject to applicable federal, state and local law.

SHENANDOAH CABLE TELEVISION, LLC

By: _____

Name: _____

ATTEST

SHEPHERDSTOWN GRANT GUIDELINES**OVERVIEW:**

Grant funds awarded to the Corporation of Shepherdstown support essential programs and services, allowing the Town to maintain existing services and fund new projects or purchase needed goods and services. Grant agreements are legal contracts. When a grant is awarded, the Town is obligated to carry out the activities associated with the funded project and to accomplish its objectives while adhering to all of the terms and conditions prescribed by the grantor.

These Grant Guidelines create a required protocol for application, approval, accounting, financial administration, and reporting for grant and other funding opportunities. This protocol will facilitate grant oversight and coordination, foster consistency with applications, and help ensure grant compliance. It will also foster good stewardship of the public trust. The goal of uniformity in the grant seeking process is to increase grant revenue, thereby elevating the impact of programs and services funded through grants.

SPECIFIC OBJECTIVES:

1. Facilitate prioritized needs identification;
2. Create a standard approval process for projects and grant applications;
3. Establish a protocol for inter-departmental communication regarding the grant application process;
4. Promote transparency and public engagement with regard to planning and funding;
5. Ensure the Town's readiness to apply for funding opportunities as they arrive; and
6. Establish the sustainability of projects beyond grant periods.

SCOPE:

These Guidelines recognize three types of approvals related to grant seeking:

1. Project approval;
2. Approval to apply for project funding; and
3. Approval of funding applications that have been completed.

All Town entities that seek to apply for federal, state, local, public, and private funding, except those listed below under EXCEPTIONS, must adhere to these Guidelines. Preliminary steps to grant proposals, such as initial letters of inquiry or pre-application submissions that do not

require budgets, will not need Town Council approval. Grant renewal and/or grant continuation forms are considered applications.

INTERNALLY COMPETING APPLICATIONS:

Generally, grantors will not consider multiple applications from the same entity during the same application period. Coordination is vital among all Town entities. It is not in the Town's best interest to compete against itself or to risk the possibility of duplicating a request for funds.

SIGNATORY AUTHORITY:

Following the Town's approval process, applying entities will obtain the Mayor's approval and signature on all funding applications.

LETTERS OF SUPPORT:

If the Town is requested to offer letters of support for grants submitted by entities outside of the Town, such letter shall not conflict with the Town's positions or policies.

NEEDS IDENTIFICATION:

The Town will take a strategic approach to the grant seeking and application process to enhance the Town's ability to coordinate grant activity on a department-wide basis and to provide an overview of needs that could be met through grant funding. Town commissions, committees, and boards should work together when identifying and applying for grants. Having a list of pre-approved, prioritized projects that need funding will expedite Shepherdstown's grant-seeking efforts. It is recommended that at the end of each fiscal year, these Town entities file simple reports stating identified needs, what analysis the needs are based on, and costs for solutions to address those needs. Submitted reports should include 1) needs and impact assessment, 2) simplified budgets, 3) a description of any public input that was incorporated into planning, and 4) how the needs relate to the goals outlined in the Comprehensive Plan. These reports should be combined and tracked to form a working list of priorities. Grant opportunities should consider these needs.

GRANTS MANAGEMENT DATABASE AND DOCUMENT RETENTION:

The Grants Committee will maintain a master database of grants, including both awarded and pending applications. Grant applications in process or pending as of the adoption of this policy will be added retroactively to the tracking list. It is recommended that this database also include projects that have been approved by the Town Council and are awaiting funding. This list shall

be made available to the public via the website and to all Town entities. The creation of this list will improve coordination, enhance oversight, and provide a snapshot of the Town's funding priorities. The Town Clerk shall keep a file of all submitted grant applications.

REQUIRED APPROVALS:

Project Approval: All Town projects in need of funding shall obtain Project Approval from the Town Council. If new projects will require funding outside of the Town's budget, this Project Approval is necessary before seeking the Town Council's Approval to Apply for Funding. New Project Approvals are valid for twelve (12) months and must be renewed or updated thereafter.

Approval to Apply for Funding: Town Council's Approval to Apply for Funding requires prior Project Approval. Both Approvals may occur simultaneously. Approvals to Apply for Funding are valid for twelve (12) months so long as no project variables have changed.

Grant Application Approval: When Approval to Apply for Funding has been granted and preparation of the grant application is complete, the Town Council will review the grant application and vote to approve its provision to the Mayor for signature and submission.

EXCEPTIONS:

Approval to Apply for Funding is not needed for the following:

1. Funding for the maintenance, upkeep, replacement, or ongoing operation of existing programs or projects where:
 - A. ~~(optional: BELOW A CERTAIN DOLLAR AMOUNT)~~ funding applied for does not exceed \$25,000.00, and
 - B. there are no significant changes in program goals, scope, or objectives, or any new requirements of continued local funding for the project; OR
2. The project's expenses were approved by Town Council and included in the Town's operating budget under "pending funding" within the year covered by the award; OR
- ~~3.~~ Applications for recurring grants that ended in the immediately preceding grant period or with no funding lapse if they are for ongoing operation, improvement, or maintenance of existing and necessary Town resources, projects, or programs, and do not involve changes in scope or budget; OR (optional: (BELOW A CERTAIN DOLLAR AMOUNT - \$50,000?)).
- 3.
4. -Applications determined by Town Council to be in the best interests of the Town and not in conflict with the Comprehensive Plan. -If this exception is utilized, the Town Council must provide substantial justification for bypassing the procedures set forth herein and provide public notice in advance of application approval.

There are no other exceptions. Applications that are rushed or that aim to devise new projects to capture new funding opportunities rather than find funding for approved projects are to be avoided. If the funding opportunity is not excepted as outlined above, and the applying entity is not made aware of the funding within adequate time to present to the Town Council at a regular meeting, a special Town Council meeting should be called.

STANDARDS FOR PUBLIC ENGAGEMENT:

Project Approval and Approval to Apply for Funding are both contingent on satisfying the requirement for public engagement, meaning whether the public has had sufficient opportunity to review the project and to provide input that is incorporated into the planning process.

There are myriad ways to satisfy the requirement for public engagement such as sufficient public notice, public meetings and placards posted at project locations. Project managers are encouraged to consult national planning ethics standards and best practices regarding this. One helpful resource is the American Planning Association: <https://www.planning.org/ethics/ethicalprinciples/>. The Town's goal in assessing needs and planning to meet those needs should be a cumulative process that provides the most comprehensive public engagement possible on a per project basis.

AWARD NOTIFICATION AND REVIEW:

Grant award notifications will come in various forms and are often sent to the signing representative. Such award letters and grant contracts must be routed to the applicant body for processing, with documentation sent to the Grants Committee for filing. -The applicant body shall:

- Save award letters electronically;
- Share copy of award with responsible department(s) and Finance Committee;
- Obtain legal review of grant award contract as indicated or needed;
- Review grant contracts for terms and conditions and prepare a list of requirements in an easy-to-follow format for the responsible department(s);
- Obtain signatures for a fully executed contract as required;
- Set up timelines for reports and other tasks.

TOWN COUNCIL AWARD APPROVAL:

In some cases, if required by the Grantor, the Town Council will need to vote to approve grant *awards*. The Town Council may decline to accept any grant award. The Town Council will be notified when any funding is awarded. The Town Council will review grant *awards* when: it did

not approve the grant *application*; any specifications in the grant/project activities or requirements have changed since the application was submitted; or for any other reason deemed valid by the Town Council, Mayor or applying entity.

REVIEW AND REVISIONS:

These Guidelines will be reviewed and revised as necessary to ensure that they are following existing rules and regulations and that they serve the public effectively. Any such revisions will be made only after soliciting public input.

GRANT / FUNDING “INTENT TO APPLY” FORM
(For Town Council Approval to Apply)

Please attach a summary report that contains the following information about the project to be funded and the funding opportunity:

BASIC INFORMATION:

1. Name of project;
2. Applying entity;
3. Project lead’s name and contact information;
4. Source of grant funding (name of grant), including link, and application due date;
5. Summary of project to be funded including purpose and overall cost; and
6. Reporting and compliance requirements;

PUBLIC ENGAGEMENT:

7. Has meaningful public input been sought, obtained, and incorporated into planning for the project that will be funded? Please describe in detail.
8. Describe how the public, including and especially members of the public who will be directly affected by the project, has been proactively informed of the project and the proposed funding source(s).
9. Please attach a comprehensive report on all citizen feedback that was received, and describe how the feedback was incorporated into planning for the project.
10. If applicable (e.g. as required by some grant applications), attach the pre-application press release of grant application.
11. Has the potential for conflict of interest been ruled out?

FINANCIAL EVALUATION:

12. What is the total anticipated project cost over the grant period?
13. Attach an itemized budget.
14. What, if any, are the match / cost share requirements? [Please note that voluntary cost match/share is not permitted.](#)
15. [Has the Finance Committee approved the match requirements? \(attach minutes documenting approval\)](#)

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16. What is the capacity of the Town to administer the funds and funded project, to include as well as all reporting requirements?

~~16. Has the Finance Committee approved the match requirements? (attach minutes documenting approval)~~

17. What are the staffing requirements, including salary and benefits increases for multi-year grants?

18. What is the sustainability Plan and cost (available funds, etc.) for the project or staff positions after the grant ends?

PROGRAMMATIC EVALUATION:

19. What is the established and documented need?

20. How was the need established?

~~21. Compatibility with~~ Is the proposed project compatible with the Comprehensive Plan?

20. Is the project for a new service, program, or structure or for an expansion of services to address established needs?

~~21. What is the established and documented need?~~

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RESOURCE CHARTS (to be adapted and included after Guidelines approved):

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- 21. Is the proposed project compatible with the Comprehensive Plan?
- 20. Is the project for a new service, program, or structure or for an expansion of services to address established needs?

RESOURCE CHARTS (to be adapted and included after Guidelines approved):

Corporation of Shepherdstown

Balance Sheet

As of July 6, 2023

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
GENERAL FUNDS BANKING	1,497,234.92
110 Lighting 2728	4,697.89
RESERVED FUNDS BANKING 6209	3,851,087.38
103 Customer Deposit Accounts 3194	123,056.34
101.031 Grants Funds-Other Grants	14,900.00
101.037 JC Bike Path Project Funds	2,731.48
101.039 Oil and Gas Tax	36,068.45
Parks & Recreation Hotel/Motel 5985	66,820.28
105 Police Dept. Equip. Fund (JSB) 4986	11,731.64
Special Fund	456,096.29
Undeposited Funds	931.18
Total Bank Accounts	\$6,065,355.85
Accounts Receivable	
General Funds A/R	60,436.00
108 Other Accrued Receivables	1,800.00
108.01 NSF Check Receivables	-1,066.81
Total Accounts Receivable	\$61,169.19
Other Current Assets	
Due from Coal Severance	429.43
Other Current Assets	71,938.81
112.011 Tobacco Warehouse	5,261.00
Total Other Current Assets	\$77,629.24
Total Current Assets	\$6,204,154.28
Fixed Assets	
General Fixed Assets (Gov-Wide)	5,443,487.51
Total Fixed Assets	\$5,443,487.51
TOTAL ASSETS	\$11,647,641.79
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
General Funds A/P	4,269.00
Total Accounts Payable	\$4,269.00
Credit Cards	
Credit Cards Payable	97.96
Fifth Third	0.00
213 Purchase Card Payable	31.03

Corporation of Shepherdstown

Balance Sheet

As of July 6, 2023

	TOTAL
Total Credit Cards	\$128.99
Other Current Liabilities	
260 Accrued Compensated Absences	45,929.73
Child Support	713.07
Christmas Club	290.00
280.40 DI - Changes in Assuptions	25,685.00
280.30 DI-Changes/Differences Prop. S	15,979.00
280.20 DI-Difference Proj/Actual Earn	4,911.00
280.10 DI-Different Expected/Actual I	3,813.00
140.02 DO - Change in Proportionate	-16,430.00
140.01 DO-RHBT Payments Subsequer	-24,060.26
Due to/from Sewer	-653,563.94
Due to/from Water	24,303.61
200.02 EVCF Endowment Fund	0.00
Garnishments	608.61
Gen Fund Other Current Liab.	26,728.55
250.10 Net OPEB Liability	262,044.00
Payroll Liabilities	2,958.54
2104 PEIA Payable	3,872.00
292.30 PPA-2017 RHBT Payment	-63,834.76
292.40 PPA-Beginning Net OPEB Obligati	313,932.00
292.20 PPA-Beginning OPEB Liability	-276,168.79
290.50 Restricted for Equipment	3,731.48
VALIC Retirement Payable	28,108.83
Total Other Current Liabilities	\$ -270,449.33
Total Current Liabilities	\$ -266,051.34
Total Liabilities	\$ -266,051.34
Equity	
Fund Balance	4,680,537.16
290 Investment in Gen. Fixed Assets	5,466,470.38
Retained Earnings	1,764,582.28
Net Income	2,103.31
Total Equity	\$11,913,693.13
TOTAL LIABILITIES AND EQUITY	\$11,647,641.79

Corporation of Shepherdstown
Budget vs. Actuals: Fiscal Year 2023
July 1, 2022 - May 31, 2023

	Actual as of 04/30/23	FY 23 Budget	Remaining	% of FY 23 Budget	YTD Budget	% YTD Budget
Income						
301 Property Tax Revenue	221,772.12	219,989.00	1,783.12	101%	201,656.62	182.23%
303 Gas & Oil Severance	8,903.40	8,903.40	0.00	100.00%	8,903.40	100.00%
308 Hotel Occupancy Tax	97,554.05	105,000.00	7,445.95	92.91%	96,250.00	103.43%
Court Fee Revenues	52,298.50	56,542.50	4,244.00	92.49%	51,833.32	98.19%
Gaming Income-Table Games	98,396.89	124,635.00	26,238.11	78.95%	114,248.75	86.28%
License & Permit Revenue	12,736.03	34,125.00	21,388.97	37.32%	31,275.75	42.65%
Other Revenues	183,447.31	127,094.73	-56,352.58	144.34%	116,500.58	158.52%
Other Tax Revenues	686,868.68	775,875.00	89,006.32	88.53%	711,218.75	98.44%
Parking Fee Revenue	179,098.53	100,800.00	-78,298.53	177.68%	92,394.50	193.72%
Planning Commission Revenue	4,521.50	7,710.00	3,188.50	58.64%	7,067.50	48.83%
Refuse Collections Revenue	188,442.74	201,075.00	12,632.26	93.72%	184,318.75	101.90%
Rents Revenue	39,600.00	45,677.00	6,077.00	86.70%	41,870.75	94.58%
Video Lottery Proceeds Revenue	301,342.57	252,433.65	-48,908.92	119.37%	231,393.25	128.76%
Total Income	\$ 2,074,982.32	\$ 2,059,860.28	-\$ 15,122.04	100.73%	\$ 1,888,931.92	109.85%
Expenses						
440.30 City Hall Legal Fees	11,977.86	12,600.00	622.14	95.06%	11,550.00	103.70%
455.01 Sidewalk Assistance Housing	367.00	0.00	-367.00	0.00%		0.00%
700.302 Police Court Judge	1,242.75	2,220.00	977.25	55.98%	2,035.00	61.07%
700.305 Misc. Contractual	3,125.48	0.00	-3,125.48	0.00%		0.00%
916 Library - Building Repairs	10,359.05	21,000.00	10,640.95	49.33%	19,250.00	53.81%
Arts, Humanities, Library	301.71	0.00	-301.71	0.00%		0.00%
City Hall Accounting/Audit	35,583.05	8,000.00	-27,583.05	444.79%	7,326.00	485.71%
City Hall Bldg/Equip Expenses	11,058.97	28,260.00	17,201.03	39.13%	25,905.00	42.69%
City Hall Insurance	15,120.14	23,310.00	8,189.86	64.87%	21,367.50	70.76%
City Hall Other Expenses	35,899.43	36,401.00	501.57	98.62%	33,363.00	107.60%
City Hall Utilities	6,631.97	6,352.50	-279.47	104.40%	5,824.50	113.86%
City Hall Video Lottery Expense	6,400.00	0.00	-6,400.00	0.00%		0.00%
City Hall-Employee Salary/Fring	116,670.14	100,190.00	-16,480.14	116.45%	91,833.50	127.05%
General Fund Donations	21,250.00	21,915.00	665.00	96.97%	20,088.75	105.78%
Magistrate Services	1,200.00	1,920.00	720.00	62.50%	1,760.00	68.18%
Parks Equipment & Supplies	57,071.61	25,000.00	-32,071.61	228.29%	22,902.00	249.20%
Parks Maintenance	4,556.16	5,840.00	1,283.84	78.02%	5,346.00	85.23%
Parks Salaries & Fringe	5,530.08	12,720.00	7,189.92	43.48%	11,660.00	47.43%
900.09 Parks Unemployment Tax Exp		315.00	315.00	0.00%	288.75	0.00%
Parks Utilities	2,050.95	74,230.00	72,179.05	2.76%	68,044.13	3.01%
Parks Vehicle Expenses	917.22	5,125.00	4,207.78	17.90%	4,697.00	19.53%
Planning Commission Expenses	97,281.89	96,792.50	-489.39	100.51%	88,724.90	109.64%
440.82 Professional Services	100.00	0.00	-100.00	0.00%		0.00%
440.83 Communications Expenses	729.28	2,625.00	1,895.72	27.78%	2,406.25	30.31%
Police Dept. Grant Expenses		1,470.00	1,470.00	0.00%	1,347.50	0.00%
Police Equip. Purchase & Repair	28,176.56	28,350.00	173.44	99.39%	25,987.50	108.42%
700.45 Police UNIFORMS	4,859.49	3,150.00	-1,709.49	154.27%	2,887.50	168.29%
Police Other Expenses	107,729.59	146,695.00	38,965.41	73.44%	134,461.25	80.12%
700.22 Police Dues		420.00	420.00	0.00%	385.00	0.00%
Police Remittance Fees	4,775.00	7,350.00	2,575.00	64.97%	6,737.50	70.87%
Police Salaries & Fringe	553,274.88	610,306.00	57,031.12	90.66%	559,434.15	98.90%
Police Utilities & Rent	6,774.11	24,413.00	17,638.89	27.75%	22,378.51	30.27%

	Actual as of 04/30/23	FY 23 Budget	Remaining	% of FY 23 Budget	YTD Budget	% YTD Budget
Police Vehicle Expenses	5,121.67	64,000.00	58,878.33	8.00%	58,652.00	8.73%
Public Works Expenses		2,625.00	2,625.00	0.00%	2,406.25	0.00%
Regional Council Dues		900.00	900.00	0.00%	825.00	0.00%
Sanitation Dumping Fees	71,374.19	61,750.00	-9,624.19	115.59%	56,600.50	126.10%
Sanitation Equip Repair & Maint	189.03	1,500.00	1,310.97	12.60%	1,416.63	13.34%
Sanitation Other Expenses	54,254.91	235,212.50	180,957.59	23.07%	215,611.22	25.16%
Sanitation Salaries & Fringe	65,374.59	117,861.00	52,486.41	55.47%	108,039.25	60.51%
800.08 Sanitation Personnel Training	600.00	225.00	-375.00	266.67%	206.25	290.91%
Sanitation Vehicle Expenses	9,631.03	5,250.00	-4,381.03	183.45%	4,812.50	200.13%
Streets Maintenance & Equipment	22,946.10	7,050.00	-15,896.10	325.48%	6,462.17	355.08%
Streets Other Expenses	26,868.87	22,785.00	-4,083.87	117.92%	20,886.14	128.64%
Streets Salaries & Fringe	91,309.53	88,638.00	-2,671.53	103.01%	81,251.50	112.38%
Streets Tree Maintenance	20,022.66	29,400.00	9,377.34	68.10%	26,950.00	74.30%
Streets Utilities	15,844.95	25,987.50	10,142.55	60.97%	23,821.82	66.51%
Streets Vehicle Expenses	11,477.83	9,000.00	-2,477.83	127.53%	8,249.89	139.13%
Tobacco Warehouse Expense	157.02	7,035.00	6,877.98	2.23%	6,448.75	2.43%
Town Elections	0.00	4,400.00	4,400.00	0.00%	4,033.26	0.00%
Town Government Salaries/Fringe	10,140.89	20,186.92	10,046.03	50.23%	18,504.64	54.80%
Visitors Center Expenses	63,322.32	73,500.00	10,177.68	86.15%	67,375.00	93.98%
Total Expenses	\$ 1,619,649.96	\$ 2,084,275.92	\$ 464,625.96	77.71%	\$ 1,910,543.96	84.77%
Net Operating Income	\$ 455,332.36					

Shepherdstown Parks & Recreation Committee
MINUTES
June 27, 2023
Viola Devonshire Park

1. Call to Order:

Meeting was Called to Order at 6:18 PM.

Members Present: Cheryl Roberts (Chair), Jenny Hayes, Lori Robertson, & Marty Amerikaner.

Members Absent: Nick Tully and Effie Kallas

Staff Present: Frank Welch & Mayor Jim Auxer

2. Approval of Agenda:

MOTION to approve the Agenda made by M. Amerikaner; Seconded by J. Haynes. Motion carried without objections.

3. Approval of Minutes – May 30, 2023.

MOTION to approve the Minutes of May 30, 2023, by M. Amerikaner. Seconded by J. Haynes. Motion carried without objections.

4. Welcome Visitors: None.

5. Unfinished Business:

a. Bane-Harris Park - C. Roberts

i. Mulch in Playground Area – F. Welch reports that this item is pending a day without unscheduled urgent maintenance work. C. Roberts reports that it needs weeding before it gets out of control.

ii. Pickle Ball Space - Sub-Committee Update. C. Roberts reports that this item is pending purchase, scheduling for portable net assembly, and net access and security. C. Roberts will contact Andy Bell to see if the storage boxes to hold the nets, balls, etc. need to be approved by the HLC. If so, this item will be placed on their agenda. If not, this item will be placed on the Town Council's agenda. Per April's minutes, C. Roberts to move forward with the acquisition of nets and court tape.

iii. Playground Equipment Replacement Initiative –

Equipment resources submitted by members of the sub-committee, M. Amerikaner, L. Robertson, C. Roberts, and Town Hall Staff Stephanie Grove for websites, emails, and telephone contacts. Motion by J. Haynes; Seconded by M. Amerikaner to conduct Market Research for replacement equipment in the \$30-40k range to fit the same area of the existing.

b. Cullison Park - M. Amerikaner

Commented [1]:

From last month's discussion regarding soft spots along the edges and several areas which appear to be an issue. M. Amerikaner followed up with Capitol Flexipave® on the warranty. M. Amerikaner obtained a proposal from contractor, for \$2400/year to include by cleaning and applying a polyurethane seal. During the discussion it was noted that Capitol Flexipave® will need to fix the problem because one of the reasons that we accepted their proposal was based upon the durability of the product.

There is also a report a complaint of possible automobile tire marks on the flexipave surface.

L. Robertson will mark the areas of issue and in need of repair. It was noted that we will need a barrier in front of the area to prevent vehicles from coming too close to the surface. M. Amerikaner will follow up.

c. Riverfront Park - J. Haynes

J. Haynes reports that the park is busy with boaters and children playing in the water. The water level is extremely low for this time of the year. Otherwise, the park remains in good shape.

d. Rumsey Park - N. Tully (Absent)

No report.

e. Viola Devonshire - L. Robertson

i. Pickle Ball Proposal - Sub-Committee Update. See Bane-Harris Report. .

ii. Meeting at this park for an opportunity to report any issues and/or needs. The park remains in good shape and many thanks to the residents of Shepherd Village.

f. Bookmark the Park 2023 Season - E. Kallas

In E. Kallas' absence, C. Roberts, and M. Amerikaner reported that the recent event held at Cullison Park was very well received. Thanks to Leigh Koonce, author, poetry readers, Jan Hafer, Mark Kohut, and other community members attending! Also, Thanks to Parks & Recreation Committee members, J. Hayes, L. Robertson, E. Kallas, and C. Roberts for refreshments and leadership!

The next Bookmark the Park event, "Poetry & Photography" featuring Nate Howard, will be held on Saturday, July 22 @ 2:00 p.m. at Bane-Harris Park (corner of W. Higher and Maiden Lane). It is also planned to unveil and present the Pickleball Court to the public.

6. New Business:

None

7. Next Meeting - July 25, 2023 - 6:00 pm – Riverfront Park

8. Adjournment

MOTION to adjourn made by J. Haynes; second by M. Amerikaner. Motion passed unanimously.

Adjourn: 7:18 pm.

Respectfully Submitted and Approved by Chairperson, C. Roberts.

Attachment: Remaining Bookmark the Park events

BOOKMARK THE PARK

Saturday, July 22, 2023

- **Poetry and Photography - Bane-Harris Park 2:00 pm.**

Shepherdstown's own Nate Howard will read from his book, Outside Everything. Moving and personal, this work also includes expressive photographs by Sarah Eckstine.

The park's new Pickleball court will also be unveiled.

Saturday, Aug 12, 2023

- **Open Mic - Viola Devonshire Park 2:00 pm.**

Calling all poets and authors - come share your art!

Another new Pickleball Court will also be introduced to the public.

Age-Friendly Shepherdstown Advisory Board
June 7, 2023

MINUTES

Attending: Marty Amerikaner, Steve Ayraud, Marcy Bartlett, Stacey Kendig, Linda Spatig

1. Bike Path update. Linda reported that Steve, Marty, and she attended the May Public Works Committee meeting. The committee recommended that we get written documentation of support from Shepherd University and from Potomac Peddlers. They also asked about how we could/should get support for using Fairmont and Minden Streets as part of the bike route. Finally, they recommended that we meet with the police chief.

Stacey is in the process of getting documentation of support from Shepherd University. She requested that we send her the link to the route so that she can submit that to university personnel for review. Steve sent that info to her as we met. She stated the university continues to be supportive of the bike route and the part that goes through the university.

Marty reported that Jonathan Moss had already written a letter of Potomac Peddlers' support for the route.

Linda reported what she learned about sharrows from guidelines provided by the National Association of City Transportation Officials and by the Federal Highway Administration. According to those guidelines, sharrows should be placed immediately following an intersection and they should be placed following a pedestrian crosswalk, never within it. Further, the maximum space between sharrows should be 250 feet, though sometimes they are placed closed together on residential streets where it is deemed appropriate. On streets with parallel parking, sharrows should be located a minimum of 11 feet from the curb and on streets *without* parking, the sharrows should be located 4 feet from the curb.

Linda reported that it is unclear who is responsible for Minden and Fairmont Streets. At the Public Works Committee meeting, we heard they were considered "orphan" streets. Subsequently, a Prospect St. resident informed us that Minden and/or Fairmont Streets seemed to be under the control of the county because they were part of regular or back-up bus routes to the public school on Minden. Linda will seek more information on this issue.

Marty agreed to set up a meeting with the police chief as soon as possible.

2. Fall Prevention Update. Marcy shared the results of the working group's systematic review of the parks and railroad crossings in Shepherdstown. In each case, the group identified potential fall/danger areas, took pictures, and rated the level of seriousness of the danger.

Marty said he had received a draft report from Ron Eck, the ADA expert who visited Shepherdstown in April. Marty and Marcy will share the draft reports with each other to see whether and to what extent they are compatible.

3. Public Transportation update. Linda reported that for now, Age-Friendly Shepherdstown will not pursue funding for EPTA bus services. Instead, SAIL has agreed to develop and pilot a shuttle service provided for SAIL members by SAIL volunteer drivers who have been approved to transport other SAIL members.
4. Next Meeting; July 19, 2023: 12:30 on zoom

Shepherdstown Tree Commission Draft Minutes

Thursday, June 22, 2023

6:00 p.m.

Town Hall

- **Members Present:** Lori Robertson – Chair, Frank Welch, Jenny Haynes, and James Dillon.
 - **Absent:** None
 - * **Visitors:** Jack Baronner - Associate Forester with First Energy
1. **Call to Order:** L. Robertson called the meeting to order at 6:02 p.m.
 2. **Approval of May 11, 2023 minutes.**
J. Haynes – move to approve May 11, 2023 Tree Commission minutes.
Second by F. Welch. No objections noted.
 3. **Public Comment:** None
 4. **Visitor's comments:**

Jack - works with Dale Hetrick - First Energy. There are several trees on the written proposal in front of the commission. Corner of Duke & High streets, one across from the McMillians, one across from Sonya Evanesko, one on W. High across from the ball field where Harry Bender used to live, the Lost Dog Bradford Pear, and at the corner of S. Princess and German streets in front of the Green

Pineapple. There is a tree on the proposal that is located on SU property and Jack knows they will have to contact them directly. First Energy is offering us 7 tree vouchers worth \$100 each as well as a credit of \$1500 towards the purchase of additional trees. The corporation is to provide a written response regarding wood removal for town property so the vendor can haul it away. The trees need to be planted in the 2023 calendar year. We need to include a 3-year maintenance plan for the new trees.

We discussed time frame - Monday's are the best day for tree removal on German St. especially for the Lost Dog tree. We would like to have a week's notice to allow the businesses to prepare. We spoke about an Okame Cherry to replace the Green Pineapple tree. The commission will look at the accepted tree list for the other replacement trees. The tree well is so small in front of the Lost Dog that replanting is an issue with removing the stump which First Energy does not do. The tree can be cut as close to the ground as possible for now and we can think about stem removal in the future.

First Energy will cut and chip the trees. The wood chips can be taken to the sewer plant per Frank as we use them regularly.

L. Haynes - move to accept the First Energy Tree Removal Proposal with the exception of the Shepherd University tree. Second by J. Dillon. No objections noted.

**** The plan is get the proposal to the Mayor for him to sign and scan to Dale Hetrick, along with the written response regarding wood removal.*****

5. Unfinished Business:

- a. Verbiage for Comprehensive Plan –input from Commission. Pending.
- b. Monarch Way Station –plants need to be cut back and weeded. Lori will go over and weed and prune now that we have had some rain. She had signs made designating these areas to not be mowed and what they are. We need poles/stakes to attach the signs too. Frank thinks he has something at the plant, if not James has some rebar.
- c. Keep as Pending - Suggestion to have Bartlett give us a quote to clear the bowl in Rumsey Park with a brush-cutter. Then plant a large White oak (red

foliage in the fall) or a Chinkopin Oak and keep the bowl clear. Put a large circle around the tree for water to pool to keep it moist.

d. Sage Place – James suggested planting perennial evergreen plugs in 1-2 years – Eastern Star Sedge. There are 9 trees to maintain – have Bartlett do all 9 trees this spring - James to email to update. The Star Sedge update is that Lori was emailed by a resident of Sage Place requesting the wells be done. Lori noted that some of the wells had been planted with perennials. James clarify that those flowers were seeds that blew into the wells. He will reach out to the resident and get this worked out.

e. Thirty Seasons - cut the roses back hard and thankfully we got a bunch of rain right afterward. The German St. beds were weeded and look good. They still need to finish on King St and at the Train Station. The weather has made it tough.

f. Tree Inventory – no updates at this time.

g. Red Maple in front of Town Hall – put a plaque “In Honor of Pete Spaulding” Lori to reach out on FB to chat with those who had worked with Pete. We need to go ahead and order it.

h. Lost Dog tree - see the above note under Visitor’s.

i. Deb Tucker - 300 W. High St. - Lori mailed Deb with these choices per James for under the wires - Serviceberry, Adirondack Crabapple, or an Okame Cherry. However, she prefers a Kousa Dogwood and James confirmed that will work fine. Lori to email her again to confirm the planting in the fall.

j. Harvey Heyser – 203 E, High St. – a new tree we planted – he would like it removed – after a lengthy discussion, we will relocate the tree. Harvey stated he has no plans to drive up and over the curb once the tree is removed. He is fine with us doing it in the fall. Keep on agenda for fall relocation and replanting of a Sugar Maple to the right of his house.

k. Dead tree at the corner of Mill and German - Frank- Bartlett to do but will need flaggers.

l. Dead tree by Seagal home - tree tag is 135. Corner of German and Duke - German St side. Need to reconfirm quote with Bartlett - **also Neil Super would to coordinate with Bartlett to get some of the wood.**

m. Rain barrel broken drain pipe at the Train Station - Update - Frank - it's fixable and Public Works will do it.

n. Bike Shop tree - DONE

7. New Business:

a. Sue Lemnitzer - tags 67, 68, 69 & 70 - Back Alley behind her house - English Ivy and poison ivy drowning on them. - James looked at the photos Lori took and we can cut them ourselves.

b. Tree to the left of the Shepherdstown Museum closer to the alley - cable? Lori spoke to Derek with Bartlett and he recommends they trim it until it's feasible to remove the problem limb. Lori to let him know.

c. Japanese Silk Lilacs on New St - in front of Jenny Allen's home - 206 W. New. - add to Bartlett's list.

d. W. High St across from Karen Moivan's home - an area between the sidewalk and street large stones were placed there - can we plant a ground cover to cover them. James - St. John's Wort will work great there. James will assess it.

e. Mayor Auxer's home. 108 E. New St. - tree needs to be trimmed - add to Bartlett's list

f. Frank needs clarification on a quote referencing tags 174 & 175 - location. Quote is for \$1185.00.

g. Heidi Glenn - would like an Ann Magnolia - planted on King St. side.

8. Maintenance/Misc. - Fall 2023 -

* Next meeting July 13 - 6pm

9. Adjournment:

**J. Haynes – if there are no objections, the meeting is adjourned at 7:08 p.m.
Second by J. Dillon. None noted.**

Dale Hetrick
First Energy – Advanced Forestry Specialist
901 Wilson Street
Martinsburg, WV 25402

June 21, 2023

Shepherdstown Tree Commission
104 North King Street
Shepherdstown, WV 25443

To Whom It May Concern:

The following text outlines a proposal regarding street trees that require maintenance for the overhead power lines. First Energy desires a partnership with the town to create a sustainable power line right of way that safeguards the public and enhances electric reliability.

To achieve the aforementioned goal, First Energy has identified **(7)** trees for removal, the locations of which can be found on the attached maps.

All trees will be cut to a stump that is as close to grade as possible. All brush will be chipped and hauled away. As wood is a commodity, and there has been past litigation regarding timber theft for wood removal, it is not the practice of FirstEnergy to remove it from the site. However, if the town is willing to provide a **written response** regarding wood removal from town property, our vendor will haul it away.

As previously discussed, FirstEnergy does not grind stumps. If the town wishes to have the stumps ground, it will be at the town's expense.

During operations, the safety of the public and our crews is paramount. This will require blocked off parking locations and traffic management via flagging provided by our contractor.

FirstEnergy will offer the town seven (7) tree vouchers, with a value of \$100 each, that are redeemable at many local nurseries to replace the removed trees. Additionally, First Energy is offering a \$1500 credit toward the purchase of additional trees to partner in a FirstEnergy Tree Line USA event. FirstEnergy will pay the tree nursery of choice directly for the trees; a check will not be issued directly to Shepherdstown Tree Commission. The town would be responsible for site selection and preparation, as well as working with our team to coordinate a planting event for the town. Also, a three-year maintenance plan for the trees by the Shepherdstown Tree Commission must be included with acceptance of these terms. The new trees need to be planted in the 2023 calendar year to receive the \$1500 credit from the FirstEnergy Tree Line USA program. This, of course, is conditional upon the acceptance of the work outlined above, removal of all trees identified.

Please respond by close of business, June 30, 2023, with acceptance or rejection of the proposal.

Please reach out should you have any questions at **(304-267-3208)**, or email dhetrick@firstenergycorp.com.

Sincerely,

A handwritten signature in black ink that reads "Dale Hetrick". The signature is written in a cursive, flowing style.

Dale Hetrick

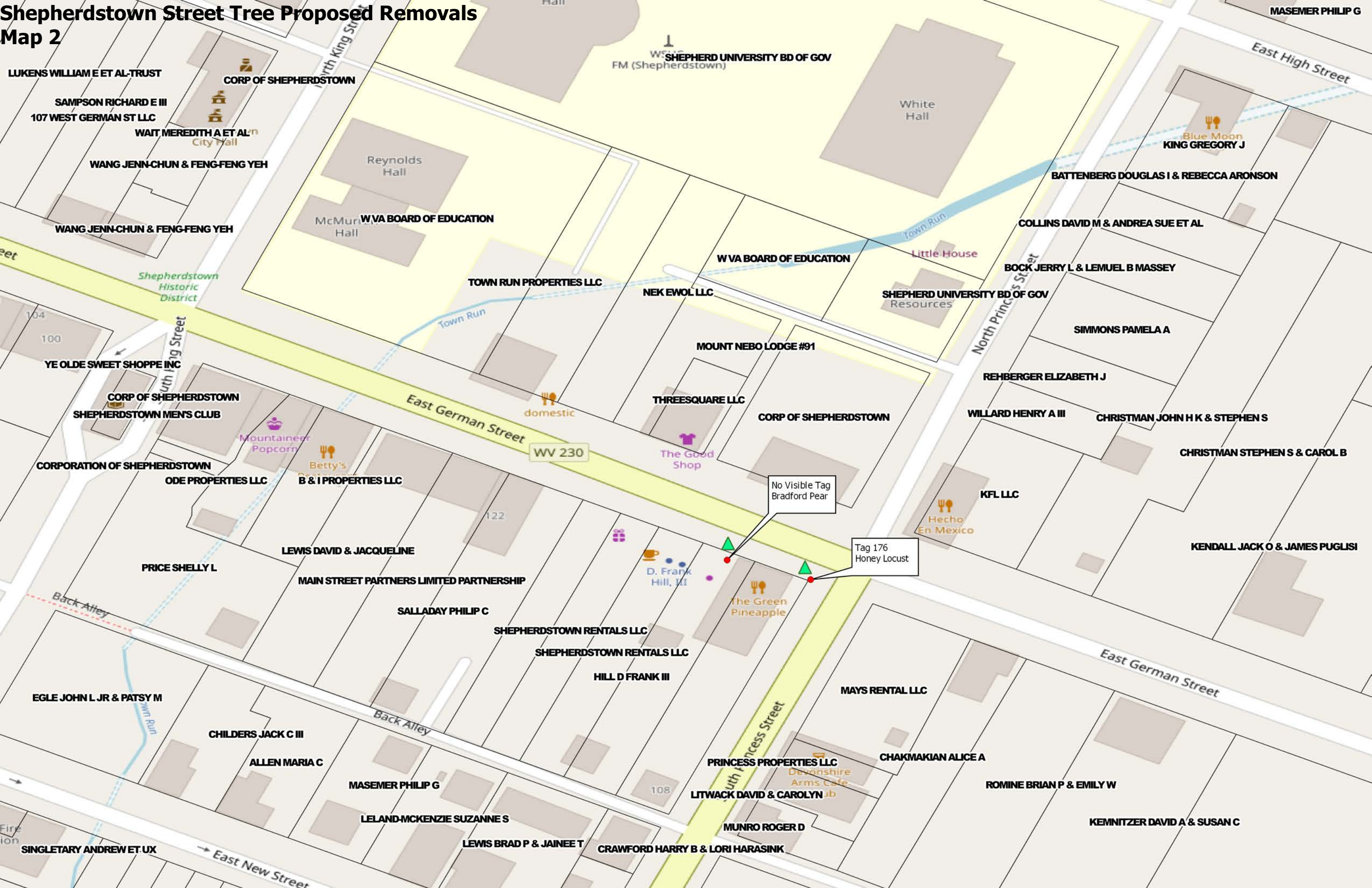
Shepherdstown Street Tree Proposed Removals

Map 1



Shepherdstown Street Tree Proposed Removals

Map 2



POTOMAC EDISON APPROVED TREE LIST

The following list of trees are approved for planting near power lines. Trees which do not appear on this list are also acceptable provided they are low growing and will not reach a height of more than 30 feet at maturity.

Emerald Arborvitae	THUJA o. 'Emerald'
Burning Bush	EUONYMUS a. 'Compactus'
Oriental Cherry	PRUNUS serrulata
Kwanzen Cherry	PRUNUS serrulata 'Kwanzen'
Choke Cherry	PRUNUS virginiana
Shubert Cherry	PRUNUS virginiana 'Shubert'
Cypress	CHAMAECYPARIS
Most Crabapples	MALUS spp.
All Dogwoods	CORNUS spp.
Dwarf Fruit Trees	
Semi Dwarf Fruit Trees	
English Holly	ILEX
Cockspur Hawthorne	CRATAEGUS crus-galli
Washington Hawthorne	CRATAEGUS phaenopyrum
Dotted Hawthorne	CRATAEGUS punctata
English Hawthorne	CRATAEGUS laevigata
Crimson Cloud Hawthorne	CRATAEGUS laevigata 'Crimson Cloud'
Winter King Hawthorne	CRATAEGUS viridis 'Winter King'
Washington Hawthorne	CRATAEGUS phaenopyrum
Junipers	JUNIPERUS
Amur Maple	ACER ginnala
Paperbark Maple	ACER griseum
Tatarian Maple	ACER tataricum
Trident Maple	ACER buergeranum
Weeping Mullberry	MORUS
Jane Magnolia	MAGNOLIA x 'Jane'
Saucer Magnolia	MAGNOLIA soulangiana
Star Magnolia	MAGNOLIA stellata
Vesuvius Purple Plum	PRUNUS 'vesuvius'
Newport Purple Plum	PRUNUS cerasifera Newport
Mugho Pine	PICEA montana mughus
Golden Vicary Privet	LIGUSTRUM x 'Vicaryi'
Silver Frost Weeping Pear	PYRUS salicifolia pendula cv. Silfrozam
Eastern Redbud	CERCIS canadensis
Rhododendron	RHODODENDRON
Serviceberry	AMELANCHIER cumulus
Summer Snow - Japanese Tree Lilac	SYRINGA amurensis Japonica
Smoke Tree	CONTINUS
Hicks Yew	TAXUS media hicksi

Bradford Callery Pear and Crimson King Maple are unacceptable due to their height at maturity. **Trees on this list that grow over 15' tall at maturity are NOT suitable for underneath the conductor zone on wood pole 138 Kv transmission lines.**

DRAFT MINUTES
CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA
WATER & SANITARY BOARDS

June 29, 2023

ATTENDEES: Water Board – J. Auxer (Mayor), J. Bresland, J. Ford, M. Godfrey, S. Kemnitzer (Chair)
Sanitary Board – J. Auxer (Chair), H. Heyser, R. Keller
Town Staff – J. Ekstrom, S. Grove, C. Painter, K. Shipley, F. Welch
Visitors: S. Pearson

1. CALL TO ORDER.

The Water and Sanitary Boards meeting was called to order by J. Auxer at 1:02 p.m.

2. MINUTES FROM PRIOR MEETING.

The proposed minutes of the May 23, 2023, regular meeting were reviewed and were approved with revisions suggested by S. Kemnitzer and H. Heyser.

3. VISITORS.

No visitor comments.

4. FINANCES.

4.a FINANCIAL STATEMENTS - ENCLOSURE.

M. Godfrey noted the the format of the Budget vs Actual numbers was different than it usually is.

S. Grove explained that an error was encountered when importing data into Quickbooks and that the format will be corrected in future reports. She also reported that she is currently investigating switching from Quickbooks to a software product that is made to support municipal accounting.

M. Godfrey noted significant discrepancies in 2 accounts of the Water Budget vs Actuals: Water Plant Expense (401.4) is underspent and Water Depreciation Expense (403) is overspent.

Re 401.4: F. Welch stated that he thinks our improved equipment has resulted in lower expenses in this area.

Re 403: S. Grove explained that at the time the budgets are created the estimated depreciation expense is not known, so it should be updated when it becomes known. That was not done in the recent past but will be in the future.

S. Kemnitzer suggested that the monthly Financial statements should include trend analyses. She offered to provide examples.

ACTION ITEM: S. KEMNITZER TO PROVIDE EXAMPLES OF TREND ANALYSIS REPORTS AND S. GROVE TO EVENTUALLY INCLUDE TREND ANALYSES IN THE MONTHLY REPORTS.

4.b AUDIT REPORT.

J. Auxer stated that there will be a separate meeting on July 11th at 5:00 p.m. to review the Audit Report.

S. Kemnitzer had some questions regarding the audit which were discussed at this point - see section 7.a below for details.

5. FLOW AND QUALITY REPORTS.

5.a WATER REPORTS.

F. Welch reported that everything is in good order.

M. Godfrey asked what our maximum water production capacity is.

J. Ekstrom replied that we can produce 800 gal/min or 1.2M gal/24 hr. He also stated that we have 1.4M gal of storage capacity.

J. Auxer asked why the average water flow on the Flow Report is 586,339 while the average on the Fluoridation Report is 753,113.

J. Ekstrom checked the reports and noted that the flow for 5/27 on the Fluoridation Report was 5,744,400. That is an obvious typographical error and should have been 574,440. When that change is made the averages agree.

5.b. SEWER REPORTS.

K. Shipley reported that everything is in good order.

6. UNFINISHED BUSINESS.

6.a WATER PLANT IMPROVEMENT PROJECT.

J. Ekstrom reported that the Control Panel had been received and was being installed and that the Raw Water Pumps are scheduled to ship next week. He said that the project is on schedule to finish by the end of August.

6.b UPDATE ON WATER DISTRIBUTION PROJECT.

J. Ekstrom reported that the Army Corps of Engineers has sent the agreement to J. Auxer for signature. J. Auxer stated that the agreement has been signed and sent back to the ACE.

J. Ekstrom also reported that H. Shingleton is in the process of filing the required certificate with the Public Service Commission.

6.c ARMY CORPS OF ENGINEERS PARTNERSHIP AGREEMENT.

S. Kemnitzer stated that, according to the agreement, we have to submit invoices before we get any payment from the ACE and she inquired as to what our plan is to ensure that we get access to our financing in a timely manner.

J. Ekstrom explained that he has worked with Amy Boyd in the past on projects whose financing worked this way and that their system has worked well. He delivers the contractors' invoices to Amy and she transmits the invoices and request for payment to the financing organization. He further explained that all the contractors understand that the ultimate payment is coming from the ACE and that they will generally have to wait 30 to 45 days for their payments.

7. NEW BUSINESS.

7.a S. KEMNITZER'S QUESTIONS.

S. Kemnitzer stated that her questions had generally been answered by S. Grove and D. Decker and that she was especially pleased by the information presented regarding bonds.

One remaining question was why our available funds are not being applied to the bond with the highest interest rate. There was some discussion but it was suggested that the board members did not have a deep enough understanding of bonds to make the decision. It was decided that we should try to get the answer from Decker.

ACTION ITEM: S. GROVE TO ASK D. SWEENEY/D. DECKER WHY OUR AVAILABLE FUNDS ARE NOT BEING APPLIED TO THE BOND WITH THE HIGHEST INTEREST RATE.

J. Bresland asked if the board could get a presentation on bonds.

ACTION ITEM: J. AUXER TO ASK D. SWEENEY TO ARRANGE FOR A PRESENTATION ON BONDS.

8. OLD BUSINESS.

8.a HYDRANT REPORT - ENCLOSURE IN PACKET.

K. Shipley stated that the work was progressing and that there was nothing to add to the information in the enclosure.

K. Shipley reported that the owner of the contracting company doing the hydrant work is thinking of retiring, in which case we would need to find a new contractor. He has talked with a contractor working on the Toll House building project and he thinks they would be a possible replacement if our current contractor closes.

8.b.1 ACTION ITEMS: M. GODFREY TO CREATE AN EXAMPLE OF A PROFIT AND LOSS TREND REPORT.

M. Godfrey reported that he had difficulty in coming up with example reports because the historical data he had to work with was reported very inconsistently.

This item seems to have been superseded by the Action Item noted in section 4.a above.

8.b.2 ACTION ITEMS: S. KEMNITZER TO CONTINUE COMMUNICATION WITH THE EPA ON LEAD SERVICE LINE RESEARCH PROJECT.

S. Kemnitzer reported that she has received no response from the EPA. This action item remains open.

ACTION ITEM: S. KEMNITZER TO CONTINUE COMMUNICATION WITH THE EPA ON LEAD SERVICE LINE RESEARCH PROJECT .

9. MAYOR'S REPORT.

F. Welch invited everyone to schedule a time to see the new press in action. K. Shipley and J. Ekstrom echoed the sentiment and stated that it was performing very well.

H. Heyser requested that a list of R/R capital improvements be included in the package in the future.

ACTION ITEM: F. WELCH TO ENSURE THAT A LIST OF R/R CAPITAL IMPROVEMENTS IS INCLUDED IN FUTURE PACKAGES .

R. Keller and M. Godfrey requested that the Quality reports included in the package be done by exception rather than including all the reports since they often contain no exceptional information and sometimes are completely blank. It was decided that this should be included as an agenda item for discussion at the next meeting.

ACTION ITEM: F. WELCH TO ENSURE AGENDA OF NEXT MEETING HAS AN ITEM TO DISCUSS THE REQUEST TO INCLUDE QUALITY REPORTS ONLY BY EXCEPTION .

10. NEXT MEETING DATE.

Our next regular meeting will be Thursday, 27 July at 1:00 PM.

11. SUMMARIZE ACTION ITEMS FROM THIS MEETING.

4.a: S. Kemnitzer to provide examples of trend analysis reports and S. Grove to eventually include trend analyses in the monthly reports.

7.a: S. Grove to ask D. Sweeney/D. Decker why our available funds are not being applied to the bond with the highest interest rate.

7.a: J. Auxer to ask D. Sweeney to arrange for a presentation on bonds.

8.b.2: S. Kemnitzer to continue communication with the EPA on lead service line research project.

9: F. Welch to ensure that a list of R/R Capital Improvements is included in future packages.

9: F. Welch to ensure agenda of next meeting has an item to discuss the request to include quality reports only be exception.

12. **DRAFT AGENDA FOR NEXT MEETING.**

13. **ADJOURNMENT.** J. Auxer adjourned the meeting at 2:05 p.m.

Respectfully Submitted: J. Ford

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CORPORATION OF SHEPHERDSTOWN
FOR
DESIGN AND CONSTRUCTION ASSISTANCE
FOR THE
SHEPHERDSTOWN WATER WORKS DISTRIBUTION SYSTEM IMPROVEMENTS

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Baltimore District (hereinafter the "District Commander") and the Corporation of Shepherdstown (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Government is authorized to provide design and construction assistance for publicly owned, non-Federal water-related environmental infrastructure and resource protection and development projects in Central West Virginia, including projects for wastewater treatment and related facilities, water supply and related facilities, and surface water resource protection and development pursuant to Section 571 of the Water Resources Development Act of 1999, Public Law 106-53, as amended (hereinafter "Section 571");

WHEREAS, Section 571(e)(3) provides that the Federal share of project costs under each agreement entered into under Section 571 shall be 75 percent, which may be in the form of reimbursements;

WHEREAS, as of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is \$1,668,000; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means design and construction of approximately 1,390 LF of 8" PVC C909 PVC; 11,530 LF of 6" C909 PVC; 600 LF of 4" PVC C909; 3,345 LF of 2" PVC SDR 17; 2,780 LF of ¾" PE service line; 1,215 LF of ¾" PE service punch; one (1) EA 8" Gate Valve w/Valve Box; sixteen (16) EA 6" Gate Valve w/Valve Box; one (1) EA 4" Gate Valve w/Valve Box; eight (8) EA 2" Gate Valve w/Valve Box; sixteen (16) EA Fire Hydrant Assemblies; one (1) EA Fire Hydrant Assembly on existing waterline; 100 LF of 16" Steel

Casing (RR Bore & Jack); 30 LF of 16" Steel Casing (Bore & Jack); 235 LF of 12" Steel Casing (Open Cut); 185 EA service reconnections; twelve (12) connections to existing waterline; ten (10) Blow-Off Assembly; 280 LF of Type 'A' Trench Repair; 4,510 LF of Type "B" Trench Repair; 785 LF of Type 'C' Trench Repair; 9,535 SY of 2" Asphalt Pavement Overlay; 410 LF of Asphalt Driveway Restoration; 560 LF of Gravel Driveway Restoration; 28 LF of Concrete Driveway Restoration; three (3) EA of Existing Rip Rap Ditch Repair; Mobilization/Demobilization; Video Taping; Erosion and Sediment Control, as generally described in the Letter Report, Corporation of Shepherdstown, Shepherdstown Water Works Distribution System improvements Project, Shepherdstown, West Virginia, Section 571 Environmental Infrastructure Program, dated February 2023, and approved by the North Atlantic Division Commander, on June 15, 2023.

B. The term "HTRW" means hazardous, toxic, and radioactive wastes, which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term "project costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Non-Federal Sponsor's eligible pre-Agreement design work costs, if any; the Government's costs for conducting environmental compliance activities, providing management oversight and technical assistance, as needed, preparing monthly financial reports, reviewing design work, appraisals, and invoices provided by the Non-Federal Sponsor, conducting periodic inspections during construction, and any other costs incurred by the Government pursuant to the provisions of this Agreement; the Non-Federal Sponsor's eligible costs for engineering, design, construction, and supervision and administration; the Non-Federal Sponsor's eligible costs for providing real property interests and relocations, and performing permit work; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; audits; betterments; or the Non-Federal Sponsor's cost to negotiate this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "pre-Agreement design work" means the design work performed by the Non-Federal Sponsor prior to the effective date of this Agreement that the Government determines was accomplished in a satisfactory manner and is necessary for the Project.

G. The term "betterment" means a difference in the design or construction of an element of the Project that results from applying standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. As of the effective date of this Agreement, the total amount of Federal funds available for the Federal share of project costs under this Agreement is limited to \$1,668,000. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount.

B. The Non-Federal Sponsor shall design and construct the Project in accordance with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto and the following:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of the Project. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of performing inspections pursuant to Article II.D.

2. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all design work, including relevant plans and specifications, and related contract solicitations, prior to the Non-Federal Sponsor's issuance of such solicitations. In addition, until the Government has provided written confirmation that environmental compliance has been completed, the Non-Federal Sponsor shall not issue the solicitation for the first construction contract for the Project or commence construction of the Project using its own forces.

3. The Non-Federal Sponsor is responsible for obtaining all permits and licenses necessary for design, construction, and operation and maintenance of the Project and for ensuring compliance with all requirements of such permits and licenses.

4. The Non-Federal Sponsor shall establish and maintain such legal and institutional structures as necessary to ensure the effective long-term operation of the Project at no cost to the Government.

5. Upon completion of design, the Non-Federal Sponsor shall furnish the Government with copies of the completed design.

6. The Non-Federal Sponsor shall operate and maintain the Project at no cost to the Government. The Non-Federal Sponsor shall furnish the Government with a copy of the as-built drawings for the completed work.

7. No more frequently than every 30 calendar days, the Non-Federal Sponsor shall provide the Government an invoice with the documentation required by Article V for the Government to determine whether costs incurred by the Non-Federal Sponsor are eligible for inclusion in project costs. If the Non-Federal Sponsor incurred costs for pre-Agreement design work, documentation of such costs shall be included in the Non-Federal Sponsor's initial invoice. Following completion of the Project, the Non-Federal Sponsor shall notify the Government, which shall conduct a final inspection of the Project. No later than 60 calendar days after the Government conducts the final inspection, the Non-Federal Sponsor shall provide its final invoice, unless an extension is requested by Non-Federal Sponsor in writing and approved by the Government.

C. Using information developed and provided by the Non-Federal Sponsor, the Government shall ensure environmental compliance activities necessary to achieve compliance with all applicable environmental laws and regulations for design and construction of the Project are completed prior to initiation of construction. The Government will notify the Non-Federal Sponsor in writing when such compliance has been completed.

D. The Government may perform periodic inspections to verify the progress of construction and that work is being performed in a satisfactory manner. In addition, the Government may provide technical assistance to the Non-Federal Sponsor on an as-needed basis during design and construction of the Project. Further, the Government shall perform a final inspection to verify satisfactory completion of the Project.

E. Subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall be responsible for 75 percent of project costs, with reimbursement for costs incurred by the Non-Federal Sponsor determined in accordance with this paragraph. The Government shall review each invoice provided by the Non-Federal Sponsor and, based on the procedures, requirements, and conditions provided in Article V, shall determine the costs, or portion thereof, that are eligible for inclusion in project costs. To the maximum extent practicable, within 30 calendar days of receipt of each invoice, the Government, subject to the availability of Federal funds, shall reimburse the Non-Federal Sponsor for 75 percent of the Non-Federal Sponsor's eligible costs included in each invoice, less 25 percent of the costs incurred by the Government during that same invoice period. The Government shall provide a written explanation to the Non-Federal Sponsor for costs it determines are not eligible for inclusion in project costs.

F. The Government shall ensure compliance with the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101-307108), prior to initiation of construction. All costs incurred by the Government and the Non-Federal Sponsor for actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the NHPA and the mitigation of adverse effects other than data recovery, as the Government determines necessary and subject to audit in

accordance with Article X.B. to determine reasonableness, allocability, and allowability of such costs, shall be included in project costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share for such work.

H. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan, including appropriate engineering plans and specifications.

I. If the Non-Federal Sponsor elects to include betterments in the design or construction of the Project, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design and construct. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits for such work, without reimbursement by the Government.

ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government and Non-Federal Sponsor shall jointly determine the real property interests required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps as appropriate, of such real property interests. Upon written confirmation by the Government, the Non-Federal Sponsor shall, in accordance with Article IV.A., investigate to ensure that HTRW does not exist in, on, or under the real property interests to be acquired. The Non-Federal Sponsor shall acquire such real property interests and notify the Government in writing when such interests have been acquired. The Non-Federal Sponsor shall ensure that such real property interests are retained in public ownership.

B. The Government and Non-Federal Sponsor shall jointly determine the relocations required for construction, operation, and maintenance of the Project, and the Non-Federal Sponsor shall provide the Government with general written descriptions, including maps and plans and specifications, as appropriate, for such relocations. Upon written confirmation by the

Government, the Non-Federal Sponsor shall perform or ensure performance of such relocations and notify the Government in writing when such relocations have been accomplished.

C. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law, that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event the Non-Federal Sponsor discovers that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor shall provide written notice to the Government within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

1. If the Non-Federal Sponsor initiates or continues construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination.

The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government.

2. In the event the Non-Federal Sponsor fails to discharge its responsibilities under this Article, the Government may suspend or terminate future performance under this Agreement, including reimbursements pursuant to Article II.E.

C. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

D. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

ARTICLE V - DETERMINATION OF ELIGIBLE NON-FEDERAL SPONSOR COSTS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in project costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Government shall include in project costs the value of required real property interests acquired from private owners after the effective date of this Agreement except that the value of real property interests donated to the Non-Federal Sponsor are not eligible for inclusion in project costs. The Non-Federal Sponsor shall obtain for each required real property interest acquired from private owners an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor concludes the acquisition of the interest. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for valuation purposes.

(3) The Government shall include in the project costs the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for valuation purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2), the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in project costs eligible incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs after the effective date of this Agreement in acquiring required real property interests from private owners. Such incidental costs include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.C., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of required real property interests.

e. Except for permit work pursuant to Article V.A.4., any publicly owned real property interests required for the Project will be provided by the Non-Federal Sponsor at no cost to the Government.

2. Relocations. The Government shall include in project costs eligible costs of required relocations performed by the Non-Federal Sponsor after the effective date of this Agreement.

a. For a relocation other than a highway, eligible costs shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, eligible costs shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of West Virginia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. Design and Construction Work. The Government shall include in project costs eligible costs of the design and construction work performed by the Non-Federal Sponsor after the effective date of this Agreement and eligible costs of pre-Agreement design work, if any.

a. The Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the amount of eligible costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Where the Non-Federal Sponsor's cost for completed pre-Agreement design work is expressed as fixed costs plus a percentage of project costs, the Non-Federal Sponsor shall calculate such costs based on actual costs.

b. The following costs are not eligible for inclusion in project costs: interest charges, or any adjustment to reflect changes in price levels after completion of the design or construction work; pre-Agreement design work previously reimbursed under another agreement; pre-Agreement design work in excess of 6 percent of project costs; costs that exceed the Government's estimate of the cost for such design and construction work; design or construction work obtained at no cost to the Non-Federal Sponsor; or any construction work initiated prior to completion of environmental compliance.

4. Permit Work. The Government shall include in project costs eligible costs of permit work performed by the Non-Federal Sponsor after the effective date of this Agreement.

Eligible costs shall be equivalent to the direct costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in obtaining all permits and licenses necessary for design and construction of the Project, including the permits necessary for construction, operation, and maintenance of the Project on publicly owned or controlled real property interests. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees involved in obtaining such permits. Failure to comply with these permits and licenses may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for design and construction of the Project in project costs.

5. Compliance with Federal Labor Laws. In undertaking construction and relocations, the Non-Federal Sponsor shall comply with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). The Non-Federal Sponsor's failure to comply with these laws may result in the Government denying, in whole or part, inclusion of the Non-Federal Sponsor's costs for relocations and construction of the Project in project costs.

B. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for any costs it incurs for real property interests, relocations, and permit work that exceed 25 percent of project costs, and any such excess amount cannot be applied towards the non-Federal cost share for another project; and for any costs incurred by the Non-Federal Sponsor prior to the effective date of this Agreement, excluding costs for pre-Agreement design work.

ARTICLE VI - ACCOUNTING

A. As of the effective date of this Agreement, project costs are projected to be \$2,224,000, with the amount of Federal funds available for such work limited to \$1,668,000. Costs incurred by the Government are projected to be \$100,000. Costs incurred by the Non-Federal Sponsor are projected to be \$2,124,000, which includes eligible design and construction work after the effective date of this Agreement projected to be \$0, eligible pre-Agreement design work projected to be \$0, eligible real property interests projected to be \$0, eligible relocations projected to be \$0, and eligible permit work projected to be \$2,000. Reimbursements pursuant to Article II.E. for eligible costs incurred by the Non-Federal Sponsor are projected to be \$1,568,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly financial reports setting forth the estimated project costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; the total amount of reimbursements made to the Non-Federal Sponsor to date; and the balance of the Federal funds available for the Project.

C. After the Non-Federal Sponsor has provided its final invoice to the Government, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. As a part of the final accounting, the Government will determine the total reimbursable amount by taking 75 percent of eligible costs incurred by the Non-Federal Sponsor, less 25 percent of the costs incurred by the Government for the Project. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursement by delivering a check payable to "FAO, USAED, Baltimore (E1)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Should the final accounting determine that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount, then subject to the limitation on available Federal funds identified in Article II.A. for the Federal share of project costs under this Agreement, the Government shall reimburse the Non-Federal Sponsor for the amount equal to such difference.

ARTICLE VII - TERMINATION OR SUSPENSION

If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate this Agreement. If the Government determines that the Federal funds available for the Project will be exhausted prior to completion of the Project, the Government shall notify the Non-Federal Sponsor and the Non-Federal Sponsor may continue with design and construction of the Project, at no cost to the Government, and with no further participation in the Project by the Government.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from any and all damages arising from design, construction, or operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in project costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Mayor
Corporation of Shepherdstown
104 North King Street/PO Box 248
Shepherdstown, WV 25443

If to the Government:

District Commander
U.S. Army Corps of Engineers, Baltimore District
2 Hopkins Plaza

Baltimore, MD 21201

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CORPORATION OF SHEPHERDSTOWN

BY: _____
ESTHER S. PINCHASIN
Colonel, U.S. Army
District Commander

BY:  _____
ARTHUR J. AUXER III
Mayor

DATE: _____

DATE: 10/22/2023

NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS

I, Arthur J. Auxer, III, do hereby certify that I am the Mayor and, as Chairman of the Finance Committee, the chief financial officer of the Corporation of Shepherdstown (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Shepherdstown Water Works Distribution System Improvements Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Shepherdstown Water Works Distribution System Improvements Project, Project Partnership Agreement (PPA).

IN WITNESS WHEREOF, I have made and executed this certification this 22 day of June 2023.

BY: Arthur J. Auxer III
ARTHUR J. AUXER III

TITLE: Mayor

DATE: 6/22/2023

CERTIFICATION REGARDING LOBBYING

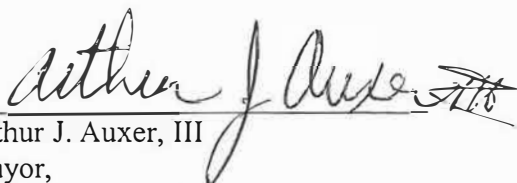
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


Arthur J. Auxer, III
Mayor,
Corporation of Shepherdstown

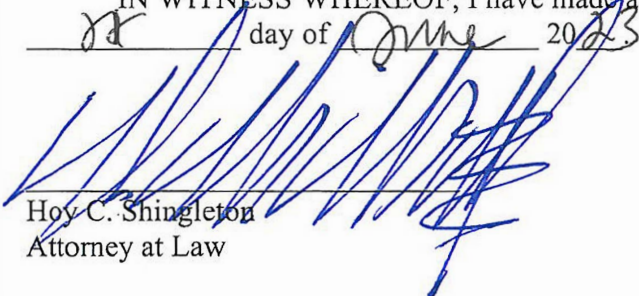
DATE: 11/21/2013

CERTIFICATE OF AUTHORITY

I, Hoy C. Shingleton, do hereby certify that I am the principal legal officer for the Corporation of Shepherdstown, that the Corporation of Shepherdstown is a legally constituted public body with full authority and legal capability to perform the terms of the Shepherdstown Water Works Distribution System Improvements Project, Project Partnership Agreement (PPA) between the Department of the Army and the Corporation of Shepherdstown in connection with the Shepherdstown Water Works Distribution System Improvements Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Shepherdstown Water Works Distribution System Improvements Project, Project Partnership Agreement (PPA), and that the person who executed this Shepherdstown Water Works Distribution System Improvements Project, Project Partnership Agreement (PPA) on behalf of the Corporation of Shepherdstown acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

28 day of June 2023


Hoy C. Shingleton
Attorney at Law

CERTIFICATION OF LEGAL REVIEW

The Agreement for the design and construction of the Shepherdstown Water Works Distribution System Improvements, in Jefferson County, West Virginia, has been fully reviewed by the Office of Counsel, U.S. Army Engineer District, Baltimore, Maryland, and is legally sufficient.

MCGRATH.JENNIFER.L.1387678154
ER.L.1387678154

Digitally signed by
MCGRATH.JENNIFER.L.13876781
54
Date: 2023.03.10 16:17:41 -05'00'

for

FRANCINE C. DIGGS
District Counsel

DATE: 10 March 2023

Historic Landmark's Commission June 12, 2023 – Regular Meeting



Draft Minutes

Members Present: Carmen Slater; Keith Alexander; Tom Mayes; Edith Thompson

Members Not Present: Nicole Saunders-Meske

Staff: Andy Beall

Visitors: Jim King; Jim Auxer; Stephanie Grove; Jenny Haynes; Ryder Collins; Jerry Bock; Brad Lewis; Jaanee Lewis; Jeremy Mason; Garth Jannsen; Zane Jannsen

Call to Order: 5:00 p.m.

Approval of Minutes: 4/3/2023 Approved

5/8/2023 Approved

Conflicts of Interest: None

Application Review:

Previous Applications:		Project Description
13-19	Jeremy Mason and Amanda Merkel	Addition of eight (8) linear feet of identical 4' high white picket fence to previously approved fence.
	105 N. Duke Street	
The applicants are present and describe the proposed extension. The commissioners feel the extension is appropriate and compatible.		
Notes:		
Motion:	T. Mayes motions to approve the addendum to application #13-19 as submitted, pursuant to page 68 of the Historic District Design Guidelines: C. Slater seconds the motion; no objections and passed unanimously.	

Previous Applications:		Project Description
20-32	Brad Lewis	On July 13, 2020, the HLC approved a non-permanent service station in the front window (with steps) of customers during the COVID-19 pandemic. The Centers for Disease Control and Prevention issued the end of the federal COVID-19 Public Health Emergency declaration on May 11, 2023, necessitating further review.
	134 E. German Street	
The applicants are present and voice their opposition to the removal of the service station and feel not enough notice was given. They refer to Section 9-309 of the Planning and Zoning Ordinance which requires notice in a local paper at least seven (7) days prior to the review for the issuance of a Certificate of Appropriateness. The review to return the façade of the front		

Historic Landmark's Commission June 12, 2023 – Regular Meeting



Draft Minutes

<i>elevation of the building to its' previous appearance and condition is not an issuance of a Certificate of Appropriateness. Nonetheless, the commissioners agree to postpone review for a month.</i>	
Notes:	
Motion:	<i>T. Mayes motions to postpone review of the service window until the July 10, 2023, meeting: E. Thompson seconds the motion; no objections and passed unanimously.</i>

Workshop:	E. Thompson motions to support restoration of the North Church Street pathway along the stone wall adjacent to the Old English Episcopal Cemetery in collaboration with the Historic Shepherdstown Commission; T. Mayes seconds the motion, no objections and motion passed unanimously.
Continuing Business:	N/A
New Business:	N/A
Administrative Matters:	N/A
Adjournment:	Motion to adjourn at 5:32 p.m.; no objections and passed unanimously.