BOARD OF GOVERNORS

AGENDA

March 27, 2015

MEMBERS

Donna Atkinson       David Lewia
Gregory Barker       Deb McDaniel
Hannah Cole          Karen Price
Mark Dempsey         Jan Vineyard
Tom Dover            Michelle Wicks
Jane Harkins

Beverly Jo Harris
President
BOARD OF GOVERNORS

BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE

Teleconference Number: 1-877-309-8671, code: 522892#
BridgeValley South Charleston Campus | Room 006
2001 Union Carbide Drive, South Charleston, WV 25303

March 27, 2015, 8:30 a.m.

AGENDA

I. Call to Order

II. Roll Call

III. Approval of Minutes

Minutes of January 16, 2015 ............................................................ 1
Minutes of March 9, 2015 ............................................................... 4

IV. President’s Report ................................................................. 6

V. Administrative Items

a. Information Item: Fiscal Year 2014-2015 Budget Update ....................... 8
b. Action Item: Approval of Fiscal Year 2015-2016 Tuition and Fees .............. 10
c. Action Item: Approval of the Fiscal Year 2014-2015 Advanced Technology Center Full Service Facility Agreement .................................................................................. 18
d. Information Item: Bridging the Gap DOL Grant Update .......................... 41

VI. Additional Board Action and Comments

VII. Announcements

a. April 28—Student Academic and Leadership Awards Ceremony, South Charleston
b. April 30—Student Academic and Leadership Awards Ceremony, Montgomery
c. May 8—Dental Hygiene Pinning Ceremony, 4 p.m., Charleston Civic Center
d. May 8—Commencement, 6 p.m., Charleston Civic Center
e. May 9—Nursing Pinning Ceremony, 1 p.m., The Bible Center
f. May 12—Strategic Planning Retreat
VIII. Next Meeting

Friday, April 24, 2015
9 a.m.
Montgomery Campus

IX. Adjournment
A meeting of the BridgeValley Community and Technical College Board of Governors (BOG) was held on Friday, January 16, 2015, at 9:00 a.m. at the South Charleston Campus in Room 006.

Board members present: Donna Atkinson, Mark Dempsey, Tom Dover, Jane Harkins, David Lewia, Deb McDaniel, Karen Price, Michelle Wicks, and Jan Vineyard. Board members absent: Greg Barker and Hannah Cole. Also in attendance were President Jo Harris, faculty and staff from BridgeValley.

I. Call to Order

Chair Dempsey called the meeting to order at 9:00 a.m.

II. Roll Call

Roll was taken by Alicia Syner noting that a quorum was present.

III. Approval of Minutes

David Lewia moved to approve the meeting minutes of November 21, 2014. Karen Price seconded the motion. Motion carried.

IV. President’s Report

President Harris presented the Board with a list of activities and meetings since the November meeting. She highlighted the upcoming Founder’s Day event planned for March 20, 2015. She also noted that the Governor’s budget that was presented to the Legislature, if not modified, would result in a cut of approximately $110,000 from BridgeValley’s state appropriations.

V. Administrative Items

a. Action Item: Naming of the South Central West Virginia Advanced Technology Center

Jan Vineyard moved the adoption of the following resolution:
Resolved, that the BridgeValley Community and Technical College Board of Governors recognizes the contributions of Toyota Motor Manufacturing to the ATC Capital Campaign by naming the academic building “Toyota Hall.”

Karen Price seconded the motion. Motion carried.

b. Action Item: Approval of 2015 Presidential Goals

Karen Price moved the adoption of the following resolution:

Resolved, that the BridgeValley Community and Technical College Board of Governors approves the 2015 Presidential Goals as presented.

Donna Atkinson seconded the motion. Motion carried.

c. Information Item: FY 2014-2015 Budget Update

Dr. Pat Hunt provided a FY 2014-2015 budget update.

VI. Academic Affairs


Dr. Kristin Mallory presented the Board with a copy of the report received from the Higher Learning Commission. She noted that the team recommends no additional follow-up is needed on the topics identified as part of this monitoring focus visit and recommends that the next comprehensive visit occur in five years (2019-2020).

VII. Possible Executive Session—Legal Matters

Jan Vineyard called for a motion to enter into Executive Session to discuss legal matters. Karen Price seconded the motion. Motion carried. Executive Session began at 9:20 a.m.

Following Executive Session, the Board reconvened in open session.

The following resolution was moved by Tom Dover, with a second from Jane Harkins:

Resolved, that the President’s Office set up a meeting with the BridgeValley Board of Governors and the West Virginia Regional Technology Park Board within the next week to discuss the different perceptions of the proposed FY 2014-15 lease agreements. Additionally, the Board directs Dr. Harris to seek a meeting with the Governor, Board members, and Chancellor Skidmore.

The motion passed unanimously.
VIII.  Announcements

a.  January 23, 2015—Master Plan Steering Committee Meeting, ATC
b.  February 3, 2015—Business After Hours, ATC
c.  February 21, 2015—Discover Engineering Day at the Clay Center
d.  February 26, 2015—Introduce a Girl to Engineering Day
e.  February 26, 2015—Joint Technical Program Advisory Committee Meeting
f.  March 20, 2015—Founder’s Day

IX.  Next Meeting

March 27, 2015
9:00 a.m.
Montgomery Campus

X.  Adjournment

There being no further business, the meeting was adjourned.

_________________________________________________, Mark Dempsey, Chair

_________________________________________________, Jan Vineyard, Secretary
A special meeting of the BridgeValley Community and Technical College Board of Governors (BOG) was held on Monday, March 9, 2015, at 8:30 a.m. via teleconference.

Board members present: Michelle Wicks, Jane Harkins, Donna Atkinson, Mark Dempsey, Karen Price, David Lewia, Jan Vineyard, and Tom Dover. Board members absent: Greg Barker, Hannah Cole, and Deb McDaniel. Also in attendance were President Jo Harris, Dr. Kristin Mallory, Dr. Pat Hunt, and Alicia Syner.

I. Call to Order

Chair Dempsey called the meeting to order at 8:32 a.m.

II. Roll Call

Roll was taken by Alicia Syner noting that a quorum was present.

III. Executive Session

It was noted for the record that the Board elected to remain in open session for the following item: Tech Park Court of Claims discussion.

Karen Price moved the adoption of the following resolution:

Resolved, that President Jo Harris contacts the West Virginia State Attorney General’s Office regarding legal representation for the Tech Park Court of Claims Lawsuit.

Jane Harkins seconded the motion. Motion carried.

IV. Additional Board Action and Comments

None.
V. **Next Meeting**

Friday, March 27, 2015
9:00 a.m.
Montgomery Campus

VI. **Adjournment**

There being no further business, the meeting was adjourned.

___________________________________________________, Mark Dempsey, Chair

___________________________________________________, Jan Vineyard, Secretary
Report of the President
for the
Board of Governors

BridgeValley Community and Technical College

March 27, 2015

Highlighted Activities—Late January-March 20

- March 20—Founder’s Day and Unveiling of Toyota Hall. Speakers included Senator Manchin, Governor Tomblin, Chancellor Skidmore, Millie Marshall and Cody Cunningham (an AMT student).
- March 19—STEMersion Launch with Education Alliance—$15,000 grant received from statewide Perkins fund to co-sponsor this June 22-26 project for 25 middle and high school teachers.
- March 12—Keynote Speaker for Region 3 Regional Intergovernmental Council—South Charleston
- March 3-4—Executive Steering Committee Meeting for Henry Ford Multi-State Advanced Manufacturing Consortium—Dearborn, MI
- March 7—Engineering Family Fun Day at the Clay Center
- February 26—Introduce a Girl to Engineering Day
- February 26—Joint Advisory Committee Dinner and Meetings
- February 11—Legislative Lunch with Senate Education Committee and Senators from region
- February 10—Legislative Breakfast with House Education and delegates from region
- January 23—First Master Plan Steering Committee Meeting
- Snow Days and Train Derailments—February 16-17, 19-20, March 5-6!

External Meetings and Events

- March 20—Meeting with Dow Chemical, Governor’s Office regarding workforce needs
- March 19—Beckley-Raleigh Chamber of Commerce Business after Hours and Ribbon-Cutting for New River CTC Beaver facility
- March 18—Region 4 Planning and Development Council CEDS Meeting—Summersville
- March 18—Meeting with Larry Malone and Chancellor regarding Court of Claims case
- March 12—CAMC Meeting regarding Nursing Cohort program
- March 12—Meeting with Walker Machinery Vice President
• March 10 — Sustainability Council Meeting
• March 9 — Mid-Term Meeting of the DOL “Bridging the Gap” statewide consortium grant members
• February 12 — Division of Highways Traffic Control Department. Interest in program similar to Highways
• February 6 — Ben Franklin Career Center Meeting
• February 6 — Putnam County Chamber of Commerce Annual Dinner
• February 3 — Speaker for TSA Completion Ceremony—Yeager Airport
• January 30 — SC Chamber of Commerce Groundhog Day Breakfast
• January 28-29 — CTCAC Presidents’ Meeting and WV Council Meeting
• January 27 — Higher Education Day at the Legislature
• Weekly South Charleston Rotary Meetings
BOARD OF GOVERNORS
BRIDGEVALLEY COMMUNITY AND TECHNICAL COLLEGE
MEETING OF MARCH 27, 2015

ITEM: Fiscal Year 2014-15 Update for BridgeValley Community and Technical College

RECOMMENDED RESOLUTION: Information Only

STAFF MEMBER: Pat Hunt

BACKGROUND:

Normally the 3rd quarter budget update would be presented at the next meeting of the BridgeValley Community and Technical College Board of Governors. However with the Board requested to consider tuition and fee increases, an update to the budget for the first eight months seemed appropriate to provide the Board with necessary information regarding College finances prior to considering changes to tuition and fees.

Rather than comparing revenue and expenses to budget, the focus of this agenda item is on the College’s fund balances at this point in the fiscal year. While the College’s calculated fund balance came in at $3,414,460, these fund balances do not reflect any lease payments to the Tech Park for fiscal year 2015 or any additional lease costs for fiscal year 2014. These expenses, assuming the full amount of the Tech Park proposed higher lease rates for first eight months of fiscal year 2015 and payment of additional lease rates for fiscal year 2014 would result in a current fund balance as of February 28 of $2,158,942.

By the end of February, most of the spring semester tuition has been paid and yet faculty and staff salaries will continue to be paid through the end of June. Additionally, there are some other large expenditures remaining to be paid this fiscal year, aside from the Tech Park lease, including an equipment lease-purchase payment of $152,538 in May as well as the fourth quarter debt service payments, payments to WV State University, and WVU Tech for the service agreement. The primary source of additional revenue from March through June will be the final quarter state allocation of $2,565,725 that must cover the remaining four months of expenditures.
## General Revenue & Tuition and Fees Budget

<table>
<thead>
<tr>
<th></th>
<th>FY 2015 Approved Budget</th>
<th>FY 2015 YTD Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual Amount</td>
<td>%</td>
</tr>
<tr>
<td>Total Projected Funds Available:</td>
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<td></td>
</tr>
<tr>
<td>General Appropriations</td>
<td>$ 7,774,924</td>
<td>55.2%</td>
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<tr>
<td>E&amp;G Tuition and Fees</td>
<td>$5,250,000</td>
<td>37.3%</td>
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<td>Auxiliary Tuition and Fees</td>
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<tr>
<td>Capital Tuition and Fees</td>
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<td>5.6%</td>
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<tr>
<td><strong>Total Available Funds</strong></td>
<td><strong>$14,074,924</strong></td>
<td>100.0%</td>
</tr>
</tbody>
</table>

### Expenses:

#### Payroll

- **Salaries**: $8,460,444 (81.2%) $5,479,109 (64.8%)
- **Benefits**: $1,958,664 (18.8%) $1,323,253 (67.6%)

**Total Salaries and Benefits**: $10,419,108 (69.3%) $6,802,362 (65.3%)

#### Non-Payroll - Current Year

- **Institutional Support**: $553,384 (12.0%) $411,529 (74.4%)
- **Academic Affairs**: $805,310 (17.4%) $373,228 (46.3%)
- **Student Affairs**: $120,300 (2.6%) $102,913 (85.5%)
- Financial Affairs & General College Obligations: $438,605 (9.5%) $266,734 (60.8%)
- **Payment of Capital Debt & Leases**: $1,887,402 (40.8%) $339,295 (18.0%)
- **Capital Projects**: $50,000 (1.1%) $58,829 (117.7%)
- **Safety & Facilities**: $770,000 (16.6%) $498,038 (64.7%)

**Total Non-Payroll Expenses**: $4,625,001 (30.7%) $2,050,566 (44.3%)

### Total Expenses

**Total Expenses**: $15,044,109 (100.0%) $8,852,928 (58.8%)

### Increase / Decrease in Net Assets

**Increase / Decrease in Net Assets**: $(969,185) $1,173,787

### Prior Year Expenses Paid in FY 2015

**Prior Year Expenses Paid in FY 2015**: $790,282 $790,282

### Beginning Fund Balances

**Beginning Fund Balances**: $3,030,955 $3,030,955

### Ending Fund Balances

**Ending Fund Balances**: $1,271,488 $3,414,460
ITEM: Approval of Fiscal Year 2015-16 Tuition and Fees

RECOMMENDED RESOLUTION: Resolved, That the BridgeValley Community and Technical College Board of Governors approves a $112 (3%) annual increase for resident tuition and a $245 (3%) annual increase for non-resident tuition.

Further Resolved, That the BridgeValley Community and Technical College Board of Governors approve the special fees and program fees as recommended by the Strategic Planning and Budgeting Council.

STAFF MEMBER: Pat Hunt / Jo Harris

BACKGROUND:

West Virginia State Code §18B-10-1(k)(1) allows the governing boards for community and technical colleges to approve annual tuition and fees increases up to five percent (5%) without further approval by the West Virginia Council for Community and Technical College Education (Council). Further, West Virginia State Code §18B-10-1 requires the local governing boards to approve changes in non-resident tuition and fees, program fees, and special or operational fees.

At the March 18, 2015 meeting of the BridgeValley Strategic Planning and Budgeting Council (Committee), the Committee approved a recommendation to take to the BridgeValley Community and Technical College Board of Governors (Board) changes to the tuition and fees as reflected in this agenda. Any changes approved by the Board will be taken to the Council for reporting purposes only at the April 16, 2015 meeting.

Some of the following material in this agenda was presented at the March 18, 2015 Strategic Planning and Budgeting Council for their review. The material included in this agenda should assist the Board in understanding the recommended changes to tuition and fees.
**Makeup of Tuition and Fees:**

West Virginia colleges break down fees into the following three components: Education & General (E&G) Tuition and fees to support operations, E&G Capital fees to support capital projects and Auxiliary fees to support other self-sustaining operations. The chart reflects where BridgeValley compares with the other community and technical colleges.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Education &amp; General Tuition and Fees</th>
<th>E&amp;G Capital Tuition and Fees</th>
<th>Auxiliary Tuition and Fees</th>
<th>Total Approved Tuition and Fees</th>
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</thead>
<tbody>
<tr>
<td>Blue Ridge Community and Technical College</td>
<td>$3,096</td>
<td>$336</td>
<td>$0</td>
<td>$3,432</td>
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<tr>
<td>BridgeValley Community and Technical College</td>
<td>$2,994</td>
<td>$562</td>
<td>$182</td>
<td>$3,738</td>
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<td>$2,780</td>
<td>$100</td>
<td>$0</td>
<td>$2,880</td>
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<td>$456</td>
<td>$0</td>
<td>$3,520</td>
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<td>$3,142</td>
<td>$422</td>
<td>$0</td>
<td>$3,564</td>
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<tr>
<td>Pierpont Community and Technical College*</td>
<td>$3,194</td>
<td>$580</td>
<td>$666</td>
<td>$4,440</td>
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<td>$0</td>
<td>$3,048</td>
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<tr>
<td>WV Northern Community College</td>
<td>$2,830</td>
<td>$100</td>
<td>$130</td>
<td>$3,060</td>
</tr>
<tr>
<td>WVU - Parkersburg (Associates Degree)</td>
<td>$2,828</td>
<td>$100</td>
<td>$0</td>
<td>$2,928</td>
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<tr>
<td>System Associate Degree Average</td>
<td>$2,966</td>
<td>$306</td>
<td>$109</td>
<td>$3,401</td>
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</table>

<table>
<thead>
<tr>
<th>Institution</th>
<th>Education &amp; General Tuition and Fees</th>
<th>E&amp;G Capital Tuition and Fees</th>
<th>Auxiliary Tuition and Fees</th>
<th>Total Approved Tuition and Fees</th>
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<td>$0</td>
<td>$6,192</td>
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<td>$562</td>
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<td>$8,924</td>
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<td>$500</td>
<td>$0</td>
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<td>$8,946</td>
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<td>$862</td>
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<td>$6,922</td>
<td>$845</td>
<td>$109</td>
<td>$7,876</td>
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</table>
Historical Tuition and Fees

This chart reflects the past five years of tuition and fees for all colleges. As the chart notes, the 5-year increase per year has been modest for BridgeValley using the higher tuition rate. However this chart does not reflect the larger increase of $324 in FY 2014 for the South Charleston campus when the then two colleges aligned their tuition in anticipation of the consolidation.
## WV Council for Community and Technical College Education
### Average Five-Year Tuition Increases from 2009-10 through 2014-15

<table>
<thead>
<tr>
<th>Institution</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15</th>
<th>Average Increase / (Decrease)</th>
<th>5 Year Total $</th>
<th>5 Year %</th>
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<tbody>
<tr>
<td><strong>Blue Ridge CTC</strong></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Resident</td>
<td>$3,072</td>
<td>$3,072</td>
<td>$3,120</td>
<td>$3,120</td>
<td>$3,120</td>
<td>$3,432</td>
<td>$72</td>
<td>2.34%</td>
<td>$360</td>
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<td>$5,520</td>
<td>$5,520</td>
<td>$5,616</td>
<td>$5,616</td>
<td>$5,616</td>
<td>$6,192</td>
<td>$134</td>
<td>2.43%</td>
<td>$672</td>
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<tr>
<td><strong>BridgeValley CTC</strong></td>
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<td></td>
</tr>
<tr>
<td>Resident</td>
<td>$3,504</td>
<td>$3,484</td>
<td>$3,484</td>
<td>$3,560</td>
<td>$3,738</td>
<td>$3,824</td>
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<td>-4.96%</td>
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<td>$11,846</td>
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<td>$8,500</td>
<td>$8,500</td>
<td>$8,924</td>
<td>$38</td>
<td>0.84%</td>
<td>$191</td>
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<tr>
<td><strong>Eastern WV CTC</strong></td>
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<tr>
<td>Resident</td>
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<td>$2,184</td>
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<td>$2,880</td>
<td>$163</td>
<td>7.91%</td>
<td>$816</td>
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<td>$6,816</td>
<td>$6,816</td>
<td>$6,816</td>
<td>$0</td>
<td>0.00%</td>
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<tr>
<td><strong>Mountwest CTC</strong></td>
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<tr>
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<td>$2,856</td>
<td>$2,856</td>
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<td>$3,354</td>
<td>$3,520</td>
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<td>4.65%</td>
<td>$664</td>
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<td>$8,774</td>
<td>$8,946</td>
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<td>1.93%</td>
<td>$786</td>
</tr>
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<td><strong>New River CTC</strong></td>
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<tr>
<td>Resident</td>
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<td>$7,672</td>
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<td>$(489)</td>
<td>-6.76%</td>
<td>$(2,446)</td>
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<tr>
<td><strong>Pierpont CTC</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>$3,652</td>
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<td>$3,720</td>
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<td>$2,102</td>
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<td>$6,816</td>
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<td>$4,676</td>
<td>$(428)</td>
<td>-6.28%</td>
<td>$(2,140)</td>
</tr>
<tr>
<td><strong>WV Northern CC</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resident</td>
<td>$2,358</td>
<td>$2,358</td>
<td>$2,478</td>
<td>$2,546</td>
<td>$2,790</td>
<td>$3,060</td>
<td>$140</td>
<td>5.95%</td>
<td>$702</td>
</tr>
<tr>
<td>Non-Resident</td>
<td>$6,670</td>
<td>$6,670</td>
<td>$7,254</td>
<td>$8,106</td>
<td>$8,686</td>
<td>$9,574</td>
<td>$581</td>
<td>8.71%</td>
<td>$2,904</td>
</tr>
<tr>
<td><strong>WVU at Parkersburg</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resident</td>
<td>$2,076</td>
<td>$2,076</td>
<td>$2,276</td>
<td>$2,496</td>
<td>$2,712</td>
<td>$2,928</td>
<td>$170</td>
<td>8.21%</td>
<td>$852</td>
</tr>
<tr>
<td>Non-Resident</td>
<td>$7,347</td>
<td>$7,347</td>
<td>$8,054</td>
<td>$8,856</td>
<td>$9,648</td>
<td>$10,416</td>
<td>$614</td>
<td>8.35%</td>
<td>$3,069</td>
</tr>
<tr>
<td><strong>System Average</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resident</td>
<td>$2,729</td>
<td>$2,727</td>
<td>$2,844</td>
<td>$2,970</td>
<td>$3,193</td>
<td>$3,401</td>
<td>$134</td>
<td>5.39%</td>
<td>$672</td>
</tr>
<tr>
<td>Non-Resident</td>
<td>$7,684</td>
<td>$7,682</td>
<td>$7,522</td>
<td>$7,444</td>
<td>$7,765</td>
<td>$7,876</td>
<td>$38</td>
<td>0.84%</td>
<td>$191</td>
</tr>
</tbody>
</table>

### Financial Health of BridgeValley

There are various ratios that the Council, as well as the Higher Learning Commission (HLC), uses to evaluate financial health. One of the most critical ones is the composite financial index or CFI which evaluates whether or not an institution has adequate financial resources. This ratio, as the name implies, is calculated by combining various
other financial ratios – primary reserve, net operating, return on net assets, and viability. HLC has determined that when the CFI is below 1.0 for two consecutive years or below 0.0 in any given year, the institution is subject to a financial panel review. Both Bridgemont and Kanawha Valley underwent this review for FY 2012 which was approved by HLC. The Higher Learning Commission requested consolidated reporting for BridgeValley for FY 2013 and FY 2014 and while the ratio has improved, it still below 0 at (-0.50 for FY 2013) and (-0.10 for FY 2014).

Proposed Tuition Increases

The recommendation, approved by the Strategic Planning and Budget Council, is to propose increasing FY 2016 resident tuition by $112 and non-resident tuition by $245 annually for the following reasons:

- Three years of reductions in state appropriations - 7.5% reduction for FY 2014, 3.75% for FY 2015, and a smaller reduction of .45% for FY 2016. FY 2016 appropriations will be $7,739,989 compared to FY 2013 appropriations of $8,099,261 which also included a $500,000 increase to partially fund operations for the Advanced Technology Center;

- The need to increase fund balances and improve the Composite Financial Index; and

- The need to budget for a worse-case scenario of increased lease costs for the Tech Park leases.

This modest tuition increase is projected to generate revenues as the following chart on the next page reflects. Please note that the Committee received three tuition increase scenarios which are reflected to show the differential in tuition increases and revenue generated.
## BridgeValley Community and Technical College
### Resident Rates - Academic Year 2014-15

<table>
<thead>
<tr>
<th>Tuition Analysis</th>
<th>AY 2014-15 Total Tuition and Fees</th>
<th>Total $ Increase</th>
<th>Proposed AY 2015-16 Tuition and Fees</th>
<th>Projected Revenue *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current FY 2014-15 Tuition</td>
<td>$3,738</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Various Tuition Increase Scenarios:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1% Increase</td>
<td>$37</td>
<td>$3,775</td>
<td>$64,144</td>
<td></td>
</tr>
<tr>
<td>3% Increase</td>
<td>$112</td>
<td>$3,850</td>
<td>$192,432</td>
<td></td>
</tr>
<tr>
<td>5% Increase</td>
<td>$187</td>
<td>$3,925</td>
<td>$320,720</td>
<td></td>
</tr>
</tbody>
</table>

* Using FY 2013-14 AFTEs

## BridgeValley Community and Technical College
### Non-Resident Rates - Academic Year 2014-15

<table>
<thead>
<tr>
<th>Tuition Analysis</th>
<th>AY 2014-15 Total Tuition and Fees</th>
<th>Total $ Increase</th>
<th>Proposed AY 2015-16 Tuition and Fees</th>
<th>Projected Revenue *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current FY 2014-15 Tuition</td>
<td>$8,180</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Various Tuition Increase Scenarios:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1% Increase</td>
<td>$82</td>
<td>$8,262</td>
<td>$3,436</td>
<td></td>
</tr>
<tr>
<td>3% Increase</td>
<td>$245</td>
<td>$8,425</td>
<td>$10,307</td>
<td></td>
</tr>
<tr>
<td>5% Increase</td>
<td>$409</td>
<td>$8,589</td>
<td>$17,178</td>
<td></td>
</tr>
</tbody>
</table>

* Using FY 2013-14 AFTEs

**Other Fees Review**

The Strategic Planning and Budget Council approved minor changes in the FY 2015-16 special and program fees. The last two charts reflect these changes with any recommended changes to existing fees or new fees highlighted in blue.
<table>
<thead>
<tr>
<th>Special Fees and Charges</th>
<th>Rate Per Semester 2014-15</th>
<th>Proposed Rate Per Semester 2015-16</th>
<th>Increase/Decrease</th>
<th>Estimated Number of Students Impacted by Fee Change *</th>
<th>Projected Revenue Due to Fee Change 2015-16 *</th>
</tr>
</thead>
<tbody>
<tr>
<td>BridgeValley Community and Technical College</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accuplacer Re-testing Fees per Test (first test free)</td>
<td>$5</td>
<td>$5</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Board of Governor's Evaluation Fee</td>
<td>$300</td>
<td>$300</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Board of Governor's Posting Fee (per credit hour)</td>
<td>$10</td>
<td>$10</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>CEU Fee</td>
<td>$10</td>
<td>$10</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Credit by Exam (per credit hour)</td>
<td>$25</td>
<td>$25</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Diploma Replacement Fee</td>
<td>$25</td>
<td>$25</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Experiential Learning Portfolio Posting Fee (per credit hour)</td>
<td>$10</td>
<td>$10</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Experiential Learning Portfolio Review Fee (per credit hour)</td>
<td>$25</td>
<td>$25</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Graduation and Diploma Fee</td>
<td>$50</td>
<td>$50</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>ID Card Replacement Fee</td>
<td>$20</td>
<td>$20</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>International Student Application Fee</td>
<td>$100</td>
<td>$100</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Late Application for Graduation Fee</td>
<td>$25</td>
<td>$25</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Late Payment Fee</td>
<td>$50</td>
<td>$50</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Parking Fee</td>
<td>$60</td>
<td>$60</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Parking Fines</td>
<td>$5</td>
<td>$5</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Returned Check Fee</td>
<td>$25</td>
<td>$25</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Transcript Fee (after first transcript)</td>
<td>$7</td>
<td>$10</td>
<td>$3</td>
<td>50</td>
<td>$150</td>
</tr>
<tr>
<td>Web-based Course Fee (per credit hour)</td>
<td>$35</td>
<td>$35</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Program Fees and Charges</td>
<td>Rate Per Semester 2014-15</td>
<td>Proposed Rate Per Semester 2015-16</td>
<td>Increase/Decrease</td>
<td>Projected Revenue Due to Fee Change 2015-16</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------------------------</td>
<td>---------------------------</td>
<td>-----------------------------------</td>
<td>-------------------</td>
<td>-------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>BridgeValley Community and Technical College</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applied Technology Program Fee (per semester)</td>
<td>$200</td>
<td>$200</td>
<td>$0</td>
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<tr>
<td>Blasting Program Fee (per semester)</td>
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<td>$175</td>
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<tr>
<td>Business and Legal Program Fee (per semester)</td>
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<tr>
<td>Compressed Schedule Program Fee (per semester)</td>
<td>$500</td>
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<tr>
<td>Computer &amp; Information Technology Program Fee (per semester)</td>
<td>$175</td>
<td>$175</td>
<td>$0</td>
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</tr>
<tr>
<td>Dental Hygiene Instrument Fee Deposit (one time fee)</td>
<td>$200</td>
<td>$200</td>
<td>$0</td>
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<td></td>
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<tr>
<td>Dental Hygiene Program Fee (per semester)</td>
<td>$200</td>
<td>$200</td>
<td>$0</td>
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<td></td>
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<tr>
<td>Digital Design and Print Technology Program Fee (per semester)</td>
<td>$175</td>
<td>$175</td>
<td>$0</td>
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<tr>
<td>EMT Program Fee (per semester)</td>
<td>$100</td>
<td>$100</td>
<td>$0</td>
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<tr>
<td>Engineering Technology Program Fee (per semester)</td>
<td>$225</td>
<td>$225</td>
<td>$0</td>
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<tr>
<td>Health Sciences Program Fee (per semester)</td>
<td>$50</td>
<td>$50</td>
<td>$0</td>
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<tr>
<td>Medical Assistant Program Fee (per semester)</td>
<td>$175</td>
<td>$175</td>
<td>$0</td>
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<td></td>
</tr>
<tr>
<td>MLT Entrance Fee (Charged one time upon acceptance into program)</td>
<td>$325</td>
<td>$325</td>
<td>$0</td>
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<tr>
<td>Nuclear Medicine Program Fee (per semester)</td>
<td>$50</td>
<td>$50</td>
<td>$0</td>
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<tr>
<td>Nursing Entrance Fee (Charged one time upon acceptance into program)</td>
<td>$600</td>
<td>$475</td>
<td>($125)</td>
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<tr>
<td>Nursing Program Fee (per semester)</td>
<td>$250</td>
<td>$250</td>
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<tr>
<td>Paramedic Entrance Fee (Charged one time upon acceptance into program)</td>
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<td>$500</td>
<td>$0</td>
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<tr>
<td>Phlebotomy Program Fee (per semester)</td>
<td>$175</td>
<td>$175</td>
<td>$0</td>
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<tr>
<td>Process Technology Program Fee (per semester)</td>
<td>$50</td>
<td>$50</td>
<td>$0</td>
<td></td>
<td></td>
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<tr>
<td>Proposed new fees:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Nursing Non-refundable Deposit Fee (Charged one time upon acceptance into program)</td>
<td>$0</td>
<td>$125</td>
<td>$125</td>
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<tr>
<td>MOS Certification Access - ATEC 250</td>
<td>$0</td>
<td>$85</td>
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<tr>
<td>MOS Certification Excel - ATEC 255</td>
<td>$0</td>
<td>$85</td>
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<tr>
<td>MOS Certification PowerPoint - ATEC 260</td>
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<td>$85</td>
<td>$85</td>
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<tr>
<td>MOS Certification Word - ATEC 265</td>
<td>$0</td>
<td>$85</td>
<td>$85</td>
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<tr>
<td>MOS Certification Word - ATEC 265</td>
<td>$0</td>
<td>$85</td>
<td>$85</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Welding consumable materials fee (Courses WLDT 101 AND WLDT 102) - per course</td>
<td>$0</td>
<td>$100</td>
<td>$100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ITEM: Approval of the Fiscal Year 2014-15 Advanced Technology Center Full Service Facility Agreement

RECOMMENDED RESOLUTION: Resolved, That the BridgeValley Community and Technical College Board of Governors approves the full service facility agreement for the Advanced Technology Center for Fiscal Year 2014-15.

STAFF MEMBER: Pat Hunt / Jo Harris

BACKGROUND:

BridgeValley Community and Technical College staff have been in negotiations with the West Virginia Regional Technology Park to resolve leases for three facilities located on the College’s South Charleston Campus. One of these leases for the Advanced Technology Center is at an acceptable rate including primarily payment for shared services and utilities only. BridgeValley staff recommend approval of this lease as a good faith measure to show payment for some of the leased facilities for this fiscal year. The entire lease is attached for the Board’s review.
FULL SERVICE FACILITY AGREEMENT

THIS FULL SERVICE FACILITY AGREEMENT (this “Agreement”) dated as of July 1, 2014 is entered into by and between BRIDGEVALLEY COMMUNITY & TECHNICAL COLLEGE (“Facility Recipient”) and the WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION, a state agency existing under the laws of the State of West Virginia (“Facility Provider”, together with Facility Recipient, the “Parties”, and each individually, a “Party”), acting through its duly appointed fiscal agent, WV Regional Technology Park Corp., with an office at 1740 Union Carbide Drive, South Charleston, West Virginia (“WVRTPC”).

WHEREAS, pursuant to that certain Donation Agreement dated October 15, 2009, as subsequently reaffirmed, modified and amended by various agreements between Facility Provider and Union Carbide Corporation (all such agreements being collectively the “Donation Agreement”), pertaining to the donation of certain real property owned by Union Carbide Corporation in South Charleston, West Virginia (the “Technology Park”), Union Carbide Corporation has transferred ownership of the Premises (as defined below) to Facility Provider;

WHEREAS, Facility Provider has formed and commissioned WVRTPC as an independent corporation, and, pursuant to that Affiliation Agreement, dated July 6, 2011, between Facility Provider and WVRTPC, has appointed WVRTPC to serve as its fiscal agent with authority to act on its behalf with respect to the operations and management of the Technology Park;

WHEREAS, Facility Recipient, wishes to utilize certain facilities of Facility Provider and Facility Provider is willing to furnish such facilities subject to the terms and conditions set forth herein;

NOW THEREFORE, THIS AGREEMENT FOR USE BY FACILITY RECIPIENT WITNESSETH:

That for and in consideration of the full and complete performance of the covenants, terms and conditions herein set forth, the Facility Provider hereby furnishes unto the Facility Recipient the following described premises:

The facility located at the West Virginia Regional Technology Park known as the Advanced Technology Center, containing approximately 55,039 square feet, which is located at 1201 Science Park Drive, in the City of South Charleston, Kanawha County, West Virginia (the “Premises”).

Facility Recipient may allow other facility recipients the right to use the common areas of the Premises, including restrooms, lunch room, the loading dock and vending areas. Facility Recipient shall have nonexclusive use of the parking area surrounding the front and lower areas of the Premises, together with the nonexclusive right to use roads, sidewalks, stairways, hallways and elevators to the extent reasonably necessary to exercise Facility Recipient’s rights under this Agreement or access the Premises.
1. TERM AND NOTICES

The term of this Agreement shall begin on July 1, 2014 (“Effective Date”) and end at midnight on June 30, 2015 (the “Term”). This Agreement may only be terminated: (a) by mutual written agreement of the Parties; (b) by Facility Recipient upon thirty (30) days’ written notice; (c) by Facility Provider upon one hundred twenty (120) days’ written notice; or (d) in accordance with the terms of Section 11 below.

Notices may be given by personal service upon the Party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last known address of the Party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either Party to the other. Notices shall be directed as follows:

To Facility Provider: WV Regional Technology Park Corp. 1740 Union Carbide Drive South Charleston, WV 25303-2732

To Facility Recipient: BridgeValley Community & Technical College 2001 Union Carbide Drive South Charleston, WV 25303

2. SERVICE FACILITY FEE PAYMENT

2.1. Facility Recipient is a community and technical college providing a variety of education, support and security services throughout the day and evening to students and the greater community. It is critical that any interruption of those services be attended to promptly and the Facility Recipient maintains facilities and security staff to manage and maintain those services.

2.2. Facility Recipient covenants that Facility Recipient shall pay the service facility fee unto Facility Provider for the use of the Premises and the Services based on the following payment schedule: $22,144.08 per month for the Premises ($265,729.00 annually) (the “Service Facility Fee”), payable monthly during the Term in arrears on the first (1st) day of each calendar month after the month in which the Services were rendered. Facility Provider will invoice Facility Recipient on the fifteen (15th) day of the preceding month for the amount of Service Facility Fee due with respect to each month.

3. DELIVERY OF THE PREMISES

Possession of the Premises will be tendered to Facility Recipient upon execution of this Agreement by all Parties in “as-is where-is” condition.

4. SERVICES

4.1. Obligation to Supply Services. Subject to the provisions of this Agreement, Facility Provider shall provide the Services (as defined in Section 4.8) to the Premises commencing on the Effective Date and for the duration of the Term.
Except as otherwise provided herein or described in the Exhibit hereto, the Services provided by Facility Provider may utilize resources both inside and outside the Premises, including any facilities maintained or operated at the Technology Park by Facility Provider provided that the Services will be performed in accordance with Section 4.4 below.

4.2. Services Provided. From and after the Effective Date, Facility Provider shall supply, or cause to be supplied, to Facility Recipient at the Facility Recipient’s Premises, and Facility Provider shall pay for as provided, the Services, subject to the terms, specifications, parameters, provisions and limitations set forth in this Agreement.

4.3. Facility Recipient’s Use of Services. Facility Recipient shall not use or permit the Services to be used except in connection with Facility Recipient’s operations on the Premises.

4.4. Service Level. Except as otherwise set forth in this Agreement, the Facility Provider is obligated to provide to Facility Recipient the same quality and delivery of Services to the Premises that it provides to other facility recipients at the Technology Park.

4.5. Logistics and Scheduling. The Parties shall work together to reasonably determine the logistics and scheduling arrangements with respect to the Services.

4.6. Cooperation. Each Party agrees to work with the other Party in good faith to resolve any matters relating to the Services and address the reasonable requests of the other Party.

4.7. Labor Agreement. Notwithstanding anything in this Section 4 or elsewhere in this Agreement to the contrary, all Services shall be provided in accordance with applicable labor agreements. In the event of a conflict in the specific terms and conditions otherwise expressly provided in this Agreement and the terms and conditions expressed in applicable labor agreements of either Party, the terms set forth in the applicable labor agreement shall prevail.

4.8. Description of Services. Facility Provider shall provide the following services to Facility Recipient on the Premises (collectively, the “Services”):

(a) Infrastructure Services.

(i) grounds care and maintenance (mowing, weeding, leaf cleanup, storm debris cleanup, shrub/tree/grass trimming, related cleanup and disposal, snow and ice removal, and minor landscaping of lawn areas);
(ii) maintenance of site emergency alert and response systems and safety relief devices;

(iii) maintenance of HVAC with prompt attention to, including immediate notification to designated Facility Recipient personnel, any issues, including but not limited to unsafe high (above 80 degrees) or low (below 65 degrees) temperatures, unbalanced rooms, etc.;

(iv) pest control;

(v) health, safety & environmental (HS&E) services for the Premises including biohazards disposal;

(vi) general lighting on the Premises; and

(vii) external directional / wayfinding signage.

(b) Utilities.

(i) electricity supply;

(ii) potable water;

(iii) natural fuel gas;

(iv) sanitary sewer and outfall discharge; and

(v) fire suppression, including provision of fire extinguishers and a sprinkler system (collectively, “Utilities”).

4.9. Service Interruptions; Maintenance Shutdowns.

(a) Subject to Section 4.9(b) below, if for any reason Facility Provider is unable to supply any Service because there is a shortage of such Service or such Service is not reasonably available, the available supply, if any, of such Service shall be apportioned to the extent possible, in a fair and reasonable manner, as determined by Facility Provider in its sole discretion, between itself, Facility Recipient and any other facility recipient at the Technology Park, subject to any safety, health and environmental requirements.

(b) Facility Recipient acknowledges that Facility Provider may from time to time need to shut down one or more of the systems at the Technology Park necessary to provide Facility Recipient with Services during emergencies or upsets or for purposes of inspection, repair or maintenance and that during such shutdowns Facility Recipient may be required, e.g. under applicable law or permits maintained for its
operations (“Permits”), to discontinue temporarily all or a portion of its operations on the Premises. Except in the case of an emergency or imminent noncompliance situation, Facility Provider shall schedule such maintenance shutdowns with reasonable notice to Facility Recipient, and Facility Recipient agrees to reasonably cooperate with Facility Provider to allow Facility Provider to shutdown such Service systems for a reasonable period as required for necessary inspection, repair and maintenance. Both Parties agree to cooperate regarding all such shutdowns so as to minimize any disruption to either or both Parties’ operations. Facility Provider shall not be liable for inconvenience, annoyance, disturbance, loss or interruption of business or any other claimed damage to Facility Recipient, by reason of any such shutdowns or service interruptions.

(c) Facility Recipient may, at its sole election and cost, provide the Services for its own use from other sources for the period of such shut-down or service interruption.

4.10. Facility Recipient’s Operations. Facility Recipient agrees to:

(a) conduct its operations on the Premises in a commercially reasonable manner;

(b) comply with all applicable laws or Permits;

(c) comply, and operate in accordance, with all applicable Technology Park safety rules, as set forth in the Tenant Handbook (except as noted below) attached hereto as Exhibit A. Exceptions to Tenant Handbook not applicable to Facility Recipient include:

   (i) 2.2.4 Janitorial Services will be provided by Facility Recipient;

   (ii) 2.2.6 Building Conference and/or Meeting Space located within Facility Recipient’s space must be scheduled by Facility Recipient;

   (iii) 2.2.7 Common Building Space does not apply to Facility Recipient;

   (iv) 3.7 Weather-related and Emergency-related Closings – WVRTPC staff will work with Facility Recipient staff regarding closures; and

(d) ensure that its operations (and the operations of any third party service providers or contractors that it directly engages) do not (i) unreasonably interfere with the use or operation of any other facilities at the Technology Park or Facility Provider’s provision of the Services hereunder, or (ii) cause Facility Provider’s breach of this Agreement.
Facility Recipient acknowledges that its failure to comply with clauses (a) through (d) of this Section 4.10 could have serious consequences for Facility Provider and, among other things, could adversely affect the standing and reputation of Facility Provider with others, including, but not limited to the community and any governmental authorities. Subject to the provisions of Section 13.6 hereof, but otherwise without limiting any other rights or obligations of the Parties hereunder, Facility Recipient shall assume all liability and/or be responsible to pay for any and all claims, losses, damages, liabilities, penalties, costs and expenses (including reasonable attorney’s fees) relating to Facility Recipient’s failure to comply with clauses (a)-(d) above, if awarded by a court of competent jurisdiction, except to the extent that such amounts result from Facility Provider’s gross negligence or willful misconduct. Facility Provider shall have the obligation to reasonably cooperate with Facility Recipient in defending matters covered by this Section.

4.11. **Facility Provider’s Right to Supply Through Third Parties.** Facility Provider shall have the right to arrange for, and to cause, any requested Service to be supplied through a third party and to assign its obligation to supply any Service to a third party. Notwithstanding the preceding sentence, Facility Provider shall retain all responsibilities herein regarding the provision of Services.

4.12. **No Public Utility.**

(a) No undertaking by Facility Provider in this Agreement will constitute the dedication of Facility Provider’s systems or facilities, or any portion thereof, to the public. Facility Provider is not a public utility and Facility Provider’s providing of Utilities pursuant to this Agreement is expressly contingent upon the continued operation of Facility Provider’s systems and facilities free from regulation as a public utility, in any respect whatsoever, by any state, federal or other public body.

(b) If a formal proceeding is initiated at any time before the public service commission of the State of West Virginia or any other governmental authority, public body or private entity, or, in Facility Provider’s reasonable judgment, the initiation of a formal proceeding claiming or asserting jurisdiction over Facility Provider as a public utility in any way related to any Service seems likely, Facility Provider may terminate the provision of such Service (a “Jurisdiction Action”). Upon the occurrence of a Jurisdiction Action, Facility Recipient and Facility Provider shall work together in good faith to allow Facility Provider to determine (i) a fee allocable to the use by Facility Recipient of Facility Provider’s existing infrastructure and/or service lines at the Technology Park and on the Premises in connection with any alternate service supply arrangements to the Premises necessitated by the Jurisdiction Action and (ii) any corresponding reduction in the Service Facility Fee to reflect the reduction in Services necessitated by the Jurisdiction Action. Upon determining an appropriate fee, Facility Provider will allow Facility
Recipient to use Facility Provider’s existing infrastructure and/or service lines to deliver such any applicable Service to the Premises from itself or a third party supplier and shall grant Facility Recipient any rights of access or other rights of ingress and egress to the Technology Park reasonably necessary in order that any such service(s) may be otherwise provided to the Premises.

(c) In no event shall Facility Provider be required to make alternate service supply arrangements or make infrastructure available for such arrangements pursuant to this Section 4.12 where Facility Provider reasonably expects that the public service commission of the State of West Virginia or any governmental authority will take action to question or challenge such arrangements.

(d) If any event described in this Section 4.12 should arise and arrangements are made by Facility Recipient for the Premises to receive services from itself or a third party, Facility Recipient shall coordinate and cooperate with Facility Provider on all related environmental, health, loss prevention, security and safety matters, and pay all reasonable costs and expenses of all necessary facilities, installations, improvements and/or modifications that must be constructed or made solely in order to deliver such Facility Recipient or third party services to the Premises. Facility Provider shall reasonably cooperate with Facility Recipient and the third party with respect to the timing, use of Facility Provider’s rights of access and use of Facility Provider’s delivery systems, provided such use will not cause Facility Provider to be subject to regulation as a public utility.

5. **SHUTDOWN OF FACILITY PROVIDER FACILITIES ON THE PREMISES**

Facility Provider may permanently shut down or permanently reduce capacity of one or more of the Facility Provider’s facilities at the Technology Park not utilized for the provision of Services under this Agreement (a “Facility Provider Shutdown”) without notice. In the case of a Facility Provider Shutdown, the obligations of each Party hereunder shall survive and continue as provided herein.

6. **PARKING**

Facility Recipient and its invitees shall be provided reasonable access to Facility Provider’s parking facilities, including the number of handicap accessible spaces required by law (ADA), during the Term. Facility Provider shall designate the parking area to be utilized by Facility Recipient and its invitees.

7. **VENDING AND FOOD SERVICES**

To the extent desired on the Premises, the Facility Recipient shall negotiate and provide its own vending and food services on the Premises. Facility Provider shall allow Facility Recipient to access certain food service areas located at the Technology Park pursuant to that
certain Memorandum of Understanding between Facility Provider and Facility Recipient, dated August __, 2014 (the “MOU”), so long as the MOU remains in effect.

8. USE OF PREMISES

8.1. Facility Recipient shall use the Premises for the purpose of administering and operating training and educational activities therein and for no other purpose without the prior written consent of Facility Provider.

8.2. Facility Recipient acknowledges that its representatives have examined and know the conditions of the Premises. Facility Recipient further acknowledges that it has accepted the Premises in its existing condition and that no representations as to the condition or repair therefore have been or shall be made to Facility Recipient except as expressed herein. Facility Provider binds itself to maintain the Premises, including the structure of the Premises, both interior and exterior; the electrical, HVAC and plumbing fixtures and equipment, except such equipment that is owned by Facility Recipient and can be removed from the Premises without doing substantial damage to the facility. For the avoidance of doubt, the Parties acknowledge and agree that any such equipment that is owned by Facility Recipient and can be removed from the Premises only by doing substantial damage to the facility shall become a part of the Premises when Facility Recipient departs the Premises and Facility Recipient shall have no further right with respect thereto. Facility Recipient will maintain the network and telephony. Facility Recipient acknowledges that the interior and exterior painting is in a good and tenantable condition equal to that of the Premises as at the time possession thereof is delivered to the Facility Recipient. Facility Recipient will repair, at its own expense, any and all defects, of its cause and keep the Premises in good and tenantable condition and repair, fair wear and tear excepted; provided, however, that any major repairs must be authorized by Facility Provider in advance. Facility Recipient shall keep the Premises at all times in compliance with applicable local, state and federal codes and the requirements of the State Fire Marshal of the State of West Virginia.

8.3. No work performed by Facility Recipient, unless through remaining Facility Provider (HEPC) directed construction or previously accepted bids from existing RFPs issued through Facility Provider (HEPC) related to construction, pursuant to this Agreement, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Facility Provider so that no mechanic’s or other lien shall be allowed against the estate of Facility Provider by reason of any consent given by Facility Provider to Facility Recipient to improve the Premises. Facility Recipient covenants and agrees not to suffer or to permit any lien of mechanics or materialmen to be placed upon or against the Premises, the Technology Park or any portion thereof, or against Facility Recipient’s interest in the Premises or any portion thereof. Facility Recipient has no authority or power to cause or permit any lien or encumbrance of any kind
whatsoever, whether created by act of Facility Recipient, operation of law or otherwise, to attach to or be placed upon the Premises, the Technology Park or any portion thereof, and any and all such liens and encumbrances created by Facility Recipient shall attach only to Facility Recipient’s interest in the Premises. If, because of any act or omission of Facility Recipient or its employees, agents or contractors, any mechanic’s lien, UCC financing statement or other lien, charge or order for the payment of money shall be filed against Facility Provider or against the Premises, the Technology Park or any portion thereof, then Facility Recipient shall be responsible for all costs, expenses, liabilities, suits, penalties, claims and demands (including reasonable attorneys’ fees and disbursements) resulting therefrom, if awarded by a court of competent jurisdiction, and Facility Recipient shall cause such mechanic’s lien, financing statement or other lien, charge or order to be released and discharged of record, by bonding or otherwise, within thirty (30) days after the filing thereof (at Facility Recipient’s sole cost and expense). If any such liens so attach and Facility Recipient fails to pay and remove the same within the aforementioned thirty (30) day period, Facility Provider, at its election, may pay and satisfy the same, and in such event, the sums so paid by Facility Provider, shall be deemed to be additional Service Facility Fee due and payable by Facility Recipient at once without notice or demand.

8.4. Facility Recipient shall permit, at reasonable intervals, property inspection by Facility Provider or any of its designated representatives.

9. ALTERATIONS TO PREMISES

9.1. No modifications or changes will be made to the Premises without prior written consent of Facility Provider (with the exception as noted in 8.3) and the cost of such change shall be born solely by the Facility Recipient; provided, however, that Facility Recipient is permitted to undertake de minimus maintenance activities (i.e. replacing light bulbs and HVAC filters) on the Premises without the prior written consent of Facility Provider. All modifications and improvements to the Premises must have prior written authorization from Facility Provider before Facility Recipient performs any work or makes any expenditure for such work. All such improvements shall become the property of Facility Provider upon termination of the Agreement, unless otherwise agreed in writing by the Parties. Notwithstanding anything to the contrary contained in this Agreement, Facility Recipient hereby agrees that any renovations made within the Premises shall comply with the accessibility standards established and set forth by the Americans with Disabilities Act of 1990, whether requested by Facility Recipient or required by law.

9.2. Upon the expiration of this Agreement, Facility Recipient shall peacefully and quietly leave, surrender and yield up unto Facility Provider the Premises in such state of repair as is required herein except for (i) reasonable wear and
tack, (ii) damage by fire, the elements or other casualty, as provide for in this Agreement, and (iii) the right to remove signage, fixtures, machinery and equipment provided herein.

9.3. Facility Recipient shall not, without Facility Provider’s prior written consent erect or install any exterior signs, window or door lettering, placards, decorations or advertising media of any type without the prior written consent of Facility Provider. All signs, lettering, placards, decorations and advertising media shall conform in all respects to applicable laws, and shall be subject to Facility Provider’s requirements as to construction, method of attachment, size, shape, height, lighting, color and general appearance and shall be further subject to Facility Provider’s advance written consent as to all words, pictures, and other content. Facility Recipient shall, at Facility Recipient’s sole cost and expense, keep all signs in good condition and in proper operating order at all times.

10. **INDEMNIFICATION AND INSURANCE**

(a) **General Covenants.**

   (i) Neither Facility Provider or Facility Recipient shall do or permit to be done any act or thing in or upon the Premises that will invalidate or be in conflict with any applicable certificate of occupancy, the Rules and Regulations of the West Virginia State Fire Marshal’s Office or any form of fire, boiler, sprinkler, water damage or other form of fire, boiler, sprinkler, water damage or other insurance policies covering the Premises and/or the fixtures, equipment and property therein, with extended coverage, which is carried by the Facility Provider.

   (ii) If, because of anything done, omitted, caused or permitted to be done by Facility Recipient, the rate of liability, fire, sprinkler, water damage or other insurance (with all extended coverage) on the Premises or on the property and equipment of the Facility Provider, shall be higher than it otherwise would be, Facility Recipient shall reimburse the Facility Provider, for the additional insurance premiums.

(b) **Fire and Extended Coverage Insurance.** During the term of this Agreement, Facility Provider shall maintain fire and extended coverage insurance on the Premises for the replacement value thereof, but shall not protect Facility Recipient’s property in the Premises. Facility Provider shall not be liable for any damage to Facility Recipient’s property.

(c) **Facility Recipient’s Liability Insurance Responsibility and Indemnification.** Facility Provider shall not be liable to Facility Recipient or to any other person for (i) damage to property or injury or death to
persons due to the condition of the Premises, the parking facilities or the Technology Park, or (ii) the occurrence of any accident in or about the Premises, the parking facilities or the Technology Park, or (iii) any act or neglect of Facility Recipient or of any other person, unless such damage, injury or death is primarily the result of Facility Provider’s negligence. Facility Recipient shall be liable for any and all liability for (i) any act or neglect of Facility Recipient and any person coming on the Premises, the parking facilities or the Technology Park by the license of Facility Recipient, express or implied, (ii) any damage to the Premises, the parking facilities or the Technology Park, and (iii) any loss of or damage or injury to any person (including death resulting therefrom) or property occurring in, on or about the Premises, the parking facilities or the Technology Park, except for that caused primarily by Facility Provider’s gross negligence or the gross negligence of its employees, agents, representatives or invitees. Notwithstanding the foregoing, Facility Recipient shall bear the risk of any loss or damage to its property.

(d) Facility Recipient’s Insurance. Facility Recipient, in order to insure against the liabilities specified in this Agreement, shall at all times during the Term carry, at its own expense, one or more policies of general public liability and property damage insurance, issued by the West Virginia Board of Risk and Insurance Management, with the following minimum coverages:

(i) Worker’s compensation: minimum statutory amount;

(ii) Comprehensive General Liability Insurance, including blanket, contractual liability, broad form property damage, personal injury, completed operations, products liability and fire damage: Not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate for both bodily injury and property damage; and

(iii) Fire and Extended Coverage, Vandalism and Malicious Mischief, and Sprinkler Leakage Insurance, if applicable, for the full cost of replacement of Facility Recipient’s property.

The insurance policy or policies shall protect Facility Recipient and Facility Provider as their interests may appear, naming Facility Provider and WVRTPC as additional insureds, and shall provide that they may not be canceled on less than thirty (30) days’ prior written notice to Facility Provider. As requested, Facility Recipient shall furnish Facility Provider with Certificates of Insurance evidencing all required coverage.

Notwithstanding anything to the contrary contained in this paragraph, Facility Recipient may, at its option, satisfy any or all of its obligations to insure with (a) a so-called “blanket” policy or policies of insurance, or (b) an excess or umbrella liability policy or policies of insurance, now or hereafter carried and maintained by Facility Recipient; provided, however, that Facility Provider and any additional party named pursuant to the terms of this Agreement
shall be named as additional insured thereunder as their respective interests may appear, and provided that the coverage afforded Facility Provider and any additional named insureds shall not be reduced or diminished by reason of the use of any such blanket or umbrella policy or policies and that all the requirements set forth in this Section are otherwise satisfied. Facility Recipient agrees to permit Facility Provider at any reasonable time to inspect any policies of insurance of Facility Recipient if such policies (or copies thereof) have not been delivered to Facility Provider.

11. DEFAULT

(a) Facility Recipient’s Default. In the event that Facility Recipient defaults in any of the covenants contained herein, except a monetary default for the payment of the Service Facility Fee, Facility Provider shall notify Facility Recipient in writing of such default and if such default is not corrected within thirty (30) days after Facility Recipient’s receipt of written notice of default (provided such default can be cured within thirty (30) days and if not, then within a reasonable time thereafter, provided Facility Recipient commenced such cure within thirty (30) days and thereafter diligently pursues such cure to completion), Facility Provider may terminate the Agreement upon providing ten (10) days written notice of termination to Facility Recipient. In the event that Facility Recipient defaults in the payment of the Service Facility Fee, if such default is not corrected within fifteen (15) days after the date when the Service Facility Fee was due, then Facility Provider may terminate the Agreement upon providing ten (10) days’ written notice of termination to Facility Recipient and exercise any other rights set forth in this Agreement or permitted by applicable law.

(b) Facility Provider Default. If Facility Provider fails to perform any of its obligations under this Agreement, and such failure shall continue for a period of thirty (30) days after receipt of written notice of default from Facility Recipient (provided such default can be cured within thirty (30) days and if not, then within a reasonable time thereafter, provided Facility Provider commenced such cure within thirty (30) days and thereafter diligently pursues such cure to completion), Facility Recipient shall have the right to take such remedial action or complete such maintenance or repairs as may be necessary to place the Premises in a good, safe and sanitary condition. In the event that Facility Recipient exercises its right to take remedial action, Facility Provider shall promptly reimburse the costs incurred by Facility Recipient in curing such default upon receipt of an invoice from Facility Recipient, which shall be accompanied by reasonable supporting documentation. If Facility Provider fails to reimburse Facility Recipient within thirty (30) days after receipt of Facility Recipient’s invoice, Facility Recipient, in addition to all other available rights and remedies, shall have the right to deduct such unpaid amount from the next installment(s) of the Service Facility Fee due to Facility Provider until reimbursed in full.

(c) General. In all instances of default, the non-defaulting Party shall use reasonable efforts to mitigate its damages. All rights and remedies of Facility Provider and Facility Recipient enumerated herein shall be cumulative and shall not be
construed to exclude any other rights or remedies available under this Agreement, at law or in equity. No waiver of any right or remedy by a Party on one occasion shall constitute a waiver of the same right or remedy on future occasions. In the event of an emergency, the cure periods set forth in Sections 11(a) and 11(b) shall be shortened to a period of time reasonable under the circumstances. An emergency situation is a condition that threatens the Premises or building with the probability of imminent substantial damage or destruction or that creates an imminent risk of personal injury, as determined in the reasonable discretion of Facility Provider.

12. ASSIGNMENT

Facility Recipient shall not assign or transfer this Agreement in whole or in part or permit the Premises to be used or occupied for any other purpose or sublet the Premises without the prior written consent of Facility Provider.

13. COMPLIANCE WITH LAW

13.1. Compliance with the Law. Each Party shall comply in all material respects with all applicable law and Permits as they may pertain to the performance of such Party’s obligations under this Agreement. Each Party shall cooperate and communicate reasonably with the other to assist such other Party in meeting its compliance obligations related to the Premises.

13.2. Compliance Procedure. Should either Party reasonably believe that the other Party is not in compliance or is not using all reasonable efforts to comply in all material respect with the applicable law and Permits applicable to its performance related to this Agreement then such Party (“Notifying Party”) may give notice thereof to the other Party and promptly thereafter, taking into consideration all relevant circumstances, the respective Parties shall meet to attempt in good faith to resolve all of the issues raised in such notice (“Compliance Issues”). If after exercising all good faith the respective Parties are unable to resolve the Compliance Issues, then the other Party shall promptly thereafter use all reasonable efforts to cure any non-compliance with applicable law that is the subject of the Compliance Issues and that remain unresolved within such period of time as may be reasonably necessary to do so, taking into consideration all relevant circumstances. The Notifying Party shall use all reasonable efforts to fully cooperate with the other Party to assist it in curing any such non-compliance, including, but not limited to, paying its allocable costs therefor. If the other Party fails to promptly use all reasonable efforts to cure such non-compliance within such period of time and the Notifying Party has used all reasonable efforts to cooperate with the other Party to cure such non-compliance under this Section 13, then at the expiration of such period of time, the other Party shall be deemed in breach hereof and shall thereafter be responsible to pay for any and all damages caused by the non-compliance for which notice has been given, if such are assessed by a court of competent jurisdiction.
13.3. **Facility Provider Responsibility.** In the event that an action, suit, proceeding or claim (collectively, “Claim”) is brought against Facility Recipient by a Facility Provider employee or other third party arising out of Facility Provider’s ownership, operation or use of the Premises, Facility Provider shall be responsible to pay any and all obligations, damages, claims, losses, liabilities, costs and expenses of any kind or nature, including, but not limited to, court costs and reasonable attorneys’ and accounting fees, governmental fines and citations, penalties and punitive damages, losses of or damage to property, environmental damages, or for bodily injury, sickness, or death (collectively, “Losses”), in connection with such Claim, except to the extent such Claim or Losses result from Facility Recipient’s gross negligence or willful misconduct and only to the extent assessed by a court of competent jurisdiction.

13.4. **Facility Recipient Responsibility.** In the event that a Claim is brought against Facility Provider by a Facility Recipient employee or other third party arising out of Facility Recipient’s ownership, operation or use of the Premises, Facility Recipient shall be responsible to pay any and all Losses in connection with such Claim, except to the extent such Claim or Losses result from Facility Provider’s gross negligence or willful misconduct and only to the extent assessed by a court of competent jurisdiction.

13.5. **Claims and Losses Procedure.** The following procedure shall apply to all Claims and Losses defined in and covered by the provisions of Sections 13.4 and 13.5:

Any Party claiming it is the other Party’s responsibility to pay a Claim or Loss under Section 13.4 or Section 13.5, whichever the case may be between Facility Provider and Facility Recipient hereunder (“Claiming Party”), shall give prompt notice to the other Party (the “Responsible Party”) of the assertion of any Claim or Loss as to which such Claiming Party may seek payment pursuant to Section 13.4 or Section 13.5. The omission so to notify the Responsible Party shall not relieve the Responsible Party from any duty which otherwise might exist with regard to such Claim or Loss, except to the extent that the Responsible Party can demonstrate that the omission to notify materially prejudiced the ability of the Responsible Party to effectively defend such Claim or Loss, but only to the extent actually prejudiced.

13.6. **Limitations.** As between themselves, the Parties agree that except as otherwise specifically set forth in this Agreement, neither Facility Provider nor Facility Recipient shall have any liability or obligation to the other Party (whether based upon theories of negligence or otherwise) arising out of the ownership or operation of the Premises or the rendering of Services, except to the extent arising out of the gross negligence or willful misconduct of such Party.
NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS, LOST OPPORTUNITIES OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE AND IRRESPECTIVE OF THE THEORY UNDER WHICH SUCH CLAIM IS MADE.

14. RELATIONSHIP OF PARTIES

In its performance of the obligations contained in this Agreement, each Party shall be acting in the capacity of an independent contractor and not as the agent or partner of any other Party.

15. PUBLIC ANNOUNCEMENTS

Except as otherwise required by applicable law, Facility Provider and Facility Recipient will consult with the other and obtain the prior consent of the other before issuing, or permitting any agent or affiliate to issue, any press releases with respect to this Agreement or the transactions contemplated hereby or otherwise making, or permitting any agent or affiliate to make, any public statements with respect to this Agreement or the transactions contemplated hereby.

16. FORCE MAJEURE

16.1. Definition. “Force Majeure Event” means labor trouble (whether or not beyond the reasonable control of the affected Party) and other circumstances reasonably beyond the control of the affected Party, including, without limitation, acts of God, fire, flood, war, accident, explosion, breakdowns or embargoes or other import or export restrictions, shortage of or inability to obtain energy, equipment, transportation, products or good faith compliance with applicable law or any request (whether ultimately valid or invalid) made by any governmental authority.

16.2. Notification. If a Force Majeure Event is claimed by either Party, the Party making such claim shall orally notify the other Party as soon as reasonably practicable after the occurrence of such Force Majeure Event and shall provide the other Party with written notice of such Force Majeure Event within five (5) business days after the occurrence of such Force Majeure Event.

16.3. General. Neither Party hereto will be liable for any nonperformance or delay in performance of the terms of this Agreement when such failure is due to a Force Majeure Event.

16.4. Efforts to Remedy. To the extent reasonably possible, a Force Majeure Event shall be remedied as expeditiously as possible using commercially reasonable efforts. It is understood and agreed that nothing in this Section 16 shall require the settlement of strikes, lockouts or industrial disputes or
disturbances by acceding to the demands of any opposing Party therein when such course is inadvisable in the discretion of the Party having the difficulty.

17. **WARRANTY AND DISCLAIMER**

    FACILITY PROVIDER WARRANTS THAT IT WILL USE THE SAME LEVEL OF CARE IN PROVIDING THE SERVICES TO FACILITY RECIPIENT AS IT DOES IN PROVIDING THE SERVICES FOR OTHER USERS AT THE TECHNOLOGY PARK. EXCEPT AS EXPRESSLY SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE, FACILITY PROVIDER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES. FACILITY PROVIDER EXPRESSLY DISCLAIMS AND EXCLUDES ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES PROVIDED BY STATUTE, COMMON LAW COURSE OF DEALING OR USAGE OF TRADE.

18. **TERMINATION**

18.1. Facility Recipient shall have the right to cancel this Agreement on the last day of a given month during the Term, without further obligation on its part, upon giving a written notice to Facility Provider at least thirty (30) days prior to the last day of the applicable month in which Facility Recipient seeks to cancel this Agreement. Facility Provider shall have the right to cancel this Agreement on the last day of a given month during the Term, without further obligation on its part, upon giving a written notice to Facility Recipient at least one hundred twenty (120) days’ prior to the last day of the applicable month in which Facility Provider seeks to cancel this Agreement.

18.2. At the expiration or earlier termination of the Term, Facility Recipient shall promptly vacate and yield up the Premises, broom clean and in the same condition of good order and repair in which they are required to be kept throughout the Term, reasonable wear and tear, damage due to casualty and repairs to be performed by Facility Provider excepted.

18.3. Upon the termination of this Agreement, or at any time during the Term, Facility Recipient shall have the right to remove all trade fixtures and equipment belonging to it that have been affixed, attached or otherwise made part of the Premises. In performing such removal work Facility Recipient shall not impair the structural integrity or the operating systems of the Premises and in each instance Facility Recipient shall repair any damages to the Premises due to the installation or removal of such trade fixtures or equipment. Any removal work shall be performed by contractors who are reasonably acceptable to Facility Provider and shall be scheduled as reasonably convenient to Facility Provider so as not to interrupt the use of the Technology Park, including the use of utility systems, by Facility Provider, other facility recipients or third parties. Any fixtures, equipment or other
property of Facility Recipient remaining upon any part of the Premises upon the lapse of thirty (30) days after the expiration or termination of this Agreement as to such area shall be deemed abandoned and shall become the property of Facility Recipient and may be removed or otherwise disposed of by Facility Provider without any notice or liability or obligation to Facility Recipient, subject to reimbursement of Facility Provider by Facility Recipient for any removal costs. Facility Recipient or its contractor shall have the right of access to the Premises for purposes of removing such trade fixtures and equipment during such period.

18.4. Except as otherwise provided in this Agreement, upon the expiration or other termination of this Agreement, Facility Recipient shall remain liable to reimburse promptly Facility Provider for the reasonable cost incurred to make any repairs to the Premises as required of Facility Recipient hereunder, to remove Facility Recipient’s garbage, waste or other debris and to eliminate any nuisances or dangerous conditions arising out of Facility Recipient’s use of the Premises.

19. [INTENTIONALLY OMITTED.]

20. TAXES AND ASSESSMENTS

Facility Provider and Facility Recipient do not anticipate any taxes or assessments to be levied against the Premises.

21. FISCAL AGENT

Facility Recipient acknowledges and agrees that WVRTPC is the fiscal agent of Facility Provider and that any rights or obligations of Facility Provider under this Agreement may be duly exercised or fulfilled by WVRTPC on behalf of Facility Provider. Facility Recipient agrees to interact with WVRTPC for all purposes as if WVRTPC were the Facility Provider under this Agreement unless otherwise instructed in writing by a representative of Facility Provider.

22. TENANT HANDBOOK OF WEST VIRGINIA REGIONAL TECHNOLOGY PARK

Facility Recipient acknowledges and agrees that (i) it is bound by the terms set forth in the Tenant Handbook (except as noted in Section 4.10(c)) attached hereto as Exhibit A during the Term, which include terms essential to this Agreement, and (ii) Facility Provider and/or WVRTPC may, at its or their sole option, change, delete, suspend, discontinue or add to parts or the entirety of the Tenant Handbook or the policies contained therein at any time by providing Facility Recipient with written notice no more than five business days after such change.

23. GENERAL PROVISIONS

23.1. Further Assurances. Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional
consideration, each such Party will execute and deliver any further legal instruments and perform any acts in each case that are or may become reasonably necessary to effectuate the purposes of this Agreement.

23.2. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without reference to the choice of law principles thereof.

23.3. **Entire Agreement; Third Party Beneficiaries.** This Agreement and the exhibits attached hereto, including, but not limited to, the Tenant Handbook, set forth the entire agreement between the Parties and supersede all prior agreements, understandings or arrangements, written or oral, by any officer, employee or representative of either Party dealing with the subject matter hereof. Except for any applicable indemnification provision, this Agreement is not intended to confer upon any person not a Party hereto (and their successors and assigns) any rights or remedies hereunder. While purchase orders, invoices or similar routine documents may be used to implement or administer provisions of this Agreement, any provisions of these documents that add to, vary, modify or are at conflict with the provisions of this Agreement shall be deemed deleted and shall have no force or effect on either Party’s rights or obligations under this Agreement.

23.4. **Binding Effect; Assignment; Certain Notices.**

   (a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns and legal representatives.

   (b) Facility Provider shall have the right (but not the obligation), without the consent of Facility Recipient (but upon written notice following such transfer), in the event of the sale or transfer of its interest in the Premises, to assign this Agreement, in whole or in part, in connection therewith, provided that such assignee expressly assumes the assigned obligations under this Agreement by executing an assignment and assumption agreement. Upon any assignment and acceptance of this Agreement pursuant hereto, Facility Provider shall be relieved of its obligations under this Agreement that arise after the date of such assignment.

   (c) **Contracted Services.** It is understood and agreed by the Parties that the Services provided by Facility Provider under this Agreement may be provided by Facility Provider directly or through any other associated agency of the State of West Virginia, or through third parties, all at Facility Provider's sole discretion.

23.5. **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected thereby, and there shall be
deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

23.6. **Amendments and Waivers.** This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Parties hereto. A Party hereto may, only by an instrument in writing, waive compliance by the other Party hereto with any term or provision of this Agreement on the part of such other Party hereto. The waiver by any Party hereto of a breach of any term of this Agreement shall not be construed as a waiver of any subsequent breach. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising or single or partial exercise of any right, power or remedy by any Party and no course of dealing between the Parties, shall constitute a waiver of any such right, power or remedy.

23.7. **Rights of Access.** Each Party and its contractors, employees, agents and other entities that supply Services in connection with performance of this Agreement shall be entitled to enter the Premises in order to perform their respective obligations hereunder.

23.8. **Headings.** The section and article headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement. All references to Sections or Articles contained herein mean sections or articles of this Agreement unless otherwise stated.

23.9. **Construction.** All capitalized terms used but not defined herein shall have the meanings given to such terms within the Agreement. Unless the context of this Agreement otherwise clearly requires, (a) references to the plural include the singular, (b) references to the singular include the plural, (c) references to any gender include the other gender, (d) the terms “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the phrase “without limitation,” (e) the term “or” has the inclusive meaning represented by the phrase “and/or,” (f) the terms “hereof,” “herein,” “hereunder,” “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (g) the terms “day” and “days” mean and refer to calendar day(s) and (h) the terms “year” and “years” mean and refer to calendar year(s). Unless otherwise set forth herein, each reference in this Agreement to (i) any document, instrument or agreement (including this Agreement) (A) includes and incorporates all exhibits, schedules and other attachments thereto, (B) includes all documents, instruments or agreements issued or executed in replacement thereof and (C) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) applicable law means such applicable law as amended, modified, supplemented or succeeded, from time to time and in effect at any time.
23.10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties hereto and delivered to the other Party hereto.

[Signature page follows this page.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf by their respective representatives thereunto duly authorized as of the date first written above.

WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

By: WV Regional Technology Park Corp.,
its fiscal agent

By: _________________________________
Name: Russell P. Kruzelock
Title: Chief Executive Officer and Executive Director

BRIDGEVALLEY COMMUNITY & TECHNICAL COLLEGE

By: _________________________________
Name: Beverly Jo Harris
Title: President
Exhibit A

Technology Park Tenant Handbook

[See attached.]
ITEM: Bridging the Gap DOL Grant Update

RECOMMENDED RESOLUTION: Information Only

STAFF MEMBER: Rebecca Prokity

BACKGROUND:

A Department of Labor TAACCT grant was awarded in the amount of $25 million for West Virginia community colleges. Bridgemont (now BridgeValley) was designated lead institution and fiscal agent for the “Bridging the Gap” grant. The college contracted with employees located in the Central Office for administering the statewide grant; each institution named an Institutional Transformation Leader (ITL) to guide initiatives on individual campuses.

Rebecca Prokity, BridgeValley’s ITL, will report on the progress to date on this important project.