FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (herein after called "Agreement") is made and entered into on this _____day of _____, 2016, by and between the **COUNTY OF MONTGOMERY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter called "County"), and **MOUNTAIN VALLEY CHARITABLE FOUNDATION**, a 501(c)(3) non-profit organization located in Shawsville, Virginia (hereinafter called "the Foundation");

WHEREAS, the County owns Tax Map Parcel 083-C 2 A 26, Tax Map Parcel 083-C2 3 2, Tax Map 083-C2 A 25A, and Tax Map 083-C2 A 25C, as shown more particularly on the attached Boundary Plat labeled Exhibit A entitled "Boundary Plat of Tax Map 083(C2)3 2 and Tax Maps 083(C2)A 25A & 25C Owned By Montgomery County School Board and Tax Maps 083(C2)A 26 Owned by Montgomery County Board of Supervisors Located in Shawsville, Virginia" dated 18 MAR 2016, together the property is commonly referred to as the "Shawsville Middle School Athletic Complex" located in the Shawsville community of Montgomery County, Virginia; and

WHEREAS, the improvements located at the Shawsville Middle School Athletic Complex include a baseball field along with dugouts, scoreboard, foul ball netting and poles and fencing, a track, athletic field in the interior of track, 4 poles with stadium lights, 2 sets of bleachers, 1 concession stand, Press box w/PA system, lighting system, fencing, 2 goal posts, scoreboard, ticket booth, tennis courts, 6 tennis court lights, multipurpose field, elongated storage building, sidewalks and parking lot, and a sliver of land with no improvements, all shown more particularly on the attached aerial imagery labeled Exhibit B entitled "Shawsville Middle School Athletic Complex" (hereinafter referred to as "Facilities"); and

WHEREAS, the Foundation desires to enter into this Agreement in order to take over control of the use, the scheduling, and the maintenance of the Facilities for the community; and

WHEREAS, the County desires to grant the Foundation the right to use, control, improve and maintain the Facilities for use by the community;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein the County and Foundation agree as follows:

Section 1. **Grant of Use**

The County hereby agrees to grant to the Foundation at an annual user fee of One Dollar ($1.00) per year control of the use of the Facilities commonly referred to as the Shawsville Middle School Athletic Complex subject to the terms and conditions of this Agreement. The Foundation shall have exclusive control of the Facilities and shall be responsible for the scheduling and coordinating of the use of the Facilities by the Community and by any third parties through the term of this Agreement. Third party uses may include commercial uses such as festivals, musical and other shows, ect. Any such activities shall have all licenses or permits as may be required by County and State law and regulations. The Foundation agrees to make the track, the athletic field in the interior of the track and the baseball field available for use by (1) County residents for their individual recreational use, (2) by Montgomery County Public School teams and (3) by Montgomery County Parks and Recreation teams at no cost. The Montgomery County Public School and Montgomery County Parks and Recreation teams may have priority but not exclusive use of the fields. Both entities shall reserve the use of the fields as do all other third party users through the Foundation. The Foundation may permit third parties to use the Facilities and charge an appropriate fee to assist the Foundation in the cost of maintaining the Facilities. The Foundation agrees to keep an accounting of all fees that have been charged and collected for using the facilities and to make this information available to the County upon request.

Notwithstanding any other provision contained in this Agreement, the County hereby reserves the right to remove the area of land identified as the "Potential Future Shawsville Rescue Squad site " located adjacent to Old Town Road in the northwest corner of the property shown more particularly on Exhibit A from land and facilities subject to this Grant of Use if the County determines that the land is immediately needed in order to begin the process of constructing the new Shawsville Rescue Squad on the property. The County agrees to provide the Foundation with sixty (60) days written notice before removing the area from the Grant of Use provisions under Section 1.

The Foundation agrees that during regular school hours the students at Shawsville Middle School shall have priority but not exclusive use of the new multi-purpose field, tennis courts, and the track and the athletic field in the interior of the track for Physical Education. The Foundation agrees that for safety and security purposes, the Foundation shall not schedule or authorize uses of any kind that conflicts with regularly scheduled uses by the Middle School on the multi-purpose field, track, tennis courts or the athletic field in the interior of the track during the school year when school is in session, Monday through Friday 7:00 a.m. to 4:00 p.m. when the Montgomery County School Administration and or the Principal at Shawsville Middle School has properly scheduled use of the particular fields during those hours. Exceptions to this scheduling would include fire drills, evacuations and other emergencies.

Section 2. **Maintenance**

The Foundation shall be responsible for any and all required maintenance in order to keep the Facilities in good order and repair and in a neat, clean, sanitary and safe condition including all mowing and weed eating. The County agrees to provide Four Thousand Dollars ($4,000) annually to the Foundation payable on January 1 of each year of the Agreement to offset maintenance costs. The Foundation shall be responsible for all the trash pick-up at the Facility. The Foundation shall be responsible for making all the necessary repairs and the day-to-day maintenance in a timely matter and all such repairs and maintenance shall be at least equal in quality to the condition of the Facilities at the beginning of this Agreement, wear and tear excepted. The Foundation agrees to regularly inspect the four wooden light poles with stadium lights surrounding the track and the athletic field, the wooden poles holding up the foul ball net at the baseball field and perform the required maintenance or improvements necessary to keep these wooden pole structures, netting and lighting in a safe condition.

If following notice and the expiration of any applicable cure period, the Foundation fails to perform its obligation to maintain the Facilities and /or perform any improvements in good order and repair and/or keep the Facilities in a neat, clean, sanitary and safe condition, the County shall have the right, but not the obligation to perform such work upon delivery of a written notice to the Foundation and the Foundation shall reimburse the County for all reasonable expenditures the County incurs in connection with such work. As a remedy to the Foundation's failure to perform its maintenance obligations of keeping the Facilities mowed and in a clean, sanitary and safe condition under this Section, the County shall have the right to suspend annual payment provided the Foundation to offset maintenance costs and/or close the Facilities if the conditions or improvements pose a danger to the health, safety or well-being of the community.

Section 3. **Utilities**

The Foundation agrees to put in their name and assume responsibility for the two electric accounts currently in the Montgomery County School Board's name with APCO associated with the Facilities. Meter #445762642 is for power at the concession stand and for athletic field lights. There is also an unmetered account for the three outdoor lights that illuminate the parking lot between the tennis courts and Old Town Road. The Foundation agrees to put in their name and assume responsibility for the two utility accounts currently in the Montgomery County School Board's name with the Montgomery County Public Service Authority. One account provides water and sewer service to the concession stand and the second account is for irrigation water only, with the account supplying a standard pipe for a water cannon connection below the baseball field. The Foundation agrees to transfer the electric and water and sewer accounts into the Foundations name within 30 days of this Agreement being executed.

Section 4. **Improvements and Personal Property**

The Foundation shall make no improvements or alterations not otherwise regarded as maintenance to the Facilities without first obtaining written approval from the County. During the term of this Agreement, any improvements constructed at or on the Facilities as permitted or required under this Agreement shall be and remain the property of the County without compensation to the Foundation. The granting of permission to use the Facilities under this Agreement shall not constitute a lease or a grant of any property right by the County to the Foundation.

All personal property, furnishings, fixtures and equipment installed by the Foundation at or on the Facilities which are not attached to the Facilities so as to cause substantial damage upon removal and are not necessary for the normal continued operation of the Facility shall be the personal property of the Foundation. The Foundation shall have the right to remove the personal property provided the Foundation shall repair any damage caused by the removal of such personal property upon termination of this Facility Use Agreement. The personal property shall be removed with due diligence and without expense to the County. Any personal property which remains at or on the Facilities for thirty (30) days after this Facility Use Agreement is terminated may, at the option of the County, be deemed to have been abandoned and may either be retained by the County or disposed of. Personal property shall not include any fixture or portion or part of any building components necessary for the operation of the Facilities.

Section 5. **Term**

The initial term of this Facility Use Agreement shall be five (5) years commencing on _____, and expiring _____. Thereafter, the parties may renew the term for additional periods of time upon mutual written consent of the parties.

Section 6. **Insurance**

Without limiting the Foundation's indemnification obligations as set forth in this Agreement, the Foundation shall maintain at its own expense and maintain in force at all times during any Term of this Agreement a comprehensive general liability coverage policy in an amount not less than $1,000,000 per occurrence, which shall name the County as an additional insured. The Foundation shall provide a certificate of insurance to the County at the time the Agreement is executed and the certificate shall provide for a thirty (30) day prior notice of cancellation, non-renewal or other material change. The Foundation shall require third party users to carry the same or additional amounts of insurance and have the County named as an additional insured along with the Foundation.

Section 7. **Indemnification**

To the fullest extent permitted by applicable law, the Foundation agrees to indemnify, defend and hold harmless the County, its agents, employees, representatives, officers, board members, directors, insurers, attorneys, and managers (collectively the "Indemnified Parties"), from and against all claims, demands, injuries, losses, liens, cause of actions, suits, judgments, penalties, liabilities, debts, costs and expenses, including court costs and attorneys' fees of any nature, kind or description, whether arising out of contract, tort, strict liability, misrepresentation, violation of applicable law and/or any cause whatsoever, including, without limitation, claims for injuries to or death of any person or damages to or loss of any property, of any person or entity directly or indirectly arising out of, caused by, in connection with or resulting from the Foundation's utilization of the Facilities under this Agreement. The Foundation agrees to be responsible for the conduct and control of patrons, participants and guests using the Facilities and for any damages or injuries incurred by them or caused by them arising from the Participant's utilization of the Facilities under this Agreement.

Section 8. **Fuel Storage/Hazardous Materials**

The storage of petroleum or other hazardous materials is prohibited at or in the Facilities.

Section 9. **Termination**

The County shall have the unilateral right prior to the end of each term to terminate this Agreement upon One Hundred Eighty (180) days written notice notifying the Foundation the County does not desire to renew the term for an additional period of time. The County may also terminate this Agreement if the Foundation fails to comply with the terms and conditions of this Agreement or if the Foundation fails to remedy any default in performance within thirty (30) days of written notice.

The Foundation may terminate this Agreement during the initial five year term upon One Hundred Eighty (180) days written notice notifying the County that the Foundation intends to terminate this Agreement.

Section 10. **Notice**

All notices shall be sent to both parties as follows:

County of Montgomery, Virginia
ATTN: County Administrator
755 Roanoke Street, Ste. 2E
Christiansburg, VA 24073

Mountain Valley Charitable Foundation
ATTN: Ellen Ryan, President
P.O. Box 532
Shawsville, VA 24162
Contact Person: Charlotte Hawes, Executive Director
Phone Number: 540-384-2801

Section 11. **Miscellaneous**

The Parties may mutually agree to written modifications of the terms of this Agreement. The Foundation may not assign any interest in this Agreement to any person or entity nor delegate any duties under this Agreement without prior written approval of the County. If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the Agreement shall remain in full force and effect.

THE REMAINING PORTION OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the effective date.

COUNTY OF MONTGOMERY, VIRGINIA

By: _____
F. Craig Meadows, County Administrator

MOUNTAIN VALLEY CHARITABLE FOUNDATION

By: _____
Ellen S. Ryan, President

COMMONWEALTH OF VIRGINIA,
COUNTY OF MONTGOMERY:

The foregoing instrument was acknowledged before me in the County and State aforesaid, this _____ day of October, 2015 by F. Craig Meadows, County Administrator for the County of Montgomery, Virginia.

My commission expires:
Registration Number:

_____
Notary Public

Approved as to Form:

_____
Martin M. McMahon,
County Attorney

COMMONWEALTH OF VIRGINIA
COUNTY/TOWN OF _____:

The foregoing instrument was acknowledged before me in the County/Town and State aforesaid, this _____ day of October 2015 by Ellen S. Ryan, President of and on behalf of Mountain Valley Charitable Foundation.

My commission expires:
Registration Number:

_____
Notary Public