



**JOURNAL of the PROCEEDINGS  
of the  
CITY COUNCIL**

CITY OF CHARLESTON, WEST VIRGINIA

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Regular Meeting – Monday, November 6, 2017

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

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**OFFICIAL RECORD**

**Danny Jones  
Mayor**

**JB Akers  
City Clerk**

**CALL TO ORDER**

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The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of November on the 6<sup>th</sup> day, in the year 2017, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilmember Richardson and the Pledge of Allegiance was led by Councilmember Jones. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

<b>BURKA</b>	<b>BURTON</b>	<b>CEPERLEY</b>
<b>CHESTNUT</b>		<b>DAVIS</b>
<b>EALY</b>	<b>FAEGRE</b>	<b>HAAS</b>
<b>HARRISON</b>		<b>IRELAND</b>
<b>JONES</b>	<b>KING</b>	<b>LANE</b>
<b>MINARDI</b>	<b>OVERSTREET</b>	
<b>REISHMAN</b>	<b>RICHARDSON</b>	<b>SALISBURY</b>
<b>SMITH</b>	<b>SNODGRASS</b>	<b>STEELE</b>
<b>TALKINGTON</b>	<b>WARE</b>	<b>MAYOR JONES</b>

With twenty-four members being present, the Mayor declared a quorum present.

Pending the reading of the Journal of the previous meeting, the reading thereof was dispensed with and the same duly approved.

### ***PUBLIC SPEAKERS***

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1. Councilmember Faegre introduced Beth Karnes- from the Fraternal Order of Eagles, who presented a \$1,000 check for a new roof for the Safety City Building to Lieutenant Paul Perdue.
2. James R. Strongwater – thanked the Charleston Police Department for recovering his stolen property.
3. Connie Andrews – asked Councilmembers that they request CURA to publicly release information concerning the 2008 West Side Community Renewal Plan.
4. Ricardo Martin – representing the WSCR, asked that the 2008 West Side Community Renewal plan be released to the public.

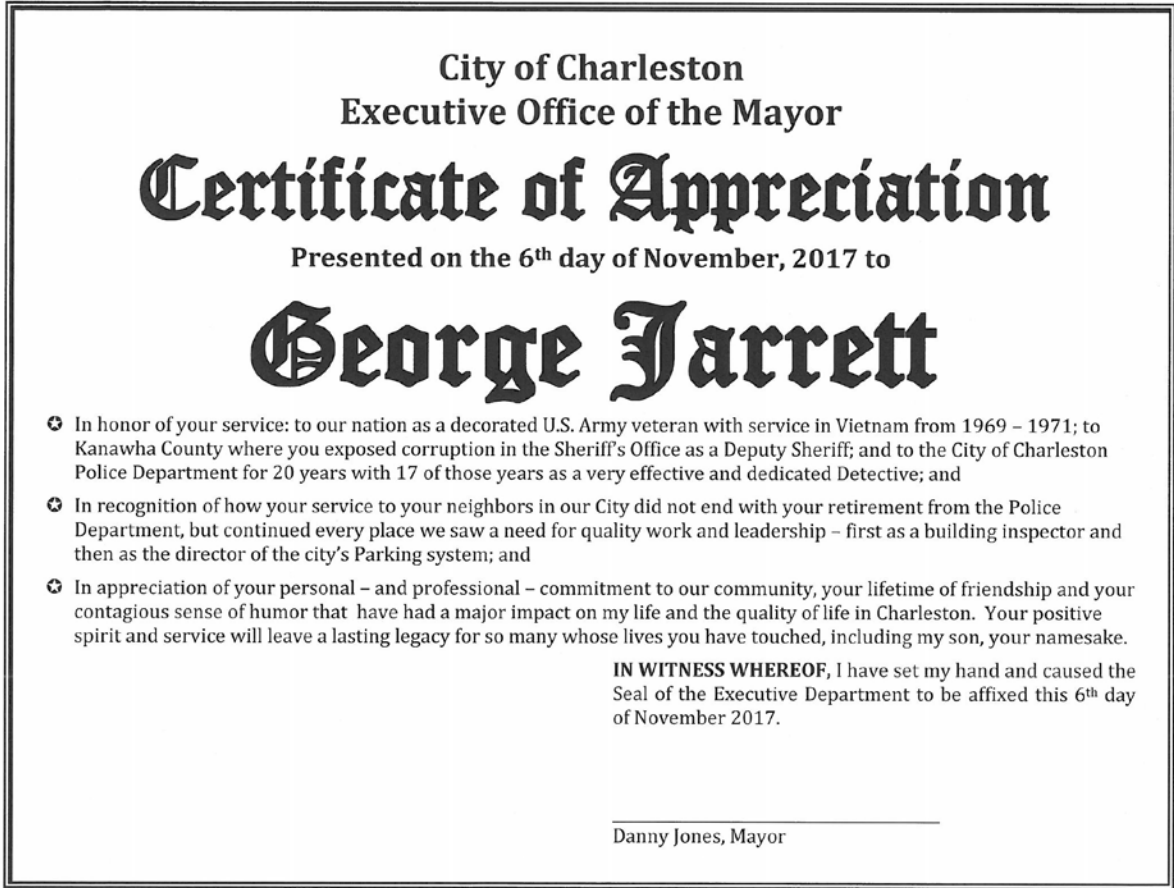
### ***CLAIMS***

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1. A claim of Timothy Brogan, 118 Lude Road, South Charleston, WV;  
Alleges damage to vehicle.  
Refer to City Solicitor.
2. A claim of Catrina R. Hancock, 1591 Kanawha 2 Mile Road, Charleston, WV;  
Alleges damage to vehicle.  
Refer to City Solicitor
3. A claim of Ronald W. Stutler Senior, 710 Beulah St., Charleston, WV;  
Alleges damage to property.  
Refer to City Solicitor.

**COMMUNICATIONS**

1.



Mayor Jones presented the Certificate of Appreciation to George Jarrett.

2. Jim Strawn presented the Live on the Levee 50/50 Raffle contributions to the following charities: Covenant House, Manna Meal, RCCR, Roark Sullivan Lifeway Center, and YWCA.

3.

CITY OF CHARLESTON  
OFFICE OF THE MAYOR



**TO: J. B. AKERS  
CITY CLERK**

**FROM: DANNY JONES  
MAYOR**

**RE: WAYFINDING COMMISSION**

**DATE: NOVEMBER 6, 2017**

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I recommend that Charles J. Denham, 204 50<sup>th</sup> Street, SE, Charleston, WV 25304 be appointed to the Wayfinding Commission, with an initial term to expire September 19, 2018. He is the Municipal Beautification representative on Wayfinding. He's replacing Beth Loflin.

I respectfully request City Council's approval of this recommendation.

DJ/dmp

Councilmember Harrison moved to approve the appointment. Councilmember Lane seconded that motion. By unanimous vote, the appointment was confirmed.

**PUBLIC HEARINGS**

1. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 979-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.
2. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Resolution No. 980-17. No person from the public came to speak in reference to the Public Hearing. The Mayor declared the Public Hearing CLOSED.

**REPORTS OF COMMITTEES**

**COMMITTEE ON ORDINANCE AND RULES**

Councilmember Harrison, Chair of the Council Committee on Ordinance and Rules, submitted the following reports:

1. Your committee on Ordinance and Rules has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7767 Committee Substitute do pass.

Bill No. 7767 Committee Substitute - An Ordinance to create Article IV of Chapter 14 of the Code of the City of Charleston related to the vacating, closing, removal, or demolition of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

WHEREAS, West Virginia Code Section 8-12-16 authorizes the City of Charleston to provide by ordinance for the vacating, closing, removal, or demolition of any dwelling, building, or structure deemed unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and

WHEREAS, the vacating, closing, and removal or demolition of such buildings and structures promotes public health and safety by removing dangerous conditions that may be encountered by community members, code enforcement personnel, and members of the police and fire departments; and

WHEREAS, the City of Charleston intends to create a process to correct these dangerous conditions that provides fair notice and due process to property owners while facilitating correction of the dangerous conditions in an appropriate and timely manner;

Now, therefore, be it ordained by the City Council of the City of Charleston,

That Chapter 14, Article VI of the Code of the City of Charleston, is hereby created to read as follows:

Chapter 14, Article VI –

Section 14-251. - Purpose and Scope.

(a) This Article provides a process for the identification, inspection, correction, and removal of unsafe structures within the city in a manner that provides adequate notice and due process to the owners of such structures while protecting the public from danger due to unsafe or unsanitary conditions.

(b) This Article is intended to authorize the City to exercise, to the fullest extent provided by law, the power and authority provided by W. Va. Code Section 8-12-16, as it may be amended, subject to the requirements and limitations therein.

(c) The powers and duties granted in this Article are in addition to those otherwise granted by law and shall not be construed to limit any other lawful powers of the City of Charleston, including the power of code enforcement officials to interpret and enforce the Building Code of the City of Charleston, West Virginia.

(d) This Article shall be construed liberally to promote the purpose of efficiently abating dangerous conditions that are harmful to the community.

Section 14-252. - Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(a) "Code enforcement agency" means the Building Department of the City of Charleston, a code enforcement department as defined by Title 87 West Virginia Code of State Rules Section 7-2, as it may be amended.

(b) "Code official" means any person employed by the City of Charleston who has been delegated the authority from the code enforcement agency to conduct property maintenance inspections.

(c) "Owner" or "landowner" means a person who individually or jointly with others:

(1) Has legal title to the property or structure, dwelling, or building, with or without actual possession of the property or structure, dwelling, or building;

(2) Has charge, care or control of the property or structure, dwelling, or building as owner or designated agent of the owner;

(3) Is an executor, administrator, trustee or guardian of the estate of the owner;

(4) Is the designated agent of the owner for the purpose of managing, controlling or collecting rents; or

(5) May lawfully control or direct the management or disposition of the property or structure, dwelling, or building.

(d) "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" means:

(1) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the City of Charleston as related to the requirements for existing buildings; or

(2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress; or

(3) Any portion of a structure, dwelling, or building or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged; or

- (4) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value; or
- (5) The structure, dwelling, or building, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way; or
- (6) The structure, dwelling, or building, or any portion, is clearly unsafe for its use; or
- (7) The structure, dwelling, or building is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the structure, dwelling, or building for committing a nuisance or an unlawful act; or
- (8) Any structure, dwelling, or building constructed, existing or maintained in violation of any specific requirement or prohibition applicable to any structure, dwelling, or building provided by the approved building or fire code of The City of Charleston or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety; or
- (9) A structure, dwelling, or building, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease; or
- (10) Any structure, dwelling, or building, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health; or
- (11) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

Section 14-253. - Closing and Removal of Unsafe Structures.

(a) The code enforcement agency may order the repair, alteration, improvement, closing, demolition, or removal of any structure, dwelling, or building that is determined by a code official to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare in accordance with the procedures set forth in this Article.



(b) In order to make a determination regarding the classification of a structure as unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to this Article, and to determine and enforce the appropriate remedy for any such structure, code officials shall be entitled to make inspections, perform investigations, issue notices, require corrective measures, obtain search warrants from and/or present complaints to the municipal judge, and exercise all other powers and duties authorized by West Virginia Code Section 8-12-16, as it may be amended.

Section 15-254. - Inspection. For purposes of inspections performed pursuant to this Article, the following rules shall apply:

- (a) When a code official lawfully enters the premises of the property or the structure, dwelling, or building for investigating or inspecting any structure, dwelling, or building, the investigation shall be conducted in a way that minimizes the inconvenience to the owner or person(s) in possession.
- (b) Except in exigent circumstances and as may be permitted by law, the code enforcement agency shall provide reasonable notice of the inspection to the owner and request permission from the owner to enter the structure, dwelling, or building.

(c) If the owner cannot be located after reasonable inquiry by the code enforcement agency, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the Kanawha County Magistrate Court. Before issuance of an administrative search warrant, a code enforcement agency official shall be required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry.

(d) If the administrative search warrant is granted by the court, and if the owner can be located by a code official, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the structure, dwelling, or building. If there is a tenant or other person in possession of the structure who is not the owner, and if such person(s) can be located, the code enforcement agency shall also provide such person(s) a copy of the administrative search warrant five days before entering the structure, dwelling, or building.

- (e) Any entry pursuant to this section shall be made for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

Section 14-255. - Correction of Unsafe Conditions. Upon a determination by the code enforcement agency that a structure, dwelling, or building is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the City may take corrective action by causing it to be vacated, closed, removed, or demolished, either directly or through a third-party agent, in the absence of owner agreement or a court order, provided the following conditions are met:

(a) The code enforcement agency undertakes reasonable efforts to locate and seek agreement from the owner prior to taking the corrective action.

(b) The corrective action may only be taken as to a structure, dwelling, or building that is either

(1) Defined in Section 14-252 (d)(3), (5), or (8); or

(2) Defined in Section 14-252 (d)(6), (7), (9), or (11): *provided*, that the structure, dwelling, or building is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the reasonable estimate of the fair market value of the structure, dwelling, or building.

(c) Prior to undertaking the corrective action, the City will complete the following procedural requirements:

(1) The code enforcement agency shall produce a written notice containing:

(A) a description of the property and the structure, dwelling, or building sufficient for identification,

(B) the date of the last inspection,

(C) the name of the inspector,

(D) a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s),

(E) a reasonable description of the corrective measures required,

(F) the allotted time to correct the substandard condition(s), and

(G) a statement of the owner's right to apply to the circuit court for a temporary injunction or other similar relief, restraining action by the enforcement agency.

(2) The notice shall be served on the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property or structure, dwelling, or building, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in Section 14-259(b).

(3) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained by the code enforcement agency for a minimum of two years, that demonstrates the structure, dwelling or building falls within one of the categories set forth in Section 14-255 (b)(1) or (2), sets forth the basis in reasonable detail including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property or structure, dwelling, or building for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and the date of

the proposed action, as a Class II legal advertisement, the first of which shall run at least thirty days before the date of the proposed action by the enforcement agency, and the last being no later than twenty days before the date of the proposed action by the enforcement agency.

(4) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality shall have the authority to proceed with correction or demolition of the subject structure, dwelling, or building.

#### Section 14-256. - Relief from Order for Corrective Action.

(a) Pursuant to W. Va. Code Section 8-12-16, the owner of property subject to corrective action shall be given notice of the right to apply to the Circuit Court of Kanawha County for a temporary injunction or other similar relief restraining correction or demolition by the City. Such notice shall be provided in the written notice produced pursuant to Section 14-255(c)(1).

(b) Pursuant to W. Va. Code Section 8-12-16, if such an application is made by the owner to the Circuit Court, a hearing shall be held within twenty days of the application, or as soon as reasonably possible.

(c) Pursuant to W. Va. Code Section 8-12-16, continuances of the hearing provided for in this section may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the structure, dwelling, or building likely to be incurred by the municipality during the continuance. This requirement is in addition to any other bond required or authorized by the West Virginia Rules of Civil Procedure or other applicable law.

(d) Pursuant to W. Va. Code Section 8-12-16, at the conclusion of a hearing held under this subdivision, if the court finds that the structure, dwelling, or building is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the City.

#### Section 14-257. - Owner Responsibility for Costs.

(a) The owner of any structure, dwelling, or building under order of the Code Enforcement Agency of the City of Charleston, shall be required to pay for the costs incurred by City for repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building.

(b) In addition to any other rights provided by law, the City may file a lien against the real property in question for an amount that reflects all costs incurred by the City for repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building. Any such lien shall be filed and notices in accordance with applicable West Virginia law and City Code.

#### Section 14-258. - Civil Action for Corrective Action and Recovery of Costs.

(a) In addition to any other rights provided in this Article and by law, the City may, in its discretion, institute a civil action in circuit court against the landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling, or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the City with respect to the property or structure, dwelling, or building and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(b) No fewer than ten days before instituting a civil action as provided in this section, the City shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(c) The notice shall be sent to the most recent address of the landowner of record in the office of the Kanawha County Assessor and to any other address for the landowner as may exist on record with the City. If, for any reason, such certified mail is returned without evidence of proper receipt, the City shall resend the notice(s) by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property or structure, dwelling, or building.

#### Section 14-259. - Notices.

(a) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that fall within one of the categories defined in Section 14-252 (d)(1), (2), (4), or (10) shall be served in accordance with the process set forth in the state building code.

(b) Any violation of this Article may be prosecuted by the City consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a Code Enforcement Official or City Attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and

complaint. If the first-class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

Section 14-260. – Absolute Defense. It shall be an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by the City under this Article that the City followed the procedures set forth herein; *provided*, that the City acted in good faith, can demonstrate that the structure, dwelling or building falls within one of the categories set forth in Section 14-255 (b)(1) or (2), followed the procedures set forth in this Article, and had adopted the State Building Code at the time the closure, demolition or other corrective action occurred.

Councilmember Harrison moved to approve the Resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Davis, Ealy, Faegre, Haas, Harrison, Ireland, Jones, King, Lane, Minardi, Overstreet, Reishman, Richardson, Salisbury, Smith, Snodgrass, Steele, Talkington, Ware, Mayor Jones

NAYS: NONE

ABSENT: Clowser, Hoover, Persinger

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7767 Committee Substitute passed.

**COMMITTEE ON FINANCE**

Councilmember Reishman, Chair of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 970-17 do pass.

Resolution No. 970-17 - Authorizing the Finance Director to amend the FY 2017- 2018 General Fund budget as indicated on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the FY 2017- 2018 General Fund budget as indicated on the attached list of accounts.

**General Fund FY 2017-2018 Budget Amendment No. 3 - November 6, 2017**

<b>Account No.</b>	<b>Department</b>	<b>Account Description</b>	<b>Amount</b>
001 368 01 0000	Revenue	Contributions from Others	(250,000)
001 436 00 000 2 230	Building Commission	Contract Services	250,000

To recognize contribution from CURA to provide funding for structure demolitions.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Davis, Ealy, Faegre, Haas, Harrison, Ireland, Jones, King, Lane, Minardi, Overstreet, Reishman, Richardson, Salisbury, Smith, Snodgrass, Steele, Talkington, Ware, Mayor Jones

NAYS: NONE

ABSENT: Clowser, Hoover, Persinger

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 970-17 adopted.

2. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 971-17 do pass.

Resolution No. 971-17 - A Resolution authorizing the Mayor or City Manager to enter into an Agreement with the West Virginia Department of Transportation Division of Highways, attached as Exhibit A hereto, for the purpose of installation of public art, the Gallery 64 North Wall Mural, on an abutment wall beneath eastbound I-64 adjacent to Pennsylvania Avenue and Washington Street, all within the Division of Highways' right-of-way; and further authorizing the Mayor or City Manager to enter into an Agreement with Charleston Main Streets, attached as Exhibit B hereto, for the purpose of installation and maintenance of the Mural.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That, the Mayor or City Manager is hereby authorized to enter into an Agreement with the West Virginia Department of Transportation Division of Highways, for the purpose of installation of public art, the Gallery 64 North Wall Mural, on an abutment wall beneath eastbound I-64 adjacent to Pennsylvania Avenue and Washington Street, all within the Division of Highways' right-of-way; and that the Mayor or City Manager is authorized to enter into an Agreement with Charleston Main Streets, attached as Exhibit B hereto, for the purpose of installation and maintenance of the Mural.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 971-17 adopted.

WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
AGREEMENT  
GALLERY 64 NORTH WALL MURAL  
KANAWHA COUNTY

THIS AGREEMENT, executed in duplicate, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called "Division", and the City of Charleston, a West Virginia municipality, hereinafter called "City,"

WITNESSETH that,

WHEREAS, in accordance with City's "Gallery 64 Public Art Project," City desires to beautify certain portions of Division's right-of-way of I-64, located within the City limits, by installing a mural along an abutment wall beneath eastbound I-64, adjacent to US 119 (Pennsylvania Avenue) and US 60 (Washington Street); and

WHEREAS, Division considers it to be in the public interest to allow City to enter Division's property to install the mural and to perform maintenance activities; and

WHEREAS, City has submitted to Division an application concerning the mural and City's request to implement such mural has been developed in conformance with Division's approved policy regarding art within Division's right-of-way;

NOW, THEREFORE, in consideration of the faithful performance of each party of the mutual covenants hereinafter set forth, Division and City agree as follows:

I I. City has submitted, and Division has approved, an application for installation of art within Division's right-of-way, and such application includes appropriate plans regarding a mural that City desires to install on Division's abutment wall beneath eastbound I-64, adjacent to US 119 (Pennsylvania Avenue) and US 60 (Washington Street), and any other work to be performed by City as part of this activity. Division will obtain any necessary Federal Highway Administration approval regarding the installation of the mural.

I II. The mural shall not include, illustrate or represent any material deemed by Division to be objectionable or offensive, nor shall mural contain any items deemed by Division to be of a political nature. No commercial advertising of any type may be placed on Division's property and mural shall comply with Division's outdoor advertising rules and regulations. After installation, if Division notifies City that any portion of mural is objectionable, offensive or containing content that is political in nature, or if Division notifies City that the mural is resulting in undue driver distraction, City then shall either implement additional measures, acceptable to Division, to address Division's concerns or City shall remove mural at City's expense.

I III. For as long as mural exists on Division's property, City shall continue oversight of vehicular and pedestrian traffic in the area of the mural for the purpose of identifying any impediment to vehicular and/or pedestrian traffic resulting from the placement of the mural. Upon request by the Division, the City shall provide pertinent comments and/or available information about vehicular and pedestrian traffic concerning the roadways adjacent to the mural that are not available to Division. City shall coordinate with Division for any other City proposals or plans pertinent to the area in which the mural is located.

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I IV. After receipt of Division's written authorization to proceed, City shall be permitted to enter Division's property to install the mural and perform other associated activities. All activities on Division's right of way must be first approved by Division. City shall bear the total cost of the project, including all materials, equipment, and labor. City shall secure all approvals and/or permits, if any, required by other governmental agencies for Project. City shall be responsible for any taxes or fees associated with the painting of the mural and associated activities.

I V. Division shall be notified of the construction schedule and shall have the right at all times to review the work. City's project shall be performed only between the hours 9:00 AM and 3:00 PM, and 7:00 PM and 10:00 PM, Monday through Friday and between the hours of 7:00 AM and 10:00 PM on Saturday, and shall commence no earlier than January 1, 2018, and is anticipated to be completed before September 30, 2018. City shall not apply any paint associated with mural project when ambient air temperatures are at or below forty degrees Fahrenheit (40o F). City shall be responsible for preparation of the abutment wall for installation of the mural but shall obtain from Division approval of any such proposed preparation method. Should Division's review reveal that the work is not



being performed in accordance with the approved plans, Division will report such fact to City for appropriate prompt remedial action.

I VI. City shall comply with all applicable Federal, State and local laws, rules and regulations, including, but not limited to hazardous waste requirements and the proper disposal of any paint or chemicals. City shall take appropriate measures to prevent and mitigate damage caused by spilled or dripped paint or chemicals, and City shall be responsible for the entire cost of any fines levied by any governmental agency as a result of City's project. City shall have no open flames nor shall smoking be permitted on Division's property. City shall obtain any necessary approvals concerning the use of any copyrighted material. Division and the Federal Highway Administration shall be granted an irrevocable, nonexclusive, nontransferable, non-commercial and royalty-free license to use for non-commercial purposes visual reproduction of the artwork that is the subject of this Agreement.

I VII. As between City and Division, City shall be responsible for one hundred percent (100%) of the cost of any repair necessary as a result of City's project, including damage to vehicles.

I VIII. In the performance of work by City, no equipment shall be permitted to be on the travel lanes or shoulders of any public highway except as shown on Plans approved by Division. City's project shall in no way interfere with the safe and efficient movement of traffic along the I-64 mainline, and shall not adversely affect Division's ability to reasonably access Division's property. City's project shall not adversely affect any permitted parking or existing use associated with a lease agreement by Division within area of City's project. City shall coordinate with Division regarding any maintenance or construction activities by Division in the area of City's Project and City's Project shall not adversely affect Division's construction or maintenance activities. City shall reinstall any fencing or other appurtenances that are removed by City.

I IX. Division shall have no responsibility to maintain the mural after completion by City. City shall obtain Division's prior approval regarding any maintenance activities associated with the mural that City desires to perform, including repainting. If any part of the mural is removed from the bridge piers as a result of damage, vandalism, Division's maintenance activities, or for any other reason, Division shall have no responsibility to repair or replace mural or compensate City for same. City shall promptly, appropriately, and to Division's satisfaction remove from the wall upon which mural is placed any graffiti or non-approved items. Division reserves the right to remove such graffiti or non-approved items, and by such act also may remove all or part of any mural, at Division's discretion and without compensation to City.

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I X. Division and City agree that as between Division and City, City shall be responsible for any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work performed by City, its agents, employees, or contractors, under this Agreement, during or any time after such work is being or has been performed, including (without limitation) liability involving bodily injury, death, property damage, or any violation or alleged violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or negligence of Division, its employees, agents or contractors.

I XI. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

II A. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or

III B. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

Further, if contract work by City is to be performed, City shall furnish evidence of having at least the minimum amounts of insurance required of the Contractor in Section 103.6 through and including Section 103.6.5 of the "West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2017," and supplements hereto. City also shall require its contractor(s) to have the aforesaid minimum insurance coverage and to provide evidence, as necessary, that contractor has a current license and is qualified to perform work in West Virginia. City shall require that its contractor(s) include the Division as an additional insured on all policies of insurance, except worker's compensation.

I XII. This agreement shall be binding upon the successors and assigns of each party thereto and shall not be assigned without the prior written consent of Division.

I XIII. Any resolutions of the City Council necessary to authorize City's compliance with the terms of this Agreement are attached hereto. In the absence of any such attached resolution, the duly authorized officer by whose signature City enters this Agreement warrants that no such resolution is necessary.

I XIV. This Agreement, including any Exhibits, constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.

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AGREEMENT FOR

CHARLESTON MAIN STREETS  
GALLERY 64 MURAL

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Charleston, a municipality (hereinafter called "City") and Charleston Main Streets (hereinafter called "CMS").

WITNESSETH that,

WHEREAS, CMS desires to install and maintain a mural on West Virginia Department of Transportation Division of Highways (hereinafter called "DOH") property on the wall north of Washington Street at Pennsylvania Street under I-64, the northern most section of the Gallery 64 area (hereinafter "Mural"); and

WHEREAS, City considers it to be in the public interest to coordinate with CMS to facilitate CMS's installation and maintenance of the Mural;

NOW, THEREFORE, in consideration of the faithful performance of each party of the mutual covenants hereinafter set forth, City and CMS agree as follows:

- 1) CMS acknowledges and agrees that it will be solely responsible for funding, selection of the artist, oversight of installation, and all maintenance related to the Mural.
- 2) City will execute the "West Virginia Department of Transportation Division of Highways Agreement Gallery 64 North Wall Mural Kanawha County," attached as Exhibit A hereto, authorizing and setting forth the requirements for the use of DOH property for the installation and maintenance of the Mural. CMS acknowledges and agrees that it shall comply with and abide by all requirements set forth by the DOH in the West Virginia Department of Transportation Division of Highways Agreement Gallery 64 North Wall Mural Kanawha County.
- 3) CMS shall maintain general liability insurance in a minimum amount of one million dollars, and shall name City and DOH as additional insureds with respect to the Mural. CMS shall indemnify, defend, and hold harmless City and DOH from and against any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work performed by CMS, its agents, employees, or contractors, under this Agreement, during or any time after such work is being or has been performed, including (without limitation) liability involving bodily injury, death, property damage, or any violation or alleged violation of any Federal, State or local law or regulation, except for any liability or damages due to the willful or intentional unlawful acts or negligence of City, its employees, agents or contractors. CMS shall indemnify, defend, and hold harmless City for any claims, demands, or causes of action resulting from a failure to comply with the requirements set forth in the "West Virginia Department of Transportation Division of Highways Agreement Gallery 64 North Wall Mural Kanawha County."
- 4) The performance of any work by CMS to install and maintain the Mural shall in no way interfere with the safe and efficient movement of traffic on roadways adjacent to the Mural, and CMS shall coordinate with the DOH if any interruption of traffic or modification of the traffic pattern is necessary during installation or maintenance of the Mural.

- 5) During installation and maintenance of the Mural, CMS shall be solely responsible for putting in place adequate safety measures and warnings for pedestrians, including, but not limited to, barricades, flashing lights, and all other measures required by law or necessary under the circumstances.
- 6) If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
  - A. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - B. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- 7) If contract work by CMS is to be performed as part of the installation or maintenance of the Mural, CMS shall require its contractor(s) to have a minimum of one million dollars of general liability insurance coverage and to provide evidence, as necessary, that contractor has a current license and is qualified to perform work in West Virginia. CMS and its contractors shall include the City and DOH as an additional insured on all policies of insurance, except worker's compensation. This insurance provision does not apply to the installation of artwork by any artist(s).
- 8) Notwithstanding the permission and obligations contained herein, in the event that the Mural ceases to comply with all applicable State and City laws and regulations, or if CMS fails after notice to perform any necessary maintenance or repairs, or if CMS fails to comply with or abide by the provisions of the "West Virginia Department of Transportation Division of Highways Agreement Gallery 64 North Wall Mural Kanawha County," City shall have the right to repair, alter, or remove the Mural. CMS further acknowledges and agrees that in the event the City should have a public need for the property affected by this Agreement, or if the "West Virginia Department of Transportation Division of Highways Agreement Gallery 64 North Wall Mural Kanawha County" is cancelled for any reason, the City may terminate this Agreement and remove the Mural from DOH property.
- 9) This agreement shall be binding upon the successors and assigns of each party thereto.

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 972-17 do pass.

Resolution No. 972-17 - Authorizing the City Manager to execute Change Order No. 1 with Garcie R. Marker & Sons, Inc., in relation to the Concrete Curb and Sidewalk Project-Summer2017, in the amount of \$9,878.00, providing for additions to the base contract as listed in Exhibit A, attached hereto. Change Order No. 1 increases the contract price from \$ 246,140.00 to \$256,018.00.



**CONCRETE CURB AND SIDEWALK PROJECT**  
**SUMMER 2017**

**PROJECT NUMBER E2 06/17-106**

**Change Order No.1**  
**October 31, 2017**

**This change order will consist of replacing curb and sidewalk in the 100 and 200 Blocks of Hunt Ave. (East Sides Only).**

<b>Sidewalk Replacement (Approx.)</b>	705.00 s.f. @ \$11.00/s.f.	\$ 7,755.00
<b>Plain Curb (Approx.)</b>	193.00 l.f. @ \$11.00/l.f.	<u>\$ 2,123.00</u>
	<b>Total:</b>	<b>\$ 9,878.00</b>

**Original Contract Price.....\$246,140.00**

**Change Order No.1 Price.....\$ 9,878.00**

**New Contract Price .....\$256,018.00**

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 972-17 adopted.

4. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 973-17 do pass.

Resolution No. 973-17 - Authorizing the Mayor or City Manager to receive and administer \$99,396.00 from the WV Department of Homeland Security and Emergency Management to purchase equipment for Charleston Fire's Regional Response Team.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to receive and administer \$99,396.00 from the WV Department of Homeland Security and Emergency Management to purchase equipment for Charleston Fire's Regional Response Team.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 973-17 adopted.

5. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 974-17 do pass.

Resolution No. 974-17 - Authorizing the Mayor or City Manager to receive and administer \$99,396.00 from the WV Department of Homeland Security and Emergency Management to purchase equipment for Charleston Fire's Regional Response Team.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to receive and administer \$99,396.00 from the WV Department of Homeland Security and Emergency Management to purchase equipment for Charleston Fire's Regional Response Team.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 974-17 adopted.

6. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 975-17 do pass.

Resolution No. 975-17 - Authorizing the Mayor or City Manager to receive and administer \$39,470.00 from the WV Division of Justice and Community Services for partial salary reimbursement, laptop, training and victim travel vouchers for the Charleston Police Department's VOCA Crime Victim Advocate.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to receive and administer \$39,470.00 from the WV Division of Justice and Community Services for partial salary reimbursement, laptop, training and victim travel vouchers for the Charleston Police Department's VOCA Crime Victim Advocate.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 975-17 adopted.

7. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 976-17 do pass.

Resolution No. 976-17 - Authorizing the Mayor or City Manager to receive and administer \$36,000.00 from the WV Division of Justice and Community Services for partial salary reimbursement for the two Prevention Resource Officers at Capital High School and Stonewall Jackson Middle School.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to receive and administer \$36,000.00 from the WV Division of Justice and Community Services for partial salary reimbursement for the two Prevention Resource Officers at Capital High School and Stonewall Jackson Middle School.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 976-17 adopted.

8. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 977-17 do pass.

Resolution No. 977-17 - Authorizing the Mayor or City Manager to receive and administer \$62,100.00 from the WV Division of Justice and Community Services for partial salary reimbursement for MDENT officers

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to receive and administer \$62,100.00 from the WV Division of Justice and Community Services for partial salary reimbursement for MDENT officers

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 977-17 adopted.

9. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 978-17 do pass.

Resolution No. 978-17 - Authorizing the City Manager to enter into one or more agreements for purchase of E-10 Gasoline and Diesel Fuel through bids to be received by the Kanawha Valley Regional Transportation Authority (“KVRTA”) on November 15, 2017. The bid prices for E-10 Gasoline and Diesel Fuel shall remain in effect for a 24-hour period following the bid opening; therefore, the City Manager is authorized to exercise discretion in accepting or rejecting such bid proposals as may be deemed to be in the best interest of the City and to report same to the Finance Committee and Council at the next scheduled meeting.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the City Manager is hereby authorized and directed to enter into one or more agreements for purchase of E-10 Gasoline and Diesel Fuel through bids to be received by the Kanawha Valley Regional Transportation Authority (“KVRTA”) on November 15, 2017. The bid prices for E-10 Gasoline and Diesel Fuel shall remain in effect for a 24-hour period following the bid opening; therefore, the City Manager is authorized to exercise discretion in accepting or rejecting such bid proposals as may be deemed to be in the best interest of the City and to report same to the Finance Committee and Council at the next scheduled meeting.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 978-17 adopted.



10. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 979-17 do pass.

Resolution No. 979-17 - Authorizing the City Manager to enter into two thirteen month leases, with the option for two twenty-four month renewals each subject to Council approval, with Paterno's LLC d/b/a Paterno's at the Park, for space at 601 Morris Street for the purpose of the operation of Paterno's at the Park restaurant (a copy of the proposed leases are attached hereto as Exhibit A and Exhibit B). The monthly rental for the lease of 4,815 square feet (Exhibit A) is \$3,000.00, and the monthly rental for the lease of 2,043 square feet (Exhibit B) is \$1,285, for a total monthly rental amount of \$4,285.00.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That, the City Manager is hereby authorized to enter into two thirteen month leases, with the option for two twenty-four month renewals each subject to Council approval, with Paterno's LLC d/b/a Paterno's at the Park, for space at 601 Morris Street for the purpose of the operation of Paterno's at the Park restaurant (a copy of the proposed leases are attached hereto as Exhibit A and Exhibit B). The monthly rental for the lease of 4,815 square feet (Exhibit A) is \$3,000.00, and the monthly rental for the lease of 2,043 square feet (Exhibit B) is \$1,285, for a total monthly rental amount of \$4,285.00.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 979-17 adopted.

THIS INDENTURE OF LEASE, Made as of this First day of November, 2017, by and between THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal corporation, whose address is P.O. Box 2749, Charleston, West Virginia 25330, party of the first part, hereinafter referred to as "Landlord", and PATERNO'S LLC d/b/a PATERNO'S AT THE PARK, whose address will be 601 Morris Street, Charleston, WV, party of the second part, hereinafter referred to as "Tenant";

WITNESSETH:

That, for and in consideration of the premises, covenants and agreements herein entered into between the parties, the parties do hereby agree to and with each other as follows:

1. DEMISED PREMISES: The Landlord does hereby rent and lease unto the Tenant, and the Tenant takes and leases from the Landlord, approximately Four Thousand Eight Hundred Fifteen (4,815) square feet of floor space, including the agreed upon common area allocations, (the "Premises") on the First (1st) Floor of 601 Morris Street in Charleston, Kanawha County, West Virginia, together with the right to use the common areas thereof. The Premises are delineated on the drawing attached hereto as "Exhibit A" and hereby incorporated in and made a part hereof.

2. TERM: The term of this lease shall be for a period of thirteen (13) months, commencing on the first day of November, 2017, and ending on the 31<sup>st</sup> day of December, 2018. Provided Tenant is not in default in the performance of its obligations under this Lease, this Lease will automatically renew for two additional terms of twenty-four (24) months each, each of which shall be referred to as a "Renewal Term", unless Tenant provides Landlord with written notice of Tenant's intention to not renew this Lease at least sixty (60) days prior to the end of the term or any Renewal Term.

3. RENTAL AMOUNT: The Landlord agrees to accept, and the Tenant agrees to pay a Base Rental for the thirteen months lease term in the amount of Thirty-nine Thousand Dollars (\$39,000.00), payable in amounts of Three Thousand Dollars (\$3,000.00) monthly beginning November 1, 2017. The Landlord agrees to accept, and the Tenant agrees to pay a Base Rental for each Renewal Term of Thirty-six Thousand Dollars (\$36,000.00), payable in amounts of Three Thousand Dollars (\$3,000.00) monthly.

4. RENTAL PAYMENTS: Said rentals are to be payable in advance on the first day of each and every month during the term of this lease; said payments to be made at the office of the City Manager, 501 Virginia Street East, Charleston, West Virginia 25301, or at such other location as the Landlord may designate in writing to the Tenant.

5. GENERAL COVENANTS: The parties hereby covenant and agree as follows:

a. The Tenant shall pay said rentals and any other amounts payable hereunder punctually and promptly.

b. Unless the Landlord consents thereto in writing, which consent shall not be unreasonably withheld, the Tenant:

(i) Shall not use or permit the Premises, or any part thereof, to be used for any purpose other than for a restaurant, bar, and related uses, or such purpose as may be approved in writing by Landlord.

(ii) Shall not make any alterations, additions or improvements without the prior written consent of the Landlord, and any and all such alterations and improvements shall at the option of the Landlord become and be the property of the Landlord upon the termination of the lease.

(iii) Shall not assign nor mortgage this lease, nor re-let or sublet the Premises, or any part thereof.

(iv) Shall not suffer any act of commission or omission which will increase the rate of fire or general liability insurance of the Premises or of the building of which the demised premises are a part.

6. TENANT'S USE OF THE PREMISES. Tenant shall occupy and use the Premises as a restaurant, bar and entertainment complex, or for such other purposes as may be approved in writing by the City and for all incidental and related uses. Tenant shall not occupy or use the Premises or permit the use or occupancy of the Premises for any purpose which:

(a) Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;

(b) May be dangerous to persons or properties; or

(c) May create a nuisance, disturb any other tenants or the occupants of neighboring property.

Notwithstanding the foregoing, the City may designate to Tenant in writing given at least 30 days in advance, certain time periods on which City-held events will be conducted in the ball field during which parties utilizing the ball field have required that the City prohibit the sale or consumption of alcoholic beverages in the outside colonnade space utilized by Tenant. The Tenant shall not permit the sale or consumption of alcoholic beverages in said outside colonnade space during such periods.

**7. COMPLIANCE WITH LAWS:**

a. The Tenant shall comply with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the use of the Premises.

b. The Landlord shall at all times and at their own cost keep and maintain the common areas and fixtures in a condition comparable to common areas in first-class commercial office space and in compliance with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the common areas.

**8. INDEMNIFICATION:**

a. Tenant shall indemnify, hold harmless and defend Landlord from and against any and all costs, expenses (including reasonable attorney fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person or governmental authority arising out of or in any way connected with the Lease or the Premises, and Landlord shall not be liable to Tenant on account of, (i) any failure by Tenant to perform any of the agreements, terms, covenants or conditions of this Lease required to be performed by Tenant, (ii) any failure by Tenant to comply with any statutes, ordinances, regulations, requirements or orders, present and future, of any governmental authority, or (iii) any accident, death or personal injury or damage, including fire or water damage, or loss or theft of property, which shall occur in the Premises or as a result of any act or omission by Tenant or its employees or agents, except as the same may be caused by the negligence or act of Landlord, its employees or agents. In all cases in which Tenant is required to obtain insurance, Tenant shall be responsible for all deductibles, and its insurance shall provide primary coverage.

b. In addition to and not in lieu of the above provisions, Tenant agrees to defend, indemnify and hold harmless the Landlord and its agents from any claims, liabilities, fines, alleged damages, and/or any types of actions whatsoever, including attorneys' fees, arising out of alleged injury to property or contamination of the environment (including, but not limited to, injury or contamination related to asbestos), whether or not prosecuted by a governmental entity, to the extent such claims arise out of Tenant's business activities on the Premises. Tenant further agrees to defend, indemnify and hold harmless Landlord and its respective agents in connection with any administrative proceeding arising out of alleged damage to person, property, or the environment, including, but not limited to notification that Landlord, or its agents, are potentially responsible parties for any alleged damage to any environmental hazard created by Tenant as a result of its performance under this Lease to the extent such claims arise out of Tenant's business activities on the Premises.

c. Tenant shall maintain general liability insurance during the term of this Lease and any extensions thereof in the amount of \$1,000,000.00 and shall name City as an additional insured for purposes of this Lease and the indemnity provisions herein. Tenant shall be responsible for the payment of all deductibles. Tenant shall also purchase and maintain all such other kinds of insurance and minimum amounts required to be purchased and maintained by Tenant throughout the term of this Lease. All policies shall provide primary coverage, shall reflect that Tenant is responsible for any and all deductibles. Tenant agrees to provide City with a copy of its insurance policies prior to the commencement of this Lease and any extensions thereof. In the event that Tenant's insurer denies coverage or terminates Tenant's insurance coverage, the City may, at its option, terminate this Lease immediately.

d. If the Premises or the building of which the demised premises are a part are partially damaged by fire or other casualty, unless caused by the negligence or willful actions of Tenant, the damages shall be repaired by and at the expense of Landlord and the rent, until such repairs shall be made, shall be apportioned from the date of such fire or other casualty according to the part of the Premises which is usable by Tenant. Subject to the terms herein, Landlord agrees to repair such damage within a reasonable period of time, except that Tenant agrees to repair and replace its own furniture, furnishings and equipment at Tenant's expense.

e. If the Premises are totally damaged or are rendered wholly untenable by fire or other casualty, and if Landlord in its sole discretion shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide to demolish it, then or in any such events Landlord shall, within thirty (30) days after such fire or other casualty, give Tenant written notice of such decision and thereupon, the term of this Lease shall expire

by lapse of time upon the third day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions hereinbefore provided, Tenant's liability for rent shall cease as of the date following the casualty. In addition, under any such circumstance Tenant may, within thirty (30) days after such fire or other casualty, elect to terminate this Lease by giving written notice thereof to Landlord, in which event this Lease shall expire as of the date of such fire or other casualty. No damages shall be owed by Landlord arising from election and/or termination.

9. CONDEMNATION: In the event that the land or building in which the Premises are located, or any part of said land or building be condemned, or the right of entry be granted as a part of the condemnation proceeding, for public use (irrespective of whether or not any portion of the demised premises is condemned), the Landlord, at its option, may terminate this lease upon one hundred twenty (120) days' notice in writing of its election so to do and upon the date set forth in said this lease shall cease, terminate and come to an end in the same manner and to the same effect as if such date were fixed herein for the expiration of the term. The Tenant shall have no claim against the Landlord nor be entitled to any portion of the amount which may be awarded as damages or paid as a result of such condemnation; provided, however, that nothing contained herein shall impair the Tenant's right to pursue a claim against the condemning authority for Tenant's relocation expenses. Landlord agrees to promptly advise Tenant of the filing of such proceeding advise Tenant of the filing of such proceeding.

10. BREACH: Upon the continuance of any breach or violation by the Tenant of any of the terms, covenants or conditions of this lease, for a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, the Landlord may, at its election, terminate this lease and upon such election, this lease and all of the estate of the Tenant in the Premises shall come to an end and the Landlord may thereupon reenter the premises as of its former estate. The Landlord shall not be entitled to elect to terminate this lease unless the Tenant fails, within a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, to begin use of all commercially reasonable efforts to remedy the breach or violation complained of or thereafter fails to diligently and promptly complete the remedying thereof, to the satisfaction of Landlord. Provided, however, that if the breach or violation complained of shall be the result of an action taken under any statute, ordinance, rule or requirement of any governmental body, then if the Tenant shall institute and prosecute diligently, any bona fide action to establish the invalidity thereof, the period of twenty (20) days shall be suspended until the final determination of such proceedings. Any waiver by the Landlord of any breach shall not be deemed a waiver of any similar or other further breach. The rights and privileges herein reserved shall be in addition to the remedies afforded to the Landlord in the courts of law and equity.

11. ABANDONMENT: If the Premises shall become vacant or abandoned, or if the Tenant or any assignee or subtenant to whose assignment or sublease the Landlord shall have consented, shall be dispossessed or removed from the Premises, or if the term hereof shall terminate prior to the expiration date fixed herein because of any act or omission of the Tenant or such assignee or subtenant, or because of the happening of any contingency or of the abandonment herein provided for, or as a result of any election exercised by the Landlord pursuant to the terms hereof, the Tenant does hereby authorize and empower the Landlord, at its option, to reenter the Premises as agent of the Tenant or for any occupant of the Premises under the Tenant, or for its own account or otherwise, and to re-let the same for any term expiring either prior to the original expiration date hereof or simultaneously therewith, or beyond such date and to repair the same if necessary or desirable for re-letting purposes and to receive and apply the rent so received to the cost of reentry, repair, and re-let and to the payment of the rent and other charges due hereunder. The Tenant shall not be entitled to any surplus accruing from such re-letting. Moreover, unless an Early Termination shall be executed as provided at paragraph 6, herein, Tenant shall remain liable for any deficiency, which deficiency shall be, at the Landlord's option, payable monthly as the amount thereof shall be ascertained, or in a single payment, with reasonable allowance for acceleration, on demand.

12. QUIET ENJOYMENT: The Landlord hereby covenants that if the Tenant shall perform all the covenants and agreements herein stipulated to be performed on the Tenant's part, Tenant shall at all times during the term hereof have the peaceful and quiet enjoyment and possession of the Premises without any manner of let or hindrance from the Landlord, or any persons lawfully claiming said Premises.

13. SURRENDER OF PREMISES: Tenant shall, at expiration or termination of the term, or any renewal term, peaceably surrender the Premises with all the improvements and additions thereto, broom-cleaned and in good

condition, excepting ordinary wear and tear. All repairs, alterations and additions made either by the Landlord or Tenant to the demised premises except unattached moveable business fixtures, shall, at the option of the Landlord, be the property of the Landlord and remain upon and be surrendered with the Premises as part thereof at the termination of this lease or any renewal term thereof.

14. SUBORDINATION:

a. This Lease shall be subject, junior and subordinate to that certain Contract of Lease-Purchase dated as of November 1, 2004 (the "Primary Lease"), between the West Virginia Economic Development Authority as lessor (the "Authority") and City as lessee, which expires on November 1, 2026, subject to annual termination as provided for below. The Primary Lease is of record in the office of the Clerk of the County Commission of Kanawha County, West Virginia, in Lease Book 251 at page 191.

b. Under the terms of the Primary Lease, the City has the right to terminate the Primary Lease at the end of any fiscal year upon 30 days' prior written notice to the Authority and to WesBanco Bank, Inc, as trustee (the "Trustee") under that certain Indenture, Credit Line Deed of Trust and Security Agreement (the "Indenture"), dated as of November 1, 2004, between the Authority and the Trustee. The Indenture constitutes a deed of trust on the baseball stadium complex known as "West Virginia Power Park," including the Premises. The Indenture is of record in the aforesaid Clerk's office in Trust Deed Book 3194 at page 567.

c. Notwithstanding the above, and in addition thereto, this lease shall be subject and subordinate at all times to the lien of any mortgages and/or deeds of trust and/or bond issues and/or trust debentures in any amount or amounts whatsoever now or hereafter placed on the land and buildings of which the Premises form a part and/or on the Landlord's interest or estate therein without the necessity of any further instrument or act on the part of the Tenant to effectuate such subordination, provided, however, the Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this lease to the lien of any such mortgage or mortgages and/or deeds of trust and/or bond issues and/or deeds of trust and/or bond issues and/or trust debentures as may reasonably be desired, and Tenant's execution of any and all documents necessary and proper to effectuate a subordination shall not be unreasonably withheld by Tenant.

15. UTILITIES: The parties recognize that the common areas may be serviced by certain utilities in common with other tenants or the building in general. It is agreed that Landlord shall make all arrangements for utilities and services for such spaces and shall be responsible for and pay such utility bills. Tenant shall be solely responsible for and shall make all arrangements for utilities and services to its Premises. Tenant shall pay for all utilities, including gas, electricity, water, telephone, sewer, incinerator, garbage, fire services, cable television, as well as any other utility or service used on or supplied to the building on the Premises. Tenant shall be responsible for the installation and maintenance of separate meters for utility services to its Premises.

Tenant understands and acknowledges that all utilities and services shall be furnished to the Premises by third parties and that Landlord shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities.

16. MAINTENANCE: The Landlord agrees to keep, maintain and repair the outside of the building and all common areas, including the sidewalk, the parking area, lawns and shrubbery, in a neat and tidy condition. Tenant shall, at its sole cost and expense, keep and maintain the Premises in a clean, healthful, and sanitary condition, free from all pests, vermin and odors (other than those odors normally associated with the restaurant/bar business), and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services within the Premises, keeping all windows clean and orderly. Tenant shall, at its sole cost and expense, repair and maintain the interior of the portion of the building comprising the Premises, except that which is common to other tenants, during the Term of this Lease, including all interior electrical and utility apparatus, all heating, ventilation and air conditioning systems and all mechanical systems and all component parts; Provided, that Tenant shall also be responsible, after coordination with the Landlord, to make all necessary replacements, repairs and perform all necessary maintenance and custodial service for the restrooms located on the same floor the building in which the Premises are situated and used by Tenant, its patrons and invitees.

17. ENTRY UPON PREMISES: Tenant shall permit Landlord, Landlord's agents or employees or any other person or persons authorized by the Landlord, to inspect the Premises at any time, and to enter the Premises if Landlord shall so elect for making repairs or additions thereto or for making alterations, additions or routine repairs to the building of which the Premises are a part. Landlord shall exercise due care to minimize any disruption to Tenant's business activities. Unless immediate access to the Premises is needed for emergency repairs, Landlord shall provide

Tenant with at least 48 hours notice before entering the Premises to make repairs. Except as specifically provided for in Paragraph 11 herein, no diminution or abatement of rent or other compensation shall be claimed or allowed for inconveniences, discomfort or interruption of business arising from the making of repairs or improvements to the building, or any part thereof, or to the machinery, fixtures or appurtenances thereto and therein, nor for any space taken to comply with any law, ordinance or order of any governmental authority. The Landlord and Landlord's agents may enter upon the Premises at reasonable hours to examine the same, and may during the last six months of Tenant's occupancy exhibit the same to any person or persons, and during said time may also maintain "For Lease" and "For Sale" notices on the outside walls thereof. Landlord shall, however, exercise reasonable care to minimize any disruption to Tenant's business activities.

18. NOTICES: All written notices by the Landlord to the Tenant shall be sent by certified mail to the Tenant at 601 Morris Street, Charleston, WV, or at such other location as the Tenant may designate in writing. All notices by the Tenant to the Landlord shall be sent by certified mail to the Landlord in care of the City Manager at City Hall, 501 Virginia Street East, Charleston, WV, 25301, or at such other location as the Landlord may designate in writing.

19. GOVERNING LAW: The terms, covenants and conditions of the within lease shall be binding upon and inure to the benefit of each of the parties hereto, their successors and assigns. Further, the terms, covenants and conditions of the within lease are to be governed by the laws of the State of West Virginia.

Landlord and Tenant agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.

20. ACCEPTANCE OF PREMISES: The taking of possession by Tenant of the leased premises is conclusive evidence that Tenant has examined the Premises and is satisfied with its physical condition and acknowledges receipt of it in good order and repair, except as otherwise specified to Landlord in writing within ten (10) days of taking possession, and the Tenant agrees that no representation as to condition of repair has been made, except as is contained in the lease and he agrees that no promise to decorate, alter, repair, or improve the Premises has been made except as is set forth herein.

21. REPAIRS: In the event that at any time before the expiration of the term hereby granted the Tenant shall cease to occupy the Premises, and shall remove substantially all of their furniture therefrom, the Landlord shall have the right to enter upon the Premises for the purpose of cleaning, altering or redecorating the same; and the exercise of such right by the Landlord shall in no way affect or modify the obligations and covenants of the Tenant under this lease for the remainder of the term thereof.

22. SIGNS: Tenant shall not display any signage visible from the outside of the Premises without written authorization from Landlord. Tenant may, however, place direction signage on the first floor, on the entrance door or sidelight windows to their premises, and will be identified on the common area marquee maintained by the Landlord in the first floor lobby.

23. TAXES AND FEES: Tenant shall pay any and all taxes and fees levied and assessed upon any personal property, fixtures and improvements belonging to Tenant and located upon the Premises.

24. SEVERABILITY: If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future law, such provision shall be fully severable, and further the remainder of this agreement shall be fully enforceable and remain in force and effect. All covenants and representations are binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of Landlord and Tenant. Where the singular or plural member is used herein the same shall be construed to apply to the party or parties whether singular or plural, and any word used herein indicating gender shall be construed to include all person, firms, or corporations, parties hereto, of whatever gender.

25. ENTIRE AGREEMENT; EFFECTIVE DATE OF LEASE: This Agreement constitutes the entire agreement between the Landlord and the Tenant pertaining to the subject matter contained herein. The Landlord and Tenant agree to execute any and all supplementary documents and to take all supplementary steps to give full force and effect to the basic terms and intent of this lease. Notwithstanding any agreement of this lease to the contrary, this lease is not effective until it is approved by the City Council of Landlord and duly executed by its Mayor.

Exhibit B

THIS INDENTURE OF LEASE, Made as of this First day of November, 2017, by and between THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal corporation, whose address is P.O. Box 2749, Charleston, West Virginia 25330, party of the first part, hereinafter referred to as "Landlord", and PATERNO'S LLC d/b/a PATERNO'S AT THE PARK, whose address will be 601 Morris Street, Charleston, WV, party of the second part, hereinafter referred to as "Tenant";

THIS INDENTURE OF LEASE, Made as of this First day of November, 2017, by and between THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal corporation, whose address is P.O. Box 2749, Charleston, West Virginia 25330, party of the first part, hereinafter referred to as "Landlord", and PATERNO'S LLC d/b/a PATERNO'S AT THE PARK, whose address will be 601 Morris Street, Charleston, WV, party of the second part, hereinafter referred to as "Tenant";

Exhibit B

WITNESSETH:

That, for and in consideration of the premises, covenants and agreements herein entered into between the parties, the parties do hereby agree to and with each other as follows:

1. DEMISED PREMISES: The Landlord does hereby rent and lease unto the Tenant, and the Tenant takes and leases from the Landlord, approximately Two Thousand Forty-three (2,043) square feet of floor space, including the agreed upon common area allocations, (the "Premises" or "Space B") on the First (1st) Floor of 601 Morris Street in Charleston, Kanawha County, West Virginia, together with the right to use the common areas thereof. The Premises are delineated on the drawing attached hereto as "Exhibit A" and hereby incorporated in and made a part hereof.

2. TERM: The term of this lease shall be for a period of thirteen (13) months, commencing on the first day of November, 2017, and ending on the 31<sup>st</sup> day of December, 2018. Provided Tenant is not in default in the performance of its obligations under this Lease, this Lease will automatically renew for two additional terms of twenty-four (24) months each, each of which shall be referred to as a "Renewal Term", unless Tenant provides Landlord with written notice of Tenant's intention to not renew this Lease at least sixty (60) days prior to the end of the term or any Renewal Term.

3. RENTAL AMOUNT: The Landlord agrees to accept, and the Tenant agrees to pay a Base Rental for the thirteen months lease term in the amount of Sixteen Thousand Seven Hundred Five (\$16,705.00), payable in amounts of One Thousand Two Hundred Eighty-five Dollars (\$1,285.00) monthly beginning November 1, 2017. The Landlord agrees to accept, and the Tenant agrees to pay a Base Rental for each Renewal Term of Fifteen Thousand Four Hundred Twenty Dollars (\$15,420.00), payable in amounts of One Thousand Two Hundred Eighty-five Dollars (\$1,285.00) monthly.

4. RENTAL PAYMENTS: Said rentals are to be payable in advance on the first day of each and every month during the term of this lease; said payments to be made at the office of the City Manager, 501 Virginia Street East, Charleston, West Virginia 25301, or at such other location as the Landlord may designate in writing to the Tenant.

5. GENERAL COVENANTS: The parties hereby covenant and agree as follows:

a. The Tenant shall pay said rentals and any other amounts payable hereunder punctually and promptly.

b. Unless the Landlord consents thereto in writing, which consent shall not be unreasonably withheld, the Tenant:

(i) Shall not use or permit the Premises, or any part thereof, to be used for any purpose other than for a restaurant, bar, and related uses, or such purpose as may be approved in writing by Landlord.

(ii) Shall not make any alterations, additions or improvements without the prior written consent of the Landlord, and any and all such alterations and improvements shall at the option of the Landlord become and be the property of the Landlord upon the termination of the lease.

(iii) Shall not assign nor mortgage this lease, nor re-let or sublet the Premises, or any part thereof.

(iv) Shall not suffer any act of commission or omission which will increase the rate of fire or general liability insurance of the Premises or of the building of which the demised premises are a part.

6. TENANT'S USE OF THE PREMISES. Tenant shall occupy and use the Premises as a restaurant, bar and entertainment complex, or for such other purposes as may be approved in writing by the City and for all incidental and related uses. Tenant shall not occupy or use the Premises or permit the use or occupancy of the Premises for any purpose which:

(a) Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;

(d) May be dangerous to persons or properties; or



(e) May create a nuisance, disturb any other tenants or the occupants of neighboring property.

(f)

#### 7. COMPLIANCE WITH LAWS:

a. The Tenant shall comply with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the use of the Premises.

b. The Landlord shall at all times and at their own cost keep and maintain the common areas and fixtures in a condition comparable to common areas in first-class commercial office space and in compliance with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the common areas.

#### 8. INDEMNIFICATION:

a. Tenant shall indemnify, hold harmless and defend Landlord from and against any and all costs, expenses (including reasonable attorney fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person or governmental authority arising out of or in any way connected with the Lease or the Premises, and Landlord shall not be liable to Tenant on account of, (i) any failure by Tenant to perform any of the agreements, terms, covenants or conditions of this Lease required to be performed by Tenant, (ii) any failure by Tenant to comply with any statutes, ordinances, regulations, requirements or orders, present and future, of any governmental authority, or (iii) any accident, death or personal injury or damage, including fire or water damage, or loss or theft of property, which shall occur in the Premises or as a result of any act or omission by Tenant or its employees or agents, except as the same may be caused by the negligence or act of Landlord, its employees or agents. In all cases in which Tenant is required to obtain insurance, Tenant shall be responsible for all deductibles, and its insurance shall provide primary coverage.

b. In addition to and not in lieu of the above provisions, Tenant agrees to defend, indemnify and hold harmless the Landlord and its agents from any claims, liabilities, fines, alleged damages, and/or any types of actions whatsoever, including attorneys' fees, arising out of alleged injury to property or contamination of the environment (including, but not limited to, injury or contamination related to asbestos), whether or not prosecuted by a governmental entity, to the extent such claims arise out of Tenant's business activities on the Premises. Tenant further agrees to defend, indemnify and hold harmless Landlord and its respective agents in connection with any administrative proceeding arising out of alleged damage to person, property, or the environment, including, but not limited to notification that Landlord, or its agents, are potentially responsible parties for any alleged damage to any environmental hazard created by Tenant as a result of its performance under this Lease to the extent such claims arise out of Tenant's business activities on the Premises.

c. Tenant shall maintain general liability insurance during the term of this Lease and any extensions thereof in the amount of \$1,000,000.00 and shall name City as an additional insured for purposes of this Lease and the indemnity provisions herein. Tenant shall be responsible for the payment of all deductibles. Tenant shall also purchase and maintain all such other kinds of insurance and minimum amounts required to be purchased and maintained by Tenant throughout the term of this Lease. All policies shall provide primary coverage, shall reflect that Tenant is responsible for any and all deductibles. Tenant agrees to provide City with a copy of its insurance policies prior to the commencement of this Lease and any extensions thereof. In the event that Tenant's insurer denies coverage or terminates Tenant's insurance coverage, the City may, at its option, terminate this Lease immediately.

d. If the Premises or the building of which the demised premises are a part are partially damaged by fire or other casualty, unless caused by the negligence or willful actions of Tenant, the damages shall be repaired by and at the expense of Landlord and the rent, until such repairs shall be made, shall be apportioned from the date of such fire or other casualty according to the part of the Premises which is usable by Tenant. Subject to the terms herein, Landlord agrees to repair such damage within a reasonable period of time, except that Tenant agrees to repair and replace its own furniture, furnishings and equipment at Tenant's expense.

e. If the Premises are totally damaged or are rendered wholly untenable by fire or other casualty, and if Landlord in its sole discretion shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide to demolish it, then or in any such events Landlord shall, within thirty (30) days after such fire or other casualty, give Tenant written notice of such decision and thereupon, the term of this Lease shall expire by lapse of time upon the third day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions hereinbefore provided, Tenant's liability for rent shall cease as of the date following the casualty. In addition, under any such circumstance Tenant may, within

thirty (30) days after such fire or other casualty, elect to terminate this Lease by giving written notice thereof to Landlord, in which event this Lease shall expire as of the date of such fire or other casualty. No damages shall be owed by Landlord arising from election and/or termination.

9. **CONDEMNATION:** In the event that the land or building in which the Premises are located, or any part of said land or building be condemned, or the right of entry be granted as a part of the condemnation proceeding, for public use (irrespective of whether or not any portion of the demised premises is condemned), the Landlord, at its option, may terminate this lease upon one hundred twenty (120) days' notice in writing of its election so to do and upon the date set forth in said this lease shall cease, terminate and come to an end in the same manner and to the same effect as if such date were fixed herein for the expiration of the term. The Tenant shall have no claim against the Landlord nor be entitled to any portion of the amount which may be awarded as damages or paid as a result of such condemnation; provided, however, that nothing contained herein shall impair the Tenant's right to pursue a claim against the condemning authority for Tenant's relocation expenses. Landlord agrees to promptly advise Tenant of the filing of such proceeding advise Tenant of the filing of such proceeding.

10. **BREACH:** Upon the continuance of any breach or violation by the Tenant of any of the terms, covenants or conditions of this lease, for a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, the Landlord may, at its election, terminate this lease and upon such election, this lease and all of the estate of the Tenant in the Premises shall come to an end and the Landlord may thereupon reenter the premises as of its former estate. The Landlord shall not be entitled to elect to terminate this lease unless the Tenant fails, within a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, to begin use of all commercially reasonable efforts to remedy the breach or violation complained of or thereafter fails to diligently and promptly complete the remedying thereof, to the satisfaction of Landlord. Provided, however, that if the breach or violation complained of shall be the result of an action taken under any statute, ordinance, rule or requirement of any governmental body, then if the Tenant shall institute and prosecute diligently, any bona fide action to establish the invalidity thereof, the period of twenty (20) days shall be suspended until the final determination of such proceedings. Any waiver by the Landlord of any breach shall not be deemed a waiver of any similar or other further breach. The rights and privileges herein reserved shall be in addition to the remedies afforded to the Landlord in the courts of law and equity.

11. **ABANDONMENT:** If the Premises shall become vacant or abandoned, or if the Tenant or any assignee or subtenant to whose assignment or sublease the Landlord shall have consented, shall be dispossessed or removed from the Premises, or if the term hereof shall terminate prior to the expiration date fixed herein because of any act or omission of the Tenant or such assignee or subtenant, or because of the happening of any contingency or of the abandonment herein provided for, or as a result of any election exercised by the Landlord pursuant to the terms hereof, the Tenant does hereby authorize and empower the Landlord, at its option, to reenter the Premises as agent of the Tenant or for any occupant of the Premises under the Tenant, or for its own account or otherwise, and to re-let the same for any term expiring either prior to the original expiration date hereof or simultaneously therewith, or beyond such date and to repair the same if necessary or desirable for re-letting purposes and to receive and apply the rent so received to the cost of reentry, repair, and re-let and to the payment of the rent and other charges due hereunder. The Tenant shall not be entitled to any surplus accruing from such re-letting. Moreover, unless an Early Termination shall be executed as provided at paragraph 6, herein, Tenant shall remain liable for any deficiency, which deficiency shall be, at the Landlord's option, payable monthly as the amount thereof shall be ascertained, or in a single payment, with reasonable allowance for acceleration, on demand.

12. **QUIET ENJOYMENT:** The Landlord hereby covenants that if the Tenant shall perform all the covenants and agreements herein stipulated to be performed on the Tenant's part, Tenant shall at all times during the term hereof have the peaceful and quiet enjoyment and possession of the Premises without any manner of let or hindrance from the Landlord, or any persons lawfully claiming said Premises.

13. **SURRENDER OF PREMISES:** Tenant shall, at expiration or termination of the term, or any renewal term, peaceably surrender the Premises with all the improvements and additions thereto, broom-cleaned and in good condition, excepting ordinary wear and tear. All repairs, alterations and additions made either by the Landlord or Tenant to the demised premises except unattached moveable business fixtures, shall, at the option of the Landlord, be the property of the Landlord and remain upon and be surrendered with the Premises as part thereof at the termination of this lease or any renewal term thereof.

14. SUBORDINATION:

a. This Lease shall be subject, junior and subordinate to that certain Contract of Lease-Purchase dated as of November 1, 2004 (the "Primary Lease"), between the West Virginia Economic Development Authority as lessor (the "Authority") and City as lessee, which expires on November 1, 2026, subject to annual termination as provided for below. The Primary Lease is of record in the office of the Clerk of the County Commission of Kanawha County, West Virginia, in Lease Book 251 at page 191.

b. Under the terms of the Primary Lease, the City has the right to terminate the Primary Lease at the end of any fiscal year upon 30 days' prior written notice to the Authority and to WesBanco Bank, Inc, as trustee (the "Trustee") under that certain Indenture, Credit Line Deed of Trust and Security Agreement (the "Indenture"), dated as of November 1, 2004, between the Authority and the Trustee. The Indenture constitutes a deed of trust on the baseball stadium complex known as "West Virginia Power Park," including the Premises. The Indenture is of record in the aforesaid Clerk's office in Trust Deed Book 3194 at page 567.

c. Notwithstanding the above, and in addition thereto, this lease shall be subject and subordinate at all times to the lien of any mortgages and/or deeds of trust and/or bond issues and/or trust debentures in any amount or amounts whatsoever now or hereafter placed on the land and buildings of which the Premises form a part and/or on the Landlord's interest or estate therein without the necessity of any further instrument or act on the part of the Tenant to effectuate such subordination, provided, however, the Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this lease to the lien of any such mortgage or mortgages and/or deeds of trust and/or bond issues and/or deeds of trust and/or bond issues and/or trust debentures as may reasonably be desired, and Tenant's execution of any and all documents necessary and proper to effectuate a subordination shall not be unreasonably withheld by Tenant.

15. UTILITIES: The parties recognize that the common areas may be serviced by certain utilities in common with other tenants or the building in general. It is agreed that Landlord shall make all arrangements for utilities and services for such spaces and shall be responsible for and pay such utility bills. The Landlord does covenant and agree that during the term of this lease the following will be furnished at the Landlord's expense:

a. Heating and air-conditioning within the Premises between the hours of 6:00 am and 9:00 pm, seven days per week unless otherwise agreed to in writing by Tenant and Landlord. Upon twenty-four (24) hours written notice from the Tenant to the Landlord with regard to a particular day or time outside of the hours set forth hereinabove, the Landlord agrees to keep the premises comfortably heated or cooled for that particular day or time outside of the hours set forth hereinabove.

b. Electric power and light necessary to operate elevator, building air-conditioning and heating systems and to light building and operate Tenant's equipment, including customary kitchen equipment. In addition to the amounts set forth in paragraph 3 herein, the Tenant shall pay for all other electricity for equipment that requires more than usual and customary amounts of electricity and will be charged on a metered or pro-rata share basis.

Tenant understands and acknowledges that all utilities and services shall be furnished to the Premises by third parties and that Landlord shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities.

16. MAINTENANCE: The Landlord agrees to keep, maintain and repair the outside of the building and all common areas, including the sidewalk, the parking area, lawns and shrubbery, in a neat and tidy condition. Tenant acknowledges and agrees that that Tenant shall be responsible at its sole cost and expense for providing janitorial services within the Premises, including the cleaning and general maintenance of the restrooms on the same floor as the Premises. Tenant shall, at its sole cost and expense, repair and maintain the interior of the portion of the building comprising the Premises, except that which is common to other tenants, during the Term of this Lease, and excepting all interior electrical and utility apparatus, all heating, ventilation and air conditioning systems and all mechanical systems and all component parts.

17. ENTRY UPON PREMISES: Tenant shall permit Landlord, Landlord's agents or employees or any other person or persons authorized by the Landlord, to inspect the Premises at any time, and to enter the Premises if Landlord shall so elect for making repairs or additions thereto or for making alterations, additions or routine repairs to the building of which the Premises are a part. Landlord shall exercise due care to minimize any disruption to Tenant's business activities. Unless immediate access to the Premises is needed for emergency repairs, Landlord shall provide Tenant with at least 48 hours notice before entering the Premises to make repairs. Except as specifically provided for in Paragraph 11 herein, no diminution or abatement of rent or other compensation shall be claimed or allowed for

inconveniences, discomfort or interruption of business arising from the making of repairs or improvements to the building, or any part thereof, or to the machinery, fixtures or appurtenances thereto and therein, nor for any space taken to comply with any law, ordinance or order of any governmental authority. The Landlord and Landlord's agents may enter upon the Premises at reasonable hours to examine the same, and may during the last six months of Tenant's occupancy exhibit the same to any person or persons, and during said time may also maintain "For Lease" and "For Sale" notices on the outside walls thereof. Landlord shall, however, exercise reasonable care to minimize any disruption to Tenant's business activities.

18. NOTICES: All written notices by the Landlord to the Tenant shall be sent by certified mail to the Tenant at 601 Morris Street, Charleston, WV, or at such other location as the Tenant may designate in writing. All notices by the Tenant to the Landlord shall be sent by certified mail to the Landlord in care of the City Manager at City Hall, 501 Virginia Street East, Charleston, WV, 25301, or at such other location as the Landlord may designate in writing.

19. GOVERNING LAW: The terms, covenants and conditions of the within lease shall be binding upon and inure to the benefit of each of the parties hereto, their successors and assigns. Further, the terms, covenants and conditions of the within lease are to be governed by the laws of the State of West Virginia.

Landlord and Tenant agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.

20. ACCEPTANCE OF PREMISES: The taking of possession by Tenant of the leased premises is conclusive evidence that Tenant has examined the Premises and is satisfied with its physical condition and acknowledges receipt of it in good order and repair, except as otherwise specified to Landlord in writing within ten (10) days of taking possession, and the Tenant agrees that no representation as to condition of repair has been made, except as is contained in the lease and he agrees that no promise to decorate, alter, repair, or improve the Premises has been made except as is set forth herein.

21. REPAIRS: In the event that at any time before the expiration of the term hereby granted the Tenant shall cease to occupy the Premises, and shall remove substantially all of their furniture therefrom, the Landlord shall have the right to enter upon the Premises for the purpose of cleaning, altering or redecorating the same; and the exercise of such right by the Landlord shall in no way affect or modify the obligations and covenants of the Tenant under this lease for the remainder of the term thereof.

20. SIGNS: Tenant shall not display any signage visible from the outside of the Premises without written authorization from Landlord. Tenant may, however, place direction signage on the first floor and on the entrance door or sidelight windows to their suite.

21. TAXES AND FEES: Tenant shall pay any and all taxes and fees levied and assessed upon any personal property, fixtures and improvements belonging to Tenant and located upon the Premises.

22. SEVERABILITY: If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future law, such provision shall be fully severable, and further the remainder of this agreement shall be fully enforceable and remain in force and effect. All covenants and representations are binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of Landlord and Tenant. Where the singular or plural member is used herein the same shall be construed to apply to the party or parties whether singular or plural, and any word used herein indicating gender shall be construed to include all person, firms, or corporations, parties hereto, of whatever gender.

23. ENTIRE AGREEMENT; EFFECTIVE DATE OF LEASE: This Agreement constitutes the entire agreement between the Landlord and the Tenant pertaining to the subject matter contained herein. The Landlord and Tenant agree to execute any and all supplementary documents and to take all supplementary steps to give full force and effect to the basic terms and intent of this lease. Notwithstanding any agreement of this lease to the contrary, this lease is not effective until it is approved by the City Council of Landlord and duly executed by its Mayor.

11. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 980-17 do pass.

Resolution No. 980-17 - A Resolution granting Appalachian Power Company, a unit of American Electric Power (“AEP”) a permanent transmission easement across City property adjacent to the Spring Hill Cemetery, as more fully described and depicted in Exhibit A hereto, being part of an overall upgrade by AEP of electric services provided to Charleston and the surrounding area; said easement to be granted to AEP in consideration of payment of \$5,040.00 for the value of the easement. Further, the City Manager is hereby authorized to execute the easement granted herein, consistent with the terms and conditions set forth in Exhibit A hereto.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 980-17 adopted.

**Line Name:** Bullitt Street - Chesterfield  
**Line No.:** TLN383:1195 **Easement No.:** 18

**EASEMENT AND RIGHT OF WAY**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, in consideration of Ten and NO/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the covenants hereinafter set forth, **The City of Charleston**, whose address is PO Box 2749, Charleston, West Virginia 25330, ("Grantor"), whether one or more persons, hereby grants, sells, conveys, and warrants to **Appalachian Power Company** a(n) West Virginia corporation, a unit of American Electric Power, whose principal business address is 1 Riverside Plaza, Columbus, Ohio 43215, ("AEP") and its successors, assigns, lessees and tenants a permanent easement and right of way ("Easement"), for electric transmission, distribution, and communication lines and appurtenant equipment and fixtures, being, in, on, over, under, through and across the following described lands of the Grantor, situated in the two certain lots or parcels of land situated within the corporate limits of the City of Charleston, Charleston District, Kanawha County, West Virginia, being Lots No. One (1) and Two (2) of Block No. 1, of the Capitol Hill Addition to said City of Charleston.

Grantor(s) claims title by Agreement Book 305 Page 541 recorded 11/8/1926 in the Kanawha County Clerk's Office.

Auditor/Key/Tax Number: 10 48005800000000

The Easement Area is more fully described and depicted on Exhibit "A", a copy of which is attached hereto and made a part hereof ("Easement Area").

**GRANTOR FURTHER GRANTS AEP THE FOLLOWING RIGHTS:**

The right, now or in the future, to construct, reconstruct, operate, maintain, alter, improve, extend, inspect, patrol, protect, repair, remove, replace, upgrade and relocate within the Easement Area, poles, towers, and structures, made of wood, metal, concrete or other materials, and crossarms, guys, anchors, grounding systems, and all other appurtenant equipment and fixtures, and to string conductors, wires and cables; together with the right to add to said facilities from time to time, and the right to do anything necessary, useful or convenient for the enjoyment of the Easement herein granted.

The right, in AEP's discretion, now or in the future, to cut down, trim, remove, and otherwise control using herbicides or tree growth regulators or other means, any and all trees, overhanging branches, vegetation or brush situated within the Easement Area. AEP shall also have the right to cut down, trim or remove trees situated on lands of Grantor which adjoin the Easement Area when in the opinion of AEP those trees may endanger the safety of, or interfere with the construction, operation or maintenance of AEP's facilities or ingress or egress to, from or along the Easement Area.

The right of unobstructed ingress and egress, at any and all times, over, across and along and upon the Easement Area, and across the adjoining lands of Grantor as may be necessary for access to and from the Easement Area for the above referenced purposes.

**THIS GRANT IS SUBJECT TO THE FOLLOWING CONDITIONS:**

The Grantor reserves the right to cultivate annual crops, pasture, construct fences (provided gates are installed that adequately provide AEP the access rights conveyed herein) and roads or otherwise use the lands encumbered by this Easement in any way not inconsistent with the rights herein granted. In no event, however, shall Grantor, its heirs, successors, and assigns plant or cultivate any trees or place, construct, install, erect or permit any temporary or permanent building, structure, improvement or obstruction including but not limited to, storage tanks, billboards, signs, sheds, dumpsters, light poles, water impoundments, above ground irrigation systems, swimming pools or wells, or permit any alteration of the ground elevation, over, or within the Easement Area. AEP may, at Grantor's cost, remove any structure or obstruction if placed within the Easement Area, and may re-grade any alterations of the ground elevation within the Easement Area.

AEP agrees to repair or pay the Grantor for actual damages sustained by Grantor to crops, fences, gates, irrigation and drainage systems, drives, or lawns that are permitted herein, when such damages arise out of AEP's exercise of the rights herein granted.

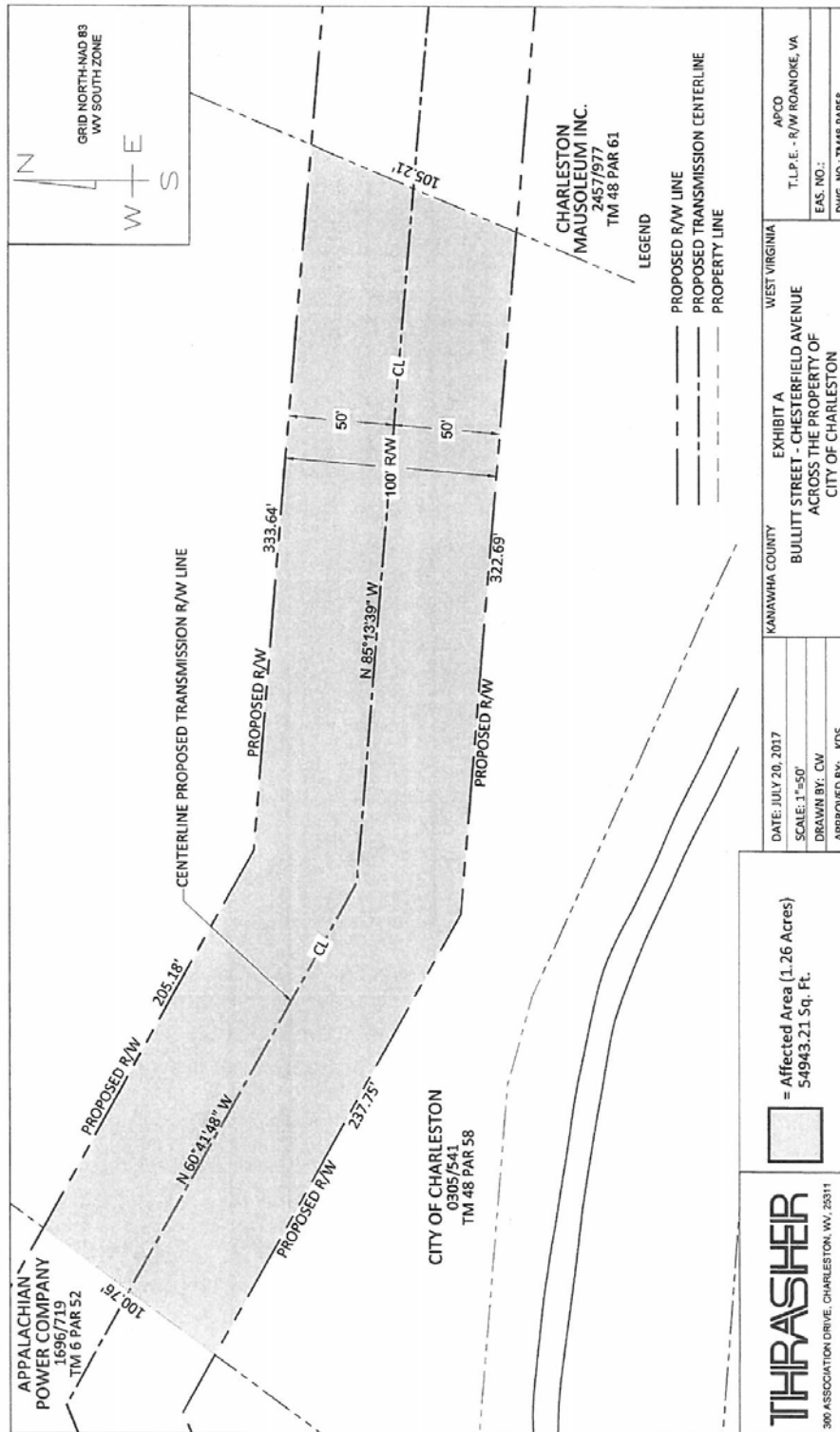
The failure of AEP to exercise any of the rights granted herein, or the removal of any facilities from the Easement, shall not be deemed to constitute an abandonment or waiver of the rights granted herein.

This instrument contains the complete agreement, expressed or implied between the parties herein and shall inure to the benefit of and be binding on their respective successors, assigns, heirs, executors, administrators, lessees, tenants, and licensees.

This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

**Any remaining space on this page left intentionally blank. See next page for signatures.**





**THRASHER**  
300 ASSOCIATION DRIVE, CHARLESTON, WV, 25311

**Legend:**  
 = Affected Area (1.26 Acres)  
 54943.21 Sq. Ft.

12. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 981-17 do pass.

Resolution No. 981-17 - Authorizing settlement of the personal injury and wrongful death claim of the Estate of Dora Clarke, in the amount of \$675,000.00 (to be paid by the City's liability insurer, minus the City's \$300,000.00 self-insured retention); and further authorizing the Mayor, City Manager, or their designee to execute any documents necessary to consummate the full settlement of the claim, subject to review and approval by the City Attorney, in exchange for a full release of the City, its officers, employees, and agents by Claimant of any and all claims related to or arising from the personal injury and death of Mrs. Clarke.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the settlement of the personal injury and wrongful death claim of the Estate of Dora Clarke, in the amount of \$675,000.00 (to be paid by the City's liability insurer, minus the City's \$300,000.00 self-insured retention) is hereby authorized; and that the Mayor, City Manager, or their designee is hereby authorized to execute any documents necessary to consummate the full settlement of the claim, subject to review and approval by the City Attorney, in exchange for a full release of the City, its officers, employees, and agents by Claimant of any and all claims related to or arising from the personal injury and death of Mrs. Clarke.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. A roll call was taken:

YEAS: Burka, Burton, Ceperley, Chestnut, Davis, Ealy, Haas, Harrison, Ireland, Jones, King, Lane, Minardi, Overstreet, Reishman, Richardson, Salisbury, Smith, Snodgrass, Steele, Talkington, Ware, Mayor Jones

NAYS: NONE

ABSTAIN: Faegre

ABSENT: Clowser, Hoover, Persinger

With a majority of members elected recorded thereon as voting in the affirmative with one abstention the Mayor declared Resolution 981-17 adopted.

13. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 982-17 do pass.

Resolution No. 982-17 - Authorizing the Mayor or City Manager, for and on behalf of the City and the Charleston Fire Department (the “CFD”), to enter into a contract, attached hereto as Exhibit A, to retain William Payne, MD as Medical Director to supervise the medical performance of emergency medical service personnel employed by the CFD at the rate of \$100.00 per hour.”

WHEREAS, the CFD renders emergency medical services in accordance with the Emergency Medical Services Act of 1996 (the “Act”) set forth in W.Va. Code §16-4C-1, *et seq.*; and

WHEREAS, the CFD requires the services of a licensed physician to act as Medical Director to supervise the medical performance of emergency medical service personnel and ensure compliance with the Act; and

WHEREAS, the CFD desires to enter into a contract consistent with Exhibit A hereto, to retain William Payne as Medical Director to satisfy the requirements of the Act and to ensure proper implementation and oversight of the emergency medical services provided by the CFD;

NOW, THEREFORE, BE IT RESOLVED that City Council for the City of Charleston authorizes the Mayor, for and on behalf of the City and the CFD, to enter into a contract consistent with Exhibit A attached hereto and upon final approval by the City Attorney, to retain William Payne, MD as Medical Director to supervise the medical performance of emergency medical service personnel employed by the CFD at the rate of \$100.00 per hour.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 982-17 adopted.

AGREEMENT

THIS AGREEMENT is made this 1st day of November, 2017, by and between The City of Charleston, a municipal corporation for and on the behalf of the Charleston Fire Department hereinafter referred to as "CFD", and William Payne MD, hereinafter referred to as "Medical Director".

WHEREAS, Medical Director is a physician licensed to practice medicine in the State of West Virginia;

WHEREAS, CFD desires for Medical Director to serve as medical director of the EMS ambulance services;

NOW THEREFORE, in consideration of mutual terms, conditions, covenants, and requirements contained herein, and for the purpose of ensuring medical direction to CFD in accordance with Chapter 16, Article 4C of the Code of West Virginia, the parties agree as follows:

1. CFD shall, consistent with the requirements of W.Va. code 16-4C-16, provide professional liability insurance for the Medical Director for any and all activity related to the performance of such duties for CFD.
  
2. Medical Director agrees that he shall conform to the following:
  - A.) Hold a currently registered license as a physician in WV;
  
  - B.) Be a full-time emergency physician or practice emergency medicine for at least half time of a full time practice;
  
  - C.) Possess a valid Drug Enforcement Agency (DEA) number;
  
  - D.) Perform the following Medical Director duties:
    - 1.) Provide such services as necessary to promote compliance by CFD EMS personnel with professionally recognized standards of patient care;
  
    - 2.) Direct the EMS system and the EMS personnel in the overall clinical management of patients;
  
    - 3.) Assist with system development through planning, implementing, and evaluating EMS programs;
  
    - 4.) Oversee compliance with medical policies, procedures, standards, and treatment protocols as adopted by CFD;
  
    - 5.) Aid in the establishment of state approved treatment protocols, procedure policies, and guidelines as established by the region or state;
  
    - 6.) Provide information and recommendations on matters requiring physician

input, as requested;

- 7.) Aid in compliance with applicable state rules, regulations, and policies;
- 8.) Assist in designing/overseeing compliance with applicable security procedures for medications, fluids, and controlled substances in accordance with the United States Drug Enforcement Administration and state regulations;
- 9.) Provide medical oversight for CFD, including authorizing or prohibiting such personnel from performing Critical Care, Advanced, or Basic Life Support procedures and/or pre-arrival instructions;
- 10.) The Medical Director will oversee and maintain an active role in EMS education in the areas of original certification, recertification, continuing education, communications, and testing;
- 11.) The Medical Director shall provide medical audit, review, and evaluation of the performance of CFD personnel via an established QA/QI program, at a minimum, which shall include but not be limited to a review of run reports, direct observation, and comparison of field performances with established standards, policies, protocols, and guidelines;
- 12.) The Medical Director shall provide service to CFD at the established hourly rates;
- 13.) The Medical Director shall ensure that the CFD participates in quality assurance programs developed by the state or region;
- 14.) The Medical Director shall provide advice and direction to CFD on the prevention of illness and injuries which are common to EMS personnel in the performance of their duties;
- 15.) Medical accountability and quality assurance are of paramount importance in the operation of the EMS System. The Medical Director is responsible for overseeing the medical conduct of the system's prehospital care providers;
- 16.) The Medical Director shall hold CFD harmless for any activities performed solely and exclusively by the Medical Director; and
- 17.) The Medical Director will provide input, review and approval of dispatch protocols, also known as Emergency Medical Dispatch cards, as may be necessary and required. Such input will include, but not be limited to, key questions, pre-arrival instructions, post dispatch instructions, hot/cold

response decisions, automatic first responder dispatch algorithms, as well as the processes involved in the ongoing analysis and review (QA/QI) of the programs and their effectiveness.

3. Compensation. Medical Director shall be paid the sum of \$100.00 per hour for services provided under this Agreement by the Medical Director. The parties agree that Medical Director shall generate and submit one invoice per month, containing hourly charges for services provided under this Agreement for the applicable month. CFD agrees to remit to Medical Director payment in full for each monthly invoice within 20 days of receipt of a proper invoice.
4. Relationship of the Parties. The parties agree that the Medical Director is an independent contractors of the CFD and not an employee. Medical Director will not receive the benefits of employment from CFD, including, but not limited to, health insurance and workers compensation coverage. Nothing contained in this Agreement shall be deemed to restrict in any way the prerogative and responsibility of the Medical Director to exercise independent medical judgment in all matters within the scope of his license and duties relative to the provision of services hereunder. Nothing contained in this Agreement shall be deemed to restrict or prevent the Medical Director from engaging in other emergency medical services, medical direction activities, or in any other business at such times, places and in such manner as the Medical Director shall determine, in his sole discretion, during the term of this Agreement and thereafter.
5. Term/Termination. This Agreement shall be effective upon signing, shall extend through October 31, 2018, and, subject to annual approval and appropriation of funds by Charleston City Council, shall be automatically renewed for successive one (1) year terms unless terminated as herein stated. This Agreement may be terminated without cause by any party by providing sixty (60) days notice in writing to all parties to this Agreement.
6. Hold Harmless. Medical Director agrees to accept and be responsible for its own acts or omissions in providing services under this Agreement and nothing in this Agreement shall be interpreted to place any such responsibility for professional acts or omissions onto CFD. Medical Director agrees to indemnify, defend and hold harmless CFD, its directors, officers, agents, and employees from and against all claims, actions or causes of actions, including attorney fees, arising out of Medical Director's services under this Agreement.  
  
CFD agrees to accept and be responsible for its own acts or omissions, as well as those acts or omissions of its employees, and nothing in this Agreement shall be interpreted to place any such responsibility onto Medical Director.
7. Government Access to Records. In accordance with 42 U.S.C. Section 1395x(v)(l) and 42 C.F.R. Section 402.300-402.304, Medical Director agrees that he will provide to the extent allowable by the law the Secretary of Health and Human Services and the Comptroller General access to the Agreement between Medical Director and CFD, and to such Medical Director books, documents and records necessary to verify the cost of services performed until the expiration of four (4) years after the services are furnished. Such access shall be provided upon written request from the Secretary of Health and Human Services or the Comptroller General or their authorized representatives.
8. HIPAA Compliance. CFD acknowledges that Medical Director is bound by law to have written agreements with its business partners who may have access to patient information requiring compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the rules and regulations promulgated thereunder. Accordingly, CFD shall execute the Business Associate Agreement

- attached as Exhibit A to this Agreement. Failure by CFD to comply with this provision shall result in immediate and automatic termination of the Agreement without penalty or cost to Medical Director.
9. **Equal Opportunity.** The parties hereto shall not discriminate against any patient or employee because of race, color, handicap, age or national origin nor shall there be any such discrimination in the employment practices and personnel policies of either party.
  10. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of West Virginia and shall be construed in accordance therewith. The parties agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.
  11. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior negotiations, representations, warranties, commitments, offers, writings and agreements.
  12. **Construction of Agreement.** The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against Medical Director or CFD. The headings preceding each paragraph are for convenience only and shall not in any way be construed to affect the meaning of the paragraphs themselves.
  13. **Severability.** In the event that any provision of this Agreement shall violate any applicable statute, ordinance or rule of law in any jurisdiction which governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
  14. **No Waiver.** The failure by either party to require performance of any provision of this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
  15. **Assignments Prohibited.** Nothing in this Agreement shall be construed to permit assignment by CFD or Medical Director of any rights or duties under this Agreement and such assignment is expressly prohibited.
  16. **Amendments.** This Agreement may not be amended, altered, modified or extended except by written agreement signed by each of the parties hereto.
  17. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing, and shall be delivered personally, or sent by overnight courier service or by U.S. certified mail, return receipt requested, postage prepaid, to the address listed below:  
If to Medical Director:  
William Payne MD  
5122 Kanawha Ave.  
Charleston, WV 25304  
If to CFD:  
P.O. Box 2749  
Charleston, WV 25330  
Attn: EMS Operations Coordinator
  18. **Authority.** The persons signing below warrant that they have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

Exhibit A

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into effective this 1st day of April, 2010 (“Commencement Date”), by and between CFD, (a “Covered Entity”) and William Payne, MD (“Business Associate”).

RECITALS

WHEREAS, Covered Entity is a licensed health care provider and is a covered entity as defined in 45 Code of Federal Regulations (“CFR”) Part 164.103 and the regulations codified at 45 CFR Parts 160 and 164 (“HIPAA Privacy Rule”) promulgated under Title F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);

WHEREAS, Covered Entity has determined that Business Associate is a business associate of Covered Entity as defined under HIPAA and Covered Entity may provide, in the course of its operations, individually identifiable health information as defined in HIPAA (“Protected Health Information”) to Business Associate to provide services to Covered Entity;

WHEREAS, this Agreement addresses the conditions under which Covered Entity will disclose and Business Associate will obtain and use such Protected Health Information;

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

ARTICLE I

RESPONSIBILITIES OF BUSINESS ASSOCIATE

1.1 Confidentiality. Business Associate agrees to maintain the confidentiality of any Protected Health Information provided to it by Covered Entity in accordance with all applicable federal, state and local laws and regulations, and more specifically, in accordance with the following:

1.1.1 Business Associate represents and warrants that Protected Health Information will be used and disclosed solely as necessary to perform the agreed upon services to or on behalf of Covered Entity, and Covered Entity relies upon such representation and warranty in providing the Protected Health Information.

1.1.2 Business Associate represents and warrants that it will not use, disclose, release, reveal, show, sell, rent, lease, loan, publish or otherwise grant access to Protected Health Information in any manner that is prohibited by law or regulation, or in any manner that would be a violation of any law or regulation if it were to have been done by Covered Entity.

1.1.3 Business Associate represents and warrants that if it uses, discloses, releases, reveal, shows, sells, rents, leases, loans, publishes or otherwise grants access to Protected Health Information or an element of Protected Health Information, it will do so only in the minimum amount and to the minimum number of individuals necessary to achieve the purpose of the services being rendered to or on behalf of Covered



Entity.

1.1.4 Business Associate agrees to establish and utilize appropriate administrative, technical, and physical safeguards to protect the confidentiality of Protected Health Information that it receives from Covered Entity in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.316, and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as applicable. Business Associate shall prevent individuals not involved in performing the services that it provides to Covered Entity from using or accessing the Protected Health Information.

1.1.5 Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information that constitutes a “breach” as defined by Section 13400 of the HITECH Act, as well as any use or disclosure that is not authorized by or otherwise constitutes a violation of this Agreement, within thirty (30) days of its discovery.

1.1.6 Business Associate agrees to mitigate, to the extent practicable, any harmful effects resulting from use or disclosure of Protected Health Information by Business Associate which is not permitted by law or by this Agreement.

1.1.7 Business Associate shall implement written security and privacy policies and procedures regarding the handling of Protected Health Information as required of Business Associates per the HITECH Act. Business Associate shall conduct periodic compliance audits as required per the HITECH Act.

1.1.8 Business Associate shall comply with requests for restrictions, requests for accountings, and requests for access to Protected Health Information in accordance Section 13405 of the HITECH Act.

1.1.9 Business Associate agrees that if Covered Entity determines or has a reasonable belief that Business Associate may have used, made a disclosure of or permitted access to Protected Health Information in a way that is not authorized by this Agreement, then Covered Entity may in its sole discretion require Business Associate to: (a) promptly investigate and provide a written report to Covered Entity of the Business Associate’s determination regarding any alleged or actual authorized disclosure, access, or use; (b) cease such practices immediately; (c) return to Covered Entity, or destroy, all Protected Health Information; and (d) take any other action Covered Entity deems appropriate.

1.1.10 Business Associate agrees to require all of its subcontractors and agents that receive, use or have access to Protected Health Information under this Agreement to agree, in writing to abide by all of the terms to which Business Associate is subject to under this Agreement with respect to the Protected Health Information.

1.1.11 Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information for the proper management and administration of Business Associate’s business operations or to carry out its legal responsibilities.

1.1.12 Business Associate and Covered Entity acknowledge that state and federal laws relating to data security and privacy are rapidly evolving. The parties agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and other applicable laws relating to the security and privacy of Protected Health Information.

## 1.2 Relationship to Individuals who are the Subjects of Protected Health Information.

1.2.1 Business Associate agrees that Covered Entity and the applicable individual retain all ownership rights to the Protected Health Information, and that Business Associate does not obtain any right, title or interest to the Protected Health Information furnished by Covered Entity.

1.2.2 Business Associate agrees to comply with all lawful requests of individuals who are subjects of Protected Health Information to permit access to inspect and obtain a copy of their Protected Health Information about the individual that is subject to this Agreement as required by law.

1.2.3 Business Associate agrees that, within fifteen (15) days of a request being made, it will provide Covered Entity with any Protected Health Information requested by Covered Entity.

1.2.4 Business Associate agrees to make Protected Health Information available for amendment and to immediately incorporate any amendments or corrections to an individual's health information upon request by Covered Entity in accordance with applicable law.

1.2.5 Business Associate agrees to make available the information required for Covered Entity to provide an accounting of disclosures upon request for Covered Entity in accordance with applicable law.

1.3 Maintenance of Protected Health Information. Business Associate agrees that upon termination of the Agreement, Business Associate shall contact Covered Entity with regard to any Protected Health Information currently in possession that was received from or created on behalf of Covered Entity, and determine whether Covered Entity wishes to have the Protected Health Information returned to it or destroyed. If feasible, Business Associate agrees to proceed in accordance with the Covered Entity's instructions to return or destroy Protected Health Information within thirty (30) days of receiving such instructions. If Covered Entity elects to have the Protected Health Information destroyed, Business Associate agrees to destroy the Protected Health Information in a manner and by a method acceptable to Covered Entity. If returning or destroying the Protected Health Information is not feasible on account of a regulatory duty imposed on Business Associate by law, or another valid reason, Business Associate agrees that the protections afforded to such Protected Health Information by this Agreement will extend indefinitely beyond the term of this Agreement, and that Business Associate will limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible. Business Associate further agrees that no Protected Health Information, copies of Protected Health Information, or parts thereof, shall be retained when the aforementioned Protected Health Information are returned or destroyed.

1.4 Availability of Protected Health Information. Business Associate shall make any and all internal practices, books, records and Protected Health Information related to this Agreement available to Covered Entity for inspection and/or audit upon request by Covered Entity. In addition, Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Department of Health and Human Services for review, upon the request of the Secretary of that Department.

## ARTICLE II

### RESPONSIBILITIES OF COVERED ENTITY

2.1 Notification of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices for Protected Health Information that Covered Entity produces as required under HIPAA, as well as any changes to such notice.

2.2 Other Requirements. Covered Entity shall provide Business Associate with (a) any changes in, or revocation of permission by individuals to use or disclose Protected Health Information about them, if such changes affect Business Associate's permitted or required uses and disclosures; and (b) any restrictions or changes thereto to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with HIPAA.

## ARTICLE III

### TERM AND TERMINATION

3.1 Term. This Agreement shall be effective as of the Commencement Date, and shall continue for as long as

Business Associate provides agreed upon services to or on behalf of Covered Entity.

3.2 Termination.

3.2.1 This Agreement shall be considered terminated if Business Associate no longer provides any services for Covered Entity.

3.2.2 This Agreement may be terminated immediately by Covered Entity in the event of any breach of this Agreement.

3.3 Effect of Termination. The termination of this Agreement shall have not effect on Business Associate's obligation to treat the contents of Protected Health Information as confidential.

ARTICLE IV  
MISCELLANEOUS

4.1 Indemnification. Business Associate will indemnify and hold Covered Entity (including Covered Entity's Board of Directors, individually and collectively, and its officers, owners, employees, agents, and other representatives, individually and collectively) harmless from and against all claims, demands, costs, expenses, liabilities and losses, including reasonable attorneys fees and punitive damages which may arise against Covered Entity as a result of any violation of this Agreement.

4.2 Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested to the other party's principal place of business.

4.3 Assignment. No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

4.4 Waiver of Breach. The wavier by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be a waiver of any subsequent breach of the same or other provision hereof.

4.5 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

4.6 Gender and Number. Whenever the context hereof requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

4.7 Addendum. This Agreement shall serve as an Addendum to and become part of any and all contract, agreements, and/or arrangements between the parties in effect as of the Commencement Date or which may be entered into after the Commencement Date. In the event there is a conflict as to terms of this Agreement and any other contracts, agreements, and/or arrangements between the parties, this Agreement's terms shall be controlling.

4.8 Amendments. This Agreement may only be amended by the written consent of both parties.

4.9 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

4.10 Incorporation of Recitals. The aforesaid Recitals are hereby incorporated into this Agreement as if fully set forth herein.

4.11 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, no shall

anything herein confer, upon any person other than the parties hereto and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

4.12 Counterparts; Copies. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimiles and photocopies hereof shall be deemed to be originals.

4.13 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits covered Entity to comply with HIPAA and the HITECH Act.

14. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 983-17 do pass.

Resolution No. 983-17 - Authorizing the Mayor or his designee to execute and submit a NSR/Title V Permit Revision Application for the City of Charleston Sanitary Landfill to the West Virginia Department of Environmental Protection Division of Air Quality for the purpose of enabling and facilitating the operation of the landfill gas collection system and related functions by Tallarico Energy LLC at the City of Charleston sanitary landfill.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

That the Mayor or his designee is hereby authorized to execute and submit a NSR/Title V Permit Revision Application for the City of Charleston Sanitary Landfill to the West Virginia Department of Environmental Protection Division of Air Quality for the purpose of enabling and facilitating the operation of the landfill gas collection system and related functions by Tallarico Energy LLC at the City of Charleston sanitary landfill.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 983-17 adopted.

15. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 984-17 do pass.

Resolution No. 984-17 - Authorizing the Mayor or City Manager to enter into an Agreement with PNC Equipment Finance, LLC, in the amount of approximately \$546,000.00 for a three-year lease purchase period at a rate of 1.95% and approximately \$2,325,900.00 for a five-year lease purchase period at a rate of 2.10% to provide for the purchase of various vehicles and equipment for City departments, and subject to review and final approval by legal counsel for the City.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with PNC Equipment Finance, LLC, in the amount of approximately \$546,000.00 for a three-year lease purchase period at a rate of 1.95% and approximately \$2,325,900.00 for a five-year lease purchase period at a rate of 2.10% to provide for the purchase of various vehicles and equipment for City departments, and subject to review and final approval by legal counsel for the City.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 984-17 adopted.

## Lease Purchase Agreement

Bid Opening: October 26, 2017 @ 2:00 p.m.

		Three (3) Year Loan	Five (5) Year Loan
<b>United Bank</b> 500 Virginia Street East, PO Box 393 Charleston, WV 25322 P: (304) 348-8423	Non-Bank Qualified	2.25%	2.45%
	Bank Qualified	1.89%	2.03%
<b>US Bancorp Gov't Leasing &amp; Finance, Inc.</b> 10 Smoke Rise Lane Annandale, NJ 08801 P: (908) 894-5520	Non-Bank Qualified	1.760%	1.922%
	Bank Qualified	1.760%	1.922%
<b>City National Capital Finance, Inc.</b> 390 N. Orange Ave., Suite 2600 Orlando, FL 32801 P: (410) 409-7579	Non-Bank Qualified	1.79%	1.98%
	Bank Qualified	1.79%	1.98%
<b>Municipal Leasing Consultants</b> 7 Old Town Lane Grand Isle, VT 05458 P: (802) 372-8435	Non-Bank Qualified	1.979%	1.989%
	Bank Qualified	1.979%	1.989%
<b>Bank of America Public Capital Corp</b> 1111 E. Main Street 18th Floor Richmond, VA 23219 P: (804) 788-3345	Non-Bank Qualified	1.7161%	1.8397%
	Bank Qualified	1.7861%	1.9362%
<b>PNC Equipment Finance, LLC</b> 155 E. Broad Street, 5th Floor Columbus, OH P: (614) 463-6575	Non-Bank Qualified	1.97%	2.15%
	Bank Qualified	1.95%	2.10%

16. Your committee on Finance has had under consideration the following committee report, and reports the same to Council with the recommendation that committee report pass.

Proposal submitted by Finley Fire Equipment Co. Inc., in the total amount of \$40,845.00, for purchase of five (5) Air Mask Systems and ten (10) Spare Air Cylinders.

To be charged to Account No. 001-976-00-706-4-459, Fire- Capital Outlay, Equipment

### Radios & Accessories - Charleston Police Department

Bid Opening: October 27, 2016 @ 11:00am

<b>A.V. Luttamus Communications</b>				
1344 Cove Hill Road Weirton, WV 26062 P: (304) 216-9869 <a href="mailto:toddwotring@luttamus.com">toddwotring@luttamus.com</a>				
<b>Item</b>	<b>Quantity</b>	<b>Make &amp; Model</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Mobile Radios	11	Kenwood TK-5830	\$974.00	\$10,714.00
Mobile Programming Cable	2	Kenwood KPG-46XM	\$96.00	\$192.00
Portable Radios	23	Kenwood TK-5330	\$1,011.00	\$23,253.00
Rapid Rate Charger	23	Kenwood KSC-32	\$43.00	\$989.00
Speaker Microphone	26	Kenwood KMC-42WDM	\$69.00	\$1,794.00
Belt Loop Attachment	26	Kenwood KBH-8DS	\$16.00	\$416.00
Antenna	6	Kenwood KRA-27M	\$9.00	\$54.00
Portable Programming Cable	2	Kenwood KPG-36XM	\$96.00	\$192.00
Programming Software	1	Kenwood	\$0.00	\$0.00
Lithium Batteries	38	Kenwood KNB-L1M	\$70.00	\$2,660.00
<b>Total Bid</b>			<b>\$40,264.00</b>	
Delivery			30-60 days	

Councilmember Reishman moved to approve the Committee Report. Councilmember Ware seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report adopted.



***REPORTS OF OFFICERS***

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1. Municipal Court Report to City Council Month Ending October 2017.  
Received and Filed.
2. Report of the City of Charleston Payroll Variance Analysis;  
October 2017.  
Received and Filed.

***NEW BILLS***

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Introduced by Councilmember Rick Burka on November 6, 2017:

Bill No. 7764 – A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, by rezoning from an I-4 district to a C-10 district, that certain parcel of land located at 419 58th Street, Charleston, West Virginia.

Refer to Municipal Planning Commission and Planning Committee.

Introduced by Councilmember Mary Jean Davis on November 6, 2017:

Bill No. 7765 – A BILL to amend Sections 102-274 of Article VII of Chapter 102 of the Municipal Code of the City of Charleston entitled “Outdoor Dining,” by amending the zoning districts where outdoor dining is permitted and increasing the speed limit permitted on the adjacent roadway.

Refer to Planning Committee and Finance Committee.

Introduced by Councilmember Robert Reishman on November 6, 2017:

Bill No. 7766 – An Ordinance authorizing the Mayor to enter into an Agreement between the Kanawha County Emergency Ambulance Authority and the City of Charleston for allocation of authorized special levies and other matters for fiscal years beginning July 1, 2019, 2020, 2021, and 2022.

Refer to Finance Committee.

Introduced by Councilmember Jack Harrison on November 6, 2017:

Bill No. 7768 – An Ordinance to amend and reenact Chapter 38, Article II, Division 3, Section 38-126 of the Code of the City of Charleston expanding the organizations for which community service may be served.

Refer to Ordinance and Rules Committee.

Introduced by Councilmembers Becky Ceperley, Mary Jean Davis, Susie Salisbury, Mary Beth Hoover, Jeanine Faegre, Tom Lane,

Rick Burka, Bobby Reishman, Jack Harrison, Brent Burton on November 6, 2017:

Bill No. 7769 – An Ordinance amending and reenacting Chapter 26 of the Code of the City of Charleston; and amending and reenacting Chapter 102, Article I, Section 102-12 of the Code of the City of Charleston; related to solicitation within the City of Charleston.

Refer to Public Safety Committee and Ordinance and Rules Committee.

**ADJOURNMENT**

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*The Clerk, JB Akers, called the closing roll call:*

YEAS: Burka, Burton, Ceperley, Chestnut, Davis, Ealy, Faegre, Haas, Harrison, Ireland, Jones, King, Lane, Minardi, Overstreet, Reishman, Richardson, Salisbury, Smith, Snodgrass, Steele, Talkington, Ware, Mayor Jones

NAYS: NONE

ABSENT: Clowser, Hoover, Persinger

At 7:38 p.m., by a motion from Councilmember Ware, Council adjourned until Monday, November 20, 2017, at 7:00 p.m., in the Council Chamber in City Hall.

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Danny Jones, Honorable Mayor

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JB Akers, City Clerk