



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, March 3, 2014

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

**Danny Jones
Mayor**

**James M. Reishman
City Clerk**

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of March on the 3rd day, in the year 2014, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilman Harrison and the Pledge of Allegiance was led by Council Lady Salisbury. The Honorable James M. Reishman, City Clerk, called the roll of members and it was found that there were present at the time:

**BURKA
DAVIS
EALY
HOOVER
LANE
NICHOLS**

**SHEETS
TALKINGTON
MAYOR JONES**

**BURTON
DENEALT
HAAS
KIRK
MILLER
PERSINGER
RUSSELL
SMITH
WARE**

**CLOUSER
DODRILL
HARRISON
KNAUFF
REISHMAN
SALISBURY
SNODGRASS
WHITE**

With twenty-six 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

1. **Dr. Jim McJunkin** – Spoke about the safety of guns being allowed in after school programs. (in reference to SB 317)

CLAIMS

1. A claim of Rodney Back, 406 Surrey Terrace, St. Albans, WV; alleges damage to vehicle.
Referred to City Solicitor
2. A claim of Kelly Hight, 197 1st Ave., Hometown, WV; alleges damage to vehicle.
Referred to City Solicitor
3. A claim of John Simpson, 112 29th Street, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor
4. A claim of Anika Sloan, 566 Galen Drive, Charleston, WV; alleges damage to vehicle.
Referred to City Solicitor

REPORTS OF COMMITTEES

COMMITTEE ON FINANCE

Councilperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration Resolution No. 416-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 416-14- Authorizing the Mayor or City Manager to enter into an agreement with O'Dell Associates, Inc. for Design Consulting Services Related to Program and Performance Criteria Development and related services for a Design-Build Project to Expand and Renovate the Charleston Civic Center, in the amount of \$1,163,880.00 together with agreed upon reimbursable expenses not to exceed \$203,130.00 without prior approval of the City Manager.

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 O'Dell Associates, Inc. for Design Consulting Services Related to Program and Performance Criteria Development and related services for a Design-Build Project to Expand and Renovate the Charleston Civic Center, in the amount of \$1,163,880.00 together with agreed upon reimbursable expenses not to exceed \$203,130.00 without prior approval of the City Manager

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 416-14 adopted.

2. Your committee on Finance has had under consideration Resolution No. 417-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 417-14- Authorizing the Mayor or City Manager to enter into an agreement with Tyler Technologies, in the amount of \$25,600.00, for purchase of a Project Accounting Module for the Eden Inforum Gold System currently serving the City's Accounting Department, and an additional cost of \$3,600.00 for annual maintenance services, for a total of \$29,200.00.

To be charged to Account No. 001-975-00-439-4-459, I.S. Dept. –Capital Outlay, Equip.

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 Tyler Technologies, in the amount of \$25,600.00, for purchase of a Project Accounting Module for the Eden Inforum Gold System currently serving the City's Accounting Department, and an additional cost of \$3,600.00 for annual maintenance services, for a total of \$29,200.00.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 417-14 adopted.

3. Your committee on Finance has had under consideration Resolution No. 418-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 418-14- Authorizing the Finance Director to amend FY 2013-2014 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 FY 2013-2014 General Fund Budget as indicated on the attached list of accounts.

General Fund FY 2013-2014 Budget Amendment No. 6 - March 3, 2014

Account No.	Department	Account Description	Amount
001 416 00 000 1 103	Municipal Court	Wages & Salaries - Overtime	14,000
001 416 00 000 1 104	" "	FICA	1,071
001 416 00 000 1 106	" "	PERS Retirement	2,030
001 699 00 000 5 598	Contingency	Capital Outlay - Equipment	(17,101)
To provide additional overtime for Municipal Court			
001 366 01 0000	Revenue	Recycling grant	(19,322)
001 978 00 800 4 459	Refuse & Recycling	Capital Outlay - Equipment	19,322
To recognize grant funds received for the purchase of a recycling truck			
001 712 00 000 1 103	Traffic Engineering	Wages & Salaries	38,350
001 712 00 000 1 104	" "	FICA	2,934
001 712 00 000 1 106	" "	PERS Retirement	5,561
001 712 00 000 3 341	" "	Material & Supplies	40,000
001 750 00 000 1 103	Street Department	Wages & Salaries	(38,350)
001 750 00 000 1 104	" "	FICA	(2,934)
001 750 00 000 1 106	" "	PERS Retirement	(5,561)
001 750 00 000 3 341	" "	Material & Supplies	(40,000)
To transfer three (3) Sign Specialists IV (PG-5) and one (1) Sign Shop Foreman (PG-6) and related Material & Supplies from Street Department to Traffic Engineering.			
001 750 00 000 3 341	Street Department	Material & Supplies	(13,000)
001 977 00 750 4 459	" "	Capital Outlay - Equipment	13,000
To reclassify funds in the Street Department to purchase a milling machine.			
001 422 00 000 2 214	Human Resources	Travel	2,800
001 422 00 000 2 221	" "	Training	1,700
001 442 00 000 2 230	Strategy Management	Contract Services	(4,500)
To reclassify funds from Strategy Management to Human Resources to provide for HR Eden Systems training.			

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 418-14 adopted.

4. Your committee on Finance has had under consideration Resolution No. 419-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 419-14 - Authorizing the Mayor or his designee to enter into a Joint Use Agreement with the West Virginia Department of Transportation, Division of Highways, attached as Exhibit A hereto, granting the City of Charleston a 25 year lease for a 0.17 acre parcel of land in the south Annex District adjacent to Interstate 64, to be used as the location for a City of Charleston Gateway Sign subject to the terms of the Agreement.

Authorization of this Agreement by Resolution is permitted pursuant to the Municipal Code of the City of Charleston Chapter 3, Article II, Section 3-12;

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

That the Mayor or his designee are hereby authorized to enter into a Joint Use Agreement with the West Virginia Department of Transportation, Division of Highways, attached as Exhibit A hereto, granting the City of Charleston a 25 year lease for a 0.17 acre parcel of land in the south Annex District adjacent to Interstate 64, to be used as the location for a City of Charleston Gateway Sign subject to the terms of the Agreement.

Exhibit A

Lease No. 817-0120

THIS JOINT USE AGREEMENT, made the 15th day of January, 2014, between the **WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS**, Lessor, and **CITY OF CHARLESTON**, Lessee.

WITNESSETH: That for and in consideration of the money payments hereinafter provided and the conditions herein contained, Lessor does hereby demise, let and lease to the Lessee all that certain tract or parcel of land situate in South Annex District, Kanawha County, West Virginia, containing 0.17 acre, more or less, as shown upon a plat attached hereto and made a part hereof.

This lease is subject to the following terms and conditions:

1. **Purpose** – Lessee shall use said property for construction of a welcome sign to Charleston. No improvements shall be made on the leased property without the prior approval of the Lessor.

2. **Compensation** – Lessee shall pay to Lessor the sum of **ONE DOLLAR (\$1.00)**, for said term hereof. Such payments shall be remitted, in advance, to Finance Division, West Virginia Department of Transportation, Division of Highways, State Capitol Complex, Building 5, 1900 Kanawha Boulevard East, Charleston, West Virginia, 25305-0430, upon receipt of invoice.

3. **Term** – This lease is for a term of twenty-five (25) years from and after **February 1, 2014**.

4. **Conditions and Restrictions** – Lessee understands and agrees that said area of lease was acquired as a part of a Federal-Aid Highway Project and as such is subject to the following covenants and restrictions:

- a. No dangerously flammable, volatile or explosive substances, lumber, wood products or other material which would constitute a hazard to the adjoining highway, shall be manufactured, stored or held thereon.
- b. No hazardous or unreasonably objectionable smoke, fumes, vapor or odors may be permitted to be discharged on said highway.
- c. This agreement is subject to any and all existing utility lines whether or not visible upon the ground.

District Right of Way Agent
 WV Department of Transportation, Division of Highways
 District One Right of Way Section
 1334 Smith Street, Charleston, WV 25301
 Mail to:

- d. Any parking design and arrangement shall be so designed and arranged to assure orderly and functional parking.
- e. Any planting and other scenery measures are allowed only to the extent that they improve the esthetics and appearance of the area.
- f. Surfacing, lighting, fencing, striping, curbs, wheel stops and pier protection devices are required to the extent necessary to protect the Lessor's existing fixtures.
- g. Access for fire protection and firefighting equipment shall be maintained at all times.

5. **Relocation** – It is understood and agreed between the parties hereto that in the event the Lessor should terminate this lease, Lessee is not eligible for relocation monies and is not a "displaced person" as defined in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act 49 CFR part 24.2(g)(1).

6. **Assignability** – This agreement may not be transferred, assigned or sublet without prior written approval of the Lessor.

7. **Possession** – It is understood and agreed between the parties hereto that the Lessee shall have exclusive control and right of possession of said leased area, subject to the rights reserved in paragraph 9, during the term hereof and, as between Lessee and Lessor, Lessee shall have sole responsibility for custody, maintenance, operation and use thereof, including the payment of any loss or damage occurring as a result of Lessee's operations and use, either to the adjoining highway facility or the public for personal injury, loss of life or property damage and 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 resulting from Lessee's, its agents', employees', or contractors' operations and use of premises, except for any liability or damages due to the willful or intentional unlawful acts or negligence of Lessor, its employees, agents or contractors.

8. **Nondiscrimination** – The Lessee, as a part of the consideration hereof, does hereby covenant and agree that, (1) no person, on the grounds of race, religion, color, sex, national origin or disability shall be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination in the use of the lease area and

facilities thereof; (2) that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no discrimination shall be practiced in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors; (3) that such discrimination shall not be practiced against the public in accommodations constructed or operated within the lease area; and (4) that the Lessee shall use the premises in compliance with all other requirements imposed by the Department of Transportation pursuant to Title 49, Code of Federal Regulations, Part 21, and as said regulations may be amended. That, in the event of breach of any of the above nondiscrimination covenants, if Lessor has given to Lessee sixty (60) days written notice of the alleged breach and Lessee has failed either to cure the breach or to take appropriate steps to prevent a reoccurrence, the Lessor shall have the right to terminate this agreement and to reenter and repossess the area of lease and hold the same as if said agreement had never been made or issued.

9. **Inspection and Maintenance** – Lessor reserves to itself and to the Federal Highway Administration the right, acting by and through its agents and employees, to enter upon said lease area at any time for purposes of inspection and determination of compliance with the terms hereof, and for any necessary maintenance, repair, construction or reconstruction of its adjacent highway facility. It is understood and agreed between the parties hereto that the Lessor, in the conducting of such maintenance, repair, construction or reconstruction, shall have, to the extent reasonably necessary, the right to cause the interruption or suspension of the Lessee's use of said lease area and may damage or alter the Lessee's improvements thereon, with no liability to the Lessor.

10. **Termination** – Lessor reserves the right to terminate this lease at any time by giving Lessee a written notice of termination thirty (30) days before the effective date thereof if: (1) Said property is needed for highway purposes; (2) Lessee violates any of the terms hereof; (3) Lessor desires to sell said property.

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IN WITNESS WHEREOF, the parties hereto have caused their names to be signed by their duly authorized officers.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

Secretary of Transportation / Commissioner of Highways

STATE OF WEST VIRGINIA, COUNTY OF KANAWHA, TO-WIT:

The foregoing instrument was acknowledged before me this ___ day of ___, 2014, by Paul A. Mattox, Jr., P. E.,

Secretary of Transportation / Commissioner of Highways.

My commission expires: _____

Notary Public

CITY OF CHARLESTON

By: _____

Its: _____



SIGN HERE

STATE OF WEST VIRGINIA, COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this ___ day of ___, 2014, by _____ it's _____ on behalf of said corporation

My commission expires: _____

Notary Public



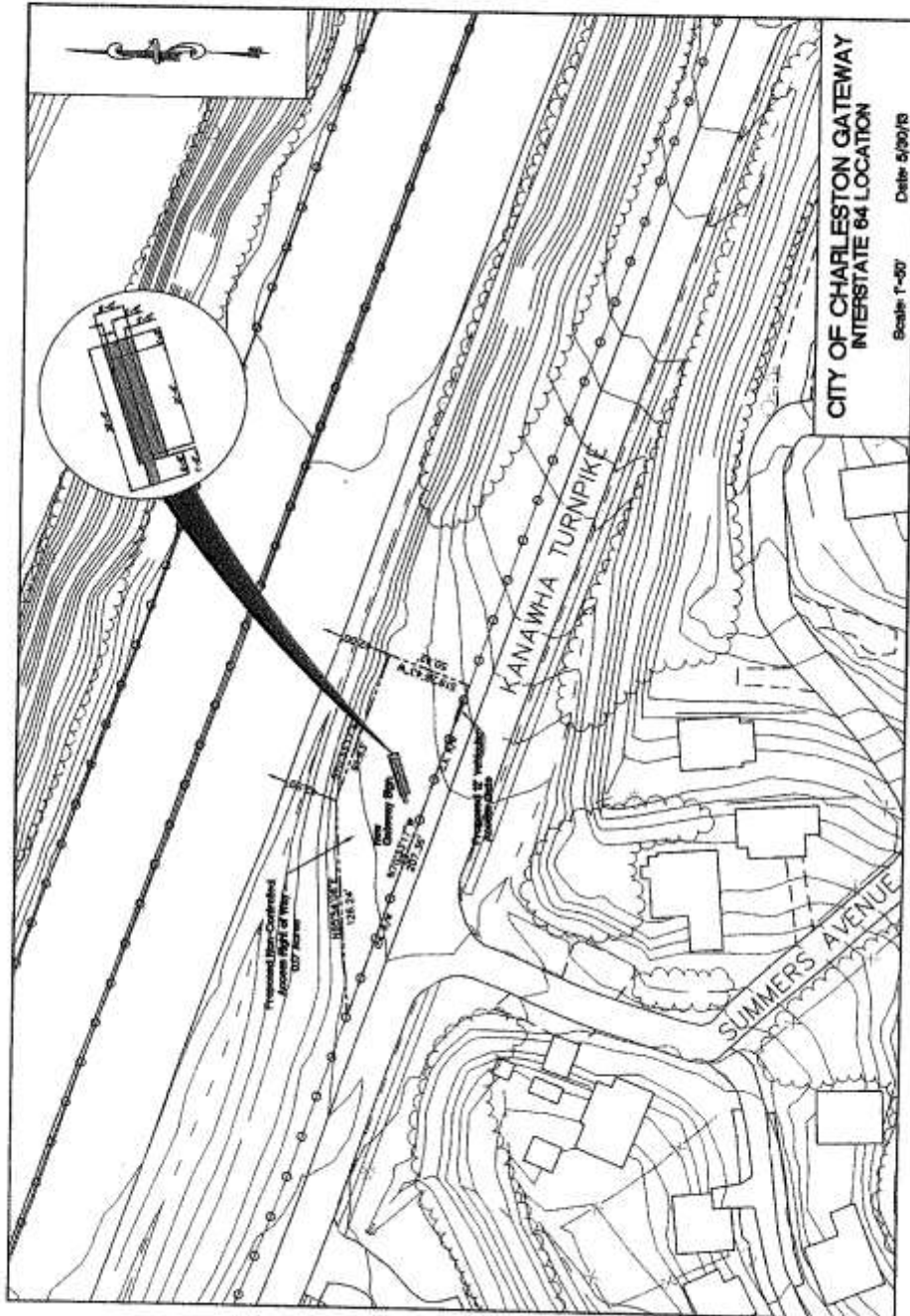
NOTARIZE

LA 877-0039 10/04/08

First Payment Received and Lease Delivered on _____

Right of Way Division, District One

This instrument was prepared from a form provided by the Legal Services Section, Right of Way Division, Division of Highways.



Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 419-14 adopted.

5. Your committee on Finance has had under consideration Resolution No. 420-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 420-14- Authorizing the Finance Director to issue a refund in the amount of \$9,000.00 to Midtown Partners for overpayment of Business and Occupation (“B&O”) Tax for the third quarter of 2013. The overpayment was the result of a calculation error and the Audit Division has verified the refund is due.

To be charged to Account No. 001-305-01-0000, Current Year

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

That the Finance Director is hereby authorized and directed to issue a refund in the amount of \$9,000.00 to Midtown Partners for overpayment of Business and Occupation (“B&O”) Tax for the third quarter of 2013. The overpayment was the result of a calculation error and the Audit Division has verified the refund is due.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 420-14 adopted.

6. Your committee on Finance has had under consideration Resolution No. 421-14, and reports the same to Council with the recommendation that the resolution do pass.

Resolution No. 421-14- Authorizing the Finance Director to issue a refund in the amount of \$16,329.78 to Davy Tree Expert Company for overpayment of Business and Occupation (“B&O”) Tax for the first quarter of 2013. The overpayment was due to the taxpayer including its 2012 revenue along with the 2013 first quarter revenue. In addition, the taxpayer paid taxes on jobs not located within the Charleston city limits.

To be charged to Account No. 001-305-01-0000, Current Year

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

That the Finance Director is hereby authorized and directed to issue a refund in the amount of \$16,329.78 to Davy Tree Expert Company for overpayment of Business and Occupation (“B&O”) Tax for the first quarter of 2013. The overpayment was due to the taxpayer including its 2012 revenue along with the 2013 first quarter revenue. In addition, the taxpayer paid taxes on jobs not located within the Charleston city limits.

Councilman Reishman moved to approve the Resolution. Councilman Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution 421-14 adopted.

MISCELLANEOUS BUSINESS

Mayor Jones and Council President Lane discussed repealing a gun law that was put in effect 21 years ago. He explained that Senate Bill 317 would require them to remove this bill, so he is suggesting that they conform and be in compliance with the bill. Most of the Councilmembers were in favor of this by hand vote. The bill will be introduced in the upcoming months.

Councilman Harrison set an Ordinance and Rules Committee meeting for Thursday, March 13th at 5:30 p.m. in the Audio Visual Room in City Hall.

ADJOURNMENT

The Honorable James M. Reishman, City Clerk, called the closing roll call:

YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Hoover, Kirk, Knauff, Lane, Miller, Nichols, Persinger, Reishman, Russell, Smith, Salisbury, Sheets, Talkington, Ware, White, Mayor Jones

ABSENT: Minardi, Richardson

At 7:25 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, March 17, 2014, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk