



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, February 5, 2018

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

**Danny Jones
Mayor**

**JB Akers
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 February on the 5th day, in the year 2018, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilmember Harrison and the Pledge of Allegiance was led by Boy Scout Troop 31. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

CHESTNUT	BURTON	
EALY	FAEGRE	DAVIS
HARRISON	HOOVER	HAAS
JONES	KING	IRELAND
	OVERSTREET	LANE
REISHMAN	RICHARDSON	SALISBURY
SMITH	SNODGRASS	STEELE
TALKINGTON	WARE	MAYOR JONES

With twenty-two 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

NONE

CLAIMS

1. A claim of Verna Black, 144 Wilson Way, Charleston, WV;
alleges personal injury.
Refer to City Solicitor.
2. A claim of Ronald H Hatfield Jr., 63308 Highland Dr, Huntington, WV;
alleges damage to vehicle.
Refer to City Solicitor.
3. A claim of Linda R Harper., 338 Valley Brook Circle, Nitro, WV;
alleges damage to vehicle.
Refer to City Solicitor.
4. A claim of Red Roof Inns, Inc., 6305 MacCorkle Ave SE, Charleston, WV;
alleges damage to property.
Refer to City Solicitor.
5. A claim of Wandell Spurlock, 706 Grant Street, Charleston, WV;
alleges damage to property.
Refer to City Solicitor.
6. A claim of Fred B Westfall Jr, 1597 Alexandria Place, Charleston, WV;
alleges damage to property.
Refer to City Solicitor.

COMMUNICATIONS

1.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



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

**FROM: DANNY JONES
MAYOR**

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: FEBRUARY 5, 2018

I recommend that Richard Cooke, 1005 Dartmouth Avenue, Charleston, WV 25302, be appointed to the Spring Hill Cemetery Park Commission, with an initial term to expire April 6, 2023. He is replacing Terrell Ellis.

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.

2.

CITY OF CHARLESTON
OFFICE OF THE MAYOR



TO: J. B. AKERS
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: FEBRUARY 5, 2018

I recommend that Tom Toliver, 702 Hall Street, Charleston, WV 25314, be reappointed to the Spring Hill Cemetery Park Commission, with a said term to expire April 6, 2023.

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.

3.



CITY OF CHARLESTON
OFFICE OF THE MAYOR

TO: J. B. AKERS
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: SPRING HILL CEMETERY PARK COMMISSION

DATE: FEBRUARY 5, 2018

I recommend that Jerry Waters, 866 Alta Road, Charleston, WV 25314, be appointed to the Spring Hill Cemetery Park Commission, with an initial term to expire April 6, 2023. He is replacing Brian Thompson.

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. 009-18. 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 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. 004-18 be adopted.

Resolution No. 004-18 - 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. 7 - February 5, 2018

Account No.	Department	Account Description	Amount
001 800 00 000 1 103	Refuse & Recycling	Wages & Salaries	(930)
001 800 00 000 1 104	" "	FICA & Medicare	(71)
001 800 00 000 1 106	" "	PERS Retirement	(102)
001 699 00 000 5 598	Contingency		1,103
Reducing the number of <i>Sanitation Driver</i> positions (pay grade 107) from 26 to 25 and increasing the number of <i>Sanitation Workers</i> (pay grade 105) from 35 to 36.			

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

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

NAYS: NONE

ABSENT: Burka, Ceperley, Clowser, Minardi, Persinger

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 004-18 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. 005-18 be adopted.

Resolution No. 005-18 - Authorizing the City Manager to execute Change Order No. 3 with Multivista Construction Documentation, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$ 10,870.80, as listed in Exhibit A, attached hereto. Change Order No. 3 increases the contract price from \$120,204.27 to \$131,075.07.

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

That the City Manager is hereby authorized and directed to execute Change Order No. No. 3 with Multivista Construction Documentation, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$ 10,870.80, as listed in Exhibit A, attached hereto. Change Order No. 3 increases the contract price from \$120,204.27 to \$131,075.07.

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 No. 005-18 adopted.



BuildView, LLC DBA Multivista

204 East Joppa Road, Suite L5, Towson, MD 21286 (443)

823-1827 p (443) 927-7244 f

j.donahoe@multivista.com / www.multivista.com

PROJECT QUOTE & AGREEMENT

CLIENT

Name: The City of Charleston Address:

T:

F:

Website: Email:

PROJECT

Name: Description/Type: Charleston Civic Center CO#3 EXTENSION

Location: Renovation / Addition project Size (SQFT): 275,000 GSF

Start Date: 5/1/2018 Duration: 5 months

Buildview LLC ("MULTIVISTA") is pleased to provide The City of Charleston ("CLIENT") with Multivista Documentation services for the Civic Center Renovation / Addition project project in accordance with the Scope and Terms listed in this document and in the accompanying RIDER: Multivista Project Quote Terms and Conditions.

MULTIVISTA: PROJECT QUOTE & AGREEMENT

PRICING

TOTAL FEES: \$ 10,870.80

Monthly Invoice: \$ 2,174.16 X 5 months

REIMBURSABLE EXPENSES

Multivista will be reimbursed for actual expenses incurred plus Zero percent (0.0 %) for those expenses that are not directly related to the Project. Validation of all such expenses will be provided along with invoicing. Expenses that are reimbursable include, but are not limited to, reproductions, printing costs, deliverables/parcels and project-specific insurance where the insurance needs exceed Multivista's standard liability policy limits.

For this Project, reimbursable expenses are estimated to be: \$ 0.00

ACCEPTANCE

Multivista will perform all work per the agreed upon scope of services and their Terms and Conditions, contained herein and in the accompanying RIDER to this Project Quote and Agreement. Upon acceptance of this Project Quote and accompanying RIDER, Multivista will diligently pursue its work until the completion of this project, consistent with the above-referenced scope of services. Your acceptance of this Project Quote constitutes your authorization and direction to Multivista to proceed with this Project. Multivista reserves the right to revoke or modify this Project Quote at any time before acceptance of the Project Quote and all terms and conditions herein and in the accompanying RIDER or if work has not commenced within ninety (90) days of acceptance.

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 006-18 be adopted.

Resolution No. 006-18 - Authorizing the City Manager to execute Change Order No. 20 to the Design-Build contract with BBL Carlton, LLC, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$ 332,366.01, providing for additions to the base contract as listed in Exhibit A, attached hereto. Change Order No. 20 increases the contract price from \$ 94,062,973.75 to \$ 94,395,339.76.

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

That the City Manager is hereby authorized and directed to execute Change Order No. 20 to the Design-Build contract with BBL Carlton, LLC, in relation to the Civic Center Expansion and Renovation Project, in the amount of \$ 332,366.01, providing for additions to the base contract as listed in Exhibit A, attached hereto. Change Order No. 20 increases the contract price from \$ 94,062,973.75 to \$ 94,395,339.76

Charleston Civic Center Expansion and Renovation Change Order #20

Exhibit A

02/06/2018

PCO's combined in Change Order #20 (Refer to the attached PCO descriptions):

Add

1. PCO 155 (Design Quarrier St Rigging Points)	\$6,856.16
2. PCO 156 (Pulper Waste System Equipment)	\$83,000.49
3. PCO 157 (Design Pulper Waste System Utilities)	\$55,808.04
4. PCO 159 (Floor Leveling for the Quarrier St Lobby – T&M NTE)	\$159,277.61
5. PCO 160 (Lobby & Ballroom Art Support)	<u>\$27,423.71</u>

TOTAL	\$332,366.01
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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 No. 006-18 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. 008-18 be adopted.

Resolution No. 008-18 - Authorizing the City Manager to enter into a Lease Agreement with ProSource for the leasing of copiers for various City departments, at an equipment cost not to exceed \$5,000 per month for a 60-month period plus cost of prints per page as set forth on the attached list.

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 a Lease Agreement with ProSource for the leasing of copiers for various City departments, at an equipment cost not to exceed \$5,000 per month for a 60-month period plus cost of prints per page as set forth on the attached list.

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 No. 008-18 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. 009-18 be adopted.

Resolution No. 009-18 - Authorizing the Mayor or City Manager to execute the First Amendment to Lease Agreement (attached hereto as Exhibit A) with Shenandoah Personal Communications, LLC, (hereinafter “Shentel”) extending the term of a 1997 lease permitting Shentel to locate telecommunications equipment on a tower located at 1562 Garfield Street for up to four (4) additional five-year terms (original lease attached hereto as Exhibit B). The monthly rent, beginning February 1, 2018, will be \$1,049.41, with a fifteen percent increase upon commencement of each renewal term.

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

That, the Mayor or City Manager is hereby authorized to execute the First Amendment to Lease Agreement (attached hereto as Exhibit A) with Shenandoah Personal Communications, LLC, extending the term of a 1997 lease permitting Shenandoah Personal Communications, LLC, to locate telecommunications equipment on a tower located at 1562 Garfield Street.

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 No. 009-18 adopted.

This FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment") dated as of this _____ day of _____, 2018 (the "Effective Date") is by and between the CITY OF CHARLESTON, a municipal Corporation, with its principal office located at 501 Virginia Street, East, Charleston, West Virginia 25301, (hereinafter referred to as "LESSOR") and SHENANDOAH PERSONAL COMMUNICATIONS, LLC, a Virginia limited liability company, successor to West Virginia PCS Alliance, L.C., of 500 Shentel Way, Post Office Box 459, Edinburg, VA 22824 (hereinafter referred to as "LESSEE").

WHEREAS, LESSEE and LESSOR entered into a Lease Agreement dated the 2nd day of December, 1997 (the "Agreement"), permitting West Virginia PCS Alliance, L.C. to locate Telecommunications Equipment on the Leased Property located at 1562 Garfield Street, Charleston, West Virginia 25312; and

WHEREAS, on May 6, 2016, West Virginia PCS Alliance, L.C. was acquired by Shenandoah Telecommunications Company, and effective January 1, 2017, a subsidiary of Shenandoah Telecommunications Company, Shenandoah Personal Communications, LLC became the successor-in-interest to West Virginia PCS Alliance, L.C.; and

WHEREAS, the rights and obligations of the Agreement are vested with Shenandoah Personal Communications, LLC; and

WHEREAS, the final Renewal Term of the Agreement has an expiration date of January 31, 2018, and LESSEE has requested to extend the term of the Agreement upon the completion of the final Renewal Term described in the Agreement; and

WHEREAS, LESSOR and LESSEE have mutually agreed to amend the terms of the Agreement, subject to the terms and conditions hereof.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE agree as follows:

1. Extensions. Section IV of the Agreement shall be amended to provide for additional Renewal Terms as follows: Upon the completion of the final five-year Renewal Term described above, this Agreement shall renew for four (4) additional five-year terms upon the provisions set forth herein, unless LESSEE provides LESSOR written notice of its intention not to renew at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

2. Rent: Beginning at the commencement of the Renewal Term on February 1, 2018, rent will be paid in equal monthly installments of One Thousand Forty-Nine Dollars and Forty-One Cents (\$1,049.41), on the first day of the each month, partial months to be prorated, in advance. Rent shall increase upon the Commencement of each Renewal Term by the annual rent in effect for the final year of the Initial Term or prior Renewal Term by fifteen percent (15%). The late charge payment agreement set forth in Article III shall continue to apply to renewal term rent installments.

3. Notices. The notice addresses set forth in Section XIII of the Agreement shall be amended to read:

LESSOR:

City of Charleston
Attn: City Manager
P.O. Box 2749
Charleston, WV 25330

LESSEE:
Shenandoah Personal Communications, LLC
Attn: Lease Administration
P.O. Box 459
500 Shentel Way
Edinburg, VA 22824

Copy to: Shenandoah Personal Communications, LLC

Attn: General Counsel
P.O. Box 459
500 Shentel Way

Edinburg, VA 22824

4. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall govern and control. This First Amendment shall be attached to and become a part of the Agreement and all of the terms, conditions, covenants and responsibilities set forth in the Agreement not specifically modified hereby, are hereby ratified and affirmed and continue to be in full force and effect.

5. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the dates set forth below.

LESSOR: CITY OF CHARLESTON

By: _____

Name: _____

Title: _____

Date: _____

LESSEE: SHENANDOAH PERSONAL COMMUNICATIONS, LLC

By: _____

Name: William L. Pirtle

Title: Senior Vice President - Wireless

Date: _____

LEASE AGREEMENT

NC1000966

CH 108

THIS AGREEMENT IS ENTERED INTO THIS 2nd day of December, 1997, by and between the City of Charleston, a municipal Corporation with its principal office located at 501 Virginia Street, East, Charleston, West Virginia 25301 ("LESSOR"), and West Virginia PCS Alliance, L.C., a Virginia limited liability company comprised of CFW Communications Company, R & B Communications, Inc., Hardy Net, Inc. and AEP Communications, LLC ("LESSEE") with its principal office located at 401 Spring Lane, Suite 300, Waynesboro, Virginia 22980.

WITNESSETH

In consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

- I. **PROPERTY.** LESSOR hereby leases to LESSEE that certain space ("Property"), as depicted on EXHIBIT A attached hereto and made a part hereof, on the LESSOR'S tower, located at Lots 43 to 48, Garfield Street, Charleston, Kanawha County, State of West Virginia, as shown on Tax Map Number 3 in the District of Charleston West, County of Kanawha as parcel number 382, and is further described in Deed Book 2238 at Page 574 as recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia on December 7, 1989. Moreover, LESSOR grants LESSEE the right to install, reinstall, operate, maintain, repair, replace and remove telecommunications equipment including, but not limited to, one antenna array generally consisting of six (6) panels, but may consist of a maximum of twelve (12) panels, and associated equipment cabinets, wires, cables, conduits and other appurtenances on the Property together with a non-exclusive right and easement for ingress and egress by LESSEE, its agents or contractors seven (7) days a week, twenty-four (24) hours a day, and for the installation and maintenance of utility wires, cables, conduits and associated appurtenances required to serve the leased Property and equipment installed thereon at no additional charge to LESSEE.

The herein granted ingress and egress shall be effected using keys obtained on a case by case basis by LESSEE, its employees, agents, or contractors, from the Metro 911 Center located at 501 Virginia Street, East, Charleston, West Virginia. Moreover, LESSEE agrees to provide LESSOR with a list of its employees, agents and contractors authorized to sign out such keys, and shall keep said list current at all times listing the full name, title, date of birth and social security number of each such authorized person.

LESSEE reserves the right to replace the aforementioned antenna and associated equipment with similar and/or comparable equipment.

- II. **TERM.** This Agreement shall be for an initial term of ten (10) years commencing on the first day of the month in which LESSEE begins the physical alteration of the leased Property on or between the first day and the fifteenth day of the month. The initial term shall begin on the sixteenth day of the month if LESSEE begins the physical alteration of the leased Property on or between the sixteenth and the last day of the month.
- III. **RENT.** Annual rental of seven thousand two hundred---no/100 Dollars (\$7,200.00) in equal monthly installments of six hundred---no/100 Dollars (\$600.00) shall be due on the first day of each month of years one (1) through five (5) of the initial term, in advance, with the payment due for the month in which the initial term begins and for the next following month on the fifteenth day of the next following month. Annual rental of eight thousand two hundred eighty---no/100 Dollars (\$8,280.00) in equal monthly installments of six hundred ninety---no/100 Dollars (\$690.00) shall be due on the first day of each month of years six (6) through ten (10) of the initial term, in advance. If due to the sole negligence of the LESSEE, any installment is not paid within forty-five (45) days after the due date, LESSEE will pay LESSOR a late charge in an amount equal to five percent (5%) of the monthly installment which is in arrears.

The herein prescribed annual rental for the initial and all renewal terms, if any, may, by mutual agreement of the Parties, be discontinued in favor of LESSEE providing LESSOR with a certain number of PCS communicators and monthly PCS service packages. The exact number and type of PCS communicators and PCS service packages shall be determined through negotiations between the Parties. Subsequent to such negotiations, this Agreement shall be amended in writing, signed by the Parties, setting out the renegotiated rent.

- IV. **RENEWAL TERM.** This Agreement shall be automatically extended, with no additional writings required by the Parties, for two (2) consecutive five (5) year terms beginning the day next following the last day of the initial term unless LESSEE provides LESSOR written notice of its intention not to renew at least ninety (90) days prior to the expiration of the initial or first renewal term.

- V. **RENT FOR RENEWAL TERM(S)**. Annual rental for the first renewal term shall be nine thousand five hundred twenty-two----no/100 Dollars (\$9,522.00) in equal monthly installments of seven hundred ninety-three----50/100 Dollars (\$793.50) due on the first day of the month, in advance, in which the first renewal term begins, and on the first day of each successive month of the first renewal term. Annual rental for the second renewal term shall be ten thousand nine hundred fifty----30/100 Dollars (\$10,950.30) in equal monthly installments of nine hundred twelve----52.5/100 Dollars (\$912.525) due on the first day of the month, in advance, in which the second renewal term begins, and on the first day of each successive month of the second renewal term. The late charge payment agreement set out in Article III shall apply to renewal term rent installments.
- VI. **USE OF PROPERTY, INSTALLATION, CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS**. LESSEE shall, at its own expense and with minimal disruption to the LESSOR, use, alter and maintain the Property for the purpose of installing, constructing, operating and maintaining its telecommunications equipment. All improvements to the leased Property and to the easement for utility installation to the Property, and the upkeep and maintenance of the same, shall be at the LESSEE's expense. All plans for the design and construction and/or installation of the aforementioned equipment and improvements shall be forwarded to LESSOR for LESSOR's review and approval, which shall be expeditiously and reasonably provided prior to the commencement of construction. All work necessary to carry out such plans shall be completed by the LESSEE, its agents or contractors.
- At the termination of this Agreement, the LESSEE reserves the right to remove any or all of its equipment or other improvements from the Property, and to reasonably restore the Property to its original condition, normal wear and tear excepted. By written agreement between the Parties, any or all of the equipment and/or improvements may be left on the Property and shall become the property of the LESSOR.
- VII. **UTILITY LINES**. At its own expense, LESSEE has the right to use and upgrade, as required, LESSOR's utilities, and/or to install new utilities on the LESSOR's premise to serve LESSEE's equipment installed on the Property. LESSEE shall have separate meters installed for billing metered utility service charges to LESSEE. LESSOR reserves the right to use such upgraded or new utility lines provided it pays all charges and expenses associated with such use. All interconnection of LESSEE's equipment to these utility lines shall be coordinated by the LESSEE, and shall be at LESSEE's expense. At the termination of this Agreement, all interest of LESSEE, if any, in these utility lines shall terminate, and LESSEE shall not remove or cause to be removed any of the utility lines unless required to do so in writing by LESSOR.
- VIII. **TAXES**. LESSOR is responsible for the payment of all real estate taxes on the Property. LESSEE shall pay any increase in real estate taxes which is attributable to the construction or presence of its equipment or its operations.
- IX. **INSURANCE**. LESSEE shall, at its own expense, during the initial and any renewal terms of this Agreement, maintain general liability insurance with limits of \$1,000,000 combined single limit per occurrence, and an excess liability umbrella policy with a \$2,000,000 combined single limit per occurrence. LESSOR shall be provided with a certificate of insurance naming LESSOR as an additional insured on the heretofore mentioned insurance coverages.
- X. **ASSIGNMENT; SUCCESSION; SUBLEASE**. (a) This Agreement may be assigned. (b) This Agreement is binding on the successors and assigns of each Party.
- XI. **INTERFERENCE**. LESSEE shall install and operate its equipment in a manner which shall not cause technical interference to the LESSOR or to other lessees with tenancies and rights to install telecommunications equipment pre-dating the execution date of this Agreement. Beginning on the execution date of this Agreement, LESSOR shall not allow any other use of the property which causes interference with LESSEE's use. In the event that interference exists between competing signals, the parties shall cooperate and exercise their best efforts to eliminate such interference. Generally, the responsibility for eliminating such interference shall be the party's that was the last on the air to transmit a new or changed signal.
- XII. **DEFAULT AND TERMINATION**. This Agreement may be terminated as follows: (a) Upon one year's written notice without penalty if, due to changed circumstances, LESSEE determines that the premises are no longer suitable for its intended purpose; (b) If LESSEE defaults in payment of its rent for more than forty-five (45) days after written notice of such default has been mailed by LESSOR, LESSEE's rights under this Agreement shall terminate; (c) If there shall be any other default by either Party in the performance of any covenant or condition contained herein or hereinafter agreed to by the Parties in writing as an amendment to this Agreement for more than fifteen (15) days after written notice of such default has been mailed by the other Party. The non defaulting Party may at its election cure such default on behalf of the defaulting Party, in which case the defaulting Party shall reimburse the non defaulting Party for all sums paid to such cure, together with interest at the rate of ten percent (10%) per annum and reasonable attorney's fees if they are incurred; (d) Nothing contained in the foregoing section shall be construed to deprive either Party of additional legal or equitable remedies to which it is otherwise entitled by law; (e) In the event of default or breach of this Agreement, the Party responsible for the default or breach shall be responsible for the reasonable attorney's fees and expenses of the other Party in enforcing its rights under this Agreement.

XIII. NOTICES. All notices herein required or permitted must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by overnight courier service with proof of delivery addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Charleston
ATTN: City Manager
P.O. Box 2749
Charleston, West Virginia 25330

LESSEE: West Virginia PCS Alliance, L.C.
Attn: CFW Wireless Inc.
Tom Whitaker, Director - Network Operations
401 Spring Lane, Suite 300
P.O. Box 1328
Waynesboro, VA 22980

XIV. MISCELLANEOUS. (a) LESSOR warrants that it owns the leased Property and that there exists no covenant or restriction that would prohibit LESSEE from its use of the leased Property for a telecommunications site; (b) This Agreement is contingent upon LESSEE being able to acquire all local, state and federal permits and licenses necessary for the use contemplated by this Agreement. Additionally, this Agreement is made expressly subject to continuing approval from the FCC, or any other governmental agency or body that regulates LESSEE's business at the leased Property. If such approval is denied or withdrawn during the term of this Agreement for any reason except LESSEE's violation of any applicable law or governmental rule or regulation, then all rights and obligations of the Parties hereto shall cease, and this Agreement shall terminate as of the date of such denial or withdrawal. LESSEE agrees to exercise its best efforts to maintain such approval at all times during the term of this Agreement; (c) This Agreement constitutes the entire agreement between the Parties and may be amended only by written instruments executed by the Parties hereto, their successors or assigns; (d) This Agreement may be recorded in the appropriate Clerk of the County Commission's Office with the cost of such recording to be borne by the Party submitting the same for recordation. Both Parties shall cooperate in the execution of any memorandum of Agreement to facilitate such recordation; (e) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of West Virginia.

XV. EFFECT OF INVALID TERMS. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

CITY OF CHARLESTON

By: [Signature]

Its: [Signature]

STATE OF WEST VIRGINIA

TO WIT:

COUNTY OF KANAWHA

The above writing was acknowledged before me by D. Kemp Melton whose name is signed to the within writing bearing date 2nd day of December, 1997.

Given under my hand this 2nd day of December, 1997.



OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SHEILA MELTON
100 West Virginia
Elkins, West Virginia 26031
My Commission Expires Feb. 1, 1999

[Signature]
Notary Public

My commission expires the 1st day of February, 1999.

LESSEE:

WEST VIRGINIA PCS ALLIANCE, L.C.

By: [Signature]

Its: VP/COO for Managing Partner

CERTIFICATE OF ACKNOWLEDGMENT

CITY/COUNTY OF Waynesboro

TO WIT:

COMMONWEALTH OF VIRGINIA

The above writing was acknowledged before me by Walter M. Zirkle whose name is signed to the within writing bearing date 2nd day of December, 1997.

Given under my hand this 8th day of December, 1997.

[Signature]
Notary Public

My commission expires the 31st day of August, 2001.

EXHIBIT A

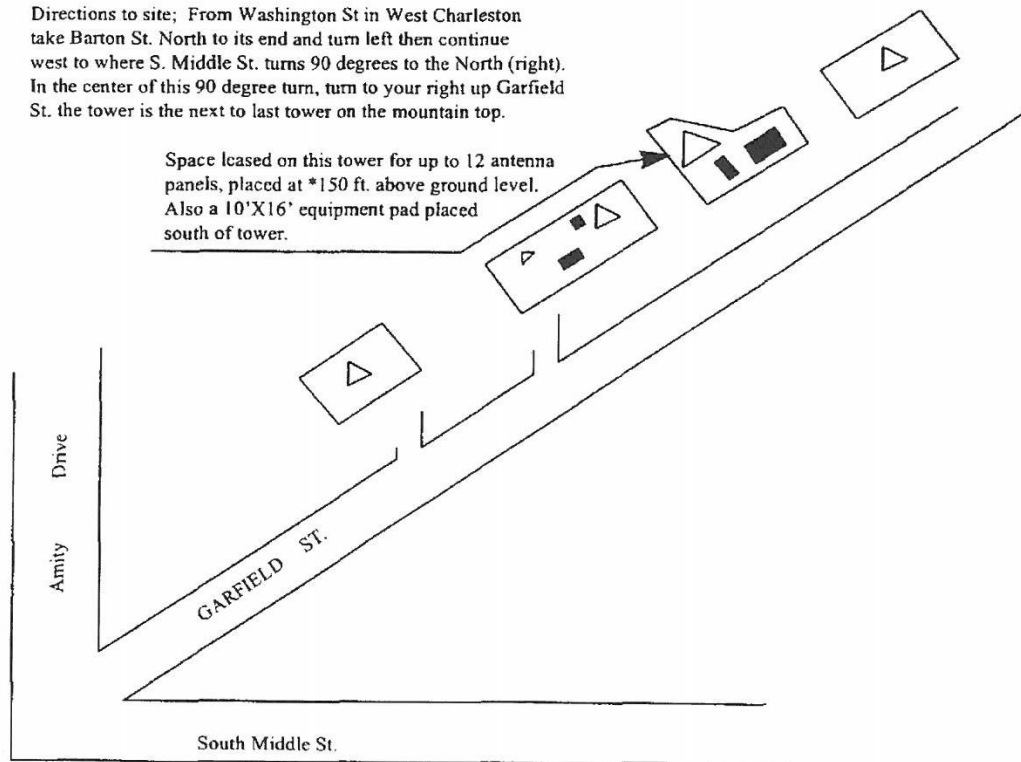
DESCRIPTION OF
LEASED PROPERTY

KA108 Garfield
CITY OF CHARLESTON
501 Virginia St. E.
Charleston, WV 25301
304 348 8012
N38 22 32.34 W81 28 55.41
AMSL 1000 ft., AGL 150 ft.
USGS Map Pocatalico W VA
Kanawha County, Charleston west Dist.
Tax Map 3, Parcel 382, Lots 43-48
DB 2238, Page 574
This drawing is not to scale
11/17/97 JH



Directions to site; From Washington St in West Charleston take Barton St. North to its end and turn left then continue west to where S. Middle St. turns 90 degrees to the North (right). In the center of this 90 degree turn, turn to your right up Garfield St. the tower is the next to last tower on the mountain top.

Space leased on this tower for up to 12 antenna panels, placed at *150 ft. above ground level.
Also a 10'X16' equipment pad placed south of tower.



*This tower is capable of supporting only 6 antenna panels at the 150 ft. height should additional panels be needed they must be installed at a lower level on the tower.

(This Exhibit to be replaced by an As-Built Drawing.)

6. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 010-18 be adopted.

Resolution No. 010-18 - Authorizing the Mayor or his designee to enter into a Joint Use Agreement with the West Virginia Division of Highways, attached as Exhibit A hereto, granting the City of Charleston a 25 year lease for a 0.22 acre parcel of land in the Charleston North Corporation District adjacent to Greenbrier Street, 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 Division of Highways, attached as Exhibit A hereto, granting the City of Charleston a 25 year lease for a 0.22 acre parcel of land in the Charleston North Corporation District adjacent to Greenbrier Street, to be used as the location for a City of Charleston Gateway Sign subject to the terms of the Agreement.

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 No. 010-18 adopted.

Lease No. _____

THIS JOINT USE AGREEMENT, made the ____ day of February 2018, 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 Charleston North Corporation District, Kanawha County, West Virginia, containing 0.22 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, 2018**.

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.

- 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.

**WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, DIVISION OF
HIGHWAYS**

By: _____
THOMAS J. SMITH, P.E.
**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
_____, 20____, by Thomas J. Smith, P. E., Secretary of Transportation/
Commissioner of Highways.

My commission expires: _____

Notary Public

CITY OF CHARLESTON

By: _____

Its: _____

STATE OF WEST VIRGINIA;

COUNTY OF _____, TO-WIT:

The foregoing instrument was acknowledged before me this _____ day of
_____, 2017, by _____, on behalf of
_____, a _____.

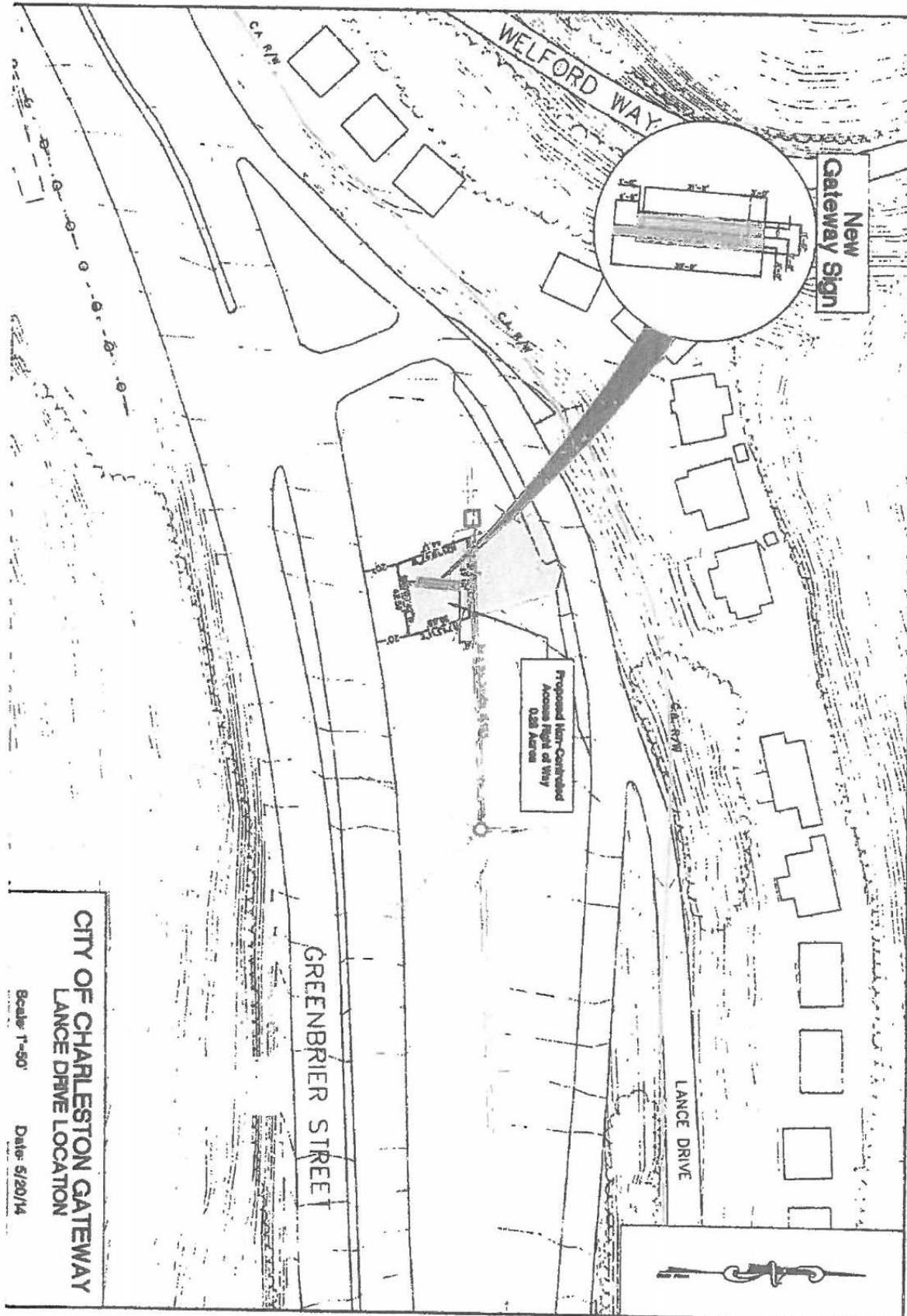
My commission expires: _____

Notary Public

This instrument was prepared by:
Right of Way Division
West Virginia Department of Transportation,
Division of Highways
Building Five, Room 832; 1900 Kanawha Blvd., E.
Charleston, West Virginia 26305-0430

First Payment Received: _____
Lease Delivered on: _____
Check Number: _____
Check Amount: _____

Agent: _____
Right of Way Division, District _____



7. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 011-18 be adopted.

Resolution No. 011-18 - Authorizing participation and ratifying prior participation of the City of Charleston, Kanawha County, West Virginia, with the Department of the Army, Corps of Engineers, for the design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, and authorizing the City Manager of the City of Charleston, and other appropriate City officials, to act for and on behalf of the City of Charleston in executing, accepting, or otherwise approving all documents, agreements, instruments, or other necessary papers required by the Department of the Army to implement said participation in the project.

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 Council hereby authorizes participation and ratifies prior participation of the City of Charleston, Kanawha County, West Virginia, with the Department of the Army, Corps of Engineers, for the design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, and further authorizes the City Manager of the City of Charleston, and other appropriate City officials, to act for and on behalf of the City of Charleston in executing, accepting, or otherwise approving all documents, agreements, instruments, or other necessary papers required by the Department of the Army to implement said participation in the project.

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 No. 011-18 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. 012-18 be adopted.

Resolution No. 012-18 - Authorizing the Mayor or the Chief of Police to enter into an Agreement with Langley Productions consistent with Exhibit A attached hereto, for the purpose of filming activities of the Charleston Police Department to be used in the production of episodes for the 31st season of the television show “COPS”.

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

That, subject to review, revision, and approval by the City Attorney of the legal terms contained in the Agreement attached hereto as Exhibit A, the Mayor or the Chief of Police is hereby authorized to execute an Agreement with Langley Productions for the purpose of filming activities of the Charleston Police Department to be used in the production of episodes for the 31st season of the television show “COPS”.

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 No. 012-18 adopted.



January 23, 2018

Steve Cooper, Chief of Police Charleston
Police Department 501 Virginia Street East
Charleston, WV 25330

Chief Cooper,

This letter will confirm our understanding of conditions under which Langley Productions, Inc. ("LP") will produce episodes of COPS with the cooperation of the Charleston Police Department ("Department"):

1. The Department will be fully consulted in advance of LP filming, after which the Department will allow LP reasonable access to officers and situations such officers encounter.
2. All LP film activity will be subject to and under control of the Department officer in charge. LP agrees that it will not interfere with the officers' regular work obligations and/or the efficient operation of the Department. LP, its agents and employees, will at all times obey the commands and directions of any Department officer for health, safety, security or operational reasons.
3. LP recognizes that some officers and citizens may refuse to be filmed and that the Department has no obligation to compel them to do so. LP agrees that all filming of Department personnel will be undertaken with the employees' consent and that no employee will be compensated by LP for any time, effort or other cooperation expended on the program.
4. LP grants Department the right to review and comment on completed rough cuts prior to "on-lining" for broadcast for purposes of accuracy, protection of nonpublic information and investigatory techniques and otherwise for the protection of the public trust. LP agrees to provide the Department's Designated Officer with copies of each segment no less than twenty (20) working days prior to segment on-lining. In consideration of the time-sensitive nature of LP delivery requirements, Department agrees to provide any notes regarding substantive segment content within ten (10) working days of receipt of the proposed segment. LP agrees to abide by the determination of the Department and to remove or revise portions of the segment as the Department deems necessary.

Pg 1 of 2

1111 BROADWAY, SANTA MONICA, CA 90401
310. 449. 5300 FAX 310. 449. 5330

5. LP understands that it is operating as an independent contractor and is not an employee or agent of the Department. LP agrees that it shall indemnify, defend and hold harmless, the Department, its officers, agents, employees and administrators from and against any and all claims for damage and liability for injury to or death of persons and for damage to or destruction of property occurring during and arising out of the acts or omissions of LP, its employees and/or agents with regard to LP's filming, and shall pay the reasonable cost of defending lawsuits resulting therefrom, including, but not limited to, reasonable attorneys' fees, court costs and any judgment awarded to a third party as the result of such suit. In accordance with the foregoing, LP also agrees to indemnify, defend and hold harmless the Department from and against all claims related to intellectual property claims arising out LP's filming activities. Notwithstanding the foregoing, LP shall not be responsible for any claims, damage, destruction or other liability arising from the acts or omissions of Department, its officers, agents or administrators or any other act or omission outside of its control.

6. The City of Charleston, West Virginia shall be named an additional insured on LP's Comprehensive General Liability Insurance Policy, which shall be written up to a minimum of \$1,000,000.00 in coverage. LP's insurance coverage shall be primary insurance with respect to the Department, its officers, agents, employees and administrators. Any insurance or self-insurance maintained by the Department, its officers, agents, employees or administrators shall be in excess of LP's insurance, and shall not contribute with it.

Accepted and Agreed:



01/23/2018

Zach Ragsdale
Producer, COPS

Steve Cooper, Chief of Police
Charleston Police Department LANGLEY PRODUCTIONS, INC.

9. 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 Advanced Public Safety for purchase of 35 Zebra ZQ520 printers and related materials in the total amount of \$25, 183.25. The printers will be distributed to law enforcement agencies within the four county Metro Valley Highway Safety Program (“MVHSP”) area of Kanawha, Boone, Clay, and Logan counties.

To be charged to Account No. 095-175-18-000-3-341, Highway Safety Grant – Police, Materials and Supplies

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

10. 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 \$30,456.00 for purchase of 18 (eighteen) sets of Globe protective clothing (coats at \$985.00/each and pants \$707.00/each) to be used by the Charleston Fire Department.

To be charged to Account No. 001-706-00-000-3-345, Fire - Uniforms

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

11. 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.

A Proposal submitted by Capitol Business Interiors, in the amount of \$41,767.48, for purchase of furniture needed for the Charleston Civic Center Meeting Parlor Rooms (\$9,785.08) and the Second-floor lounge area (\$31,982.40) as part of the Civic Center Expansion and Renovation Project.

To be charged to Account No. 216-979-01-000-4-460, Civic Center – Capital Outlay, Furniture, Fixtures & Equipment

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

12. 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.

A bid submitted by Thornhill Ford Lincoln in the amount of \$ 85,787.00 for the purchase of a new 2018 Chipper Body Truck to be used by the Street Department.

Funds for the truck are available in the PNC Equipment Finance, Schedule 210052000 and charged to Account No. 001-977-00-750-4-459, Street- Capital Outlay, Lease/Purchase Equipment

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

13. 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.

A bid submitted by West Virginia Tractor Company in the amount of \$ 440,000.00 for the purchase of two (2) new Broom Street Sweepers to be used by the Street Department.

Funds for the truck are available in the PNC Equipment Finance, Schedule 210052000 and charged to Account No. 001-977-00-750-4-459, Street- Capital Outlay, Lease/Purchase Equipment

Councilmember Reishman moved to approve the Committee Report. Councilmember Lane 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

1. Report of the City of Charleston Payroll Variance Analysis;
January 2018.
Received and Filed.
2. City of Charleston, WV – Financial Statements, for the one-month period ending July 31,
2017
Received and Filed.
3. City of Charleston, WV – Financial Statements, for the two-month period ending August
31, 2017
Received and Filed.
4. City of Charleston, WV – Financial Statements, for the three-month period ending
September 30, 2017
Received and Filed.
5. City of Charleston, WV – Financial Statements, for the four-month period ending
October 31, 2017
Received and Filed.
6. City of Charleston, WV – Financial Statements, for the five-month period ending
November 30, 2017
Received and Filed.
7. City of Charleston, WV – Financial Statements, for the six-month period ending
December 31, 2017
Received and Filed.

NEW BILLS

Introduced by Councilmember Mary Jean Davis on February 5, 2018:

Bill No. 7774 - A Bill amending the Zoning Ordinance of the City of Charleston by clarifying the regulations regarding open storage in both residential and commercial zoning districts.

Refer to Municipal Planning Commission and Planning Committee.

Introduced by Councilmember Chuck Overstreet on February 5, 2018:

Bill No. 7775 - A Bill to establish a 20 MPH speed limit on South Middle Street.

Refer to Streets and Traffic Committee.

Introduced by Councilmember Sam Minardi on February 5, 2018:

Bill No. 7776 - A Bill to establish a Stop intersection on Woodoak Lane at Overbrook Road by installing a stop sign on the corner of Woodoak Lane.

Refer to Streets and Traffic Committee.

ADJOURNMENT

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

YEAS: Burton, Chestnut, Davis, Ealy, Faegre, Haas, Harrison, Hoover, Ireland, Jones, King, Lane, Overstreet, Reishman, Richardson, Salisbury, Smith,

Snodgrass, Steele, Talkington, Ware, Mayor Jones

NAYS: NONE

ABSENT: Burka, Ceperley, Clowser, Minardi, Persinger

At 7:38 p.m., by a motion from Councilmember Harrison, Council adjourned until Tuesday, February 20, 2018, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

JB Akers, City Clerk