



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, March 19, 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 second meeting in the month of March on the 19th day, in the year 2018, 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 the United States Attorney from the Southern District, Michael Stewart. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

**BURKA
CHESTNUT
EALY
HARRISON
JONES
MINARDI
REISHMAN
SMITH
TALKINGTON**

**BURTON
CLOWSER
FAEGRE
HOOVER
KING
OVERSTREET
RICHARDSON
SNODGRASS
WARE**

**CEPERLEY
DAVIS
HAAS
IRELAND
LANE
PERSINGER
SALISBURY
STEELE
MAYOR JONES**

With twenty-seven 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. Jennie Hill – Spoke against Bill No. 7780.
2. Traci Strickland – Spoke against Bill No. 7780.
3. Somiyah Said – Spoke against Bill No. 7780.
4. Corporal Rob Welsh – Spoke in favor of Bill No. 7780.
5. Sue Frye – Spoke in favor of Bill No. 7780.

CLAIMS

1. A claim of Michael J Burdette, 714 Adams Street, Charleston, WV; alleges damage to property.
Refer to City Solicitor.
2. A claim of Sharon Garnes, 309 Holmes Hollow, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.
3. A claim of John R Lloyd, 246 Sunset Drive, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.
4. A claim of Betty Tucker, 5031 Jonquil Drive, Charleston, WV; alleges personal injury.
Refer to City Solicitor.

PROCLAMATIONS

1.

**EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION
By the Mayor**

WHEREAS: The American Red Cross saw a record-breaking disaster response year in 2017, responding to back-to-back hurricanes, the deadliest week of wildfires in California history, and the horrific mass shooting in Las Vegas. West Virginia Red Cross volunteers and staff deployed over 250 times in response these large scale disasters; and

WHEREAS: In Charleston, the Red Cross has a long history of helping our neighbors in need. In the past year alone, they installed more than 300 smoke alarms in more than 100 homes and assisted over 200 people who experienced a disaster, a majority of which were home fires. They have assisted over 100 military members, veterans and their families, collected almost 5,000 units of blood, educated over 4,000 people in life-saving skills and educated more than 200 students in disaster preparedness; and

WHEREAS: The City of Charleston is a partner and supporter of the work of the American Red Cross and is a proudly participating with their Sound the Alarm, Save a Life Event as one of the 100 cities across the United States where the Red Cross and their partners will install over 100,000 smoke alarms nationwide between April 28-May 13, 2018; and

WHEREAS: March is American Red Cross Month, a special time to recognize and thank the Red Cross volunteers and donors who give of their time and resources to help members of the community. The Red Cross depends on these local heroes to deliver help and hope during a disaster. We applaud our heroes here in West Virginia who give of themselves to assist their neighbors when they need a helping hand.

WHEREAS: We dedicate the month of March to all those who support the American Red Cross mission to prevent and alleviate human suffering in the face of emergencies. Our community depends on the American Red Cross, which relies on donations of time, money and blood to fulfill its humanitarian mission.

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby proclaim March 2018 as

AMERICAN RED CROSS MONTH

in Charleston, West Virginia, and urge all residents support this organization and its noble humanitarian mission.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 19th day of March, 2018.

DANNY JONES, MAYOR

The Proclamation was accepted by Erica Mani and various members of the Redd Cross.

PUBLIC HEARINGS

1. After duly being published as required, the Mayor declared the floor open for a Public Hearing on Bill No. 7778. 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 Bill No. 7779. 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 ENVIRONMENT AND RECYCLING

Councilmember Talkington, Chair of the Council Committee on Environment and Recycling, submitted the following reports:

1. Your committee on Environment and Recycling has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7779 do pass.

Bill No. 7779 - A BILL amending and re-enacting Chapter 98, Article II, Division 2, Section 98-71 of the Code of the City of Charleston to increase the charge for refuse collection.

WHEREAS, West Virginia State Code Section 8-13-13 gives West Virginia municipalities the authority to impose by ordinance reasonable rates, fees, and charges for providing services, including the collection and disposal of garbage; and

WHEREAS, the charges for refuse services currently in use were established in May of 2002; and

WHEREAS, the expenses associated with refuse and recycling collection have grown to exceed the revenue generated by refuse service charges by more than one million dollars annually; and

WHEREAS, the Council of the City of Charleston has determined that it is in the best fiscal interest of the City to increase the refuse service charges to produce sufficient revenue to help meet its obligations to continue to provide refuse removal to the citizens of Charleston;

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That, effective on July 1, 2018, Chapter 98, Article II, Division 2, Section 98-71 of the Code of the City of Charleston is hereby amended and re-enacted to read as follows:

Sec. 98-71. - Charges for refuse, recyclables and yard (green) waste services; authority of city collector to promulgate rules and regulations related to collection of fees.

(a) In conformity with subsection (g) of this section, and in order to make refuse disposal services self-supporting, the city council shall enact a schedule of rates, fees and charges for refuse disposal services provided by the city which shall include, but not be limited to, the collection and disposal of all bulky waste, refuse, recyclables and yard (green) waste; and any

such schedule enacted pursuant to this section shall, while it is in effect, be maintained on file in the office of the city clerk.

(b) For standard weekly service to each residential property, including each single-family dwelling and each multi-family dwelling unit, the charges will be as follows: ~~\$180.00~~216.00 per year (or ~~\$15.00~~18.00 per month.) For standard weekly service to nonresidential properties, the charges will be as follows: \$25.00 per month for pickup of bags which will not be supplied by the city, and \$40.00 per month per dumpster, not to exceed three cubic yards in size. There shall be no credit or rate reduction applicable to fees accruing on January 1, 2010, and thereafter, for residential or nonresidential properties that are vacant.

(c) Any bill not paid in full within 20 days of the mailing shall be delinquent and a ten percent penalty shall be added to such bill.

(d) The billing of the charges provided for above will be made by billing one-twelfth of such amount monthly in conjunction with the billing of the sanitary board and the fire service charge, under an arrangement providing for equitable sharing of the billing cost; provided, however, that when a user of waste disposal service is not being billed for sewer service, the city reserves the right to bill this service on an quarterly basis.

(e) When the aggregate gross income of all persons residing in residential property, including single-family dwellings and multi-family dwelling units, maintained and occupied by a resident of the city during the preceding calendar year of the city, is less than \$20,000.00, the rate for refuse may be reduced to \$60.00 a year (or \$5.00 per month); provided that the refuse fee account for which the reduced rate is requested is not in delinquent status, is current with no arrearage or penalties owed, has no delinquent fees or penalties due, and the resident who occupies such residential property makes an application for such reduced rate to the city collector and files therewith an affidavit evidencing the relevant facts required herein. If approved, the reduced rate and charges shall become effective with the first monthly billing after the filing of the affidavit; provided, however, that any approved reduced rate shall remain in effect for no more than one calendar year, or through June 30 of the year after which the affidavit is filed, whichever occurs first. So long as the qualifying and procedural requirements are met, a person may re-apply annually for a reduced rate in subsequent years. In the event any person making application for a reduced rate shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced rate as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to 150 percent of the prevailing rate then in effect.

(f) The city collector is hereby authorized to adopt such rules and regulations as may be necessary for him or her to determine, and he or she shall determine, the classification of residential properties, single-family dwellings, multi-family dwellings and other buildings and

premises for the application of the rates, fees and charges established by any schedule enacted by the city council pursuant to this section. Any person allegedly aggrieved by the application of any such rule or regulation of the city collector shall have the burden of proof to show that the city collector's rule or regulation is erroneous.

(g) The city council shall have the right to revise from time to time the schedule of rates, fees and charges enacted pursuant to subsections (b) and (e) of this section, so as to accomplish the purposes mentioned in subsection (a) or to so adjust the rates, fees and charges so that costs will be distributed as equitably as possible among all citizens of the city on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering refuse disposal costs at the landfill, or more revenue than is required to meet all costs involved in the collection and disposal services provided by the city.

Councilmember Talkington moved that the bill be referred to Finance Committee.
Councilmember Lane seconded the motion.
Received and Filed.

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. 023-18 be adopted.

Resolution No. 023-18 - Authorizing the Mayor or his designee to submit a grant application in the amount of \$4,970.00 to the Kanawha County Public Safety Grant Program to provide for purchase and installation of dual gun racks for the Charleston Police Department patrol cars. Matching funds are not required.

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

That the Mayor or his designee is hereby authorized and directed to submit a grant application in the amount of \$4,970.00 to the Kanawha County Public Safety Grant Program to provide for purchase and installation of dual gun racks for the Charleston Police Department patrol cars. Matching funds are not required.

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. 023-18 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. 024-18 be adopted.

Resolution No. 024-18 - Authorizing the City Manager or his designee to enter into an Agreement, upon final review and approval by the City Attorney and attached hereto as Exhibit A, with artist Dierk Van Keppel, for the design, fabrication, transportation, and installation of a large-scale fused glass relief sculpture to be installed on the wall of the pre-function area of the Charleston Civic Center referred to as the Elk River Atrium. The total cost for design, fabrication, transportation, and installation of the sculpture, selected by the Civic Center Public Art Committee, is \$100,000.00.

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

That the City Manager or his designee is hereby authorized to enter into an Agreement, upon final review and approval by the City Attorney and attached hereto as Exhibit A, with Dierk Van Keppel, for the design, fabrication, transportation, and installation of a large-scale fused glass relief sculpture to be installed on the wall of the pre-function area of the Charleston Civic Center referred to as the Elk River Atrium. The total cost for design, fabrication, transportation, and installation of the sculpture, selected by the Civic Center Public Art Committee, is \$100,000.00.

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 No. 024-18 adopted.

AGREEMENT FOR DESIGN, FABRICATION, TRANSPORTATION,
AND INSTALLATION OF ART FOR THE CHARLESTON CIVIC CENTER

This Agreement for Design, Fabrication, Transportation, and Installation of Art for the Charleston Civic Center (the “Agreement”), is made between THE CITY OF CHARLESTON, a municipal corporation, hereinafter called “City”, and DIERK VAN KEPPEL, hereinafter called “Artist”.

WHEREAS, the Artist has developed a proposal to design, fabricate, transport, and install an original piece of art (the “Art Work”) at the Charleston Civic Center (the “Project Site”), and as more particularly set forth in Art Work Proposal submitted by Artist. The Art Work Proposal is incorporated herein and made a part hereof, except to the extent inconsistent with the terms of this Agreement, as Exhibit A.

WHEREAS, the Art Work Proposal has been reviewed by the Civic Center Public Art Committee (the “Committee”), and the Committee has recommended to the City Council that it enter into this Agreement with the Artist to design, fabricate, transport, and install the Art Work.

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions set forth herein, agree as follows:

1. Term of the Agreement.

The term (“Term”) of this Agreement shall commence upon the Effective Date and be completed no later than October 8, 2018, or upon the Final Acceptance of the Art Work by the City of Charleston/Charleston Civic Center as described in Section 4, whichever is earlier.

2. Services Artist Agrees to Perform.

The Artist agrees to design, fabricate, transport, and install the Art Work at the Project Site and as more specifically set forth in Exhibit A. The Artwork is generally described as a large-scale fused glass relief sculpture to be installed in the Elk River Atrium addition.

The Artist will be responsible for the following services (collectively, the “Services”): (a) providing the Committee with the final design submittal for approval; (b) fabricating and installing the Art Work in the timeframe described in Section 4; (c) consulting with the City’s Director of Public Art (the “Director”) on the Art Work; (d) providing reports, documentation and description of maintenance requirements of Art Work; and (e) securing all Project Approvals for fabrication and installation from the City and any other governmental agencies.

3. Project Approvals.

Artist, at their expense, shall secure or cause to be secured any and all project approvals and permits (“Project Approvals”), which may be required by City or other governmental agencies. Director will work cooperatively with Artist to assist in coordinating the expeditious processing and consideration of all necessary Project Approvals for the Art Work. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any Project Approvals required by City or any other governmental agency.

4. Timely Provision of Services.

Artist shall commence and complete design, fabrication, transportation, and installation of the Art Work and satisfy all other obligations and conditions of this Agreement with respect thereto within the times established in this Agreement. Director and Artist may mutually agree in writing to changes in the following schedule:

1. CONCEPTUAL MEETING WITH ARTIST VIA CONFERENCE
2. DESIGN REVIEW/APPROVAL (1ST) – WITHIN 30 DAYS OF CONTRACT
3. DESIGN REVIEW/APPROVAL (2ND) – WITHIN 60 DAYS OF 1ST DESIGN REVIEW
4. FABRICATION/EXECUTION –
5. INSTALLATION – COMPLETED BY OCTOBER 4, 2018
6. FINAL APPROVAL – OCTOBER 8, 2018

5. Consultation during Design, Fabrication and Installation; Deviation from Approved Specifications.

Artist hereby acknowledges that the goal of the parties to this Agreement is the installation of a work of art that best represents the creative talents of Artist and conforms to the requirements of the City. To those ends, Artist agrees to be available as reasonably required for consultation with the Director during design and execution of the Art Work. Artist shall also make good faith efforts to attend any inauguration or presentation ceremonies and/or public relation events.

Artist shall fabricate and install the Art Work in strict conformity with the specifications and designs approved by the City. However, Artist may at any time make a request of the City for its approval of a deviation from the approved specifications. All such requests must be made in reasonable specificity and with reasonable advance notice to provide the City with sufficient information and time to make an informed and considered decision. City reserves the right to bring such requests to the Committee and/or City Council for approval. In no event shall any deviation increase the project scope and/or Contract Amount without prior City Council approval. The City may withhold approval to any such requested deviation in its sole discretion.

6. Preparation of and Access to Project Site/Notice of Conflicting Conditions

The preparation of the Project Site shall be the responsibility of the Artist. Artist shall not fabricate or install the Art Work until access to the Project Site has been approved and scheduled in coordination with the Director. Cost of transportation to and from the Project Site and any parking fees incurred by the Artist are the responsibility of the Artist.

In case of delay in Artist's services through no fault of Artist, including construction delay, Artist shall store the Art Work at no additional cost to City for up to 6 months. If Artist's work is delayed due to construction delays at the Project Site or other delays caused by City or its contractors, so that Artist suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Artist may apply to the City for reimbursement of those expenses, which City may award in its sole discretion.

7. Compensation

7.1. Contract Amount: The total compensation to Artist is \$100,000.00 (One Hundred Thousand Dollars) ("Contract Amount") for all Services under this Agreement, including payment to all suppliers, subcontractors, fees, taxes (including City business and occupation tax), Project Approvals, insurance, transportation to and from meetings, site preparation, and all other expenses associated with the scope of work specified in this Agreement. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the costs of fabricating, transporting, and installing the Art Work, for transporting and unloading materials and equipment to the Project Site, and for the costs of all travel by the Artist and the Artist's agents, subcontractors, fabricators, and employees necessary for the proper performance of the Services required under this Agreement.

7.2. Method of Payment: City agrees to pay Artist for the Services performed by Artist upon certification by City that the Services were actually performed in accordance with this Agreement. City shall make payments to Artist for the amounts specified and Services as described in Exhibit A hereto. Compensation for Services performed shall be paid to Artist upon receipt and approval of invoices by City. Artist shall submit invoices for each payment milestone described in Exhibit A. City shall pay Artist within forty-five (45) days after approval of the invoice by City (each an "Interim Payment"). In no event shall total payment exceed the total Contract Amount described in Section 7.1 unless such payment has been approved in writing by City. City may withhold any payments to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement or is otherwise in default. In no event shall City be responsible for payments to supplier or subcontractor of Artist.

7.3 Effect of Interim Payments. Approval of the work to permit an Interim Payment is solely for the benefit of the Artist. Any Interim Payment does not constitute acceptance or approval of the work by the City; nor shall it be construed as a waiver of the City's right to require that the work conform strictly to the Final Design as approved by the Committee, as specified under Section 4.

8. Method of Payment; Audit and Records.

Invoices furnished by the Artist under this Agreement must be in a form acceptable to the City. Payment shall be made within forty-five (45) days after approval of the invoice by Director. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Artist will permit the City to audit, examine, and make excerpts or transcripts from such records, and to

audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

9. Taxes.

Any taxes levied upon this Agreement, the transaction, or the equipment or services delivered under this Agreement, including sales or use taxes shall be borne by the Artist.

10. Liability for Damage to Equipment or Art Work.

The City shall bear no responsibility, nor incur any liability, for loss or damage to the Art Work or any Artist-owned equipment involved in Artist's performance under this Agreement.

11. Independent Contractor.

Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Artist performs the service required by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment or City relationship between the City and the Artist. Terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and result of the Artist's work only and not as to the means by which such a result is obtained. Artist is solely responsible for hiring and paying subcontractors and employees, as well as responsible for the acts of these subcontractors and employees.

12. Artist Warranties

12.1 Conformance with Plans and Specifications. Artist hereby expressly warrants to the City that the Art Work, and all services and materials incorporated therein, shall conform to all plans and specifications of the Art Work approved by the City. The Art Work shall be subject to inspection and rejection by the City from the beginning of fabrication until the completion and Final Acceptance. An inspection by the City of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final approval of the work shall be corrected or replaced by the Artist within a reasonable time. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship reasonably in accordance with the contract.

12.2. Defects in Material and Workmanship. Artist warrants that the work will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effect; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that it shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within twenty-four (24) months of the Final Acceptance of the Art Work.

In the event the Art Work should deteriorate due to an inherent defect during the [period for warranty], the Artist will replace the work at Artist's expense. "Inherent defect" refers to a quality within the material or materials which comprise the Art Work which, either alone or in combination, results in the tendency of the work to destroy itself. "Inherent defect" does not include any tendency to deteriorate which is specifically identified in the proposal submitted by the Artist.

12.3. Title. The Artist represents and warrants that: (a) the Art Work is solely the result of the artistic effort of the Artist; and (b) the Art Work is unique and original and does not infringe upon any copyright.

13. Maintenance, Repairs, Alterations and Removal.

13.1. Maintenance and Repair. As a condition to Final Acceptance by the City of the Art Work, the Artist shall provide the City with a materials list, the manufacturer's technical sheets and/or specifications for the materials, and a written description of the regular maintenance needs of the Art Work ("Maintenance and Materials List"). Routine maintenance of the Art Work shall be the responsibility of the City. The City shall maintain the Art Work and/or make minor or emergency repairs without Artist's approval or consultation, provided such work is performed in accordance with the maintenance and materials information provided by the Artist. If necessary maintenance and repairs cannot be made in accordance with the Artist's specifications, or if the Artist has provided insufficient information to the City, the City may use its best judgment to effect necessary repairs in a timely fashion.

13.2. Removal or Destruction. Artist hereby acknowledges that the Art Work, when installed, will be incorporated within and made a part of the Project Site in such a way that removing the Art Work from the Project Site, or the destruction or modification of the Project Site may cause the destruction, distortion, mutilation or other modification of the Art Work. Artist therefore agrees

that the City shall have the absolute right incidental to its ownership of the Art Work to alter, change, modify, destroy, remove, relocate, move, replace, transport, or transfer, in whole or in part (such actions being referred to herein as "Alterations"), the Art Work at such time as the City shall deem necessary in order to exercise its powers and responsibilities with respect to public works and improvements in furtherance of City's operations. The City shall make a good faith effort to provide the Artist with prior written notice of the City's intent to undertake any Alterations to the Art Work.

13.3. Public Hazard. Artist warrants to the City that the Art Work as installed does not contain features, materials or elements that pose a foreseeable danger to the public. In the event that the City determines that the Art Work presents an imminent hazard to the public, the City may authorize the removal of the Art Work without approval of the Artist. The Artist shall be notified within ten (10) days of any such action, and the City shall then consider options for the final disposition, repair, reinstallation, maintenance or de-accession of the Art Work. In the event that the Art Work cannot be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights to Art Work the Artist may have.

14. Insurance

14.1. Required Insurance. Artist shall place and maintain for the periods stated below, and pay the cost thereof, the following insurance policies: (a) Worker's Compensation. If Artist has employees, Artist shall procure and maintain statutory Worker's Compensation Insurance in the jurisdiction where the work is being performed and provide a waiver of subrogation against the City. Artist shall also procure and maintain Employer's Liability Insurance with a limit of no less than \$1,000,000 each accident, covering all employees. If Artist warrants that it is not an employer and has no employees, then the City waives the requirement for Worker's Compensation and Employer's Liability Insurance under this Agreement. Artist shall ensure that Artists' subcontractors who do qualify as employers procure prior Worker's Compensation, with Employer's Liability insurance, with limits of no less than \$1 million each accident, covering all employees employed by Artist's subcontractor to provide statutory benefits as required by law, said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City. (b) General Liability Insurance. Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage. (c) Risk of Loss Insurance. Artist shall procure and maintain Risk of Loss Insurance in an amount not less than \$100,000.00 (One Hundred Thousand Dollars). Artist shall take such measures as are reasonably necessary to protect the Art Work from loss or damage until Artist has completed the Art Work as specified herein and ownership is transferred to the City. The risk of loss or damage to the Art Work shall be borne by Artist prior to final acceptance of the Art Work by the City.

15. Indemnification and General Liability.

Artist shall defend, indemnify and hold harmless the City and its officers, employees, agents, contractors, consultants and members of its boards, committees and commissions (an "Indemnified Person") harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of any injury to or death to any person or damage to or destruction of any property, from any cause whatsoever, relating to Artist's performance, attempted performance or failure to perform under this Agreement or breach of this Agreement, whether such Loss is caused by the Artist or its agents, employees or contractors, or by any third party, but excluding liability caused by conduct of the City. In the event any action or proceeding is brought against an Indemnified Person by reason of a claim arising out of any Loss covered by this indemnity, and upon written notice from such Indemnified Person, Artist shall at the Artist's sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Person. For purposes of this Section, the term "Losses" shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorney's fees. The Artist shall indemnify and hold the City harmless from all loss and liability, including attorney's fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any third party persons arising from the Artist's work under this Agreement. The provisions of this Section 15 shall survive termination of this Agreement.

16. Default; Remedies; Termination.

16.1. For Cause. Failure or refusal of either party to perform or do any act herein required shall constitute a default. Either party may terminate this Agreement upon seven (7) days' advance written notice to the other party in the event that the other party (i) materially breaches any duty, obligation, or service required pursuant to this Agreement and (ii) fails to cure such breach within ten (10) days after written notice of such breach from the non-breaching party. In the event this Agreement is terminated by reason of the Artist's default, the Artist shall immediately refund to the City the amount of any interim payment(s) made to the Artist.

16.2. For Public Convenience or Necessity. The City may terminate this Agreement at any time, in whole or in part, at

any time for the convenience of the City, or should the City have a compelling public need to terminate this Agreement. The Director will deliver to Artist a Notice of Termination specifying the effective date thereof, which shall not be fewer than fifteen (15) days. Upon termination by City pursuant to this subsection 16.2, City shall provide for payment to the Artist for services rendered and expenses incurred prior to the termination date. Artist shall receive payment only for expenses directly related to the current phase of the Project at the time of termination. Such payment shall not exceed the amount of the Interim Payment for the current phase of the Project at the time of termination.

16.3. No Waiver. Termination by the City pursuant to this Section does not waive any other legal remedies available to the City. The remedies described herein are in addition to all other remedies available to either party under the laws of the State of West Virginia should the other party fail to comply with the terms of this Agreement.

17. Notices.

Submittals, payments, requests, notices and reports required under this Agreement shall be delivered as follows:

For the City:
 Jeff Pierson, Director of Public Art
 City of Charleston
 915 Quarrier Street, Suite 2
 Charleston, WV 25301

For the Artist:

Any submittal, payment, request, notice, or report shall be deemed delivered five (5) business days after the party providing notice has mailed said notice to the other party by certified mail.

18. Ownership of Art Work; Copyright and Patents; Documentation.

18.1. Generally. Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Art Work except as otherwise set forth in this Agreement. The City is not responsible for any third party infringement of the Artist's copyrights and Artist agrees to hold the City harmless for any such infringement. Title to the Art Work shall be held by the City.

18.2. Display. The City has the right to display the project drawings and models, and is authorized to make and reproduce photographs and other two-dimensional reproductions of any drawings or models for publicity and program purposes.

18.3. Reproduction Rights. City shall have a perpetual, nonexclusive license to make, and to authorize the making of photographs and other two-dimensional reproductions of the work for educational, public relations, arts promotional and other non-commercial purposes. For the purposes of this Agreement, the following are deemed to be reproductions for non-commercial purposes: reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars, and the City's or Civic Center's on-line webpages; in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational purposes from all stations.

18.4. Artistic Credit. The City hereby agrees to credit the Artist for the Art Work upon publication of any two-dimensional reproductions of the work as stated in this Section.

19. Subcontracting.

The Artist shall not subcontract this Agreement or any part of it unless such subcontracting is approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In the event Artist desires to subcontract for any of the services under this Agreement, the Artist shall notify the City in writing and describe in detail the services to be provided by said subcontractor. Within ten (10) business days after receipt of Artist's notice of intent to subcontract, City shall notify Artist in writing of its consent to subcontract, which consent shall not be unreasonably withheld. All subcontractors shall obtain insurance for the coverages and amounts described in Section 14. All insurance policies of subcontractors shall name the City as an additional insured.

The Artist's agreements with its subcontractors shall require that the subcontractors comply with each of the Artist's legal obligations to the City as set forth in this Agreement.

20. No Assignment or Transfer.

Artist shall consistently give its personal attention to the faithful execution of the scope of work of this Agreement. The Artist shall keep the work under its control and shall not assign or subcontract the whole or any part thereof, except as herein provided. All transactions with subcontractors shall be made through the Artist, and no subcontractor shall relieve the Artist of any of the Artist's liability or obligations under this contract.

21. Compliance with Laws

In the performance of this contract, Artist agrees to comply with applicable laws and regulations. Artist covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Artist by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Artist under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. Artist shall not discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, gender, sexual orientation, or disability.

22. Conflicts of Interest

Artist covenants and declares that, other than this Agreement, it has no business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Artist or its principals, agents or employees acquire such a holding, interest or agreement within the City of Charleston or with any official, employee or representative of the City in the future, the Artist will immediately notify the City of such holding, interest or agreement in writing.

23. Miscellaneous

23.1. Survival of Indemnities and Other Provisions. Termination of this Agreement shall not affect City's right to enforce any and all indemnities, representations or warranties given or made by Artist to City under this Agreement, nor shall it affect any other provision of this Agreement that expressly states it shall survive termination.

23.2. Force Majeure. In the event of any condition or event, not existing as of the date of execution of the Agreement, not reasonably foreseeable as of such date, and not reasonably within the control of the parties which prevents in whole or in material part the performance of either party of its obligations hereunder, the obligations of each party to perform under the Agreement shall be suspended until the cause no longer prevents or makes impracticable either party's performance at which time all obligations shall resume. Either party shall have the right to terminate this Agreement upon written notice to the other should the condition or event continue for a period of two (2) days or more. Force Majeure events or conditions shall include, but not be limited to, riots, war, governmental action, strikes or lockouts (other than the parties), epidemics, flood, earthquake and explosion.

23.3. Forum Provision Choice of Law, Consent to Jurisdiction and Venue. This Agreement shall be deemed to be executed in The City of Charleston, State of West Virginia, regardless of the domicile of Artist, and shall be governed by and construed in accordance with the laws of the State of West Virginia. The parties agree that any and all claims asserted by or against City 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.

23.4. Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Artist and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Agreement.

23.5. Integrated Agreement; Modification. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

23.6. Non-waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

23.7. Entire Agreement; Construction and Interpretation of Agreement. (a) The parties intend that this Agreement

(including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. (b) Should any provisions or portions of this Agreement be held unenforceable or invalid, the remaining provisions and portions shall be unaffected by such holdings. (c) The subject headings of the paragraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of any of its provisions. (d) The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Agreement. (e) This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which taken together shall constitute one and the same instrument. (f) If more than one person executes this Agreement on behalf of Artist, the obligations and liabilities of each such person shall be joint and several as to all obligations and liabilities of Artist hereunder.

IN WITNESS WHEREOF, The City of Charleston has caused its name to be signed hereto by its Mayor, Danny Jones, and Artist has caused this Agreement to be properly executed by its officer thereunto duly authorized.

THE CITY OF CHARLESTON, [artist]
a municipal corporation

By _____ By _____

Date _____ Date _____

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 025-18 be adopted.

Resolution No. 025-18 - Authorizing the City Manager or his designee to enter into an Agreement with artist Lyle London, for the design, fabrication, transportation, and installation of a large-scale helix concept sculpture to be installed in the atrium of the Charleston Civic Center facing Quarrier Street. The total cost for design, fabrication, transportation, and installation of the sculpture, selected by the Civic Center Public Art Committee, is \$200,000.00.

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

That the City Manager or his designee is hereby authorized to enter into an Agreement with artist Lyle London, for the design, fabrication, transportation, and installation of a large-scale helix concept sculpture to be installed in the atrium of the Charleston Civic Center facing Quarrier Street. The total cost for design, fabrication, transportation, and installation of the sculpture, selected by the Civic Center Public Art Committee, is \$200,000.00.

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 No. 025-18 adopted.

AGREEMENT FOR DESIGN, FABRICATION, TRANSPORTATION,
AND INSTALLATION OF ART FOR THE CHARLESTON CIVIC CENTER

This Agreement for Design, Fabrication, Transportation, and Installation of Art for the Charleston Civic Center (the “Agreement”), is made between THE CITY OF CHARLESTON, a municipal corporation, hereinafter called “City”, and LYLE LONDON, hereinafter called “Artist”.

WHEREAS, the Artist has developed a proposal to design, fabricate, transport, and install an original piece of art (the “Art Work”) at the Charleston Civic Center (the “Project Site”), and as more particularly set forth in Art Work Proposal submitted by Artist. The Art Work Proposal is incorporated herein and made a part hereof, except to the extent inconsistent with the terms of this Agreement, as Exhibit A.

WHEREAS, the Art Work Proposal has been reviewed by the Civic Center Public Art Committee (the “Committee”), and the Committee has recommended to the City Council that it enter into this Agreement with the Artist to design, fabricate, transport, and install the Art Work.

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions set forth herein, agree as follows:

1. Term of the Agreement.

The term (“Term”) of this Agreement shall commence upon the Effective Date and be completed no later than October 8, 2018, or upon the Final Acceptance of the Art Work by the City of Charleston/Charleston Civic Center as described in Section 4, whichever is earlier.

2. Services Artist Agrees to Perform.

The Artist agrees to design, fabricate, transport, and install the Art Work at the Project Site and as more specifically set forth in Exhibit A. The Artwork is generally described as a large-scale helix concept sculpture constructed of dichroic glass and stainless steel to be installed in the atrium of the Civic Center facing Quarrier Street.

The Artist will be responsible for the following services (collectively, the “Services”): (a) providing the Committee with the final design submittal for approval; (b) fabricating and installing the Art Work in the timeframe described in Section 4; (c) consulting with the City’s Director of Public Art (the “Director”) on the Art Work; (d) providing reports, documentation and description of maintenance requirements of Art Work; and (e) securing all Project Approvals for fabrication and installation from the City and any other governmental agencies.

3. Project Approvals.

Artist, at their expense, shall secure or cause to be secured any and all project approvals and permits (“Project Approvals”), which may be required by City or other governmental agencies. Director will work cooperatively with Artist to assist in coordinating the expeditious processing and consideration of all necessary Project Approvals for the Art Work. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any Project Approvals required by City or any other governmental agency.

4. Timely Provision of Services.

Artist shall commence and complete design, fabrication, transportation, and installation of the Art Work and satisfy all other obligations and conditions of this Agreement with respect thereto within the times established in this Agreement. Director and Artist may mutually agree in writing to changes in the following schedule:

7. CONCEPTUAL MEETING WITH ARTIST VIA CONFERENCE
8. DESIGN REVIEW/APPROVAL (1ST) – WITHIN 30 DAYS OF CONTRACT
9. DESIGN REVIEW/APPROVAL (2ND) – WITHIN 60 DAYS OF 1ST DESIGN REVIEW
10. FABRICATION/EXECUTION –
11. INSTALLATION – COMPLETED BY OCTOBER 4, 2018
12. FINAL APPROVAL – OCTOBER 8, 2018

5. Consultation during Design, Fabrication and Installation; Deviation from Approved Specifications.

Artist hereby acknowledges that the goal of the parties to this Agreement is the installation of a work of art that best represents the creative talents of Artist and conforms to the requirements of the City. To those ends, Artist agrees to be available as reasonably required for consultation with the Director during design and execution of the Art Work. Artist shall also make good faith efforts to attend any inauguration or presentation ceremonies and/or public relation events.

Artist shall fabricate and install the Art Work in strict conformity with the specifications and designs approved by the City. However, Artist may at any time make a request of the City for its approval of a deviation from the approved specifications. All such requests must be made in reasonable specificity and with reasonable advance notice to provide the City with sufficient information and time to make an informed and considered decision. City reserves the right to bring such requests to the Committee and/or City Council for approval. In no event shall any deviation increase the project scope and/or Contract Amount without prior City Council approval. The City may withhold approval to any such requested deviation in its sole discretion.

6. Preparation of and Access to Project Site/Notice of Conflicting Conditions

The preparation of the Project Site shall be the responsibility of the Artist. Artist shall not fabricate or install the Art Work until access to the Project Site has been approved and scheduled in coordination with the Director. Cost of transportation to and from the Project Site and any parking fees incurred by the Artist are the responsibility of the Artist.

In case of delay in Artist's services through no fault of Artist, including construction delay, Artist shall store the Art Work at no additional cost to City for up to 6 months. If Artist's work is delayed due to construction delays at the Project Site or other delays caused by City or its contractors, so that Artist suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Artist may apply to the City for reimbursement of those expenses, which City may award in its sole discretion.

7. Compensation

7.1. Contract Amount: The total compensation to Artist is \$200,000.00 (Two Hundred Thousand Dollars) ("Contract Amount") for all Services under this Agreement, including payment to all suppliers, subcontractors, fees, taxes (including City business and occupation tax), Project Approvals, insurance, transportation to and from meetings, site preparation, and all other expenses associated with the scope of work specified in this Agreement. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the costs of fabricating, transporting, and installing the Art Work, for transporting and unloading materials and equipment to the Project Site, and for the costs of all travel by the Artist and the Artist's agents, subcontractors, fabricators, and employees necessary for the proper performance of the Services required under this Agreement.

7.2. Method of Payment: City agrees to pay Artist for the Services performed by Artist upon certification by City that the Services were actually performed in accordance with this Agreement. City shall make payments to Artist for the amounts specified and Services as described in Exhibit A hereto. Compensation for Services performed shall be paid to Artist upon receipt and approval of invoices by City. Artist shall submit invoices for each payment milestone described in Exhibit A. City shall pay Artist within forty-five (45) days after approval of the invoice by City (each an "Interim Payment"). In no event shall total payment exceed the total Contract Amount described in Section 7.1 unless such payment has been approved in writing by City. City may withhold any payments to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement or is otherwise in default. In no event shall City be responsible for payments to supplier or subcontractor of Artist.

7.4 Effect of Interim Payments. Approval of the work to permit an Interim Payment is solely for the benefit of the Artist. Any Interim Payment does not constitute acceptance or approval of the work by the City; nor shall it be construed as a waiver of the City's right to require that the work conform strictly to the Final Design as approved by the Committee, as specified under Section 4.

8. Method of Payment; Audit and Records.

Invoices furnished by the Artist under this Agreement must be in a form acceptable to the City. Payment shall be made within forty-five (45) days after approval of the invoice by Director. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Artist will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

9. Taxes.

Any taxes levied upon this Agreement, the transaction, or the equipment or services delivered under this Agreement, including sales or use taxes shall be borne by the Artist.

10. Liability for Damage to Equipment or Art Work.

The City shall bear no responsibility, nor incur any liability, for loss or damage to the Art Work or any Artist-owned equipment involved in Artist's performance under this Agreement.

11. Independent Contractor.

Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Artist performs the service required by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment or City relationship between the City and the Artist. Terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and result of the Artist's work only and not as to the means by which such a result is obtained. Artist is solely responsible for hiring and paying subcontractors and employees, as well as responsible for the acts of these subcontractors and employees.

12. Artist Warranties

12.1 Conformance with Plans and Specifications. Artist hereby expressly warrants to the City that the Art Work, and all services and materials incorporated therein, shall conform to all plans and specifications of the Art Work approved by the City. The Art Work shall be subject to inspection and rejection by the City from the beginning of fabrication until the completion and Final Acceptance. An inspection by the City of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final approval of the work shall be corrected or replaced by the Artist within a reasonable time. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship reasonably in accordance with the contract.

12.2. Defects in Material and Workmanship. Artist warrants that the work will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effect; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that it shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within twenty-four (24) months of the Final Acceptance of the Art Work.

In the event the Art Work should deteriorate due to an inherent defect during the [period for warranty], the Artist will replace the work at Artist's expense. "Inherent defect" refers to a quality within the material or materials which comprise the Art Work which, either alone or in combination, results in the tendency of the work to destroy itself. "Inherent defect" does not include any tendency to deteriorate which is specifically identified in the proposal submitted by the Artist.

12.3. Title. The Artist represents and warrants that: (a) the Art Work is solely the result of the artistic effort of the Artist; and (b) the Art Work is unique and original and does not infringe upon any copyright.

13. Maintenance, Repairs, Alterations and Removal.

13.1. Maintenance and Repair. As a condition to Final Acceptance by the City of the Art Work, the Artist shall provide the City with a materials list, the manufacturer's technical sheets and/or specifications for the materials, and a written description of the regular maintenance needs of the Art Work ("Maintenance and Materials List"). Routine maintenance of the Art Work shall be the responsibility of the City. The City shall maintain the Art Work and/or make minor or emergency repairs without Artist's approval or consultation, provided such work is performed in accordance with the maintenance and materials information provided by the Artist. If necessary maintenance and repairs cannot be made in accordance with the Artist's specifications, or if the Artist has provided insufficient information to the City, the City may use its best judgment to effect necessary repairs in a timely fashion.

13.2. Removal or Destruction. Artist hereby acknowledges that the Art Work, when installed, will be incorporated within and made a part of the Project Site in such a way that removing the Art Work from the Project Site, or the destruction or modification of the Project Site may cause the destruction, distortion, mutilation or other modification of the Art Work. Artist therefore agrees that the City shall have the absolute right incidental to its ownership of the Art Work to alter, change, modify, destroy, remove, relocate, move, replace, transport, or transfer, in whole or in part (such actions being referred to herein as "Alterations"), the Art

Work at such time as the City shall deem necessary in order to exercise its powers and responsibilities with respect to public works and improvements in furtherance of City's operations. The City shall make a good faith effort to provide the Artist with prior written notice of the City's intent to undertake any Alterations to the Art Work.

13.3. Public Hazard. Artist warrants to the City that the Art Work as installed does not contain features, materials or elements that pose a foreseeable danger to the public. In the event that the City determines that the Art Work presents an imminent hazard to the public, the City may authorize the removal of the Art Work without approval of the Artist. The Artist shall be notified within ten (10) days of any such action, and the City shall then consider options for the final disposition, repair, reinstallation, maintenance or de-accession of the Art Work. In the event that the Art Work cannot be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights to Art Work the Artist may have.

14. Insurance

14.1. Required Insurance. Artist shall place and maintain for the periods stated below, and pay the cost thereof, the following insurance policies: (a) Worker's Compensation. If Artist has employees, Artist shall procure and maintain statutory Worker's Compensation Insurance in the jurisdiction where the work is being performed and provide a waiver of subrogation against the City. Artist shall also procure and maintain Employer's Liability Insurance with a limit of no less than \$1,000,000 each accident, covering all employees. If Artist warrants that it is not an employer and has no employees, then the City waives the requirement for Worker's Compensation and Employer's Liability Insurance under this Agreement. Artist shall ensure that Artists' subcontractors who do qualify as employers procure prior Worker's Compensation, with Employer's Liability insurance, with limits of no less than \$1 million each accident, covering all employees employed by Artist's subcontractor to provide statutory benefits as required by law, said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City. (b) General Liability Insurance. Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage. (c) Risk of Loss Insurance. Artist shall procure and maintain Risk of Loss Insurance in an amount not less than \$100,000.00 (One Hundred Thousand Dollars). Artist shall take such measures as are reasonably necessary to protect the Art Work from loss or damage until Artist has completed the Art Work as specified herein and ownership is transferred to the City. The risk of loss or damage to the Art Work shall be borne by Artist prior to final acceptance of the Art Work by the City.

15. Indemnification and General Liability.

Artist shall defend, indemnify and hold harmless the City and its officers, employees, agents, contractors, consultants and members of its boards, committees and commissions (an "Indemnified Person") harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of any injury to or death to any person or damage to or destruction of any property, from any cause whatsoever, relating to Artist's performance, attempted performance or failure to perform under this Agreement or breach of this Agreement, whether such Loss is caused by the Artist or its agents, employees or contractors, or by any third party, but excluding liability caused by conduct of the City. In the event any action or proceeding is brought against an Indemnified Person by reason of a claim arising out of any Loss covered by this indemnity, and upon written notice from such Indemnified Person, Artist shall at the Artist's sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Person. For purposes of this Section, the term "Losses" shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorney's fees. The Artist shall indemnify and hold the City harmless from all loss and liability, including attorney's fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any third party persons arising from the Artist's work under this Agreement. The provisions of this Section 15 shall survive termination of this Agreement.

16. Default; Remedies; Termination.

16.1. For Cause. Failure or refusal of either party to perform or do any act herein required shall constitute a default. Either party may terminate this Agreement upon seven (7) days' advance written notice to the other party in the event that the other party (i) materially breaches any duty, obligation, or service required pursuant to this Agreement and (ii) fails to cure such breach within ten (10) days after written notice of such breach from the non-breaching party. In the event this Agreement is terminated by reason of the Artist's default, the Artist shall immediately refund to the City the amount of any interim payment(s) made to the Artist.

16.2. For Public Convenience or Necessity. The City may terminate this Agreement at any time, in whole or in part, at any time for the convenience of the City, or should the City have a compelling public need to terminate this Agreement. The Director will deliver to Artist a Notice of Termination specifying the effective date thereof, which shall not be fewer than fifteen

(15) days. Upon termination by City pursuant to this subsection 16.2, City shall provide for payment to the Artist for services rendered and expenses incurred prior to the termination date. Artist shall receive payment only for expenses directly related to the current phase of the Project at the time of termination. Such payment shall not exceed the amount of the Interim Payment for the current phase of the Project at the time of termination.

16.3. No Waiver. Termination by the City pursuant to this Section does not waive any other legal remedies available to the City. The remedies described herein are in addition to all other remedies available to either party under the laws of the State of West Virginia should the other party fail to comply with the terms of this Agreement.

17. Notices.

Submittals, payments, requests, notices and reports required under this Agreement shall be delivered as follows:

For the City:

Jeff Pierson, Director of Public Art
City of Charleston
915 Quarrier Street, Suite 2
Charleston, WV 25301

For the Artist:

Any submittal, payment, request, notice, or report shall be deemed delivered five (5) business days after the party providing notice has mailed said notice to the other party by certified mail.

18. Ownership of Art Work; Copyright and Patents; Documentation.

18.1. Generally. Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Art Work except as otherwise set forth in this Agreement. The City is not responsible for any third party infringement of the Artist's copyrights and Artist agrees to hold the City harmless for any such infringement. Title to the Art Work shall be held by the City.

18.2. Display. The City has the right to display the project drawings and models, and is authorized to make and reproduce photographs and other two-dimensional reproductions of any drawings or models for publicity and program purposes.

18.3. Reproduction Rights. City shall have a perpetual, nonexclusive license to make, and to authorize the making of photographs and other two-dimensional reproductions of the work for educational, public relations, arts promotional and other non-commercial purposes. For the purposes of this Agreement, the following are deemed to be reproductions for non-commercial purposes: reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars, and the City's or Civic Center's on-line webpages; in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience, and television from stations operated for educational purposes or on programs for educational purposes from all stations.

18.4. Artistic Credit. The City hereby agrees to credit the Artist for the Art Work upon publication of any two-dimensional reproductions of the work as stated in this Section.

19. Subcontracting.

The Artist shall not subcontract this Agreement or any part of it unless such subcontracting is approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In the event Artist desires to subcontract for any of the services under this Agreement, the Artist shall notify the City in writing and describe in detail the services to be provided by said subcontractor. Within ten (10) business days after receipt of Artist's notice of intent to subcontract, City shall notify Artist in writing of its consent to subcontract, which consent shall not be unreasonably withheld. All subcontractors shall obtain insurance for the coverages and amounts described in Section 14. All insurance policies of subcontractors shall name the City as an additional insured.

The Artist's agreements with its subcontractors shall require that the subcontractors comply with each of the Artist's legal obligations to the City as set forth in this Agreement.

20. No Assignment or Transfer.

Artist shall consistently give its personal attention to the faithful execution of the scope of work of this Agreement. The Artist shall keep the work under its control and shall not assign or subcontract the whole or any part thereof, except as herein provided. All transactions with subcontractors shall be made through the Artist, and no subcontractor shall relieve the Artist of any of the Artist's liability or obligations under this contract.

21. Compliance with Laws

In the performance of this contract, Artist agrees to comply with applicable laws and regulations. Artist covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Artist by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Artist under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. Artist shall not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, gender, sexual orientation, or disability.

22. Conflicts of Interest

Artist covenants and declares that, other than this Agreement, it has no business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Artist or its principals, agents or employees acquire such a holding, interest or agreement within the City of Charleston or with any official, employee or representative of the City in the future, the Artist will immediately notify the City of such holding, interest or agreement in writing.

23. Miscellaneous

23.1. Survival of Indemnities and Other Provisions. Termination of this Agreement shall not affect City's right to enforce any and all indemnities, representations or warranties given or made by Artist to City under this Agreement, nor shall it affect any other provision of this Agreement that expressly states it shall survive termination.

23.2. Force Majeure. In the event of any condition or event, not existing as of the date of execution of the Agreement, not reasonably foreseeable as of such date, and not reasonably within the control of the parties which prevents in whole or in material part the performance of either party of its obligations hereunder, the obligations of each party to perform under the Agreement shall be suspended until the cause no longer prevents or makes impracticable either party's performance at which time all obligations shall resume. Either party shall have the right to terminate this Agreement upon written notice to the other should the condition or event continue for a period of two (2) days or more. Force Majeure events or conditions shall include, but not be limited to, riots, war, governmental action, strikes or lockouts (other than the parties), epidemics, flood, earthquake and explosion.

23.3. Forum Provision Choice of Law, Consent to Jurisdiction and Venue. This Agreement shall be deemed to be executed in The City of Charleston, State of West Virginia, regardless of the domicile of Artist, and shall be governed by and construed in accordance with the laws of the State of West Virginia. The parties agree that any and all claims asserted by or against City 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.

23.4. Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Artist and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Agreement.

23.5. Integrated Agreement; Modification. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

23.6. Non-waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

23.7. Entire Agreement; Construction and Interpretation of Agreement. (a) The parties intend that this Agreement (including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral

agreements or understandings. (b) Should any provisions or portions of this Agreement be held unenforceable or invalid, the remaining provisions and portions shall be unaffected by such holdings. (c) The subject headings of the paragraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of any of its provisions. (d) The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Agreement. (e) This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which taken together shall constitute one and the same instrument. (f) If more than one person executes this Agreement on behalf of Artist, the obligations and liabilities of each such person shall be joint and several as to all obligations and liabilities of Artist hereunder.

IN WITNESS WHEREOF, The City of Charleston has caused its name to be signed hereto by its Mayor, Danny Jones, and Artist has caused this Agreement to be properly executed by its officer thereunto duly authorized.

THE CITY OF CHARLESTON, [artist]
a municipal corporation

By _____ By _____

Its _____ Mayor _____ Its _____

4. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7778 do pass.

Bill No. 7778 - A Bill and order determining the necessity for continuance of additional levies for the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022, for current general governmental expenses, and providing for submission to the voters within the City of Charleston of the question of a continuance of the additional levy at the primary election to be held on May 8, 2018.

Providing for the continuance of the levy rate, providing for publication of notice of the election to authorize the additional levy; providing for application of the primary election laws to such primary election, authorizing the City Clerk and Kanawha County Clerk to furnish election officials with proper election supplies and make publication of this ordinance, delivery of this ordinance to the Ballot Commissioners and the printing of ballots; providing the form of the official ballot; and providing for the voting precincts and determining those entitled to vote.

WHEREAS, after full information and consideration thereof, the Council of the City of Charleston, West Virginia, is of the opinion and finds that the maximum levies for current expenses for the general fund purposes of said City authorized to be laid by the provisions of Section 14, Chapter 11, Article 8 of the Code of West Virginia, 1931, as amended, will not provide sufficient funds for the four fiscal years which begin, respectively, on the first day of July 2019, 2020, 2021, and 2022, and to cover expenditures properly payable from said funds, including expenditures for the purpose hereinafter set out, and having ascertained that the amounts hereinafter shown, in excess of the amount raised by regular levies, will be needed by the said City of Charleston during each of said four fiscal years for the purpose as follows, and that such levies constitute a continuance of the additional levies heretofore provided for the fiscal years beginning respectively on the first day of July 2019, 2020, 2021, and 2022, and that an election should be held pursuant to the provisions of Section 16 and 17 of Article 8, Chapter 11 of the Code of West Virginia, 1931, as amended; therefore,

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

(1) The purpose for which additional funds are needed by said City for each of the four fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022, are current, general governmental expenses.

(2) The amounts considered necessary for each of said purposes for each fiscal year beginning on the date indicated are as follows:

July 1, 2019

For current, general governmental expenses\$4,810,919
 TOTAL EXPENDITURES \$4,810,919
 Allowance for delinquent taxes and shrinkage (7.5%)\$ 385,019
 TOTAL AMOUNT OF ADDITIONAL LEVY\$5,195,938

July 1, 2020

For current, general governmental expenses\$4,810,919
 TOTAL EXPENDITURES \$4,810,919
 Allowance for delinquent taxes and shrinkage (7.5%)\$ 385,019
 TOTAL AMOUNT OF ADDITIONAL LEVY\$5,195,938

July 1, 2021

For current, general governmental expenses\$4,810,919
 TOTAL EXPENDITURES \$4,810,919
 Allowance for delinquent taxes and shrinkage (7.5%)\$ 385,019
 TOTAL AMOUNT OF ADDITIONAL LEVY\$5,195,938

July 1, 2022

For current, general governmental expenses\$4,810,919
 TOTAL EXPENDITURES \$4,810,919
 Allowance for delinquent taxes and shrinkage (7.5%)\$ 385,019
 TOTAL AMOUNT OF ADDITIONAL LEVY\$5,195,938

(3) The total amount necessary to carry out the above purposes for each year, after making reasonable allowance for uncollected taxes and shrinkage as set forth above is \$4,810,919.

(4) The separate and aggregate assessed valuation in each class of taxable property within the said City of Charleston is as follows:

Class I	\$ - 0 -
Class II	\$1,303,592,502
Class III	\$ - 0-
Class IV	\$1,930,677,902
Aggregate.....	\$3,234,270,404

(5a) The proposed additional rate of levy in cents per \$100 assessed valuation on each class of property within the said City of Charleston for the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022, is as follows:

Class I..... \$ 5.03 cents/\$100
 Class II..... \$10.06 cents/\$ 100
 Class IV..... \$20.12 cents/\$ 100

(5b) Provided that in the event the separate and aggregate assessed evaluations of each class of taxable property within the City of Charleston increases during the term of the special levy, the levy rate may be adjusted so that the projected gross tax revenue will not exceed 95% of the previous year's projected gross tax revenue. An increase in the aggregate assessed valuation of each class of taxable property due to new construction or improvements to existing real property, including beginning recovery of natural resources and newly acquired personal property shall not be included in calculating the new tax levy for the purposes of this section.

- (6) The years which the additional levies shall apply if authorized by the votes, are the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022.
- (7) The Council of the City of Charleston declares that it will not issue bonds under the provisions of Section 16, Article 8, Chapter 11, of the West Virginia Code of 1931, as amended, on approval of the voters of the proposed additional levy.
- (8) The Council of the City of Charleston finds that additional levies were heretofore authorized by the voters of the City of Charleston and have been in effect for the fiscal years beginning July 1, 2015, July 1, 2016, and July 1, 2017, and July 1, 2018, and that the additional levies proposed by this ordinance constitute as continuation of such additional levies for the fiscal years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022.
- (9) The question of such additional levies shall be submitted to the voters within the City of Charleston, West Virginia, at the primary election to be held in said City on the 8th day of May 2018.
- (10) Notice of the election to authorize the additional levy shall be given by publication of this ordinance and order at least once each week for two successive weeks, both publications to occur within fourteen (14) consecutive days, next preceding the date of the election, in the Charleston Gazette-Mail, a newspaper of the general circulation published in the City of Charleston, West Virginia.
- (11) All provisions of the laws concerning primary elections shall apply so far as they are applicable to the holding of said election and the ascertainment of the results thereof. The City Clerk is hereby authorized and directed to furnish the Clerk of Kanawha County with necessary and proper election supplies, and to do any and all things necessary and proper attendant to said primary election, including but not limited to, the performance of primary

election duties imposed by law upon Clerks of the Circuit Courts in relation to primary elections, and shall furnish and deliver a certified copy of this ordinance and order to the Ballot Commissioners of the County of Kanawha, who shall take the same and provide for the printing of ballots, in accordance with the provisions of law, as made and provided, and with the provisions of this ordinance and order.

(12) That portion of the ballot to be used in said election to authorize the additional levy shall be in the form substantially as follows:

"An Election to authorize the continuation of additional levies for the years beginning July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022, for the purpose of providing additional funds annually during such years for current, general governmental expenses according to the order and ordinance of the Council of the City of Charleston passed and adopted at its meeting on the 19th day of March, 2018."

"The additional levies shall be on Class I property 5.03 cents; and on Class II property 10.06 cents; and on Class IV property 20.12 cents; all per \$100 assessed valuation."

"Provided that in the event the separate and aggregate assessed valuations of each class of taxable property within the City of Charleston increases during the term of the special levy, the levy rate may be adjusted so that the projected gross tax will not exceed 95% of the previous years projected gross tax revenue. An increase in the aggregate assessed valuation of each class of taxable property due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be included in calculating the new tax levy for purposes of this section."

"INSTRUCTION TO THE VOTER: Those favoring and wish to vote for the proposed continuance of additional levies shall darken the oval completely next to "FOR THE LEVIES", those opposing and wish to vote against the proposed continuance of additional levies shall darken the oval completely before "AGAINST THE LEVIES."

FOR THE LEVIES

AGAINST THE LEVIES

(13) The voting precincts within the City of Charleston as now existing and as established by the County Commission of Kanawha County, West Virginia, shall be, and the same are hereby designated as the voting precincts for such election and the registration of voters and the use of registration law of the State, and the City of Charleston hereby adopts the registration list of Kanawha County as to precincts and as to persons within the limits of the City of Charleston entitled to vote, as amended and corrected according to law as the official registration list of

said City of Charleston to be used as such election on the said 8th day of May, 2018, and all persons who would be qualified to vote in the primary election shall be qualified to vote for or against said additional levies in said election.

(14) After completion of the canvass of the results of said election, the Council of the City of Charleston shall convene at its regular meeting to be held in Council Chambers of the City Hall in said City at 7:00 p.m. on the 21st day of May, 2018, to certify the returns of said election, as required by law.

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

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

NAYS: NONE

ABSENT: NONE

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7778 passed.

5. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7779 do pass.

Bill No. 7779 - A BILL amending and re-enacting Chapter 98, Article II, Division 2, Section 98-71 of the Code of the City of Charleston to increase the charge for refuse collection.

WHEREAS, West Virginia State Code Section 8-13-13 gives West Virginia municipalities the authority to impose by ordinance reasonable rates, fees, and charges for providing services, including the collection and disposal of garbage; and

WHEREAS, the charges for refuse services currently in use were established in May of 2002; and

WHEREAS, the expenses associated with refuse and recycling collection have grown to exceed the revenue generated by refuse service charges by more than one million dollars annually; and

WHEREAS, the Council of the City of Charleston has determined that it is in the best fiscal interest of the City to increase the refuse service charges to produce sufficient revenue to help meet its obligations to continue to provide refuse removal to the citizens of Charleston;

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That, effective on July 1, 2018, Chapter 98, Article II, Division 2, Section 98-71 of the Code of the City of Charleston is hereby amended and re-enacted to read as follows:

Sec. 98-71. - Charges for refuse, recyclables and yard (green) waste services; authority of city collector to promulgate rules and regulations related to collection of fees.

(a) In conformity with subsection (g) of this section, and in order to make refuse disposal services self-supporting, the city council shall enact a schedule of rates, fees and charges for refuse disposal services provided by the city which shall include, but not be limited to, the collection and disposal of all bulky waste, refuse, recyclables and yard (green) waste; and any such schedule enacted pursuant to this section shall, while it is in effect, be maintained on file in the office of the city clerk.

(b) For standard weekly service to each residential property, including each single-family dwelling and each multi-family dwelling unit, the charges will be as follows: ~~\$180.00~~216.00 per year (or ~~\$15.00~~18.00 per month.) For standard weekly service to nonresidential properties, the charges will be as follows: \$25.00 per month for pickup of bags which will not be supplied by the city, and \$40.00 per month per dumpster, not to exceed three cubic yards in size. There

shall be no credit or rate reduction applicable to fees accruing on January 1, 2010, and thereafter, for residential or nonresidential properties that are vacant.

(c) Any bill not paid in full within 20 days of the mailing shall be delinquent and a ten percent penalty shall be added to such bill.

(d) The billing of the charges provided for above will be made by billing one-twelfth of such amount monthly in conjunction with the billing of the sanitary board and the fire service charge, under an arrangement providing for equitable sharing of the billing cost; provided, however, that when a user of waste disposal service is not being billed for sewer service, the city reserves the right to bill this service on a quarterly basis.

(e) When the aggregate gross income of all persons residing in residential property, including single-family dwellings and multi-family dwelling units, maintained and occupied by a resident of the city during the preceding calendar year of the city, is less than \$20,000.00, the rate for refuse may be reduced to \$60.00 a year (or \$5.00 per month); provided that the refuse fee account for which the reduced rate is requested is not in delinquent status, is current with no arrearage or penalties owed, has no delinquent fees or penalties due, and the resident who occupies such residential property makes an application for such reduced rate to the city collector and files therewith an affidavit evidencing the relevant facts required herein. If approved, the reduced rate and charges shall become effective with the first monthly billing after the filing of the affidavit; provided, however, that any approved reduced rate shall remain in effect for no more than one calendar year, or through June 30 of the year after which the affidavit is filed, whichever occurs first. So long as the qualifying and procedural requirements are met, a person may re-apply annually for a reduced rate in subsequent years. In the event any person making application for a reduced rate shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced rate as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to 150 percent of the prevailing rate then in effect.

(f) The city collector is hereby authorized to adopt such rules and regulations as may be necessary for him or her to determine, and he or she shall determine, the classification of residential properties, single-family dwellings, multi-family dwellings and other buildings and premises for the application of the rates, fees and charges established by any schedule enacted by the city council pursuant to this section. Any person allegedly aggrieved by the application of any such rule or regulation of the city collector shall have the burden of proof to show that the city collector's rule or regulation is erroneous.

(g) The city council shall have the right to revise from time to time the schedule of rates, fees and charges enacted pursuant to subsections (b) and (e) of this section, so as to accomplish the purposes mentioned in subsection (a) or to so adjust the rates, fees and charges so that costs will be distributed as equitably as possible among all citizens of the city on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering refuse disposal costs at the landfill, or more revenue than is required to meet all costs involved in the collection and disposal services provided by the city.

Councilmember Reishman moved to approve the Bill. Councilmember Lane seconded the motion.

Councilmember Faegre asked how many trash bags are not picked up.

Councilmember Talkington stated the fee had not been raised in 15 years. He also stated that the proposed fee would be less than buying trash bags from a local retailer.

Councilmember Persinger stated he believed the budget should be cut before fees were raised.

Councilmember Steele stated her concerns that the garbage bags aren't getting to renters.

A roll call was taken:

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

NAYS: Ceperley, Hoover, Persinger, Richardson, Snodgrass, Steele

ABSENT: NONE

With 21 YEAS and 6 NAYS recorded thereon the Mayor declared Bill No. 7779 passed.

6. Your committee on Finance has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7780 be postponed until May 21, 2018.

Bill No. 7780 - A BILL amending and re-enacting Chapter 78, Article V, Division 5, Sections 78-381, 78-383, 78-396, and 78-397 of the Code of the City of Charleston to legalize the possession of hypodermic needles and hypodermic syringes being used as drug paraphernalia for illegal drug use.

WHEREAS, it is well known that the City is directly affected as part of a regional and national epidemic of opioid misuse and abuse, including pills which are modified and injected, and heroin which is injected; and

WHEREAS, the illegal users of these opioids and other controlled substances use hypodermic needles and syringes to inject themselves and others with the illegal controlled substances; and

WHEREAS, it has become apparent that the users of illegal intravenous drugs are discarding used needles and syringes by littering them throughout the streets, sidewalks, alleyways, parks, playgrounds, public restrooms, and other places of public accommodation in the City of Charleston or by discarding them in trash receptacles around the City; and

WHEREAS, the distribution of thousands of needles per week within the city limits of the City of Charleston to persons, many of whom reside outside of the City of Charleston city limits has resulted in a massive increase in the number of discarded needles found in the City; and

WHEREAS, improperly discarded needles and syringes expose residents and visitors, including children, business owners, first responders and other City employees, and other individuals to the risk of accidental needle sticks, possibly exposing them to potentially deadly infectious diseases including HIV, AIDS, and hepatitis, as well as to drugs which may be remaining in the needles and syringes; and

WHEREAS, as a result of the reasons and circumstances set forth in the findings herein at this time, the Council of the City of Charleston has determined that it is in the best interest of the City to treat these illegally used hypodermic needles and hypodermic syringes as illegal drug paraphernalia;

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That, effective March 31, 2018, Chapter 78, Article V, Division 5, Sections 78-381, 78-383, 78-396, and 78-397 of the Code of the City of Charleston are hereby amended and re-enacted to read as follows:

Subdivision II. - Sale, Marketing, and Distribution of Hypodermic Needles and Syringes

Sec. 78-381. - Sale, marketing and distribution of hypodermic needles; state license required.

It shall be unlawful for any person or persons as principal, clerk, agent or servant to sell, market, or distribute any hypodermic syringes, needles and other similar objects used or designed for injecting substances into the human body, without obtaining and having any and all licenses required under state law to do so: except that, items distributed by or exchanged at a needle exchange program sponsored or approved by the Chief of Police of the Charleston Police Department, as provided by Subdivision III herein, are thereby approved and are not unlawful.

Sec. 78-382. - Compliance with state law and regulations.

Every person licensed to sell, market, or distribute hypodermic needles shall comply with all applicable state law and regulations.

Sec. 78-383. - Penalty.

Any person violating any provision of this subdivision shall, if convicted, be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than five hundred dollars for the first offense and succeeding offenses. Each day that such violation shall continue shall be deemed a separate and distinct offense.

Secs. 78-384—78-395. - Reserved.

Subdivision III. - Needle Exchange Program Possession of Hypodermic Syringe or Needle

Sec. 78-396. - Needle exchange program authorized. Possession of Hypodermic Syringe or Needle

The City of Charleston, by and through its Chief of Police, may sponsor, approve, or participate in a program or programs within the City of Charleston for the distribution or exchange of hypodermic syringes, needles and other similar objects used or designed for injecting substances into the human body. Except as authorized by Section 78-381 or other law, it shall be unlawful for a person to possess or have under his or her control with intent to use a hypodermic syringe,

hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analogue as defined in West Virginia Code Chapter 60A, Article 2; Provided That, it shall not be unlawful for a person to possess and use a hypodermic needle or hypodermic syringe if the person obtains and uses said needle or syringe under the care and direction of a licensed health care provider for its authorized and legitimate medical purpose, including but not limited to the treatment of diabetes, vitamin deficiencies, infertility, hormone disorders, autoimmune conditions, cancer and other such medical conditions requiring use of a hypodermic needle or hypodermic syringe for lawful treatment.

Sec. 78-397. - Rules and regulations; Chief of Police authorized. - Penalty.

The Chief of Police of the City of Charleston Police Department is authorized to promulgate reasonable rules or regulations deemed necessary to implement and administer a program within the City of Charleston provided for in Section 78-396 for the distribution or exchange of hypodermic syringes, needles and other similar objects used or designed for injecting substances into the human body. Any person violating any provision of this subdivision shall, if convicted, be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars for the first offense and succeeding offenses.

Secs. 78-398—78-410. - Reserved.

Councilmember Reishman moved to approve the postponement. Councilmember Lane seconded the motion.

Councilmember Lane spoke in favor of the postponement.

Councilmember Jones spoke against the postponement.

Councilmember Harrison spoke against the postponement.

Councilmember Snodgrass spoke against the postponement.

Councilmember Ware spoke against the postponement.

Councilmember Talkington spoke in favor of the postponement.

Councilmember Ireland spoke in favor of the postponement.

Councilmember Ealy spoke against the postponement.

Councilmember Davis spoke in favor of the postponement.

Councilmember King spoke against the postponement.

Councilmember Faegre spoke in favor of the postponement.

Councilmember Clowser spoke in favor of the postponement.

Councilmember Smith spoke in favor of the postponement.

Councilmember Richardson spoke in favor of the postponement.

Councilmember Overstreet spoke in favor of the postponement.

Councilmember Salisbury spoke in favor of the postponement.

Mayor Jones spoke against the postponement.

A roll call was taken:

YEAS: Ceperley, Chestnut, Clowser, Davis, Faegre, Hoover, Ireland, Lane, Overstreet, Persinger, Reishman, Richardson, Salisbury, Smith, Steele, Talkington

NAYS: Burka, Burton, Ealy, Haas, Harrison, Jones, King, Minardi, Snodgrass, Ware, Mayor Jones

ABSENT: NONE

With 16 YEAS and 11 NAYS elected recorded thereon the Mayor declared the postponement of Bill No. 7780 passed.

REPORTS OF OFFICERS

1. City of Charleston, WV – Financial Statements, for the eight-month period ending February 28, 2018
Received and Filed.
2. City Treasurer’s Report to City Council Month Ending February 28, 2018.
Received and Filed.

NEW BILLS/RESOLUTIONS

Introduced by Councilmembers Robert Reishman on March 19, 2018:

Resolution No. 026-18 – A Resolution granting Appalachian Power Company a permanent transmission easement across City property adjacent to the Spring Hill Cemetery.
Refer to Finance Committee.

ADJOURNMENT

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

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

NAYS: NONE

ABSENT: NONE

At 8:33 p.m., by a motion from Councilmember Harrison, Council adjourned until Tuesday, March 20, 2018, at 6:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

JB Akers, City Clerk