



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

CITY OF CHARLESTON, WEST VIRGINIA

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Regular Meeting – Monday, August 6, 2018

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

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**OFFICIAL RECORD**

**Danny Jones  
Mayor**

**JB Akers  
City Clerk**

**CALL TO ORDER**

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The Council met in the Chambers of the City Building at 7:00 P.M., for the first meeting in the month of August on the 6<sup>th</sup> 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 Anthony Kinzer. The Honorable Clerk, JB Akers, called the roll of members and it was found that there were present at the time:

**BURKA  
CHESTNUT**

**HARRISON  
JONES**

**MINARDI  
REISHMAN**

**TALKINGTON**

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

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

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

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

***PUBLIC SPEAKERS***

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1. Ricardo Martin – thanked the Charleston Urban Renewal Authority and Councilmembers involved in a housing rehabilitation program

***CLAIMS***

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1. A claim of Brittany Franco, 85 Scarlet Oak Lane Apt #10, Charleston, WV; alleges damage to vehicle.  
Refer to City Solicitor.
2. A claim of Alcred Renee Garland, 1429 5<sup>th</sup> Avenue, Charleston, WV; alleges damage to property.  
Refer to City Solicitor.
3. A claim of Jaynie L. Hunt, 3824 Staunton Avenue, Charleston, WV; alleges damage to property.  
Refer to City Solicitor.
4. A claim of Sarah Kingston, 5203 Washington Avenue SE, Charleston, WV; alleges damage to vehicle.  
Refer to City Solicitor.
5. A claim of Diane Moore, 4005 Fairlawn Avenue, Dunbar, WV; alleges personal injury.  
Refer to City Solicitor.
6. A claim of Henry Nearman, 5013 Noyes Avenue, Charleston, WV; alleges damage to vehicle.  
Refer to City Solicitor.
7. A claim of Kesha Witten, 609 Wyoming Street, Charleston, WV; alleges damage to vehicle.  
Refer to City Solicitor.

**COMMUNICATIONS**


1. Chief Cooper and Mayor Jones presented Filmanatix with a plaque for the video company's help with making the Charleston, WV Police Lip Sync Challenge

2.

CITY OF CHARLESTON  
OFFICE OF THE MAYOR



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

**FROM: DANNY JONES  
MAYOR** 

**RE: HALLOWEEN 2018**

**DATE: AUGUST 6, 2018**

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I recommend that October 30, 2018 from the hours of 6:00 until 8:00 be designated as Trick or Treat in the City of Charleston.

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

DJ/dmp

Councilmember Harrison moved to approve the recommendation. Councilmember Lane seconded the motion. By unanimous vote, the recommendation was approved.

**REPORTS OF COMMITTEES**

**COMMITTEE ON STREETS AND TRAFFIC**

Councilmember Hoover, Chair of the Council Committee on Streets and Traffic, submitted the following reports:

1. Your committee on Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7787 be adopted.

Bill No. 7787 - A Bill to establish a Stop intersection on Bauer Avenue at Tinder Avenue by installing a stop sign on the corner of Bauer Avenue and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. Stop intersection on Bauer Avenue at Tinder Avenue by installing a stop sign on the corner of Bauer Avenue

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

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

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

NAYS: NONE

ABSENT: Ealy, Ware, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7787 passed.

## **COMMITTEE ON FINANCE**

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

1. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 093-18 be adopted.

Resolution No. 093-18 - Authorizing the Mayor or City Manager to enter into an Agreement with Environmental Systems Research Institute, Inc. (“ESRI”), in the amount of \$50,000 annually for a total of \$150,000.00 for a three-year software license agreement to upgrade the current Geographic Information System (“GIS”) software licenses for the Information Systems Department.

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

That the Mayor or City Manager is hereby authorized and directed to enter into an Agreement with Environmental Systems Research Institute, Inc. (“ESRI”), in the amount of \$50,000 annually for a total of \$150,000.00 for a three-year software license agreement to upgrade the current Geographic Information System (“GIS”) software licenses for the Information Systems Department.

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. 093-18 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. 094-18 be adopted.

Resolution No. 094-18 - Authorizing the Mayor or his designee to submit an application in the amount of \$148,557.00 to the Bureau of Justice Assistance Edward Byrne Justice Assistance Grant Program. The Charleston Police Department will use \$117,535.00 for in-car cameras and the Kanawha County Sheriff's Department will use \$31,022.00 for crime scene investigation supplies. Matching funds for the grant are not required.

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

That the Mayor or City Manager is hereby authorized and directed to submit an application in the amount of \$148,557.00 to the Bureau of Justice Assistance Edward Byrne Justice Assistance Grant Program. The Charleston Police Department will use \$117,535.00 for in-car cameras and the Kanawha County Sheriff's Department will use \$31,022.00 for crime scene investigation supplies. Matching funds for the grant 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. 094-18 adopted.

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 096-18 be adopted.

Resolution No. 096-18 - Authorizing the Mayor or City Manager to enter into a 3-year Agreement with Suttle and Stalnaker to Conduct a Single Audit for the City of Charleston for FY 2018 in the amount of \$ 75, 600.00, FY 2019 in the amount of \$77,760.00, and FY 2020 in the amount of \$ 79,920.00, in accordance with Federal OMB Circular A-133.

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

That the Mayor or City Manager is hereby authorized and directed to enter into a 3-year Agreement with Suttle and Stalnaker to Conduct a Single Audit for the City of Charleston for FY 2018 in the amount of \$ 75, 600.00, FY 2019 in the amount of \$77,760.00, and FY 2020 in the amount of \$ 79,920.00, in accordance with Federal OMB Circular A-133.

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. 096-18 adopted.

AUDIT PROPOSAL SCORE					
RFP #:	Entity:	Proposed to be Performed	Understanding of the Audit to be Performed	Technical Experience	Cost Criteria
Audit Year(s)	Enclosed	to the Proposal	Total Points	Average by Cost	Preference +1 to 5 Points (to 10)
18-20, 20					
2019, 2020					
01%					
Number of Bids	C				
Brown + Edwards	\$283,500	14.8	21.6		
Perry + Associates	\$134,940	11.2	15		
	\$211,480				

Scored by: (Signature)		Date	Printed Name
		7/10/18	Robert S. Reishman
		7/10/18	Tia Robertson
		7/10/18	Jennifer Vickers
		7/10/18	Tom E...



- 4 Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 097-18 be adopted.

Resolution No. 097-18 - Authorizing the Mayor or City Manager to enter into an agreement with Carl Walker Construction, in the amount of \$ 686,707.90, permitting acceptance of the base bid and of the two alternates, for the Structural Repairs to Municipal Parking Building Nos: 1, 2, 5, and 6.

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

That the Mayor or City Manager is hereby authorized and directed to enter into an agreement with Carl Walker Construction, in the amount of \$ 686,707.90, permitting acceptance of the base bid and of the two alternates, for the Structural Repairs to Municipal Parking Building Nos: 1, 2, 5, and 6.

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. 097-18 adopted.

5. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 098-18 be adopted.

Resolution No. 098-18 - Authorizing the City Manager or his designee to enter into an agreement with McKay Lodge Fine Arts Conservation Laboratory, Inc., (attached as Exhibit A hereto) to perform cleaning and conservation treatments to the Henry Gassaway Davis sculpture and monument in Davis Park. The cost of the cleaning and conservation is \$39,437.00, which will be funded by donations from the Kanawha Garden Club and the Greater Kanawha Valley Foundation.

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

That the City Manager or his designee, subject to the receipt of donations from the Kanawha Garden Club and the Greater Kanawha Valley Foundation for the cost of cleaning and conservation, is hereby authorized to enter into an agreement with McKay Lodge Fine Arts Conservation Laboratory, Inc. to perform cleaning and conservation treatments to the Henry Gassaway Davis sculpture and monument in Davis Park.

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. 098-18 adopted.

AGREEMENT FOR CONSERVATION TREATMENT OF DAVIS MONUMENT

THIS AGREEMENT is made as of this \_\_\_\_\_ day of August, 2018, between THE CITY OF CHARLESTON, a municipal corporation, hereinafter called “City,” and McKay Lodge Fine Arts Conservation Laboratory, Inc., hereinafter called “Contractor.”

WHEREAS, Contractor has been selected for the performance and completion of certain tasks constituting conservation treatment of the Henry Gassaway Davis monument in Davis Park (the “Services”), to be performed in accordance with the plans, specifications and other specified provisions incorporated herein and made a part hereof, collectively, as “Attachment A”); and

WHEREAS, Contractor has agreed to provide such Services at the prices and subject to the terms set forth herein;

WITNESSETH:

In consideration of such payments and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor agrees to perform the Services in accordance with the provisions of this Agreement, Attachment A, and all other exhibits attached hereto and documents incorporated herein by reference.

The parties acknowledge and agree that Attachment A is intended to and shall supplement the terms of this Agreement, but in the event of any inconsistency between the provisions of this Agreement and Attachment A, City shall have the exclusive right to elect which provision shall control.

Subject to the terms of this Agreement, City agrees to pay Contractor, and Contractor agrees to accept as payment in full for the Services, the sum of not more than Thirty-nine Thousand Four Hundred Thirty-seven Dollars (\$39,437.00) (the “Total Contract Amount”). The Total Contract Amount includes estimates of expenses related to the Services. The City will pay for expenses actually incurred; provided that, City shall not pay for any expense variances which result in an increase in the Total Contract Amount unless expressly agreed to in advance by City in a written Change Order.

TERMS AND CONDITIONS:

ARTICLE 1 - REPRESENTATIONS AND WARRANTIES

1.1 Procurement of Agreement

A. Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation.

B. Contractor represents and warrants that it is authorized to do business in the State of West Virginia and may lawfully perform the Services required by this Agreement without violating any Federal, State or local law or regulation.

C. The Contractor represents and warrants that the execution, delivery and performance hereof including the performance of the Services have been authorized and approved by all necessary action on its behalf, constitutes its valid and binding obligation and that the same shall not violate any law or agreement binding on or applicable to Contractor.

1.2 Conflict of Interest

Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance of the Services as herein provided.

1.3 Fair Practices

Contractor, and each person signing on behalf of Contractor, represents, warrants and certifies, under penalty of perjury, that to the best of his knowledge and belief:

A. The prices in Attachment A have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such price with any other bidder or with any competitor.

B. Unless otherwise required by law, the prices stated in this Agreement and Attachment A, have not been knowingly disclosed by Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor.

C. No attempt has been made or will be made by Contractor to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

#### ARTICLE 2 - AUDIT BY CITY

2.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based, are subject to audit by appropriate City officials.

2.2 Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by City.

2.3 Contractor shall not be entitled to final payment under the Agreement until all requirements of this Agreement and Attachment A have been satisfactorily met.

#### ARTICLE 3 - COVENANTS OF THE CONTRACTOR

##### 3.1 Prohibited Activity

Contractor shall not use any funds provided herein or personnel employed hereunder for political activities, inherently religious activities, lobbying, political patronage, or nepotism activities.

##### 3.2 Employment Laws

Contractor shall comply with all Federal, State and local employment laws, rules and regulations. If Contractor fails to comply with the aforementioned employment laws the City may, at its discretion, take appropriate action, including, but not limited to, calling Contractor's bonds and/or terminating this Agreement immediately.

Consultant shall also comply with all Federal, State and local employment laws, rules and regulations which are imposed contractually or otherwise by virtue of the public sources from which the City derives funding to meet its obligations under this Agreement.

##### 3.3 Independent Contractor Status; Indemnity; Insurance; Bonds

The parties agree that Contractor is an independent contractor and not an employee of City and, in accordance with such status as independent contractor, Contractor covenants and agrees neither it nor its employees or agents will hold themselves out as or claim to be officers or employees of City.

3.3A With respect to professional acts, errors or omissions, Contractor agrees to indemnify and hold City and its employees harmless from all claims, suits, bodily injury or damage to the extent arising out of the professional acts, errors or omissions of the Contractor, its agents, employees, and/or subcontractors. Contractor shall carry \$1,000,000 per claim and in the annual aggregate of professional liability insurance to cover the indemnity and hold harmless obligations of this paragraph. The indemnity and hold harmless obligations of this paragraph shall govern Contractor's liability under the Agreement for professional acts, errors or omissions.

3.3B Subject to Section 3.3A herein, Contractor agrees that it shall indemnify, defend and hold harmless City, its officers, employees and agents (hereinafter collectively, "City" for purposes of the indemnity, defense, hold harmless and insurance obligations contained in this Agreement) from and against any and all claims, demands, obligations, causes of action, lawsuits, fines, costs, judgments and damages of any character whatsoever, and all expenses associated therewith (including, but not limited to, reasonable attorney's fees and costs), arising from or related in any way to: (i) the operations of Contractor, its officers, agents, employees, subcontractors and its related or affiliated companies (hereinafter collectively, "Contractor" for purposes of the indemnity, defense and hold harmless obligations contained in this Agreement); (ii) any act or omission, negligence or misconduct of Contractor; (iii) a breach of this Agreement or Attachment A; (iv) failure of Contractor to complete any required work as specified in the Agreement or Attachment A; or (v) failure of Contractor to perform any obligation contained in the Agreement or Attachment A, or otherwise agreed to by Contractor, in writing. Contractor specifically acknowledges that the indemnification, defense and hold harmless obligations imposed by this Agreement require Contractor to indemnify and defend City regardless of

whether or not any claimant or litigant also alleges that City was negligent. Further, Contractor agrees that its duty to defend and indemnify City does not require a judicial determination of the Contractor's negligence as a precondition of the duty to indemnify and defend City.

Subject to Section 3.3A herein, Contractor shall be solely responsible for all physical injuries or death to its officers, agents, employees and subcontractors and, consistent with the obligations imposed by this Agreement, shall indemnify, defend and hold harmless City for such injury or death. Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the acts and omissions, negligence, fault or default of Contractor or not. Contractor hereby agrees to purchase and carry workers compensation insurance for all of its employees and to ensure that all of its subcontractors purchase and carry workers compensation insurance for all of their employees. Provided, however, that this Agreement shall not be construed to impose any responsibility on Contractor related to the general or day-to-day safety practices, or policies of City.

Subject to Section 3.3A herein, Contractor shall be solely responsible for any and all damage to any property of the City or of any third-party related in any way to Contractor's operations, provision of the Services, or any act or omission, negligence or misconduct of Contractor. Consistent with the obligations imposed by this Agreement, Contractor shall indemnify, defend and hold harmless City for any and all such damage, and, in the event of damage to any property of City, shall promptly reimburse City for all costs and expenses of any character upon Contractor's receipt of a demand for reimbursement by City.

Contractor shall fully pay off and discharge and secure the release of any and all mechanics liens related in any way to this Agreement, Contractor's operations or the provision of the Services which may be placed upon any property by any subcontractor, laborer or material men and Contractor shall also save and keep harmless the City from all losses of any character and from any cause whatsoever related in any way to the operations of Contractor or provision of the Services.

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

Prior to the commencement of the Services, Contractor shall furnish City with performance and payment bonds in the amount of Thirty-nine Thousand Four Hundred Thirty-seven Dollars (\$39,437.00), to assure the timely completion of the Services pursuant to the terms of this Agreement, Attachment A, and all other exhibits attached hereto and documents incorporated herein by reference.

The indemnity provided for in Sections 3.3, 3.3A, and 3.3B herein shall be deemed in addition to and in no way a limitation upon the right of common law indemnification of City, its officers, employees and agents from Contractor.

#### 3.4 Books and Records

Contractor agrees to maintain and retain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### 3.5 Retention of Records

Contractor agrees to retain all books, records, and other documents relevant to this Agreement for ten years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors, and any other persons duly authorized by the City, shall have full access to and the right to examine any of said materials during said period.

#### 3.6 Suspension of Work

City may suspend work if the City Manager determines that suspension is in the City's best interest and/or the City elects to terminate this Agreement for any of the provisions contained in 5.1 herein. The City Manager will deliver to Contractor a Notice of Suspension specifying the extent and duration of the suspension and the effective date thereof. Upon receipt of such Notice of Suspension, Contractor shall immediately proceed to stop work, as specified in the notice, place no further subcontracts or orders

for materials (except as necessary to complete any work that is not subject to suspension), and take all action(s) necessary, including any action(s) that the City Manager may direct, for the protection and preservation of any property related to this Agreement.

### 3.7 Compliance with Law

Contractor shall render the Services under this Agreement in accordance with applicable provisions of Federal, State and local laws, rules and regulations. If Contractor fails to comply with the aforementioned laws, the City may, at its discretion, take appropriate action, including, but not limited to, calling Contractors' bonds and/or terminating this Agreement immediately.

### 3.8 Time/Date of Completion; Delay; Default by Contractor; Remedies

Contractor shall complete the Services to City's satisfaction by December 31, 2018, unless the term herein shall be extended by the mutual written agreement of the parties hereto. If Contractor fails to perform its obligation to complete the Services by such date, or otherwise breaches the terms of this Agreement or Attachment A, City may, but without any obligation to do so, terminate this Agreement immediately, call Contractor's bonds, engage another contractor or contractors to provide the Materials and/or complete the Services as City may determine, and seek monetary damages from Contractor in addition to other remedies available under this Agreement, Attachment A, or applicable law. Contractor shall not be responsible for: (1) delays occasioned by circumstances beyond the control of Contractor, including property access, labor strikes, lockouts and unavoidable casualties or causes; or (2) changes ordered by City, unless the changes were necessary to correct defects or non-compliance of the Services.

### 3.9 Contractor's Representation, Warranties and Guarantee

Contractor shall perform all Services in a workmanlike manner and in accordance with industry standards and all specifications referenced herein, including any change orders hereto.

Contractor further warrants that, if any of its completed Services fail to conform to this Agreement or Attachment A, Contractor shall, at its own expense, and provided Contractor is notified of such defect or non-conformity within one year of the completion of the Services, either perform corrective services at no cost to City as may be required to correct such defect or non-conformity or refund to City the amount paid to Contractor for Services that are defective or non-conforming.

### 3.10 Diligent Review by Contractor and Ability to Perform the Services

Contractor agrees and acknowledges that:

- A. Contractor has examined and carefully studied this Agreement, Attachment A hereto and other related data identified in the request for qualifications and the plans, specifications and other specified provisions thereto;
- B. Contractor has visited the site of the project, has become familiar with it, and is satisfied as to the general, local and site conditions that may affect cost, progress, and performance of the Services;
- C. Contractor is familiar with and is satisfied as to all Federal, State, and local laws and regulations that may affect cost, progress, and performance of the Services;
- D. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Services at the Total Contract Amount stated herein.
- E. Contractor has given the City Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in this Agreement and Attachment A hereto, and the written resolution thereof by the City Manager is acceptable to Contractor; and
- F. This Agreement and Attachment A hereto are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Services to the satisfaction of the City.

### 3.11 Access

City agrees to take all actions necessary to allow Contractor and its subcontractor(s) authority to enter the property upon which Contractor's Services are to be performed. Contractor shall take all reasonable precautions to minimize any damage to the property covered by the Agreement, and to any adjoining property. Any cost of correction, repair or replacement to such property, or adjoining properties shall be borne by Contractor.

3.12 Compliance with Copeland “Anti-Kick Back” Act

Contractor agrees to comply with the requirements of the Copeland “Anti-Kick Back” Act (18 USC 874) as supplemented in US Department of labor regulations 29 CFR Part 3.

3.13 Drug-Free Workplace Requirements

Contractor agrees to comply with the requirements of the Drug-Free Workplace Act of 1988 (42 USC 701) in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.

3.14 Immigration Reform and Control Act

Contractor shall certify that it is in complete compliance with the Immigration Reform and Control Act (IRCA).

ARTICLE 4 - PAYMENTS, CLEAN UP

4.1 Payment

Requests for interim payment for Services performed may be prepared and submitted upon satisfactory completion of any phase of the project by Contractor in the form of a proper detailed invoice. City will pay proper requests for interim payments within 30 days from the first or fifteenth day of the month following City’s receipt of a proper request for interim payment. Invoices shall be mailed to: Shannon Milroy, Purchasing Director, P.O. Box 2749, Charleston, WV, 25330, or hand delivered to Shannon Milroy, Purchasing Director, 501 Virginia Street, E., Charleston, WV.

City may reject any Services that do not conform to this Agreement or Attachment A. Contractor shall immediately correct such non-conforming Services without additional cost to City.

ARTICLE 5 - TERMINATION

5.1 Termination of Agreement; Remedies

City shall have the right to terminate this Agreement, in whole or in part, in accordance with the following, or for reasons set forth elsewhere in this Agreement:

A. Upon the default by Contractor under any covenant or other term or condition of this Agreement or Attachment A, or if any warranty or representation made by Contractor is untrue in any material respect; or

B. Upon Contractor’s becoming insolvent or upon commencement under the Bankruptcy Act of any similar proceeding either voluntarily or involuntarily; or

C. If funds are not appropriated by City for the purposes of this Agreement. In the event of City’s termination pursuant to this section of the Agreement, City agrees to compensate Contractor for all Services for which funds were appropriated and which were satisfactorily performed through the date of termination; or

D. Upon failure by Contractor to perform the Services with sufficient and qualified employees or sufficient and suitable equipment to assure the prompt and satisfactory completion of the work; or

E. If Contractor performs the Services unsuitably or neglects or refuses to correct non-conforming Services to the satisfaction of the City; or

F. If Contractor fails to maintain General Liability insurance as required herein, with the City and its agents as additional insureds, with limits of at least \$1 million.

Upon such termination resulting from the default of Contractor, City may, in addition to its other rights and remedies hereunder, institute a civil action for damages or specific performance and exercise such other rights and remedies as it may have under applicable law.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Contractor pursuant to this Agreement shall, at the option of the City, become property of the City.

#### ARTICLE 6 - CONDITIONS PRECEDENT

This Agreement shall neither be binding on City nor effective until: (1) the approval by the City Council of City of a resolution approving this Agreement or authorizing the Mayor or his duly authorized representative to execute this Agreement on behalf of City; and (2) the execution of this Agreement by the Mayor or his authorized representative. The requirements of this section of this Agreement shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

#### ARTICLE 7 - MISCELLANEOUS TERMS

##### 7.1 General Release: Waiver of Mechanic's Liens

The acceptance by the Contractor and its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to City from any and all claims of and liability to Contractor arising out of the performance of this Agreement. Contractor waives its right to file a mechanic's or other lien in connection with the provision of the Services.

##### 7.2 No Claim Against Officer, Agent or Employees

No claim whatsoever shall be made by Contractor against any officer, employee or agent of City for, or on account of, anything done or omitted in connection with this Contract.

##### 7.3 Waiver

Waiver by City of a breach of any provision of this Agreement or Attachment A hereto shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by City.

##### 7.4 Notice between Contractor and City

Contractor and City hereby designate the business mailing addresses set forth in this Agreement as the places where all notice, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Such address may be changed at any time by either party by written notice to the other party in the manner prescribed herein.

Contractor shall identify and provide a superintendent, foreman or supervisor who shall have authority to act for Contractor for the purposes of this Agreement.

##### 7.5 Modification

This Agreement may not be modified by the parties except in writing executed by City and Contractor and, in order for any modification to be enforced against City, shall reference the Section of this Agreement to be modified and specifically identify the term, condition, or obligation to be modified.

##### 7.6 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 Contractor, 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.



7.7 Entire Agreement

This Agreement, including Attachment A and all other exhibits attached hereto and documents incorporated herein by reference, constitutes the entire Agreement between City and Contractor and supersedes all prior or contemporaneous communications, whether electronic, oral or written between City and Contractor.

7.8 Section headings and subheadings

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

7.9 Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force or effect.

7.10 Survival

The insurance and indemnity obligations contained in Sections 3.3 and 3.4 herein shall remain in full force and effect and shall survive the completion or earlier termination of this Agreement.

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

THE CITY OF CHARLESTON,  
a municipal corporation

MCKAY LODGE FINE ARTS  
CONSERVATION LABORATORY, INC.

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_ Mayor \_\_\_\_\_

Its \_\_\_\_\_

Mailing Address:

Mailing Address:

City of Charleston  
Attn: City Manager’s Office  
501 Virginia Street, East  
Charleston, WV 25301

McKay Lodge Fine Arts Conservation  
Laboratory, Inc.  
Attn: Jim Gwinner  
10915 Pyle South Amherst Road  
Oberlin, OH 44074

6. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 099-18 be adopted.

Resolution No. 099-18 - Authorizing the Mayor to sign and submit the Centralized Assessment Grant as part of the Continuum of Care grant to the U. S. Department of Housing and Urban Development and all required certifications and agreements including sub-recipient agreements, relating to the Centralized Assessment Team Grant.

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

That the Mayor is hereby authorized and directed to sign and submit the Centralized Assessment Grant as part of the Continuum of Care grant to the U. S. Department of Housing and Urban Development and all required certifications and agreements including sub-recipient agreements, relating to the Centralized Assessment Team Grant.

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. 099-18 adopted.

7. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 100-18 be adopted.

Resolution No. 100-18 - Authorizing the Mayor or City Manager to enter into an agreement with Branch Banking and Trust Company (BB&T), in the amount of approximately \$681,000.00 for a three-year lease purchase period at a rate of 2.86% and approximately \$ 2,311,000.00 for a five-year lease purchase period at a rate of 3.05% to provide for the purchase of various vehicles and equipment for City departments, and subject to review and final approval by legal counsel for the City.

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

That the Mayor or City Manager is hereby authorized and directed to enter into an agreement with Branch Banking and Trust Company (BB&T), in the amount of approximately \$681,000.00 for a three-year lease purchase period at a rate of 2.86% and approximately \$ 2,311,000.00 for a five-year lease purchase period at a rate of 3.05% to provide for the purchase of various vehicles and equipment for City departments, and subject to review and final approval by legal counsel for the City.

Councilmember Reishman moved to approve the Resolution. Councilmember Lane seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 100-18 adopted.

## Lease Purchase Agreement

Bid Opening: July 17, 2018 @ 2:00 p.m.

		Three (3) Year Loan	Five (5) Year Loan
<b>United Bank</b> 500 Virginia Street East, PO Box 393 Charleston, WV 25322 P: (304) 348-8423	Non-Bank Qualified	3.59%	3.73%
	Bank Qualified	3.29%	3.40%
<b>US Bancorp Gov't Leasing &amp; Finance, Inc.</b> 10 Smoke Rise Lane Annandale, NJ 08801 P: (908) 894-5520	Non-Bank Qualified	2.9248%	3.0448%
	Bank Qualified	2.9248%	3.0448%
<b>Branch Banking and Trust Company</b> 352 State Route 34 Hurricane, WV 25526 P: (304) 353-1635	Non-Bank Qualified	2.94%	3.13%
	Bank Qualified	2.86%	3.05%
<b>Municipal Leasing Consultants</b> 7 Old Town Lane Grand Isle, VT 05458 P: (802) 372-8435	Non-Bank Qualified	2.871%	3.027%
	Bank Qualified	2.871%	3.027%
<b>PNC Equipment Finance, LLC</b> 155 E. Broad Street, 5th Floor Columbus, OH 43215 P: (614) 463-6575	Non-Bank Qualified	3.13%	3.30%
	Bank Qualified	3.09%	3.23%

8. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 101-18 be adopted.

Resolution No. 101-18 - Authorizing approval of the FY 2018- 2019 General Fund Budget as indicated on the attached list of accounts.

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

That the FY 2018- 2019 General Fund Budget as indicated on the attached list of accounts is hereby approved.

**General Fund FY 2018-2019 Budget Amendment No. 2 - August 6, 2018**

<b>Account No.</b>	<b>Department</b>	<b>Account Description</b>	<b>Amount</b>
001 368 01 0000	Contributions	CURA	(250,000)
001 436 00 000 2 230	Building Commission	Contract Services	250,000
To recognize contribution from CURA providing additional funds for house demolitions			

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

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

NAYS: NONE

ABSENT: Ealy, Ware, Smith

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 101-18 adopted.

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

A proposal submitted by WatchGuard in the amount of \$ 98,800.00 for purchase of sixteen (16) in-car and body-worn camera bundles with extended warranties to be used by the Charleston Police Department

To be charged to Account No. 091-976-17-000-4-459, 2017 BJAG

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

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

A proposal submitted by Worldwide Equipment, Inc. in the amount of \$ 8,632.15, for supplement cost to repair oil damage to components of a new motor for Unit 800/151 - 2012 International Packer Truck. This is a sole source purchase and this unit was scheduled for replacement in the FY 2019 budget. However, it will be removed from the Capital Outlay purchasing plan.

This is a change order for a purchase request that has been previously approved by City Council on June 18, 2018.

To be charged to Account No. 001-754-00-000-2-216, Equipment Maintenance – Maintenance and Repair, Equipment

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

***REPORTS OF OFFICERS***

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1. Municipal Court Report to City Council Month Ending June 2018.  
Received and Filed.
2. City Treasurer’s Report to City Council Month Ending June, 2018.  
Received and Filed.

***NEW BILLS***

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Introduced by Councilmember Edward Talkington on August 6, 2018:

Bill No. 7788 - A Bill to establish a No Parking Tow-Away zone on the north side of Indiana Avenue from the intersection of Washington Street, W. to a point 146 feet to the east and amending the Traffic Control Map and Traffic Control File  
Refer to Streets and Traffic Committee.

**ADJOURNMENT**

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

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

NAYS: NONE

ABSENT: Ealy, Ware, Smith

At 7:27 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, August 20, 2018, at 7:00 p.m., in the Council Chamber in City Hall.

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Danny Jones, Honorable Mayor

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JB Akers, City Clerk