



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

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, November 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 first meeting in the month of December on the 3rd day, in the year 2018, and was called to order by the Honorable Mayor, Danny Jones. The invocation was delivered by Councilmember Harrison and the Pledge of Allegiance was led by Councilmember Clowser. 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
LANE
OVERSTREET
RICHARDSON
STEELE**

**BURTON
CLOWSER**

**HOOVER
MCKINNEY
PERSINGER
SALISBURY
WARE**

**CEPERLEY
DAVIS
HAAS
IRELAND
S. KING
MINARDI
REISHMAN
SNODGRASS
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

None

CLAIMS

1. A claim of Melody Ison, 126 Circle Dr, Cross Lanes, WV;
Alleges personal injury.
Refer to City Solicitor.
2. A claim of Johnsey Lee Leef Jr, 1440 Alexandra Pl, Charleston, WV;
Alleges damage to vehicle.
Refer to City Solicitor.

COMMUNICATIONS

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

MISCELLENIOUS RESOLUTIONS

Resolution No. 144-18 – A Resolution to certify the results as reflected by the attached Report and Certificate of Results as the official and correct returns and true results of the General Election held for the City of Charleston on the 6th day of November, two thousand and eighteen.

WHEREAS, the Board of Canvassers of the County of Kanawha, State of West Virginia, having carefully and impartially examined the returns of the General Election held in said county, in each district thereof, on the 6th day of November, 2018, do certify that the Report and Certificate of Results, attached hereto, as the official and correct returns and true results of the General Election.

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

"That the Council of the City of Charleston hereby adopts the Certificate of Results as reflected by the attached Report and Certificate of Results as the official and correct returns and true results of the General Election held for the City of Charleston on the 6th day of November, two thousand and eighteen."

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 144-18 adopted.

REPORTS OF COMMITTEES

COMMITTEE ON PLANNING

Councilmember Davis, Chair of the Council Committee on Planning, submitted the following reports:

1. Your committee on Planning has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7797 do pass

Bill No. 7797 - Amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from C-10 General Commercial District to UCD Urban Corridor District, those certain parcels of land located at 609 & 611, 613, 615, and 617 Tennessee Avenue and 707 & 709, 711, and 713 & 715 Bigley Avenue being Charleston West District, Map 27, Parcels 104, 105, 106, 107, 225, 226, 227, 228, 238, 239,240, and 241 Charleston, West Virginia.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, is hereby amended by rezoning from a C-10 General Commercial District to UCD Urban Corridor District whole of the following described parcels of land:

Parcel Nos. 104, 105, 106, 107, 225, 226, 227, 228, 238, 239,240, and 241 as shown upon Charleston Tax Map No. 27. Subject Parcels commonly known as 609 & 611, 613, 615, and 617 Tennessee Avenue and 707 & 709, 711, and 713 & 715 Bigley Avenue and unaddressed parcels, Charleston, West Virginia. Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 28 of this ordinance.
3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

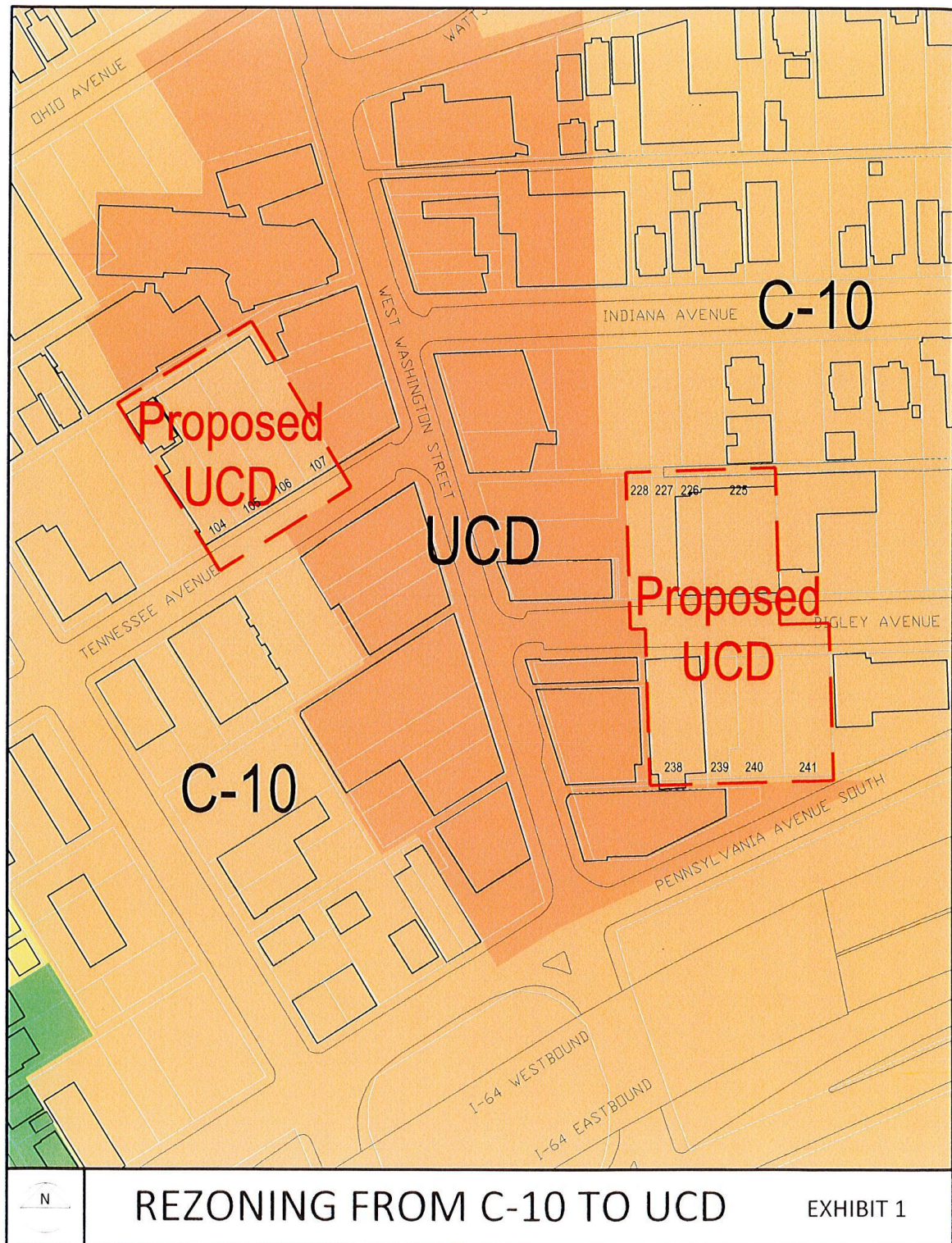
Councilmember Mary Jean Davis moved to Passed. Councilmember Tom Lane seconded the motion. A Roll Call was taken.

Yeas: Rick Burka, Brent Burton, Becky Ceperley, Rutha Chestnut, Mike Clowser, Mary Jean Davis, Bobby Haas, Jack Harrison, Mary Beth Hoover, Karan Ireland, Pat Jones, Tom Lane, Sharon King, Deanna McKinney, Sam Minardi, Chuck Overstreet, Courtney Persinger, Bobby Reishman, Andy Richardson, Susie Salisbury, Shannon Snodgrass, Keeley Steele, Jerry Ware, Danny Jones

Nays: None

Absent: Rev James Ealy, Jeanine Faegre, Bruce King

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7797 passed.



2. Your committee on Planning has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7798 do pass

Bill No. 7798 - A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 21st day of November, 2005, as amended, and the map made a part thereof, by rezoning from a PMC district to an C-8 district, that certain strip, lots or parcels of land at the corner of 33rd Street and MacCorkle Avenue, S.E., in Kanawha City, in the City of Charleston, Kanawha County, State of West Virginia, owned by Charleston Area Medical Center, Inc., a West Virginia nonprofit, nonstock corporation.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 21st day of November, 2005, as amended, is hereby amended by rezoning from a PMC district to a C-8 district the whole of the following described strip, lots or parcels of land:

Beginning at a survey nail in concrete, found in the northern right of way line of MacCorkle Avenue, S.E. (WV Route 61) at the southwesterly corner of Lot 14 of Block 18 of the Revised Map of Kanawha City, as recorded in the Office of the Clerk of the County Commission of Kanawha County in Map Book 2, at Pages 148 and 149, said point being in the existing eastern right of way line of 33rd Street and located, for reference, N.84°22'40"W., a distance of 150.00 feet, as measured along the northern right of way line of MacCorkle Avenue, S.E., from a survey nail found at the intersection of the northern right of way line of MacCorkle Avenue, S.E. with the western right of way line of 34th Street; thence, from said beginning point, leaving said Lot 14 and with said right of way line of MacCorkle Avenue, S.E., N.84°22'40"W. ~ 12.99 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence leaving MacCorkle Avenue, S.E. and running with the proposed new eastern right of way line of 33rd Street, on a line approximately five feet from the back of the concrete sidewalk along the eastern side of 33rd Street, with a curve to the right, said curve having a radius of 47.00 feet and an arc length of 64.45 feet, the chord of which bears N.33°37'45"W., for a distance of 59.52 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence continuing with the proposed new eastern right of way line of 33rd Street, N.05°39'23"E. ~ 11.93 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence continuing with the proposed new eastern right of way line of 33rd Street, on a

line approximately five feet from the back of the concrete sidewalk along the eastern

side of 33rd Street, with a curve to the left, said curve having a radius of 224.39 feet and an arc length of 73.43 feet, the chord of which bears N.03°43'05"W., for a distance of 73.10 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence continuing with the proposed new eastern right of way line of 33rd Street, N.13°05'33"W. ~ 11.64 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence continuing with the proposed new eastern right of way line of 33rd Street, on a line approximately five feet from the back of the concrete sidewalk along the eastern side of 33rd Street, with a curve to the right, said curve having a radius of 175.61 feet and an arc length of 9.26 feet, the chord of which bears N.11°34'56"W., for a distance of 9.26 feet to a 5/8 inch diameter capped rebar, thirty inches long, set; thence continuing with the proposed new eastern right of way line of 33rd Street, S.84°22'40"E., at 18.98 feet passing the existing eastern right of way line of 33rd Street at its intersection with the southern right of way line of an alley, 16 feet wide, and from this point continuing with the southern right of way line of said alley for 50 feet, for a total distance on this bearing of 68.98 feet to a capped rebar found at the northwesterly corner of the aforementioned Lot 14 of Block 18 of the Revised Map of Kanawha City, said capped rebar being located, for reference, N.84°22'40"W., a distance of 150.00 feet, as measured along the southern right of way line of the said alley, from a survey nail found at the intersection of the southern right of way line of said alley with the western right of way line of 34th Street; thence leaving said alley and with the westerly line of said Lot 14, S.05°37'20"W. ~ 150.00 feet to the point of beginning, containing 7,750 square feet (0.178 acres), more or less.

Being Tax Parcels 88.1 and 89 as shown on Kanawha City Tax Map No. 18. Said tax map is of record in, and used as zoning map sectionals by, the City Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this Ordinance.
3. All prior ordinances, or parts of ordinances, inconsistent with this Ordinance, are hereby repealed to the extent of said inconsistency.

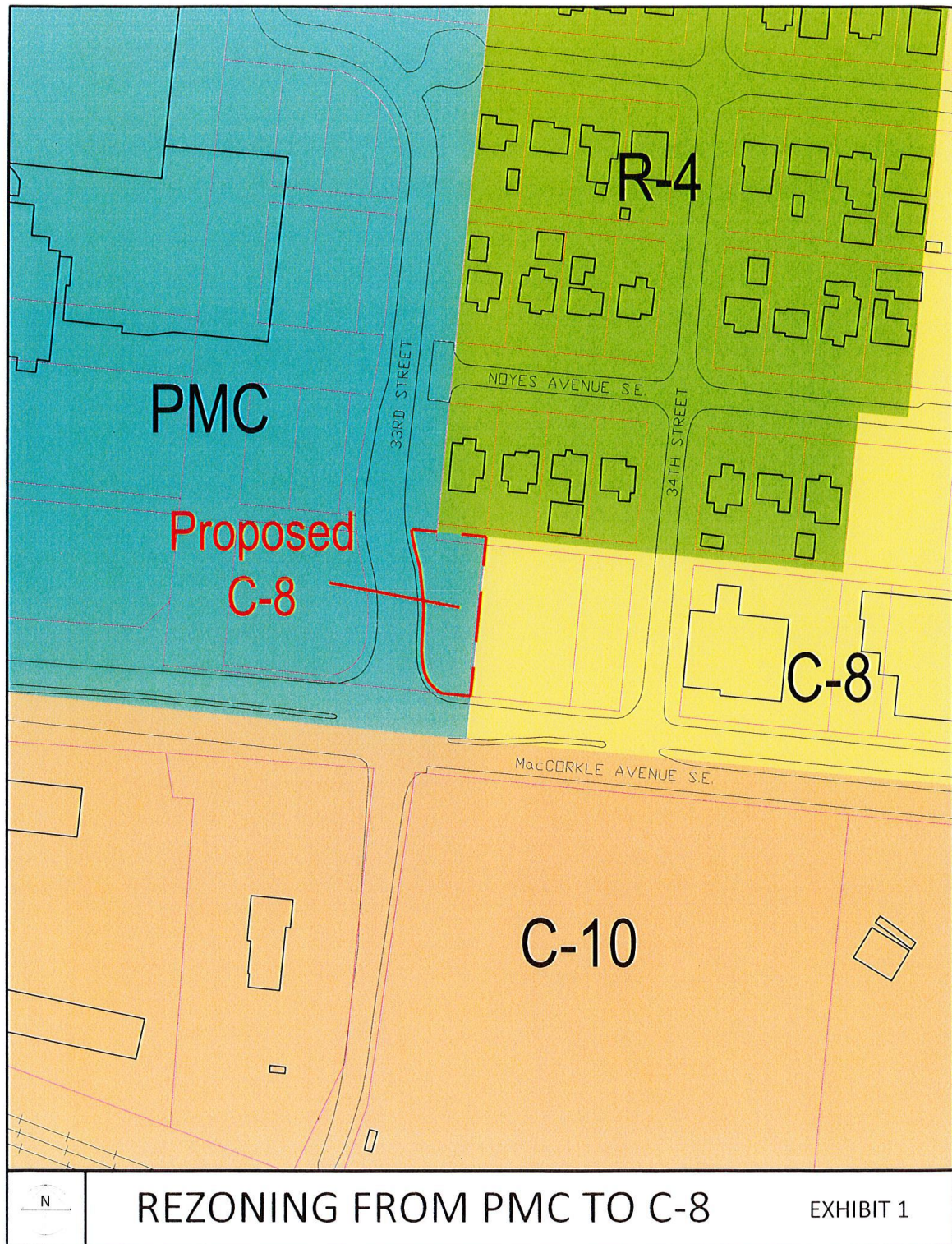
Councilmember Mary Jean Davis moved to Passed. Councilmember Tom Lane seconded the motion. A Roll Call was taken.

Yeas: Rick Burka, Brent Burton, Becky Ceperley, Rutha Chestnut, Mike Clowser, Mary Jean Davis, Bobby Haas, Jack Harrison, Mary Beth Hoover, Karan Ireland, Pat Jones, Tom Lane, Sharon King, Deanna McKinney, Sam Minardi, Chuck Overstreet, Courtney Persinger, Bobby Reishman, Andy Richardson, Susie Salisbury, Shannon Snodgrass, Keeley Steele, Jerry Ware, Danny Jones

Nays: None

Absent: Rev James Ealy, Jeanine Faegre, Bruce King

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7798 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. 146-18 do pass.

Resolution No. 146-18 - Authorizing the Mayor and/or City Manager to enter into an agreement with Castia Rx to serve as the City's Pharmacy Benefit Manager for the period January 1, 2019 through December 31, 2022. The agreement is subject to final review and approval by the City's legal department and annual budgetary appropriations by Charleston City Council. Based on repricing of claims for the period August 1, 2017 through July 31, 2018, the agreement is anticipated to result in an estimated annual savings of over one (1) million and three (3) million over the term of the agreement. The agreement also includes a performance guarantee with applicable penalties should CastiaRx not meet the key performance measures as set forth in the agreement.

PBM	Total Net Cost	Annual Savings
Castia Rx Proposed	3,094,160	1,137,831
Magellan Rx	3,401,165	830,826
Envision Rx	3,128,896	1,103,095
Express Scripts	3,853,046	378,945

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 enter into an agreement with Castia Rx to serve as the City's Pharmacy Benefit Manager for the period January 1, 2019 through December 31, 2022. The agreement is subject to final review and approval by the City's legal department and annual budgetary appropriations by Charleston City Council.

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 146-18 adopted.

City of Charleston Results: Summary Overview

Based on Scripts Filled During the Period of August 2017 through July 2018

Based on Repricing File Results

PBM	# Scripts	Total Discounted AWP Cost	Total Dispensing Fees	Total Admin Fees	Less Rebates*	Total Net Cost**	% Savings	\$ Savings Based on Repricing	Diff. Between Repricing and AWP Discount Guarantees	ACTUAL Guaranteed Total Net Cost
CastiaRx - Current	36,723	\$4,390,760	\$45,524	\$91,808	-\$296,100	\$4,231,991			+ \$115,048	\$4,347,039
MagellanRx	36,723	\$3,680,376	\$39,622	\$110,169	-\$904,197	\$2,925,969	-31%	- \$1,306,023	+ \$475,195	\$3,401,164
EnvisionRx	36,723	\$3,907,384	\$22,898	\$45,904	-\$879,149	\$3,097,038	-27%	- \$1,134,954	+ \$31,860	\$3,128,898
CastiaRx - Proposed	36,723	\$4,045,466	\$27,253	\$45,904	-\$977,410	\$3,141,213	-26%	- \$1,090,779	- \$47,052	\$3,094,161
The Health Plan/ESI - Traditional Model	36,723	\$4,125,091	\$22,434	\$0	-\$372,358	\$3,775,167	-11%	- \$456,824	+ \$77,879	\$3,853,046

PHARMACY BENEFIT MANAGEMENT AGREEMENT

This Pharmacy Benefit Management Agreement (“Agreement”) is made and entered into effective as of January 1, 2019 (“Effective Date”) by and between LeeHar Distributors, LLC d/b/a CastiaRx (“CastiaRx”), a Delaware limited liability company, and City of Charleston, West Virginia (“Client”).

RECITALS

CastiaRx (formerly LDI Integrated Pharmacy Services) and Client are parties to a Pharmacy Benefits Management Agreement dated January 1, 2014, as amended July 1, 2016 and January 1, 2017 (“Original Agreement”), whereby CastiaRx provides pharmacy benefit management services (“PBM Services”) to Client’s health Plan (“Plan”); and

The parties desire to update the pricing and terms of the Agreement and have agreed to enter this new Agreement which shall supersede the Original Agreement as of the Effective Date.

NOW THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms when capitalized shall have the following meanings:

- (a) “Administrative Fee” means an all-inclusive fee charged on a per Claim basis as identified in Exhibit E.
 - (b) “Affiliate” means, with respect to a party, a person or entity controlling, controlled by or under common control with such party.
 - (c) “AWP” means the average wholesale price, as determined by the current edition of the Medi-Span National Drug Data File (“Medi-Span”) of the prescription drug NDC on the day, and of the package size from which, the prescription is dispensed.
 - (d) “Benefit Plan” means the coverage terms and conditions of the Plan’s pharmacy benefit containing all information regarding Copayments, Formulary, days’ supply limitations and other Plan coverage details.
 - (e) “Brand Drug” means a prescription drug designated by Medi-Span indicators as “M,” “N” or “O.”
 - (f) “CastiaRx Mail Pharmacy” means one or more licensed pharmacies owned or operated by CastiaRx or an Affiliate of CastiaRx, or under contract to provide mail pharmacy services on behalf of CastiaRx where prescriptions are filled and delivered to Members via mail delivery services, and together with CastiaRx Specialty Pharmacy, referred to collectively from time to time as “CastiaRx Pharmacies.”
 - (g) “CastiaRx Specialty Pharmacy” means one or more licensed pharmacies owned or operated by CastiaRx or an Affiliate of CastiaRx, or under contract to provide specialty pharmacy services, and together with CastiaRx Mail Pharmacy, referred to collectively from time to time as “CastiaRx Pharmacies.”
 - (h) “Claim” means each prescription and supply reimbursement request (i) submitted by Participating Pharmacies and CastiaRx Pharmacies electronically, (ii) Members via paper claim, and (iii) by government agencies (subrogation).
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- (i) “Compound Prescription” means a prescription that meets the following criteria: (a) two or more solid, semi-solid or liquid ingredients, at least one of which is a Covered Drug; (b) that are weighed or measured then prepared according to the prescriber’s order and pharmacist’s art.
 - (j) “Copayment” means the Member cost share, including deductibles, required under the Plan to be paid by a Member for Covered Drugs.
 - (k) “Covered Drugs” means those prescription drugs, supplies, and Specialty Drugs covered and/or authorized for payment or reimbursement as set forth in the Benefit Plan.
 - (l) “Formulary” means the list of FDA-approved prescription drugs and supplies developed for use by Plans and/or customized by Client for its Benefit Plan.
 - (m) “Generic Drug” means a prescription drug designated by Medi-Span indicators as “Y.”
 - (n) “MAC” means the maximum allowable price per unit, charged for a prescription drug product generally available from multiple manufacturers. The MAC list is subject to review and modification to reflect changes in market conditions due to the number of manufacturers, availability, utilization and pricing volatility.
 - (o) “Member” means an individual and his/her dependents who, under the terms of the Plan, is/are eligible to receive Covered Drugs.
 - (p) “Multi-Source Generic Drug” means a Generic Drug that (i) is licensed and then currently marketed by more than two (2) drug manufacturers; (ii) is not subject to patent litigation; and (iii) is available in sufficient supply.
 - (q) “Participating Pharmacy” means any licensed retail pharmacy that has entered into an agreement with CastiaRx to provide pharmacy services to Members. CastiaRx Pharmacies are not Participating Pharmacies.
 - (r) “Rebates” means all retrospective manufacturer rebates received by CastiaRx under its agreement with pharmaceutical manufacturers and/or rebate aggregators based upon the drug utilization of eligible products by Members at Participating Pharmacies and CastiaRx Pharmacies.
 - (s) “Single Source Generic Drug” is defined as a Generic Drug which is either (i) commercially available from only one (1) generic manufacturer, or (ii) available from one manufacturer that has been given exclusive rights by the FDA to produce the generic version of a brand drug from six months to a year.
 - (t) “Specialty Drugs” means those drugs, therapies and ancillary items determined by CastiaRx as having one or more of several key characteristics, including but not limited to: indication for the treatment of chronic and or life-threatening disease states;

requiring administration by inhalation, infusion or injection; requiring surveillance, counseling or monitoring in conjunction with use; or requiring special handling in distribution.

(u) “Pass-Through Pricing” means that the Client’s cost for Participating Pharmacy prescription drug Claims, including Speciality Pharmaceuticals, is CastiaRx’ actual reimbursement cost to the Participating Pharmacies for such claims. CastiaRx’ Mail Pharmacy and Speciality Pharmacy charges to Client will be the actual guaranteed discounts set forth in Exhibit E. Rebates shall be the amount set forth in Exhibit E.

2. Scope of PBM Services.

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(a) Implementation. CastiaRx shall render PBM Services as described herein, including the Base Administrative Services set forth in Exhibit A, and upon Client request, the Non-Base Administrative Services set forth in Exhibit B, which may require the payment of additional Fees (as defined in Section 3(a)). Client shall provide or arrange for the notification to Members that CastiaRx is the manager of the Plan’s benefit (e.g., identification of CastiaRx on ID card, reference in summary plan description, etc.). Client shall provide CastiaRx initial Member eligibility data, and shall continue to provide current and updated real-time eligibility reports specifying Member additions to or terminations from the Plan directly to the CastiaRx database through designated media. CastiaRx shall be entitled to rely on the information presented in such eligibility records as conclusive evidence of the eligibility of Members from the Plan. Client shall be responsible for the payment of all Claims processed for Members prior to the date of receipt of termination of eligibility update information by CastiaRx.

(b) Claims Processing. CastiaRx will perform, or arrange with a third-party claims processor to perform, on-line processing of Claims from Participating Pharmacies and CastiaRx Pharmacies. CastiaRx will perform a standard drug utilization review (“DUR”) analysis of each Claim submitted on-line to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect dosages and other circumstances that may be indicative of a clinical issue with a prescription. If elected by Client upon set-up, CastiaRx will process Member-submitted paper claims and government (e.g., Medicaid and VA) subrogation claims in accordance with applicable law. CastiaRx’ DUR processes are not intended to substitute for the professional judgment of the prescriber or dispensing pharmacist. Client will have the final responsibility for all decisions with respect to coverage of a Claim and the benefits allowable under the Plan, including determining whether any rejected or disputed Claim will be allowed.

(c) Clinical Services. CastiaRx shall provide the Clinical Services as required or requested by Client as described in Exhibit C. CastiaRx will provide prior authorization (“PA”) services as specified and directed by Client utilizing Client-approved PA guidelines to determine whether certain designated drugs are to be deemed covered under the Benefit Plan. In determining whether to authorize coverage of such drug, CastiaRx will apply only the guidelines and may rely entirely upon information about the Member and the diagnosis of the Member’s condition provided from the prescriber or pharmacist. CastiaRx will not undertake to determine medical necessity or substitute CastiaRx’ judgment for the professional judgment and responsibility of the prescriber. CastiaRx has established an external review process for standard and expedited external review requests that are available to Clients upon request on a pass-through of cost basis. Under this process, CastiaRx shall utilize the services of accredited Independent Review Organizations (“IRO”), randomly assigned, in compliance with the federal external review requirements of the Patient Protection and Affordable Care Act (“PPACA”).

(d) Formulary and Rebates. CastiaRx shall administer the Formulary elected by the Plan, and shall pay quarterly Rebate amounts based on such Formulary to Client as set forth in Exhibit E (rebates are the greater of 100 percent of the rebates received by CastiaRx or the minimum per net paid Brand Drug guarantees) within one hundred eighty (180) days after the quarter end. CastiaRx may use the services of Affiliated and non-affiliated Rebate aggregators to process Rebates for Client, and such Rebate aggregators retain a portion of the Rebates. Subject to the assumptions set forth in Exhibit E, Client acknowledges and agrees that (i) if Client or Plan elects to apply a different Formulary or materially change the Benefit Plan, or (ii) pharmaceutical manufacturers or Rebate aggregators change the bases for paying Rebates or discontinue payment of Rebates, CastiaRx shall have a right to adjust or eliminate the Rebates and/or modify other financial terms of this Agreement upon notice to Client. Subject to Section 3(b), CastiaRx shall have the right to retain and/or apply Rebates to any Claims Reimbursements and/or Fees remaining unpaid during the Term and following termination of this Agreement.

(e) Pharmacy Networks. CastiaRx shall arrange for or maintain comprehensive networks of Participating Pharmacies that shall provide pharmacy services to Members. Each Participating Pharmacy is an independent contractor of CastiaRx, and CastiaRx shall have no liability to Client, any Member or any other person or entity for any act or omission of any Participating Pharmacy, its agents or employees. Pursuant to a Participating Pharmacy Agreement, CastiaRx shall contractually require each Participating Pharmacy to meet CastiaRx’ credentialing requirements, including but not limited to licensure, insurance

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and operational standards. CastiaRx also shall provide mail order delivery prescription services to Members through the CastiaRx Mail Pharmacy and Specialty Drugs through the CastiaRx Specialty Pharmacy. Members shall be required to pay Copayments in accordance with the applicable Copayment obligation of Members and in such amounts as provided by the terms of the Plan.

(f) Plan Design. Client represents and warrants throughout the Term that the Benefit Plan provided to CastiaRx are (and will continue throughout the Initial Term and any Renewal Term to be) accurate. Client shall provide written notice of any Plan changes that relate to the provisions of this Agreement and/or CastiaRx’ obligations. In the event Client does not give at least thirty (30) days’ notice prior to the implementation date of any such change, Client shall be responsible for any additional

charges or costs associated with implementing the change.

(g) Specialty Additional Value Program. Client hereby elects to implement the Specialty Additional Value Program (“SAV Program”) described below for the fees set forth in Exhibit E. The Client’s share of the cost of the Specialty Pharmaceuticals shall be based on the pricing set forth in Exhibit E.

(i) CastiaRx Specialty Pharmacy. CastiaRx Specialty Pharmacy shall be the exclusive Specialty Pharmacy in Client’s specialty pharmacy network, except for limited distribution Specialty Pharmaceuticals available only from limited distribution pharmacies. CastiaRx Specialty Pharmacy will research, and assist Members with applications for, pharmaceutical manufacturer copay assistance and coupon programs for the applicable Specialty Pharmaceutical (“Assistance Payments”). The amount of the Assistance Payments shall not be applied to the Member’s deductible or out-of-pocket maximum.

(ii) Assistance Payments. The Plan Benefit shall reflect a Member Copayment of 50%, and a Client share of the cost of the product of 50%. Upon application of the Assistance Payments, the Member shall not have any Copayment or other out-of-pocket responsibilities. The Client shall be responsible for the remaining 50% of the cost of the drug. Neither CastiaRx nor CastiaRx Specialty Pharmacy shall have any liability or responsibility for Assistance Payments.

(iii) No Assistance Payments. If there are no Assistance Payments available for a Specialty Pharmaceutical, the Plan Benefit shall reflect the specific Copayment payable by the Member for the product. The Client shall pay the balance of the cost of the drug.

(iv) Limited Distribution Specialty Products. If the Specialty Pharmaceutical is available solely from a Limited Distribution Pharmacy (“LDP”), LDP will determine if there are Assistance Payments available and/or secondary coverage, and/or whether the Member is eligible for such payments. If there are no Assistance Payments available, the Plan Benefit shall reflect the specific Copayment payable by the Member for the product. The Client shall pay the greater of (A) the actual price charged by the LDP; or (B) the Specialty Pharmacy Network rate set forth on Exhibit E.

(v) Client Representations and Release. Client hereby represents and warrants that it has or will timely modify its pharmacy benefit plan design to accurately reflect the terms and conditions of the SAV Program. Client further represents that it shall notify Members of the terms of the SAV Program as required by law, including ERISA and the ACA. If the adoption of SAV Program will be during a plan year, Client acknowledges and agrees that it may have additional notice requirements regarding the change of its pharmacy benefit.

3. Claims Reimbursement, Fees, Billing and Payment.

(a) Fees. In consideration of the PBM Services provided by CastiaRx, Client will pay the applicable Participating Pharmacy and CastiaRx Pharmacies claims reimbursement amounts set forth in Exhibit E (“Claims Reimbursement”), and applicable administrative fees set forth in Exhibits B and C (“Fees”).

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(b) Billing and Payment. CastiaRx shall invoice Client for Claims Reimbursement amounts and Fees on the 1st and 15th of each month. Client shall pay such fees within thirty (30) days after the receipt of the invoice. CastiaRx may suspend services or terminate this Agreement in the event Client fails to pay CastiaRx the Claims Reimbursement or Fees when due and after five (5) days written notice. All amounts not paid by the due date thereof will bear interest at the rate of 1.0% per month or, if lower, the highest interest rate permitted by law. Client will be responsible for all costs of collection and agrees to reimburse CastiaRx for such costs and expenses, including reasonable attorneys’ fees. CastiaRx shall have the right to apply Rebates to any Claims Reimbursements and/or Fees remaining unpaid during the Term and following termination of this Agreement; provided that, Client shall nonetheless be required to pay all such unpaid Claims Reimbursements and Fees. CastiaRx may require the payment of a deposit if Client is delinquent in payment of Fees, or If Client requests CastiaRx to process Claims during a run-off period (“Run-Off Period”) following termination of the Agreement.

(c) Invoice/Payment Disputes or Discrepancies. If Client disputes any amount on any invoice or the amount paid on an invoice, Client shall notify the CastiaRx account manager and state the amount in dispute and reasons therefore in writing to CastiaRx within: (i) sixty (60) days of the date of the invoice if ascertainable from the face of invoice; or (ii) thirty (30) days from the date of discovery if the matter is discovered from an audit initiated within one (1) year of the date of invoice; or (iii) thirty (30) days from the date of discovery if the matter can only be discovered from outside information other than the audit as long as the initial discovery is made within twelve (12) months of the date of the invoice. At no time may Client withhold Claims Reimbursement for services provided by a Participating Pharmacy or CastiaRx Pharmacy nor offset an amount from Fees billed for services provided by CastiaRx. In the event that Client or CastiaRx discovers an overcharge, billing or payment discrepancy resulting in an overpayment or underpayment to CastiaRx in the normal course of business or while performing an audit in accordance with Section 3(e), CastiaRx agrees to refund to Client such undisputed overpayment amount within ten (10) business days and Client agrees to make additional payment to CastiaRx to adjust for such undisputed underpayment within ten (10) business days, subject to the parties’ resolution or adjudication of amounts in dispute. Failure to dispute the amount as billed by CastiaRx and reflected on CastiaRx’ invoice within the time specified herein shall be deemed a waiver of any right to claim entitlement to an offset or recovery of the amount billed by CastiaRx. Notwithstanding the foregoing, in the event that an overpayment is asserted by Client or a Plan fiduciary, CastiaRx may defend such claim based on underpayments going back in time as far as the claimed overpayment.

(d) Audits. Client shall have the right to audit, at its expense, the books and records of CastiaRx once annually to verify the performance of PBM Services, and the accuracy of Claims Reimbursements and Rebates during the previous 12-month period and will be limited to the actual number of Claims (by pharmacy channel) to verify Rebates, and a representative sample of

Claims Reimbursements and Fees to verify Client charges. Client shall give CastiaRx a minimum of ninety (90) business days' notice of its desire to audit and any such inspection shall take place at a mutually agreed upon location and date. Client may use the services of an independent third-party auditor that does not have a conflict of interest with CastiaRx to perform the audit, subject to execution of a standard confidentiality agreement. CastiaRx shall accommodate lawful state or federal government agency audit requests, if required. Client and CastiaRx shall cooperate in good faith to reconcile payment discrepancies discovered in an audit within thirty (30) days. Client and its officers, contractors, attorneys, employees, trustees, accountants, auditors and agents agree to keep confidential any information contained in CastiaRx' books and records under the terms of Section 5(c) of this Agreement.

4. Term and Termination.

(a) Term. The term of this Agreement shall commence on the Effective Date and shall remain in effect for an Initial Term of three (3) years ("Initial Term"), provided, however, that Client shall have the right to terminate this Agreement without cause after the first twenty-four (24) months of this Agreement upon ninety (90) days' prior written notice. In addition, Client shall have the right to terminate this Agreement without cause upon ninety (90) days' prior written notice in the event CastiaRx enters into a merger or acquisition agreement. After the Initial Term, this Agreement shall thereafter automatically renew

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for additional successive terms of one (1) year each ("Renewal Term(s)") unless either party gives notice of its intent to not renew the Agreement at least sixty (60) business days prior to the end of the Initial Term or any Renewal Term or unless otherwise terminated in accordance with this Section 4. Except as allowed in Section 4.(d) below, in the event Client determines to terminate the Initial Term or any Renewal Term without cause prior to its expiration or without proper notice as described above, CastiaRx shall be entitled to retain any unpaid Rebates as a termination fee to cover unamortized implementation and/or termination expenses. CastiaRx' retention of Rebates in such circumstances does not constitute a waiver by CastiaRx of its right to determine that any early termination is a breach of this Agreement.

(b) Termination for Cause and Cure. This Agreement may be terminated by a party for cause upon the material breach of another party with at least thirty (30) days prior written notice by the non-breaching party to the other party specifying the breach or default of this Agreement if the breaching party does not cure such breach within such thirty (30) day period. Client may terminate this Agreement with thirty (30) days' written notice if CastiaRx fails to meet the same quarterly performance guarantee for two consecutive quarters. CastiaRx may terminate this Agreement if Client has not cured any non-payment of Fees and/or Claims Reimbursements following five (5) days written notice to Client for non-payment. In the event CastiaRx terminates this Agreement due to Client's uncured breach, CastiaRx shall be entitled to retain any unpaid Rebates as a termination fee for breach; provided that, Client shall nonetheless be required to pay all unpaid Claims and Reimbursements and Fees.

(c) Market Check. After the first eighteen (18) months of the Initial Term, Client shall have the right to perform one (1) market analysis for the remainder of the Term that compares CastiaRx' pricing and financial terms, in the aggregate, to pricing offered by a comparable pharmacy benefit manager (meaning a PBM primarily providing services to self-funded mid-market size health plans) to a comparable health plan, taking into account demographics, account benefit design, formulary, and the pharmacy network ("Market Check"). If the Market Check, provided to CastiaRx in the form offered to Client, would provide greater than three percent (3%) overall annual savings compared to the financial terms of this Agreement, CastiaRx shall have ninety (90) days to offer modified financial terms that, in the aggregate, will provide at least three percent (3%) additional savings compared to the present financial terms under this Agreement. If CastiaRx elects not to provide modified financial terms, Client shall have the right to terminate this Agreement upon ninety (90) days written notice.

(d) Termination Due to Budgetary Appropriations. Service performed under this Agreement may be continued in succeeding fiscal years for the term of this Agreement, contingent upon funds being appropriated by City Council or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, this Agreement shall terminate without penalty on June 30. After that date, this Agreement becomes of no effect and is null and void. However, Client agrees to use its best efforts to have the amounts contemplated under this Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

5. Claim Data and Records; Confidentiality of Proprietary Information.

(a) Claim Data. CastiaRx shall maintain all prescription drug records and supporting claims data and invoices processed by CastiaRx for services rendered under this Agreement for a minimum period of five (5) years from the date of the Claim or such longer period as may be required by law. Upon Client request, CastiaRx shall provide Client Claim data (including PHI if Client so directs) to Client's consultants, brokers or TPAs; provided, however, that Client shall require such third parties, in writing, to maintain the confidentiality of financial information incorporated in such data. Client grants CastiaRx permission to use, sell and/or disclose to third parties for its use the drug and related medical data collected by CastiaRx or provided to CastiaRx by Client for research, cost analyses, cost comparison or other lawful business purposes of CastiaRx and/or such third parties, all without charge to CastiaRx provided, however, that the information so used or disclosed by CastiaRx shall be de-identified in accordance with HIPAA, and provided any such disclosure shall comply with applicable law.

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(b) PHI Privacy and Security. The parties have entered into a Business Associate Agreement and agree to comply with all applicable privacy and security laws, including HIPAA and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

(c) Confidential Information. CastiaRx and Client agree that confidential and proprietary information of CastiaRx includes, but is not limited to, this Agreement, CastiaRx' reporting packages, system formats, proprietary software and related user documentation, clinical and other manuals, utilization review and prescription drug evaluation criteria and other documents, preferred product lists, financial terms under this Agreement, including Participating Pharmacy and CastiaRx Pharmacy pricing and Rebates, Participating Pharmacy agreements, and claims processor, pharmaceutical manufacturer or Rebate aggregator agreements (collectively, "CastiaRx Confidential Information"). Client shall not have a right to use or disclose CastiaRx Confidential Information during the term or after termination of this Agreement except to the extent specifically contemplated by this Agreement. Client shall not disclose CastiaRx Confidential Information to any third party without CastiaRx' prior written consent or as otherwise required by law. Upon termination of this Agreement, Client shall cease using all CastiaRx Confidential Information, trademarks, trade names or service marks of CastiaRx.

6. Indemnification; Limitation of Liability.

(a) By CastiaRx. CastiaRx agrees to indemnify, defend and hold harmless Client, its officers, employees and agents from and against any and all damage, loss, cost and expense (including, without limitation attorney's fees and litigation expenses) ("Costs") incurred by Client in connection with any third-party claims, actions or suits ("Claims") asserted against Client and arising out of CastiaRx' (i) breach of the terms of this Agreement, or (ii) violation of applicable law.

(b) By Client. Client agrees to indemnify, defend and hold harmless CastiaRx, its officers, employees and agents from and against any and all Costs for Claims incurred by CastiaRx arising out of Client's (i) breach of the terms of this Agreement, (ii) violation of applicable law, (iii) Client's Benefit Plan and coverage decisions, or (iv) use of misuse of Client Claim data or PHI.

(c) Limitation of Liability. In no event shall either party be liable for other than actual damages as a result of the performance or default of this Agreement. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Insurance.

(a) CastiaRx Insurance. CastiaRx shall obtain and maintain comprehensive liability insurance in minimum amounts of \$1 Million Dollars (\$1,000,000) per occurrence and \$3 Million Dollars (\$3,000,000) in the aggregate insuring CastiaRx, CastiaRx employees and place of business. CastiaRx shall provide immediate notice to Client of any notice of cancellation, non-renewal or suspension of any of said insurance, and shall provide notice to Client of other material adverse changes to said insurance within ten (10) days of the date which CastiaRx learns of their scheduled occurrence. CastiaRx may satisfy the requirements in this Section through a self-insurance program.

(b) Client's Insurance. Client shall obtain and maintain insurance coverage in amounts standard for Client's business and sufficient to cover its liability and indemnification obligations under this Agreement.

8. Compliance with Law; Client Fiduciary Responsibilities and CastiaRx Financial Disclosures.

(a) Compliance with Law. Client and CastiaRx shall be responsible for ensuring its compliance with any legal obligations, contractual obligations, laws and regulations applicable to its business, including

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maintaining any necessary licenses, registrations and permits. If the Plan is subject to the provisions of ERISA, Client shall ensure that its activities with regard to such program are in compliance with ERISA.

(b) Limitation on Fiduciary Responsibilities. CastiaRx is not the sponsor of any employee benefit plan within the meaning of ERISA or otherwise. CastiaRx is not a fiduciary to Client or its Members nor is it responsible for Client's or the Plan's compliance with applicable laws, including but not limited to those laws relating to employee benefit plans and shall have no liability to Members, third-parties or others for the design of the Plan, its coverage conditions, limitations, scope, determinations or other acts or omissions in furtherance thereof. CastiaRx exercises no discretion with respect to the management of the Plan or the control of Plan assets. The services provided by CastiaRx pursuant to this Agreement are provided on a fee for service basis and are intended to facilitate Client making available efficient, cost effective pharmacy health benefits but is not intended to be an endorsement for any prescription drug, drug therapy or delivery method.

(c) CastiaRx Financial Disclosures. CastiaRx derives revenue from Claims Reimbursements and Fees based on the rates set forth herein as well as in one or more of the ways described in the CastiaRx Financial Disclosure Statement set forth in Exhibit D. In negotiating any of the fees and revenues described in this Agreement and the CastiaRx Financial Disclosure Statement CastiaRx and CastiaRx' wholly-owned subsidiaries act on their own behalf and not for the benefit of or as agents for Client, Plan or Members. CastiaRx and CastiaRx' wholly-owned subsidiaries retain all proprietary rights and beneficial interest in such fees and revenues, and accordingly, Client acknowledges that neither it, Members or Plans has a right to receive or possess any beneficial interest in any such fees or revenues; provided, however, that CastiaRx will pay Client amounts equal to the amounts set forth in Exhibit E.

9. Dispute Resolution.

Any dispute arising out of or relating to this Agreement or the breach, termination or validity hereof shall be settled using a single arbitrator in a location agreed to by the parties at the time of the dispute in accordance with the commercial arbitration rules then in effect of the American Arbitration Association. CastiaRx or Client shall send written notice of any dispute to the other parties sixty (60) days before submitting the dispute to binding arbitration. The award entered by the arbitrator shall be final and binding on all parties to arbitration. With respect to any dispute between the parties, each party shall bear its own attorneys' fees, except

as otherwise authorized by law or statute, and each party shall pay its pro rata/equal portion of the arbitrator's charges and expenses. Notwithstanding the preceding and other provisions in this Agreement, CastiaRx shall have the right to sue or take other legal action to collect any unpaid Claims Reimbursements or Fees due hereunder.

10. Notices.

All notices and other writings required or permitted to be given under the terms of this Agreement shall be hand delivered, sent via certified or registered mail postage prepaid and return receipt requested, or sent via receipted private delivery service such as UPS to the parties with a copy by facsimile or email transmission, below or to such addresses as the parties may hereafter designate in writing. All notices and other writing required or permitted to be given under the terms of this Agreement shall be deemed given upon hand delivery or on the date received as confirmed by return receipt of certified or registered mail or as confirmed by private delivery service. If to PBM:

Leehar Distributors, LLC
2275 Half Day Road, Suite 210
Bannockburn, Illinois 60015
Attn: President
With a copy to:

If to Client:

City of Charleston, West Virginia
501 Virginia Street East
Charleston, West Virginia 25301
Attn: Maria Jones
Title: Benefits and Compensation Manager
Telephone Number: (304) 348-8015

REPORTS OF OFFICERS

1. Report of the City of Charleston Payroll Variance Analysis; November 2018.

ADJOURNMENT

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

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

NAYS: NONE

ABSENT: Ealy, Faegre, B. King

At 7:10 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, December 17, 2018, at 7:00 p.m., in the Council Chamber in City Hall.

Danny Jones, Honorable Mayor

JB Akers, City Clerk