CITY OF CHARLESTON
West Virginia

Council Member – 12th WARD

Joseph Jenkins
839 Gordon Drive
Charleston, West Virginia 25303
304-575-9202
joseph.jenkins@cityofcharleston.org

Finance Committee, Chair
Parking Committee, Chair
Parks and Recreation Committee

AGENDA
FINANCE COMMITTEE MEETING
UNTIL FURTER NOTICE, MEETINGS WILL BE MADE AVAILABLE TO THE PUBLIC VIA ZOOM
Monday, May 17, 2021
6:00 PM

***Join via internet:**
https://us02web.zoom.us/j/87558356997?pwd=YU1PM2hWZVRzckUyaFdaMzV0QXVCUT09
Passcode: 689486
***Join via Telephone: (312) 626-6799 or (929) 436-2866**
Webinar ID: 875 5835 6997

I. DISCUSSION:

a. Approval of Previous Minutes 5-3-2021

II. RESOLUTIONS:

a. Resolution No. 467-21 – Approving a revised schedule of prices relating to the costs of internment and other services at the Spring Hill Cemetery Park, as recommended by the Spring Hill Cemetery Park Commission.

b. Resolution No. 471-21 - Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services to provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers with a 25% required match.

c. Resolution No. 472-21 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston.

d. Resolution No. 473-21 - Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of $112,000. The funds will provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team with a 25% required match.

e. Resolution No. 474-21 - Confirming the enactment of Bill No. 7903, confirming publication of Notice of Public Hearing and confirming public hearing regarding the issuance of sales tax refunding revenue bonds (Coliseum and Convention Center Project), Series 2021, in one or more series, and declaring that Bill No. 7903 is in effect.

f. Resolution No. 475-21 – Authorizing a termination lease agreement with West Virginia Baseball, LLC, former owner of West Virginia Power Baseball Team.

g. Resolution No. 476-21 – Authorizing a stadium lease and service agreement for the use of Appalachian Power Park.

h. Resolution No. 477-21 - Authorizing the Mayor or City Manager to enter into a contract for the provision of contract administration and quality assurance/quality control services for the Slack Plaza / City Center construction project.

i. Resolution No. 478-21 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with other participating agencies comprising the Metro Drug Enforcement Network Team.

j. Resolution No. 479-21 - Authorizing the Mayor or City Manager to renew a software license and maintenance agreement in order to continue the use of the Cityworks asset management system.

k. Resolution No. 480-21 - Appointing an Audit Committee for the purposes of procuring audit services and overseeing any correction associated with any audit findings or concerns.

l. Resolution No. 481-21 - Authorizing the Mayor or City Manager to enter into a contract with for concrete street repair work.

m. Resolution No. 482-21 - Authorizing the Mayor to sign and submit to the West Virginia Development Office a CDBG-DR application.

III. **BILLS:**

a. Bill No. 7909 - A BILL to amend the Municipal Code relating to providing that the schedule of rates and fees for the Charleston Coliseum and Convention Center shall be approved by City Council by resolution; removing the listing of rates from the parks and recreation chapter of code; clarifying that capital improvement fees shall continue; and removing the requirement that the rates be posted on the convention center website.

MINUTES
FINANCE COMMITTEE MEETING
6:00 P.M., MAY 3, 2021
CHARLESTON COLISEUM AND CONVENTION CENTER*

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:00 p.m., May 3, 2021.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Ben Adams
Brent Burton
Becky Ceperley
Mary Beth Hoover
Will Laird

*In response to the COVID-19 pandemic, the meeting of the Finance Committee was held at the Charleston Coliseum and Convention Center for members and panelists. The meeting was made available to the public as a live stream via Zoom (per the agenda).

I. DISCUSSION:

a. Approval of Previous Minutes - Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the April 19, 2021 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

a. Resolution No. 461-21 – Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the Annual Action Plan for Program Year 2021 (FY 2021 to 2022), Year 2 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

   Now Therefore, 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 to the U. S. Department of Housing and Urban Development the Annual Action Plan for Program Year 2021 (FY 2021 to 2022), Year 2 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

Andy Backus, MOECD Director, added that this is for approval of the second year of the 5-year Consolidated Plan for CDBG fund allocations. He added that it is similar to last years plan with an emphasis on benefiting individuals with low/moderate incomes, eliminates slums/blight and addressing urgent needs.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 461-21 approved.

b. Resolution No. 462-21 - Authorizing the Mayor or City Manager to submit an application to the U.S. Department of Homeland Security Port Security Grant Program for funds to purchase a new response boat for the Charleston Fire Department. The total grant amount is $423,448.00 with a 25% cash match.

   Now Therefore, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

   That the Mayor or City Manager is hereby authorized to submit an application to the U.S. Department of Homeland Security Port Security Grant Program for funds to purchase a new response boat for the Charleston Fire Department. The total grant amount is $423,448.00 with a 25% cash match.

City Manager Jonathan Storage, added that that this is another attempt by the City to apply for a grant for a new response boat for the Charleston Fire Department.

Councilmember Jenkins confirmed that the cash match would be approximately $105,000.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 462-21 approved.

c. Resolution No. 463-21 - Authorizing the Mayor or City Manager to enter into an agreement with Pinnacle Consultants, LLC for asbestos inspection and testing services as the result of a competitive bidding process, where the recommended vendor submitted the best overall pricing.

Now Therefore, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

That the Mayor or City Manager is authorized to enter into an agreement with Pinnacle Consultants, LLC for asbestos inspection and testing services as the result of a competitive bidding process, where the recommended vendor submitted the best overall pricing.

Storage added that this is part of the routine service contracts through the Building Department for asbestos testing when an abandoned property has been slated for demolition and asbestos has been identified.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 463-21 approved.

	Astar Abatement Bonham Business Plaza 539 Two Mile Rd Charleston WV 25312 304-343-5950 vanessapritt@astarabatement.com	**Applied Geology** 1116 Smith Street, Ste: 304 Charleston WV 25301 412-736-7449 lzamiska@appliedgeology.net	**Reclaim Company LLC.** 200 8th St. Fairmont WV 26554 304-816-0194 sandeep@reclaimco.com	**Pinnacle** 10 Independent Ave. Nitro WV 25143 304-757-5204 greg.pauley@pinnaclecorp.net
Item	**Price per Unit**	**Price per Unit**	**Price per Unit**	**Price per Unit**
1. Per Structure	$285.00	$214.00	$595.00	$215.00
2. Per Bulk Sample	$5.75	$8.00	$8.00	$7.00
3. Per Sample (PLM)	$10.25	$25.00	$8.95	$14.00
4. Gravimetric Reduction Sample	$155.00	$60.00	$80.00	$25.00
TOTAL BID COST	$456.00	$307.00	$691.95	$261.00
Local Vendor Preference (4%)	**($18.24) $437.76**	**($12.28) $294.72**	**($27.68) $664.27**	**Did not apply.**

d. Resolution No. 464-21 - Authorizing the Mayor or City Manager to enter into a contract with Mr. Asphalt, Inc., in the amount of $1,821,885.00 for asphalt resurfacing of City streets pursuant to a competitive bidding process.

   Now Therefore, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

   That the Mayor or City Manager is authorized to enter into a contract with Mr. Asphalt, Inc., in the amount of $1,821,885.00 for asphalt resurfacing of City streets pursuant to a competitive bidding process.

City Engineer, Chris Knox added this may be the first year that the City received 3 responsive bids. The project was divided into 3 sections to allow for the possibility of getting better value for the Boulevard paving.

Councilmember Laird asked how concrete streets were resurfaced. Knox replied that they are currently in pre-bid for some concrete repair, adding that the goal is to do up to $1 million of concrete patching a year. Councilmember Jenkins added that they are usually done with separate bids. Storage added that they will require the vendor to have surety bonds.

Councilmember Jenkins asked if there might be similar issues to what they faced last year. Knox replied that he planned to start the winning bidder on smaller streets at first, and will work closely with them to ensure they are meeting expectations. Storage added that they will require the vendor to have surety bonds.

Councilmember Hoover requested that Councilmembers be sent email notifications that streets in their Wards are going to be paved so they can communicate that to their residents.

Councilmember Jenkins asked if they have received confirmation that the State will indeed pave MacCorkle Ave from 35th Street to the Turnpike this year. Storage replied that it wasn't likely. Councilmember Hoover added that at the last Planning, Streets and Traffic Committee, it wasn't mentioned that repairs wouldn't start until next year.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 464-21 approved.

			Mr. Asphalt 148 Hunters Ridge Charleston, WV 25320 P: (304) 395-3835 mrasphaltboggess@aol.com		Bear Contracting P.O. Box 1196 Bridgeport, WV 26330 P: (304) 326-0160 mursoebear-contracting.com		WV Paving 2950 Charles Ave. Dunbar, WV 25064 P: (304) 768-9733 ben.bragg@wvpaving.com	
Item	**Unit**	**Estimated Quantity**	**Price per Unit**	**Total Cost**	**Price per Unit**	**Total Cost**	**Price per Unit**	**Total Cost**
Table A- Citywide Streets								
Item No. 3.01 HLBC Base Course	Ton	300	$83.25	$24,975.00	$96.00	$28,800.00	$85.00	$25,500.00
Item No. 3.02 HLBC Wearing Course- 1-1/2"	Ton	11,335	$86.00	$974,810.00	$98.00	$1,110,830.00	$95.00	$1,076,825.00
Item No. 3.03 (1 1/2")Removing Bituminous Concrete	SY	103,150	$1.75	$180,512.50	$1.90	$195,985.00	$2.96	$305,324.00
Table B- Springhill Cemetery								
Item No. 3.01 HLBC Base Course (Springhill Cemetery)	Ton	300	$83.25	$24,975.00	$90.00	$27,000.00	$91.00	$27,300.00
Item No. 3.02 HLBC Wearing Course- 1-1/2" (Springhill Cemetery)	Ton	1,550	$86.00	$133,300.00	$98.00	$151,900.00	$102.00	$158,100.00
Table C- Kanawha Boulevard								
Item No. 3.02 HLBC Wearing Course- 2" Kanawha Boulevard	Ton	4,750	$86.00	$408,500.00	$92.00	$437,000.00	$90.00	$427,500.00
Item No. 3.03 (2") Removing Bituminous Concrete Kanawha Boulevard	SY	42,750	$1.75	$74,812.50	$1.25	$53,437.50	$2.90	$123,975.00
TOTAL PROJECT COST- Tables A, B, & C			**$1,821,885.00**		**$2,004,952.50**		**$2,144,524.00**	
$5,000 when a project exceeds $125,000			Did not Apply		($5,000.00) $1,999,952.50		($5,000.00) $2,139,524.00	

e. Resolution No. 465-21 - Authorizing the Mayor or City Manager to enter into a contract with SQP Construction Group in the amount of $3,127,950 for the City's Slack Plaza / City Center Renovations Project as the result of a competitive bidding process.

   Now Therefore, Be It Resolved By The Council Of The City Of Charleston, West Virginia:

   That the Mayor or City Manager is authorized to enter into a contract with SQP Construction Group in the amount of $3,127,950 for the City's Slack Plaza / City Center Renovations Project as the result of a competitive bidding process.

Storage added that the Administration is ready to begin renovations at Slack Plaza / City Center. The received bids received were competitive.

Councilmember Jenkins confirmed with Storage that the $3.1 million will be City funds from the Facilities Maintenance/General Maintenance Funds that are not part of the General Fund or Rainy-Day Fund. Grant funds were utilized for engineering design. The goal is to have the project completed by the end of the year.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 465-21 approved.

f. Resolution No. 466-21 - WHEREAS, the City is undertaking a large public parks project to reimagine the plaza space known as Slack Plaza situated between Laidley and Summers Streets in downtown Charleston, West Virginia; and

WHEREAS, the City desires to construct a new park that is inviting and lively to encourage residents to engage with one another through community events, live music, street vending, outdoor dining, and general recreation and exercise; and

WHEREAS, the City wishes to commission and install artistic pieces near one of the park entry points to be a park focal point that captures the imagination of visitors; and

Whereas, the City has identified an artist who is able and willing to produce unique sculptures for the park that will meet the City's objectives.

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

That the Mayor or City Manager is authorized to enter into a contract with Simon Sculpture, Inc., in the amount of $246,000 to create and deliver sculptures to be incorporated into the Slack Plaza / City Center Renovation Project according to the terms detailed in the attached agreement.

Storage added that 2 sculptures will be entry points to the newly renovated Slack Plaza / City Center. The artist has experience with these types of sculptures.

City Treasurer, Vic Grigoraci, added that he did not see language about City B&O tax and classification within the contract. Storage replied that it is preferred that the City Collector's Office made those decisions, adding that it was not included in the contract as the terms of the contract might change after approval (change orders, etc.).

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 466-21 approved.

g. Resolution No. 468-21 - A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand twenty-one.

WHEREAS, each Municipality is required to hold a Statutory meeting of the Council on the third Tuesday in April each year to make and enter a levy order and rate sheet; and

WHEREAS, written approval of the West Virginia State Tax Commissioner has been received and notice of the Levy Estimate has been duly published as required by law; and

WHEREAS, the levy rate attached hereto is included in the City of Charleston Municipal Budget for July 1, 2021 through June 30, 2022, before City Council for approval at a special meeting of Council held on April 20, 2021, now, therefore

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

That the City of Charleston, West Virginia does hereby make and enter the levy order and rate sheet attached hereto, incorporated herein, and made a part hereof.

Storage added that based on an accounting quirk, it was thought that the City needed to cover more than was necessary. The City worked with the Insurance Commissioner to increase the letter of credit over time until the financial statements for the next year were released. Those statements showed that an increase was not necessary, so the resolution reflects that change.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 468-21 approved.

h. Resolution No. 469-21 - Authorizing the Mayor or City Manager to enter into a contract with WV Demolition, Inc., in the amount of $3.89 per square foot for demolition services and to enter into an agreement with RS Environmental, Inc., in the amount of $2.25 per square foot for asbestos removal, as the result of a competitive bidding process with local vendor preference consideration.

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

   That the Mayor or City Manager is authorized to enter into a contract with WV Demolition, Inc., in the amount of $3.89 per square foot for demolition services and to enter into an agreement with RS Environmental, Inc., in the amount of $2.25 per square foot for asbestos removal, as the result of a competitive bidding process with local vendor preference consideration.

Storage added that it was recommended that the services listed be split in the RFP.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 469-21 approved.

i. Resolution No. 470-21 - Authorizing the Mayor or City Manager to enter into a contract with WV Demolition, Inc., in the amount of $3.89 per square foot for demolition services and to enter into an agreement with RS Environmental, Inc., in the amount of $2.25 per square foot for asbestos removal, as the result of a competitive bidding process with local vendor preference consideration.

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

That the Mayor or City Manager is authorized to enter into a contract with WV Demolition, Inc., in the amount of $3.89 per square foot for demolition services and to enter into an agreement with RS Environmental, Inc., in the amount of $2.25 per square foot for asbestos removal, as the result of a competitive bidding process with local vendor preference consideration.

Storage added that the project to stabilize Barlow Drive is well under way. The proposed change order is for additional work to utilize some leftover steel for the project. He added that no City funds will be used for the change order.

Councilmember Jenkins asked if the issue that some trucks were having turning onto Twilight Drive had been addressed. Knox replied that there were issues initially, but had had not heard of any recently.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 470-21 approved.

j. Bill No. 7901 - A BILL to amend and reenact Section 82-124 of the Municipal Code of the City of Charleston, relating to providing authorization for the waiver of certain fees for use of public parks and recreation facilities.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 82-124 of the Municipal Code of the City of Charleston is hereby amended and reenacted to read as follows:

CHAPTER 82 – PARKS AND RECREATION.
ARTICLE IV – PUBLIC USE OF PARKS AND RECRATIONAL FACILITIES.
Sec. 82-124. - Waiver of swimming pool fees at certain facilities.

Notwithstanding the rental and fee schedule provided by section 82-125, the mayor, city manager, and the director of the department of parks and recreation may jointly, from time to time, and (1) when weather conditions warrant, and under circumstances which would not substantially affect the revenues of a city swimming pool facility, declare a day or some portion of a day to be a free swim day and waive the collection of the fees prescribed by section 82-125; and (2) where the interests of the community are furthered and under circumstances which would not substantially affect the revenues of the parks and recreation department, waive the collection of a fee or fees prescribed by section 82-125 on one or more days at one or more facility.

Storage added that the bill will allow the Mayor or Parks and Recreation Director to waive fees for certain activities at recreational facilities as needed.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7901 approved.

k. Bill No. 7903 - THE CITY OF CHARLESTON

Sales Tax Refunding Revenue Bonds
(Coliseum and Convention Center Project)
Series 2021

BOND AUTHORIZING ORDINANCE OF
THE CITY OF CHARLESTON

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES TAX REFUNDING REVENUE BONDS (COLISEUM AND CONVENTION CENTER PROJECT), SERIES 2021, IN ONE OR MORE SERIES, ON A TAX-EXEMPT OR TAXABLE BASIS, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $50,000,000 (THE "2021 BONDS") BY THE CITY OF CHARLESTON (THE "ISSUER"), THE PROCEEDS OF WHICH SHALL BE EXPENDED TO REFUND ALL OR A PORTION OF THE ISSUER'S SALES TAX REVENUE BONDS (CIVIC CENTER PROJECT), SERIES 2015 (THE "2015 BONDS"), TO FUND A RESERVE FUND PLEDGED TO THE PAYMENT OF THE 2021 BONDS, IF NECESSARY, AND TO PAY COSTS OF ISSUANCE IN CONNECTION WITH THE 2021 BONDS; PROVIDING PARAMETERS FOR THE PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES AND OTHER TERMS OF THE 2021 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE MODIFYING CERTAIN TERMS OF THE 2015 BONDS WITH THE CONSENT OF THE HOLDERS THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL INDENTURE IN CONNECTION WITH THE ISSUANCE OF THE 2021 BONDS AND ANY OTHER DOCUMENTS RELATING THERETO; PROVIDING PARAMETERS FOR THE TERMS OF THE 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF OTHER DOCUMENTS, INSTRUMENTS, CERTIFICATES AND AGREEMENTS AND THE TAKING OF ALL OTHER ACTIONS RELATING TO THE ISSUANCE OF THE 2021 BONDS.

WHEREAS, pursuant to Section 5a of Chapter 8, Article 1 of the Code of West Virginia, 1931, as amended (the "Home Rule Act"), the Issuer has been granted "Home Rule Status" by the Municipal Home Rule Board;

WHEREAS, the City Council of the Issuer (the "City Council") did, pursuant to the Home Rule Act and Section 2 of Chapter 8, Article 12 of the Code of West Virginia, 1931, as amended (the "Code"), and following all necessary actions, publications, public hearings and approvals, on May 20, 2013, enact an ordinance (the "Initial Sales Tax Ordinance") levying and imposing an excise tax within the corporate boundaries of the Issuer on (i) the privilege of selling tangible personal property or custom software and furnishing certain selected services and (ii) the use of tangible personal property, custom software and the results of taxable services at a rate of one-half of one percent (0.5%) (the "Municipal Sales Tax");

WHEREAS, pursuant to the Home Rule Act and Section 2 of Chapter 8, Article 12 of the Code, and following all necessary actions, publications, public hearings and approvals, on November 3, 2014, the City Council enacted an ordinance (the "2014 Amendatory Sales Tax Ordinance") increasing the Municipal Sales Tax from one-half of one percent (0.5%) to one percent (1.0%) effective July 1, 2015;

WHEREAS, the City Council did on January 4, 2021, following all necessary actions, publications, public hearings and approvals, enact an ordinance amending and reenacting provisions pertaining to the deposit, allocation and pledge of the Municipal Sales Tax revenues (the "2021 Amendatory Sales Tax Ordinance" and collectively with the Initial Sales Tax Ordinance and the 2014 Amendatory Sales Tax Ordinance, the "Sales Tax Ordinance");

WHEREAS, the Sales Tax Ordinance created a special revenue fund in the City Treasury designated and known as the City Sales and Use Tax Fund (the "Tax Fund") and a special revenue fund in the City Treasury designated and known as the Uniform Pensions Reserve Fund (the "Pension Fund");

WHEREAS, the Municipal Sales Tax revenues collected by the Tax Commissioner of the State of West Virginia (the "Tax Commissioner"), less any fee or charge permitted by law to be collected by the Tax Commissioner, are remitted to the Issuer quarterly on or about each January 1, April 1, July 1 and October 1 and deposited into the Tax Fund (the "Municipal Sales Tax Revenues");

WHEREAS, under Chapter 8, Article 16 of the Code of West Virginia, 1931, as amended (the "Bond Act"), the Issuer has plenary power and authority to issue revenue bonds secured by all or a portion of the Municipal Sales Tax Revenues to pay the costs of public works projects;

WHEREAS, pursuant to the Bond Act, the Issuer entered into that certain Bond Indenture dated as of August 17, 2015 (the "Original Indenture"; capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Original Indenture) with United Bank (formerly known as United Bank, Inc.), as trustee (the "Trustee"), under which the Issuer issued its Sales Tax Revenue Bonds (Civic Center Project) Series 2015 in the original aggregate principal amount of $97,250,000 (the "2015 Bonds") to (i) finance the costs of design, acquisition, construction, renovation and equipping of additions, betterments and improvements to the Charleston Coliseum and Convention Center (formerly known as the Charleston Convention and Civic Center) and related improvements, (ii) fund a reserve account pledged to the payment of such obligations, if necessary, (iii) pay the costs of issuance of such obligations, and (iv) pay other costs associated with such obligations;

WHEREAS, the Issuer desires to modify certain redemption provisions of all or a portion of the 2015 Bonds with the consent of the holders thereof in accordance with the terms of the Original Indenture pursuant to a First Supplemental Indenture of Trust between the Issuer and the Trustee (the "First Supplemental Indenture");

WHEREAS, pursuant to the Bond Act, Chapter 8, Article 12 of the Code and Chapter 13, Article 2E of the Code (collectively, the "Act"), the Issuer has the plenary power and authority to issue one or more series of its Sales Tax Refunding Revenue

Bonds (Coliseum and Convention Center Project) Series 2021 (the "2021 Bonds") in an aggregate principal amount not to exceed $50,000,000 for the purposes of (i) refunding all or a portion of the 2015 Bonds for debt service savings, (ii) funding a reserve fund for the 2021 Bonds, if necessary, and (iii) paying costs of issuance of the 2021 Bonds;

WHEREAS, the 2021 Bonds will be Additional Bonds (as defined in the Original Indenture) issued on a parity with any Outstanding (as defined in the Original Indenture) 2015 Bonds, in accordance with the terms of the Original Indenture and pursuant to a Second Supplemental Indenture to be entered into between the Issuer and the Trustee (the "Second Supplemental Indenture" and collectively with the Original Indenture and the First Supplemental Indenture, the "Indenture");

WHEREAS, any Outstanding 2015 Bonds, the 2021 Bonds and any Additional Bonds issued under the Indenture from time to time shall be payable solely from and secured solely by a lien on the Municipal Sales Tax Revenues deposited in the Tax Fund;

WHEREAS, any Outstanding 2015 Bonds, the 2021 Bonds and any Additional Bonds issued under the Indenture from time to time shall not be payable from or secured by the Municipal Sales Tax Revenues deposited in the Pension Fund in accordance with the Sales Tax Ordinance;

WHEREAS, the Issuer hereby determines that it would be to the benefit of the Issuer and the inhabitants of the City of Charleston to refund all or a portion of the 2015 Bonds for debt service savings; provided, however, that the 2021 Bonds will only be issued after the Issuer has obtained from an independent certified public accountant a certification verifying the amount of savings to be achieved by the refunding shall in fact be served, based upon such independent certified public accountant's review, comparison and analysis of the net interest cost in dollars of the 2021 Bonds then proposed to be issued and the net interest cost in dollars of the 2015 Bonds then proposed to be refunded; and

WHEREAS, the Issuer deems it desirable and in keeping with its purposes under the Act, to issue the 2021 Bonds, in one or more series, in an aggregate principal amount not to exceed $50,000,000, on a taxable or tax-exempt basis determined by an Authorized Officer in the Certificate of Determination, (as such terms are hereinafter defined), for the purposes of refunding all or a portion of the 2015 Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLESTON:

Section 1. This Ordinance is adopted and enacted pursuant to and in accordance with the provisions of the Act and other applicable provisions of law. It is hereby found and determined, following the public hearing held before the City Council, that the 2021 Bonds should be issued as hereinafter described and the issuance of the 2021 Bonds and the refunding of all or a portion of the 2015 Bonds is authorized and approved.

Section 2. To accomplish the purposes of the Act, to provide for the refunding of all or a portion of the 2015 Bonds, including any premium due thereon, to fund a reserve fund pledged to the payment of the 2021 Bonds, if necessary, and to pay costs of issuance of the 2021 Bonds, the issuance of the 2021 Bonds, in one or more series, on a taxable or tax-exempt basis determined by an Authorized Officer in the Certificate of Determination, in an aggregate principal amount not to exceed $50,000,000 is hereby authorized, approved and directed; provided, however, that the 2021 Bonds will only be issued after the Issuer has obtained a certification from an independent certified public accountant verifying the amount of savings to be achieved by the refunding shall in fact be served, based upon such independent certified public accountant's review, comparison and analysis of the net interest cost in dollars of the 2021 Bonds then proposed to be issued and the net interest cost in dollars of the 2015 Bonds then proposed to be refunded.

Section 3. The Mayor and City Manager of the Issuer (together, the "Authorized Officers" and each an "Authorized Officer") shall each have the power and authority to execute and deliver a Certificate of Determination (the "Certificate of Determination"), which will establish the material terms of the 2021 Bonds including, without limitation, (i) the aggregate principal amount of the 2021 Bonds then proposed to be issued, not to exceed $50,000,000, (ii) determining whether the 2021 Bonds shall be issued in one or more series and assigning a designation to the series then proposed to be issued, (iii) determining whether such 2021 Bonds shall be issued as tax-exempt bonds, taxable bonds, or any combination thereof, with each different mode to be issued as a separate series of bonds, (iv) fixing the maturity schedule for each series of the 2021 Bonds then proposed to be issued by the Issuer, including the amounts of serial bonds and term bonds, such maturities to be not longer than forty (40) years from the date of issuance of such series of the 2021 Bonds, (v) fixing the scheduled debt service payments for the 2021 Bonds in an aggregate amount, together with any 2015 Bonds to remain Outstanding, not to exceed $7,300,000 in any year, (vi) prescribing the interest rates or yields for each series of 2021 Bonds then proposed to be issued by the Issuer, such rates or yields not to exceed an average interest cost of three percent (3%) per annum (provided that such interest cost may exceed such amount upon the occurrence of an event of default or event of taxability under the 2021 Bonds or the Indenture), (vii) fixing the amounts and times of mandatory redemption for each such series of 2021 Bonds then proposed to be issued by the Issuer, (viii) fixing optional redemption provisions for each such series of 2021 Bonds then proposed to be issued by the Issuer, including times and redemption prices, (ix) fixing the purchase price for each such series of 2021 Bonds then proposed to be issued by the Issuer, which may include an original issue discount or premium, (x) dating each such series of 2021 Bonds then proposed to be issued by the Issuer, and (xi) approving the form of the 2021 Bonds of each such series then proposed to be issued.

Section 4. The 2021 Bonds, together with the interest thereon and other costs incidental thereto, shall be secured solely by the pledges effected by the Indenture and by the Municipal Sales Tax Revenues deposited in the Tax Fund and other revenues and properties pledged for their payment in accordance with the Act. The 2021 Bonds, together with the interest thereon and other costs incidental thereto, shall not be deemed to be and shall not constitute an indebtedness of the State of West Virginia or the Issuer, but shall be special and limited obligations of the Issuer, payable solely from the Municipal Sales Tax Revenues deposited in the Tax Fund and other revenues and properties pledged under the Indenture. Neither the 2021 Bonds nor the interest thereon, nor any other costs or charges in connection therewith, shall be a charge against or pledge of the property, faith and credit or taxing power, if any, of the State of West Virginia or the Issuer, except as to such property expressly provided therefor in the Indenture, nor shall the same ever constitute an indebtedness of the State of West Virginia, the Issuer within the meaning of any constitutional provision or statutory limitation or constitute or give rise to a pecuniary liability of the State of West Virginia or the Issuer. No recourse shall be had for the payment of the principal of and interest on the 2021 Bonds against any Authorized Officer, official or member of the Issuer. The holders of the 2021 Bonds shall have no right to have taxes levied by the legislature of the State of West Virginia or the taxing authority, if any, of the Issuer for the payment of the principal of, premium, if any, or interest on the 2021 Bonds, but the 2021 Bonds shall be payable solely from Municipal Sales Tax Revenues deposited in the Tax Fund and other revenues and properties pledged under the Indenture.

The 2021 Bonds will be payable on a parity with respect to lien on, source of and security for payment from the Municipal Sales Tax Revenues which are deposited into the Tax Fund with the lien granted in favor of any Outstanding 2015 Bonds and any Additional Bonds.

Section 5. The form of the First Supplemental Indenture with the consent of the Holders of the 2015 Bonds in accordance with the Original Indenture, substantially as submitted to the City Council in connection with the enactment of this Ordinance and made a part of this Ordinance as though set forth in full herein, shall be and the same is hereby approved. The Authorized Officers are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the First Supplemental Indenture with such changes, insertions, variations and omissions as may be approved by the Authorized Officer executing the First Supplemental Indenture, subject to review, applicable revision and approval of legal counsel to the Issuer, and the City Clerk is authorized and directed to affix the seal of the Issuer thereto and to attest such seal. The execution of the First Supplemental Indenture by the Authorized Officers shall be conclusive evidence of the approval of such changes, insertions, variations and omissions.

Section 6. The form of the Second Supplemental Indenture, substantially as submitted to the City Council in connection with the enactment of this Ordinance and made a part of this Ordinance as though set forth in full herein, shall be and the same is hereby approved. The Authorized Officers are hereby authorized and directed to execute, acknowledge, if necessary, and deliver the Second Supplemental Indenture with such changes, insertions, variations and omissions as may be approved by the Authorized Officer executing the Second Supplemental Indenture, subject to review, applicable revision and approval of legal counsel to the Issuer, and the City Clerk is authorized and directed to affix the seal of the Issuer thereto and to attest such seal. The execution of the Second Supplemental Indenture by the Authorized Officers shall be conclusive evidence of the approval of such changes, insertions, variations and omissions.

Section 7. The 2021 Bonds shall be issued in fully registered form in accordance with the provisions of the Indenture and shall be delivered to the Trustee to be authenticated, registered and delivered to the purchaser thereof, in physical, non-book-entry, certificated form, in accordance with the terms of the Indenture.

Section 8. The Mayor shall execute the 2021 Bonds as necessary and the City Clerk is authorized and directed to affix the seal of the Issuer thereto and to attest such seal. The 2021 Bonds shall contain a recital to the effect that the 2021 Bonds are issued pursuant to the Act. The definitive 2021 Bonds shall be in substantially the form approved in a Certificate of Determination, with such necessary and appropriate changes, insertions, variations and omissions as are approved by the Mayor. The execution of the 2021 Bonds by the Mayor shall be conclusive evidence of the approval of such changes, insertions, variations and omissions.

Section 9. The Authorized Officers shall have the power and authority to execute and deliver a Bond Commitment Agreement or a Commitment Letter with respect to the 2021 Bonds, by and between the Issuer and the applicable purchaser of such 2021 Bonds ("Commitment Agreement").

Section 10. The Authorized Officers and the City Clerk and any other proper officers and employees of the Issuer, together with all other members and employees thereof, are hereby authorized and directed to execute, acknowledge, if necessary, and deliver any and all papers, documents, agreements, certificates and instruments, to affix the seal of the Issuer and attest the same for and on behalf of the Issuer and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance, the Indenture, any Commitment Agreement and other documents relating thereto, including but not limited to the Certificate of Determination, a Tax Compliance Certificate related to the 2021 Bonds and an Escrow Agreement for the 2015 Bonds to be refunded.

Section 11. All covenants stipulations, obligations and agreements of the Issuer contained herein and contained in the Indenture, any Commitment Agreement and other documents relating thereto shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the Issuer to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Issuer and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the Issuer or the officials thereof and by the Indenture, any Commitment Agreement and other documents relating thereto shall be exercised or performed by the Issuer or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

Section 12. No covenant, stipulation, obligation or agreement herein contained or contained in the Indenture, any Commitment Agreement or other documents relating thereto shall be deemed to be a covenant, stipulation, obligation or agreement of any Authorized Officer, officer, agent or employee of the Issuer in his or her individual capacity, and neither the members of the Issuer nor any officer executing the 2021 Bonds shall be subject to any personal liability or accountability by reason of the issuance of the 2021 Bonds. No Authorized Officer, member, officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest of any 2021 Bond, but nothing herein contained shall relieve any such Authorized Officer, member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 13. The laws of the State of West Virginia shall govern the construction of this Ordinance and all 2021 Bonds issued hereunder.

Section 14. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 15. All previous ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 16. The Issuer covenants that (i) all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and entry of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and (ii) the Authorized Officers, City Clerk and members of the City Council were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 17. The City Clerk is hereby authorized and directed to have an abstract of this Ordinance, in substantially the form attached hereto as Exhibit A, which abstract has been and is hereby determined by the City Council to contain sufficient information as to give notice of the contents of this Ordinance, published once a week for 2 successive weeks, with not less than six full days between each publication, the first such publication to be not less than 10 days before, and the second publication also being before the date set for the public hearing, in a qualified newspaper published and having a general circulation in Kanawha County, West Virginia, stating that this Ordinance has been enacted, that the Issuer contemplates the issuance of the 2021 Bonds described in this Ordinance and that any person interested may appear before the City Council at the public hearing on Monday, May 17, 2021, at 7:00 p.m., prevailing time, at the Charleston Coliseum and Convention Center, West Hall 1, Charleston, West Virginia, and be heard as to whether this Ordinance shall be made effective, and that a certified copy of this Ordinance is on file in the office of the City Clerk for review by interested persons during regular office hours. At such hearing, all objections and suggestions shall be heard and the Issuer shall then take such action as it shall deem proper.

Section 18. This Ordinance shall take effect as follows:

First Reading: April 19, 2021

Second Reading and Enactment: May 3, 2021

Public Hearing and adoption of Resolution making Ordinance Effective: May 17, 2021

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of the City of Charleston, does hereby certify that the foregoing Ordinance is a true, correct and complete copy of an Ordinance duly adopted and enacted by City Council of the City of Charleston, at a regular meeting duly held at 7:00 p.m. on May 3, 2021 (second reading and enactment), after introduction and first reading on April 19, 2021 (first reading) at a regular meeting duly held at 7:00 p.m., pursuant to proper notice, at which meetings quorums were present and acting throughout, and which Ordinance was enacted following a public hearing thereon, notice of which public hearing was published in publications having a general circulation in Kanawha County, West Virginia, the first publication having been not less than 10 days prior to such public hearing and the second publication having been prior to such public hearing.

Dated this _______ day of ____________, 2021.

By:___________________________________
Its: City Clerk

Exhibit A

Form of Notice of Public Hearing

[TO BE PUBLISHED ON
TUESDAY, MAY 4, 2021 AND TUESDAY, MAY 11, 2021]

NOTICE OF PUBLIC HEARING ON
THE CITY OF CHARLESTON
BOND ORDINANCE

A public hearing will be held on the below-entitled Ordinance at a regular meeting of the City Council of the City of Charleston (the "City Council") to be held on Monday, May 17, 2021, at 7:00 p.m. at the Charleston Coliseum and Convention Center, West Hall 1, Charleston, West Virginia. At such hearing, any person interested may appear before the City Council and present protests, and all protests and suggestions shall be heard by the City Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES TAX REFUNDING REVENUE BONDS (COLISEUM AND CONVENTION CENTER PROJECT), SERIES 2021, IN ONE OR MORE SERIES, ON A TAX-EXEMPT OR TAXABLE BASIS, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $50,000,000 (THE "2021 BONDS") BY THE CITY OF CHARLESTON (THE "ISSUER"), THE PROCEEDS OF WHICH SHALL BE EXPENDED TO REFUND ALL OR A PORTION OF THE ISSUER'S SALES TAX REVENUE BONDS (CIVIC CENTER PROJECT), SERIES 2015 (THE "2015 BONDS"), TO FUND A RESERVE FUND PLEDGED TO THE PAYMENT OF THE 2021 BONDS, IF NECESSARY, AND TO PAY COSTS OF ISSUANCE IN CONNECTION WITH THE 2021 BONDS; PROVIDING PARAMETERS FOR THE PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES AND OTHER TERMS OF THE 2021 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL INDENTURE MODIFYING CERTAIN TERMS OF THE 2015 BONDS WITH THE CONSENT OF THE HOLDERS THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL INDENTURE IN CONNECTION WITH THE ISSUANCE OF THE 2021 BONDS AND ANY OTHER DOCUMENTS RELATING THERETO; PROVIDING PARAMETERS FOR THE TERMS OF THE 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF OTHER DOCUMENTS, INSTRUMENTS, CERTIFICATES AND AGREEMENTS AND THE TAKING OF ALL OTHER ACTIONS RELATING TO THE ISSUANCE OF THE 2021 BONDS.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the 2021 Bonds contemplated thereby. The City of Charleston (the "Issuer") contemplates the issuance of the 2021 Bonds, in one or more series, as described in the Ordinance. The aggregate proceeds of the 2021 Bonds will be used to (i) refund all or a portion of the 2015 Bonds for debt service savings, (ii) fund a reserve fund for the 2021 Bonds, if necessary, and (iii) pay costs of issuance of the 2021 Bonds. The 2021 Bonds shall be payable solely from and secured solely by a lien on the Issuer's Municipal Sales Tax Revenues deposited in the City Sales and Use Tax Fund in the City Treasury. Other than the Municipal Sales Tax, no taxes may at any time be levied for the payment of the principal of or interest on the 2021 Bonds.

The above-entitled Ordinance was introduced on first reading to the City Council on April 19, 2021 and was presented on second reading and enacted on May 3, 2021. A certified copy of the above-entitled Ordinance is on file with the City Clerk for review by interested parties during regular office hours.

Following the public hearing, the City Council intends to adopt a Resolution making the Ordinance effective.

/s/ Miles Cary
Clerk

Finance Director, Andy Wood added that there are 2 maturities in the bonds, in 2030 and 2035. Technically, as the bond documents are currently written, only the 2030 bonds are refundable. Through negotiations they were able to manage the rates for significant savings to the City.

Councilmember Burton disclosed that his relative works for the bonding firm, but not in any way that would prevent him from voting.

Councilmember Adams asked if there was a difference between the gross and the net. Wood replied that the net savings is a financial calculation that is used that considers the time value of money; the net present value savings is still very strong at approximately $2.5 million which is 6% of the refunded bonds.

Councilmember Jenkins confirmed with Wood that the cost of the services for this is significantly less than the actual savings. Amy Condaras, from Frost Brown and Todd, added that the first document is the first supplemental amending the documents to change the terms. She added that the bond holders were willing to waive the premiums and allow the bonds to be refunded. The second supplemental governs what will happen going forward.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7903 approved.

l. Bill No. 7904 - A BILL to amend and reenact Section 22-35 of the Municipal Code of the City of Charleston, as amended; and to repeal Section 22-43 of said Code, all relating to clarifying that amendments to the rates for internment at Spring Hill Cemetery Park may be approved by the City Council through resolution upon recommendation from the Spring Hill Cemetery Commission.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 22-35 of the Municipal Code of the City of Charleston, as amended, is hereby amended and reenacted; and that Section 22-43 of said code is hereby repealed, all to read as follows:

CHAPTER 22 – CEMETERIES.
ARTICLE II – SPRING HILL CEMETERY.
DIVISION 1 – GENERALLY.

Sec. 22-35. - Price of rights of interment.

The commission may establish, and from time to time amend, a schedule of prices, which in each case must be approved by the city council by resolution, for the sale of rights of interment in the cemetery, for installation of memorials, for opening and closing of graves, and for other services or merchandise provided by the cemetery. Each schedule adopted shall be maintained on file in the office of the city clerk and available on the City or Spring Hill Cemetery website, so long as it remains in effect. Until the commission adopts a schedule of prices pursuant to this section, the price of lots in the cemetery shall be as in effect immediately prior to the effective date of this Code.

~~Sec. 22-43. - Schedule of rates for the Spring Hill Cemetery Park.~~

~~That the price for grave spaces and the fees for service at the Spring Hill Cemetery Park shall be as follows:~~

~~City Property (Riggs 10-Scruggs; JHL 1-2 Burdette 1-2; Jeffries, all sections 1-10 and Woods 18) (As determined available) .....$900.00~~

~~Hall and Edmonds and all others (As determined available) .....900.00~~

~~Lynn-Wehrle (As determined available) .....900.00~~

~~Lynn 2 .....900.00~~

~~Capito (As determined available) .....900.00~~

~~Capito Woods(flat marker area) $700.00 monument section .....900.00~~

~~Wilson .....900.00~~

~~Middleton (As determined available) .....900.00~~

~~Mausoleum Property .....No spaces available~~

~~Woods 1, 2 and 3 (As determined available) .....900.00~~

~~Swann Addition (all sections of Spring Hill excluding section 49) (As determined available) .....900.00~~

~~Section 49 (As determined available) .....900.00~~

~~Riggs-Jeffries Riggs (As determined available) .....900.00~~

~~Riggs Babyland .....100.00*~~

~~*No charge—infants up to two years of age~~

~~Wilson, Block 6-A, 7-A and 8 (As determined available) .....900.00~~

~~Wehrle Addition, section 16 (As determined available) .....900.00~~

~~Willow Lawn Addition .....800.00~~

~~Wehrle 16A (monument area) .....900.00~~

~~Cremation burial site .....350.00~~

~~Columbarium AGM 64-9-2005-1,~~
~~each niche .....1,000.00~~
~~(niche hold two standard cremations)~~
~~Garden of Memories~~

~~Niche Plate Engraving .....75.00~~

~~A second right of interment may be purchased for an additional 50 percent of the price of the lot purchased.~~

~~The following table of service pricing shall apply (includes tent and chairs):~~

~~Standard adult/Opening/closing~~

~~Weekdays M—F .....1,000.00~~

~~Weekends, Saturday/Sunday (weekends to include Monday before noon) .....1,200.00~~

~~Baby graves ..... Opening/closing~~

~~Weekdays M—F .....200.00*~~

~~*No charge—infants up to two years of age~~

~~Weekends and holidays. (Weekends to include Monday before noon and holidays) .....400.00~~

~~Mausoleum Crypt ..... Opening/closing~~

~~Weekdays M—F .....400.00~~

~~Weekends and holidays. (Weekends to include Monday before noon and holidays) .....600.00~~

~~Optional tent service for outside mausoleums .....150.00~~

~~The use of an insuraliner is required for all entombments. (Funeral homes required to supply liners).~~

~~Installation of memorials~~
~~(except government supplied)~~

~~Flat markers .....1.00~~
~~per sq. in.~~
~~Upright markers .....1.00~~
~~per sq. in.~~
~~Government supplied~~
~~V.A. Memorials .....No charge~~

~~Only granite or bronze on granite markers of a minimum thickness of 4" are allowed. (The exception shall be for Government VA Markers or matching of existing markers).~~

~~The installation of mausoleums, columbariums, and memorials requiring special needs and equipment for handling will be charged according to the individual application.~~

~~Cremation/Opening/closing (Ground Burial)~~

~~Weekdays M—F .....400.00~~

~~Weekends Sat./Sun. (Weekends to include Monday before noon) .....500.00~~

~~Opening/closing Columbarium~~

~~Weekdays M—F .....400.00~~

~~Weekends and holidays .....500.00~~

~~Committal service set-up .....150.00~~

~~Steel burial vault installation fee (concrete vault suppliers are required to set concrete vaults .....100.00~~

~~The following table of merchandise pricing shall apply:~~

~~Memorials and related merchandise not to exceed 300 percent of wholesale cost.~~

~~Outside burial container charges are not to exceed 300 percent of wholesale cost.~~

~~The purchase price and charges for other required services and materials for mausoleums and cremation depositories are based on individual application.~~

~~Custom design purchases will be priced per application.~~

~~Flower location/Setting service fee, per flower arrangement delivered by outside vendors for placement on a grave. Payable at time of delivery .....3.00~~

~~State sales tax will apply to services and merchandise as provided by law.~~

Storage added that the bill clarifies that the rates for the Spring Hill Cemetery Commission can be passed by resolution.

Councilmember Jenkins added that previously, the fees were put into City Code via ordinances, so the proposed bill will streamline that process so that the Commission can evaluate their budget; Council will still have approval of those fees.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7904 approved.

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.

Resolution No. 467-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 467-21 – Approving, pursuant to Municipal Code § 22-35, a revised schedule of prices relating to the costs of internment and other services at the Spring Hill Cemetery Park, as recommended by the Spring Hill Cemetery Park Commission and reflected in Exhibit A attached hereto.

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

That, pursuant to Municipal Code § 22-35, the revised schedule of prices relating to the costs of internment and other services at the Spring Hill Cemetery Park, as recommended by the Spring Hill Cemetery Park Commission and reflected in Exhibit A attached hereto, is approved.

Spring Hill Cemetery Park	Pricing	Tax	Total	2nd Right	Tax	Total
Capito -Woods lots A-K	$ 1,050.00			$ 525.00		
(Flat Markers Only)						
Capito -Woods lots L- T	$ 1,350.00			$ 675.00		
Upright markers allowed						
Willow Lawn J	$ 1,200.00			$ 600.00		
(Flat markers only)						
Woods Section 3 monuments Allowed	$ 1,350.00			$ 675.00		
Cremation lots Lynn sec 1 flat markers	$ 525.00					
(Cremation) Ground burial required **vault**	$ 300.00	$ 14.00	**$ 314.00**			
Open and Closing infants under 2 yrs Free		**This does not include extra**				
				Week -end		
Full Burial						
Open and closing	$ 1,500.00			$ 1,800.00		
Vault setting Fee	$ 150.00	$ 10.50		$ 150.00	$ 10.50	
Tent and chairs	$ 225.00	$ 15.75		$ 225.00	$ 15.75	
Total	$ 1,875.00	$ 26.25	**$ 1,901.25**	**$ 2,175.00**	$ 26.25	**$ 2,201.25**
				Week -end		
Cremations						
Open and Closing	$ 600.00			$ 750.00		
Cremation Vault	$ 300.00	$ 21.00		$ 300.00	$ 21.00	
Tent and Chairs	$ 225.00	$ 15.75		$ 225.00	$ 15.75	
Total	$ 1,125.00	$ 36.75	**$ 1,161.75**	**$ 1,275.00**	$ 36.75	**$ 1,311.75**
				Week -end		
Second Right of Interment						
1/2 of Cost of the lot		**PLUS 1/2 OF LOT PRICE**			**PLUS 1/2 OF LOT PRICE**	
Open and Closing	$ 600.00			$ 750.00		
Cremation Vault	$ 300.00	$ 21.00		$ 300.00	$ 21.00	
Tent and chairs	$ 225.00	$ 15.75		$ 225.00	$ 15.75	
Total	$ 1,125.00	$ 36.75	**$ 1,161.75**	$ 1,275.00	$ 36.75	**$ 1,311.75**

Spring Hill Cemetery Park	Pricing	Tax	Total	Week-end & Holidays	
Columbarium	$ 1,500.00		$ 1,500.00	$ 1,500.00	
Nitch (Hold 2 Cremations)					
Plaque with Name, dOB, DOD (required	$ 112.50	$ 7.88		$ 112.50	
*****vault not needed					
Open and Closing	$ 600.00			$ 750.00	
Total	**$ 1,612.50**	**$ 7.88**	**$ 1,620.38**	**$ 2,362.50**	

Resolution No. 471-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 471-21 – Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of $84,000 and administer any funds awarded. These funds will provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers (PRO) assigned to George Washington High School, West Side Middle School and Capital High School. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed by the police department's salary and wage budget.

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

That the Mayor or City Manager is authorized to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of $84,000 and administer any funds awarded. These funds will provide partial salary reimbursement for the three Charleston Police Department Prevention Resource Officers (PRO) assigned to George Washington High School, West Side Middle School and Capital High School. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed by the police department's salary and wage budget.

Resolution No. 472-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 472-21 – Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston – West Side Middle School, Capital High School and George Washington High School.

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

That the Mayor or City Manager is authorized to enter into a Memorandum of Understanding with the Kanawha County Board of Education for continued placement of three Prevention Resource Officers at schools in Charleston – West Side Middle School, Capital High School and George Washington High School.

Resolution No. 473-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 473-21 – Authorizing the Mayor or City Manager to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of $112,000 and administer any funds awarded. These funds will provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team (MDENT) from Charleston, Nitro, St. Albans and South Charleston Police Departments. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed into each of those city's police salary and wage budgets.

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

That the Mayor or City Manager is authorized to submit a grant application to the Division of Administrative Services Justice and Community Services Division in the amount of $112,000 and administer any funds awarded. These funds will provide partial salary reimbursement for four members of the Metropolitan Drug Enforcement Network Team (MDENT) from Charleston, Nitro, St. Albans and South Charleston Police Departments. There is a 25% required match that will be met by the un-reimbursed officer salary portion absorbed into each of those city's police salary and wage budgets.

Resolution No. 474-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 474-21 – Confirming the enactment of Bill No. 7903, confirming publication of Notice of Public Hearing and confirming public hearing regarding the issuance of sales tax refunding revenue bonds (Coliseum and Convention Center Project), Series 2021, in one or more series, and declaring that Bill No. 7903 is in effect.

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

That the enactment of Bill No. 7903 is confirmed, the publication of Notice of Public Hearing is confirmed and the public hearing regarding the issuance of sales tax refunding revenue bonds (Coliseum and Convention Center Project), Series 2021, in one or more series is confirmed, and that Bill No. 7903 is in effect.

Resolution No. 475-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 475-21 – Authorizing the Mayor or City Manager to enter into the Stadium License, Lease and Service Termination Agreement with West Virginia Baseball LLC that includes the waiver of the net outstanding balance owed to the City of $354,135.95. This balance represents the License Fee, as amended, accumulated during the period of the COVID-19 public health emergency, less the maintenance contribution to the team accumulated during the same period. The City Auditor is directed to consider this waiver in the financial statements for fiscal year 2021, including the amount of the waiver attributable to a prior fiscal year carried forward as an account receivable.

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

That the Mayor or City Manager is authorized to enter into the Stadium License, Lease and Service Termination Agreement with West Virginia Baseball LLC that includes the waiver of the net outstanding balance owed to the City of $354,135.95. This balance represents the License Fee, as amended, accumulated during the period of the COVID-19 public health emergency, less the maintenance contribution to the team accumulated during the same period. The City Auditor is directed to consider this waiver in the financial statements for fiscal year 2021, including the amount of the waiver attributable to a prior fiscal year carried forward as an account receivable.

STADIUM LICENSE, LEASE AND SERVICE TERMINATION AGREEMENT

This Stadium License, Lease and Service Termination Agreement (hereinafter "Agreement") is made and entered into on this _______ day of ___________________________, 2021, by and between the **West Virginia Baseball LLC** (hereinafter "WVB"), limited liability company organized and existing under the laws of the State of West Virginia, and the **CITY OF CHARLESTON** (hereinafter "City"), a municipal corporation organized and existing under the laws of the State of West Virginia. The WVB and the City may be referred to collectively as the "Parties," or singularly as "Party".

WHEREAS, WVB currently maintains a Stadium License, Lease and Service Agreement with the City as entered into on January 19, 2005 and subsequently amended in 2016, to manage and maintain the Stadium, currently known as Appalachian Power Park, which is on the block bounded by Morris Street, Lewis Street, Brooks Street, and Smith Street; and

WHEREAS, WVB has sold and transferred all of its interest in a formerly classified Single "A" baseball club, currently known as the West Virginia Power, to the Charleston Professional Baseball Company LLC (hereinafter "CPBC"); and

WHEREAS, the City intends on entering into a Stadium License, Lease and Service Agreement with CPBC to manage and maintain the Stadium referenced herein; and

WHEREAS, WVB has an outstanding amount owed to the City pursuant to the above referenced agreement; and

WHEREAS, the City and WVB desire to resolve any and all outstanding balances owed, and conditions required pursuant to the previously established Stadium License, Lease and Service Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the WVB and the City hereby agree as follows:

A. **OUTSTANDING BALANCES AND WAIVER**. WVB's outstanding net balance owed to the City is $500,453.14. The City hereby agrees to waive the amount of $354,135.95 as previously agreed upon as a result of the public health emergency, COVID-19, which was

______ _______ ________
Initials

made contingent upon the transaction between WVB and CPBC regarding the purchase of the West Virginia Power and all assets connected thereto. WVB's total amount owed to the City, excluding all amounts waived herein, shall be $146,317.19. The City hereby acknowledges receipt of $146,317.19, more particularly check number 9832 in the amount of $62,500.00; check number 9833 in the amount of $21,317.19; and check number __________ in the amount of $62,500.00.

B. **PERSONAL GUARANTEE**. ALL AMOUNTS CONTAINED HEREIN HAVE BEEN PAID VIA CHECK. IN THE EVENT THAT ANY AMOUNT PAID PURSUANT TO THIS AGREEMENT IS RETURNED FOR INSUFFICIENT FUNDS OR OTHERWISE REJECTED BY A FINANCIAL INSTITUTION, THE MEMBERS OF WVB, SPECIFICALLY TIMOTHY WILCOX, JOHN WILCOX AND CATHERINE WHITE (COLLECTIVELY AS ITS "MEMBERS"), ACCEPT PERSONAL LIABILITY, JOINTLY AND SEVERALLY, AND RESPONSIBILITY FOR THE AMOUNTS CONTAINED HEREIN. THEREBY WVB AND ITS MEMBERS HEREBY WAIVE ANY CIVIL DEFENSES AND CORPORATE PROTECTIONS POTENTIALLY AVAILABLE AS TO THE DEBT CONTAINED HEREIN. THEREFORE, ANY CIVIL ACTION RESULTING FROM ANY BREACH OF THIS AGREEMENT WILL BE COMMENCED IN THE NAME OF ALL ENTITIES CONTAINED HEREIN, INCLUDING BUT NOT LIMITED TO TIMOTHY WILCOX, JOHN WILCOX, AND CATHERINE WHITE, RESPECTIVELY AND INDIVIDUALLY. TIMOTHY WILCOX HEREBY REPRESENTS AND PURPORTS TO POSSESS THE AUTHORITY TO BIND WVB AND ITS MEMBERS TO THIS AGREEMENT.

C. **LICENSE, LEASE AND SERVICE AGREEMENT TERMINATION**. That, for and in condition of the promises and covenants set forth herein and other good and valuable consideration, the Parties herein agree to the termination of the Stadium License, Lease and Service Agreement as entered into on January 19, 2005, including all amendments and addendums provided thereto, effectively immediately upon execution of this Agreement. Any and all obligations contained therein shall not survive the execution of this Agreement, excluding the obligation of payment referenced herein.

D. **ENTIRE AGREEMENT.** This Agreement constitutes the final, complete, and exclusive written expression of the intent of the Parties with respect to the subject matter hereof

_______ ________ _________
Initials

which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

E. **GOVERNING LAW.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of West Virginia.

By the duly-authorized signatures below, the parties hereby agree and accept the terms set forth in this Agreement and acknowledge that they are freely signing this Agreement after reading and understanding the entirety of its contents.

WITNESS the following signatures

By: ______________________________

JONATHAN STORAGE, City Manager
The City of Charleston

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to wit:

The foregoing and attached instrument, a Stadium License, Lease and Service Termination Agreement, was acknowledged before me by _______________________________________ this ________ day of ___________________, 2021

____
Notary Public

My Commission Expires: ___________________________

WEST VIRGINIA BASEBALL, LLC

By: ______________________________
TIMOTHY WILCOX

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to wit:

The foregoing and attached instrument, a Stadium License, Lease and Service Termination Agreement, was acknowledged before me by _______________________________________ on this ________ day of ___________________, 2021.

____
Notary Public

My Commission Expires: ______________________________

_______ ________ _________
Initials

Resolution No. 476-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 476-21 – Authorizing the Mayor or City Manager to enter into a Stadium License, Lease and Service Agreement with Charleston Professional Baseball Company, LLC, for the use of the professional baseball stadium facilities commonly known as Appalachian Power Park for a period of five years according to the terms of the agreement attached hereto as Exhibit A.

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

That the Mayor or City Manager is authorized to enter into a Stadium License, Lease and Service Agreement with Charleston Professional Baseball Company, LLC, for the use of the professional baseball stadium facilities commonly known as Appalachian Power Park for a period of five years according to the terms of the agreement attached hereto as Exhibit A.

STADIUM LICENSE, LEASE AND SERVICE AGREEMENT

APPALACHIAN POWER PARK

By and Between

CHARLESTON PROFESSIONAL BASEBALL COMPANY, LLC

[A Kentucky Limited Liability Company]

and

CITY OF CHARLESTON

[A West Virginia Municipal Corporation]

Dated as of May 17, 2021

TABLE OF CONTENTS

STADIUM LICENSE, LEASE AND SERVICE AGREEMENT

This Stadium License, Lease and Service Agreement (hereinafter "Agreement") is made and entered into on this _______ day of ___________________________, 2021, by and between the **CHARLESTON PROFESSIONAL BASEBALL COMPANY, LLC** (hereinafter "CPBC"), limited liability company organized and existing under the laws of the State of Kentucky, and the **CITY OF CHARLESTON** (hereinafter "City"), a municipal corporation organized and existing under the laws of the State of West Virginia. The CPBC and the City may be referred to collectively as the "Parties," or singularly as "Party".

ARTICLE I.

RECITALS

WHEREAS, West Virginia Baseball, LLC, a limited liability company organized and existing under the laws of the State of West Virginia has sold and transferred all of its interest in a formerly classified Single "A" baseball club (hereinafter the "Club"), currently known as the West Virginia Power, to CPBC; and

WHEREAS, the CPBC has developed an expertise for the operation of independent professional league baseball franchises; and

WHEREAS, the CPBC has established and aligned the Club to be affiliated with the Atlantic League of Professional Baseball; and

WHEREAS, the City and CPBC desire that the CPBC cause the Club to play its home baseball games in the City pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City and CPBC desire that CPBC manage and maintain the Stadium associated herein in a manner to promote economic growth and communal support within the City.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is mutually acknowledged, the CPBC and the City hereby agree as follows:

ARTICLE II.

DEFINITIONS

As used in this Agreement, the following terms shall mean:

A. "*Broadcast Rights*" shall mean the exclusive worldwide right, on a live or delayed basis, to produce and distribute programming by means of the transmission or retransmission of electronic signals by any manner or means now known or hereafter devised including, without limitation, over-the-air VHF and UHF signals, cable (basic, premium and pay-per-view), multi-channel distribution systems, wire, fiber, microwave, satellite, master antenna, internet and direct broadcast satellite, as well as recorded visual images with or without sound, including, but not limited to, photographs, films, videotapes and cartridges.

B. "*City Events*" shall mean any event, activity or program held at the Stadium that is not a: i) CPBC Baseball Game or ii) CPBC Special Event.

C. "*Commencement Date*" shall refer to the execution date of this agreement. This is the date by which the Parties agree CPBC shall be permitted access to the Stadium to prepare the Stadium for the 2021 baseball season as circumstances allow.

D. "*Complimentary Admission(s)*" shall mean the right granted to any person to enter the Stadium on the day of a CPBC Baseball Game for which no monetary remuneration is given. Complimentary Admission(s) shall include, but not be limited to, press passes, staff passes, league passes, player passes and complimentary tickets, as well as the right of access granted to CPBC employees and personnel. Complimentary Admission(s) shall not include the right to enter the Stadium on the day of a CPBC Baseball Game pursuant to a Paid Admission Ticket.

E. "*CPBC Baseball Game*" shall mean home games of the Club, as the phrase is used throughout this Agreement, and shall mean all other baseball games at which the Club as a participant, including pre-season, exhibition, regular season, post-season and play-off, and postponed or rescheduled games and other games arranged, approved and regularly scheduled by an Independent Professional Baseball League, its successors or assigns, excluding any such game or games the playing of which in the Stadium is excused under other provisions of this Agreement.

F. "*CPBC Special Event*" shall mean any event that is not a CPBC Baseball Game or City Event and is conducted at the Stadium.

G. "*CPBC Special Event Novelties and Souvenirs*" shall mean any product, item, device, souvenir, novelty, supply or other property directly related to any CPBC Special Event.

H. "*Equivalent Professional Baseball League*" shall mean a league associated with the National Association of Professional Baseball Leagues, Inc. or affiliated with any Major League Baseball club.

I. "*Food and Beverage Concessions*" shall mean all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided at, any and all Stadium Events, whether through fixed or portable stands, machines or vendors including but not limited to, dining, Luxury Suite waitperson service, catering, concessions vending, vending machines, roving vendors, snack bars and any other food or beverages served at the Stadium.

J. "*Food and Beverage Concessions Equipment*" shall mean equipment required or appropriate to store, prepare, display, service, distribute and sell Food and Beverage Concessions at the Stadium. Food and Beverage Concessions Equipment does not include the build-out of the concession stands or picnic stands, or their permanent components (doors, counters, windows, electrical and plumbing components, etc.). The Parties understand and agree that the Food and Beverage Concessions Equipment shall include equipment similar to that found in Independent Professional League baseball facilities similar in quality to the Stadium. *Exhibit A* attached for reference hereto.

K. “*Luxury Suites*” shall mean those suites each having seating capacity of at least ten (10) persons outdoors which may or may not contain a wet bar and/or mini refrigerator.

L. “*Minimum Guaranteed Payment*” shall mean and be equal to TWO HUNDRED AND FORTY THOUSAND DOLLARS ($240,000.00) annually for years 1-5 of this Agreement. The Minimum Guaranteed Payment shall reflect and be construed as the annual lease payment pursuant to this Agreement.

M. “*Novelties and Souvenirs*” shall mean any product, item, device, souvenir, novelty, supply or other personal property. Novelties and Souvenirs shall include, but not be limited to, baseball caps and hats, bats, baseball shirts, baseballs, baseball cards, baseball gloves, baseball scorecards, programs, souvenir books and other related products which bear, contain or display the logo, trademark, tradename or design of the CPBC, any Atlantic League of Professional Baseball club, any Major League Baseball club, any team of any league which is a member of the National Association or any other professional baseball club.

N. “*Paid Admission Tickets*” shall mean the right granted in consideration for monetary remuneration to any person to enter the Stadium through the Stadium’s gates on the day of a CPBC Baseball Game, whether or not that right is exercised.

O. “*Professional Baseball Agreement*” shall mean and refer to any agreement, and all of attachments therein, entered into by and between any Independent Professional Baseball League or Association and CPBC.

P. “*Regular Season*” shall mean all professional baseball games that are played in any calendar year by the CPBC excluding pre-season, spring-training, exhibition, all-star, post-season or playoff games.

Q. “*Scoreboard Advertising*” shall mean any and all advertising affixed to or displayed on the Stadium scoreboard, including video and message center advertising.

R. “*Stadium*” shall mean the Professional baseball stadium commonly described as Appalachian Power Park located in the City of Charleston on the parcel more particularly described herein, and its playing field. Stadium shall include only the structure within the perimeter of the walls of the Stadium and field or berm fences and shall not include contiguous parking and/or real property upon which the Stadium does not sit. The Stadium does not include the warehouse at 601 Morris Street other than approximately 18,000 square feet which shall embody clubhouse space for the home and visiting teams, team souvenir retail space, ticket and box offices, administrative offices, first aid and family restroom space, batting tunnel, and maintenance and storage spaces. *Exhibit B* attached for reference.

S. “*Stadium Event*” shall mean any CPBC Baseball Game, CPBC Special Event and/or City Event.

T. “*Stadium Services*” shall mean and consist of the following:

   a. Facility Service. The operation and staffing of the Stadium scoreboard, the public address system, the box office, security within the Stadium necessary to assure the reasonable safety of attendees, emergency response and/or medical services provided in aide to personnel and spectators, all ticket booths and ushering services, first-aid room, and the opening and closing of the Stadium, and the operation of all Stadium facilities at all Stadium Events.

b. Field Preparation. Field preparation in advance of baseball games which shall include, but not be limited to, lining the field, replacement of playing surface, preparation of the unsodded areas of the field, installation of bases, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and any other events, as necessary.

c. Field and Grounds Maintenance. Shall include, but not be limited to, maintenance of the playing field and interior landscaped areas of the Stadium, which maintenance shall include periodic mowing, watering, fertilizing and other chemical treatments required to maintain the field at professional stadium quality, specialized turf care as required, such as aeration and other treatments which are required to maintain the quality of the field as defined herein, recycling requirements, and the maintenance of all unsodded areas of the field.

d. Janitorial Services. The cleaning and maintenance of the interior portions of the Stadium during and after all Stadium Events, including the stocking of all restrooms with paper products as required prior to such Stadium Events, the pick-up and disposal of all trash collected from such areas immediately after such events, and any necessary clean-up of trash and debris from public areas immediately surrounding the Stadium related to Stadium Events by no later than 8:00 A.M. on the morning following such events. All janitorial services provided to the Stadium shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with all legal requirements, including those related to recycling.

e. Pre-Stadium Event Preparation. The preparation of the Stadium for any Stadium Event as may be required, including, but not limited to, conversion of the playing field for other athletic events, installation of any supplemental seating equipment, installation of stage or platform equipment and/or temporary lighting that may be required for the event.

f. Suite Maintenance. Shall include, but not limited to, all maintenance, repairs and staffing in any and all ways related to the operation of the Luxury Suites.

U. "*Stadium Signage*" shall mean all interior advertising signs licensed or leased to third parties by CPBC whose primary purpose is to promote commercial products or services excluding the initial permanently affixed panels located on scoreboard.

V. "*Stadium Souvenir Store*" shall mean those store(s) located within the Stadium that have public access from inside and/or outside the Stadium.

W. "*Suite holder*" shall mean that third-party patron that leases, licenses or rents the use of a Luxury Suite.

X. "*Utilities*" shall include, but not be limited to, all electric, gas, sewage, and water used at the Stadium, unless otherwise specified herein.

Y. "*Warehouse*" shall mean all of that structure at 601 Morris Street which is not included in the definition of Stadium above.

ARTICLE III.

TERM AND TERMINATION

A. Term of Agreement. This Agreement is effective and enforceable immediately upon execution by the Parties. The term of this Agreement shall commence immediately after it has been executed by both Parties and shall terminate at midnight five (5) years after said execution, unless further agreed upon by the Parties.

B. Binding Agreements. CPBC shall not enter into any contract for which the duration of said contract will bind the City for any period beyond the expiration of the term in this Agreement.

C. Termination of Agreement.
   a. Termination by the City. The City shall have the right to terminate this Agreement by providing written notice to CPBC at any time if:
      i. CPBC fails to maintain an affiliate with the Atlantic League of Professional Baseball and does not within one hundred eighty (180) days either reacquire membership with the Atlantic League of Professional Baseball or obtain membership with an Equivalent Professional Baseball League.
      ii. The Atlantic League of Professional Baseball dissolves and CPBC does not either, within one hundred eighty (180) days of the dissolution, acquire an affiliated baseball membership as described in subsection (i) herein.
      iii. CPBC fails to remit the Minimum Guaranteed Payment in the manner and method described herein and said failure continues for thirty (30) days; provided that in the event of a civil shutdown related to a state of emergency for which halts CPBC operations, said payments shall be suspended and the amount owed for that year shall be adjusted pro rata for the suspension period.

ARTICLE IV.

CITY OBLIGATIONS

A. Stadium. The City hereby agrees to lease and make available the Stadium to CPBC for unrestricted legal use for CPBC Baseball Games and CPBC Special Events. It shall be the City's responsibility to deliver the Stadium to CPBC in a condition that satisfies all applicable federal, state, and local zoning, fire codes, building and health department statutes, ordinances, rules and regulations.

B. Parking.
   a. Smith Street and Morris Street Parking Lots. The City shall provide and make available the Parking Lots located on Smith Street (north side) and Morris Street for all CPBC Baseball Games and CPBC Special Events. *Exhibit C* attached for reference. The City shall operate and maintain these parking lots and shall retain without offset all revenue generated from such parking fees.

b. Smith Street Baseball Team Parking Lot. The City shall provide and make available to CPBC a parking lot located on Smith Street (south side) consisting of thirty-six (36) spaces for exclusive use by CPBC at no additional cost to CPBC.

c. Lewis Street Parking Lot. The City shall provide and make available the Parking Lot along Lewis Street, behind the First Base Concession and Suite Building for exclusive use and license to CPBC during all CPBC Baseball Games and CPBC Special Events, beginning one (1) hour before the scheduled game/event and ending one (1) hour after the conclusion of the game/event. CPBC shall be responsible for cleaning the lot after each CPBC Baseball Game or CPBC Special Event. At all other times, this Lot shall be maintained and operated by the City, primarily as short term parking, it being the intent that the short term parking shall inure to the benefit of the tenants of the 601 Morris Street Warehouse (including the Team ticket office and souvenir store). Nothing herein shall preclude the City from setting reasonable time restrictions on parking and reasonable enforcement thereof, and any revenues generated by parking meters or other enforcement methods may be retained without offset by the City.

C. Stadium Maintenance.

a. Major Maintenance. The City, with notice provided by CPBC, shall perform all major maintenance, restoration, replacement and repairs of the Stadium and all components thereof, of whatever kind and nature, foreseen or unforeseen, as may be necessary to keep the Stadium in good condition and repair, reasonable wear and tear excepted, including but not limited to the major maintenance, restoration, repair and replacement of all structural and concrete components, replacement of all carpeted areas, including the locker rooms, (provided, however, that carpeting shall not be required to be replaced more frequently than every six years), all heating, air conditioning, major painting, ventilating, plumbing, and electrical systems, field drainage systems, field lighting system (including field lighting installation, reinstallation, and the cost of replacement of field lighting bulbs), stadium lighting, grandstands, sound system, seating, bleachers, elevators, entry way area, glass, walls, roof, parking area, sidewalks and exterior landscaping maintenance, excluding therefrom the following, all of which shall be the responsibility of CPBC: i) damages or repairs necessitated by the negligence of CPBC; ii) all ordinary maintenance including, but not limited to, replacing the light bulbs in the administrative offices, Stadium Souvenir Stores, Food and Beverage Concession areas, and Club locker room, as well as field maintenance undertaken by CPBC pursuant to Article V below; and iii) maintenance of Stadium scoreboard and concession equipment. Except as to Stadium matters described as Field Preparation and Field Maintenance, the City shall conduct all necessary preventative and long-term repairs, replacements and maintenance of such systems as may be required with proper notice.

b. Maintenance Fund. In order to fulfill its responsibilities for major maintenance, restoration, replacements and repairs to the Stadium as described above, the City shall, on an annual basis, pay the sum of Twenty-Five Thousand Dollars

($25,000.00) into a separate, non-reverting "maintenance fund". This maintenance fund shall be used in conjunction with other City funds as needed to keep the Stadium, Warehouse, and parking lots reference herein in good condition and repair as well as to make other capital improvements to enhance the Stadium and Warehouse, as mutually agreed upon between the City and CPBC.

ARTICLE V.

CPBC OBLIGATIONS

A. CPBC Baseball Games. For the term of this Agreement, CPBC shall cause the Club to play all of its home baseball games at the Stadium.

B. Stadium Services.

   a. CPBC Baseball Games and CPBC Special Events. At CPBC's sole cost and expense, CPBC shall provide all Stadium Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events. CPBC will retain, employ, compensate, train, and manage sufficient numbers of personnel to provide such services in a high quality and professional manner.
   b. Security Service. At CPBC's sole cost and expense, CPBC shall provide all Security Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events necessary to assure the reasonable safety of attendees. Any and all contracting, or employment of Charleston Police Department officers shall be the sole obligation of CPBC. The City will not provide on-duty uniformed Charleston Police Officers for CPBC Baseball Games and CPBC Special Events. In the event CPBC requests street closure, said request must be submitted to the Charleston Police Department in accordance with the City of Charleston's Municipal Code.
   c. Emergency Medical Services. At CPBC's sole cost and expense, CPBC shall provide all Emergency Medical Services throughout the Stadium at CPBC Baseball Games and CPBC Special Events necessary to provide first response aide to personnel and spectators.
   d. Field Preparation and Field Maintenance. Notwithstanding anything in this Agreement to the contrary, at all times during the term of this Agreement, CPBC shall be solely responsible for the Stadium Services described as Field Preparation and Field and Grounds Maintenance for all events held at the Stadium at no additional cost to the City.
   e. Exterior Grounds Maintenance. For the term of this Agreement, CPBC shall be responsible for the maintenance of the exterior grounds, specifically limited to any designated smoking area and all areas of ingress and egress to the Stadium, including but not limited to all entrances. The City will be responsible for maintaining all other grounds of the exterior of the Stadium.
   f. Dumpster Maintenance. At CPBC's sole cost and expense, CPBC shall be responsible for any maintenance, cleaning and collection in any and all ways associated with all Dumpster(s) located within the Stadium or located upon the Lewis Street parking lot.

C. Concessions.

a. Concessions Operations. At CPBC's sole cost and expense, CPBC shall develop, market, maintain, and operate Food and Beverage Concessions services and Food and Beverage Concessions Equipment throughout the Stadium at CPBC Baseball Games and CPBC Special Events.

b. Novelties and Souvenir Operations. At CPBC's sole cost and expense, CPBC shall develop, market, maintain, operate and sell all Novelties and Souvenirs and CPBC Special Event Novelties and Souvenirs at the Stadium and the Stadium Souvenir Stores at CPBC Baseball Games and CPBC Special Events.

c. Exclusivity. Nothing contained in this Agreement shall be construed to limit the City from selling or authorizing a third party to sell Food and Beverage Concessions and Novelties or Souvenirs at City Events, provided the City will not at any time sell or authorize the sale of any professional baseball-related souvenirs, devices, items or other professional baseball related personal property at the Stadium. The City agrees to provide CPBC the right of first refusal to provide Food and Beverage Concessions at all City Events; provided that, upon refusal by CPBC, the City may use a third party or its employees to sell Food and Beverage Concessions without CPBC approval with the reserved usage of all Food and Beverage Concessions Equipment. Notwithstanding anything herein to the contrary, the City shall solely retain without offset all revenue from the sale of City Event related Novelties and Souvenirs and, if CPBC refuses to provide such services, all Food and Beverage Concessions at the Stadium during City Events. Said exclusivity shall at no time apply to sales made from the Stadium retail store. If CPBC accepts the responsibility for providing Food and Beverage Concessions at City Events, CPBC will be responsible for all necessary preparation including but not limited to, ordering the required food and beverage and all staffing associated with said operation, with the understanding that CPBC will retain, without offset, all revenue generated by the sale of any and all such Food and Beverage Concessions. In order to allow CPBC to arrange adequate staffing or informed refusal, the City will arrange all City Events with CPBC not less than thirty (30) days prior to such proposed City Event.

d. Compliance. CPBC and any third party vendor, selected by CPBC or the City, shall comply with all federal, state and local laws, statutes, rules, regulations and requirements (including licenses, permits, and taxes) pertaining to the sale of food, beverages (including alcoholic beverages), novelties and souvenirs.

e. Grease Trap Maintenance. At CPBC's sole cost and expense, CPBC shall be responsible for the operation and maintenance of the grease traps located within and around the Stadium. Said grease traps shall be maintained in compliance with all applicable federal, state and local laws, statutes, rules, regulations and requirements, including but not limited to environmental compliance with the Department of Environmental Protection and the Charleston Sanitary Board's Environmental Compliance Division. In the event of an overflow or if an emergency clean-up is necessitated, CPBC will be responsible for any liability created by such event, all cost associated with such event, and shall pay the City the amount of one thousand dollars ($1,000.00) for liquidated damages owed to the City for the breach of this known duty, per occurrence.

ARTICLE VI.

STADIUM USAGE

A. Rights and Obligations. The City and CPBC agree to the following rights and obligations related to the use of the Stadium:

a. CPBC Baseball Games and CPBC Special Events.

i. Scope. CPBC shall have exclusive priority use of the Stadium for the conduct of CPBC Baseball Games and CPBC Special Events. Such use shall include the period of time from 7:00 a.m. on the date scheduled until 12:00 a.m. (midnight), or three (3) hours subsequent to the conclusion of CPBC Baseball Games and CPBC Special Events, whichever shall be later on said date. Except as limited herein, said usage shall encompass the entire Stadium. Without prior approval of CPBC, which approval shall not be unreasonably withheld, the City shall not conduct or authorize or permit any other individual or entity to conduct any City Event or athletic event at the Stadium. **CPBC hereby acknowledges the previous usage of the Stadium for local high school and college athletic competitions and hereby agrees to facilitate the scheduling and any request pertaining to said usage as reasonably practical under certain scheduling restraints. Notwithstanding the foregoing or any other provision of this Agreement, CPBC agrees that it will assist the Charleston Convention & Visitors Bureau ("CVB") in any bids for the West Virginia High School State Baseball Tournament and, if awarded, CPBC agrees to coordinate with the CVB on the scheduling of the Tournament and all requirements for appropriately hosting the Tournament. For the avoidance of doubt, the CVB previously bid on and currently holds the rights to host the Tournament in Charleston and CPBC hereby agrees to coordinate with the CVB to appropriately host the Tournament.**

ii. Ticketing. CPBC shall be exclusively responsible for all ticket printing, sales and distribution related to CPBC Baseball Games and CPBC Special Events. In satisfaction of this obligation, CPBC shall have the right to designate the identification of seating at the Stadium and to conduct such ticket sales at the Stadium box office at all times it deems proper. CPBC shall not have the right to sell or allow the sale of tickets at the Stadium box office for events other than CPBC Home Baseball Games and CPBC Special Events without the express written approval of the City. CPBC shall have the right to charge any amount it deems appropriate for Paid Admission Tickets to CPBC Baseball Games and tickets to CPBC Special Events. Notwithstanding anything in this Agreement to the contrary, CPBC shall retain the reasonable and lawful right to deny and/or eject individuals from the Stadium.

iii. Suites. CPBC shall have the right to effectuate the lease, license or rental for the use of the CPBC Luxury Suites upon terms, conditions and in a form of agreement as CPBC declares to be prudent. CPBC shall be the sole contracting entity for such CPBC Luxury Suites and shall have the right to enforce and prosecute all obligations, duties and rights under such agreements. Every agreement with a Suite holder shall contain a provision allowing an option to be held by the Suite holder allowing such Suite holder to sublease or sublicense to the City and/or CPBC, upon terms agreed to between such Suite holder and the CPBC, the use of such Suite holder's Luxury Suite at City Events and/or CPBC Special Events. As contained herein, CPBC shall be responsible for any and all maintenance, staffing, and repairs associated with the operation of the Luxury Suites.

b. Access for CPBC training. CPBC shall have the right of access to and use of the Stadium, playing field and concourse, in order to conduct baseball-related and operational training, unless said action interferes with a City Event or other agreed upon activity. All CPBC trainings shall be conducted at CPBC's sole cost and expense.

c. Administrative Offices. In order to facilitate the satisfaction of its obligations undertaken pursuant to this Agreement, CPBC shall at all times during the term of this Agreement have the right of access to and use of at least Two Thousand Five Hundred (2,500) square feet of administrative office space in the Stadium. CPBC shall be responsible for all furniture, interior decorating, and office equipment to be housed and used in the administrative offices.

d. Stadium Souvenir Stores and Box Offices. During the term of this Agreement, CPBC shall have the exclusive right to occupy and operate, at any time CPBC deems appropriate, the Stadium Souvenir Stores and Stadium box office connected to the concourse and to administrative offices that are used by CPBC.

e. Naming Rights. CPBC shall have complete control over the sale of naming rights for the Stadium during the term of this Agreement. CPBC agrees to utilize its best efforts to sell naming rights to a local individual or entity. The City also agrees that there will be no restrictions as to the sale of the naming rights, subject to standards of good taste and any Independent Professional Baseball League restrictions. City shall have the right to approve the sale of naming rights, which approval shall not be unreasonably withheld or delayed. In the process of selling naming rights, CPBC agrees to consult with the City regarding possible naming right sponsors and keep City apprised of its progress. **For the avoidance of doubt, CPBC is prohibited from selling naming rights for the Stadium that extend beyond the expiration or termination of this Agreement.**

f. The City's Rights and Obligations. Notwithstanding Paragraph A of this Article, the City does not relinquish and does herein and hereby retain all ownership rights and control associated with the Stadium. Therefore, all duly authorized representatives of the City shall have access to all areas of the Stadium at any time and on any occasion, provided that any such representative, other than any City operating personnel assigned to the Stadium must have either a Complimentary Admission or Paid Admission Ticket in order to observe a CPBC Baseball Game or CPBC Special Event. The City does hereby retain the right to enforce all necessary and proper rules for the management, operation and control of the Stadium.

Consistent with its ownership of the Stadium and with CPBC's rights as granted in this Agreement, the City and CPBC agree that the City shall have the following rights and obligations related to the use of the Stadium:

i. City Events.

1. Scope. Subject to the restrictions and exceptions contained in this Agreement, CPBC shall have exclusive use and control of the Stadium for any and all events, including but not limited to CPBC Baseball Games, CPBC Special Events and City Events. CPBC possesses the right to use exclusively the Stadium administrative offices, box office, team locker rooms and the Stadium Souvenir Stores as contained herein. Associated with such exclusivity, CPBC shall be responsible for all maintenance, repairs and staffing associated with the aforementioned areas. In exercising such use and control, the CPBC shall give due consideration to the City's requested use of the Stadium for City Events. Subject to scheduling concerns and potential deterioration and restoration of the Stadium's playing surface, CPBC's approval of City Events shall not be unreasonably withheld. All clean-up required post-City Events shall be at the sole cost and expense of the City; therefore any funds expended by CPBC as it pertains to the assisted production and/or post-event clean-up associated with a City Event shall be subject to reimbursement by the City.
2. Ticketing. The City shall be exclusively responsible for all ticket printing, sale and distribution related to City Events. The City shall have the right to charge any amount it deems appropriate for tickets to City Events and such proceeds from said events shall be retained by the City without offset to CPBC.

ARTICLE VII.

SCHEDULING

The City and CPBC agree that there is a need for scheduling of events at the Stadium. As such, the Parties have adopted, for implementation each year of this Agreement, the following scheduling procedure:

A. Control. At CPBC's sole cost and expense, CPBC shall have exclusive control of scheduling CPBC Baseball Games, CPBC Special Events, and City Events. CPBC and the

City agree to cooperate and accommodate, in good-faith, any scheduling requests made for City Events. CPBC shall provide a yearly list of all events scheduled at the Stadium to the City as soon as practical. CPBC shall supplement this event list with the City of any subsequently scheduled events as soon as reasonably practical.

B. Priority. It is understood by the parties that CPBC shall be granted absolute priority to conduct all CPBC Baseball Games and CPBC Special Events at the Stadium, including practice and rain dates. CPBC agrees that it will co-operate and coordinate in scheduling so as to permit the Stadium to be used for the Secondary Schools Activities Commission state and regional high school baseball tournaments and University of Charleston home baseball games, as necessary.

C. City Events. The City shall have the opportunity to select dates for City Events, so long as the dates do not contradict the priority schedule within this Article. Any request for a City Event shall be submitted to CPBC at least thirty (30) days before said event is to occur at the Stadium, provided that CPBC shall not unreasonably withhold approval of a City Event submitted less than thirty (30) days before said event is to occur at the Stadium where the event will not create a hardship upon CPBC.

ARTICLE VIII.

MARKETING

Each Party shall be responsible for its own marketing. CPBC shall be responsible for and have the exclusive right of marketing CPBC Baseball Games and CPBC Special Events. The City shall be exclusively responsible for marketing City Events. The Parties will be jointly responsible for marketing the Stadium in a manner consistent to promote economic growth and reputation.

ARTICLE IX.

ADVERTISING

A. CPBC's Advertising Rights and Responsibilities.
   a. Stadium Signage and Scoreboard Advertising. CPBC shall have the exclusive right to sell all Stadium Signage and Scoreboard Advertising.
      i. The parties agree that the Stadium shall include space and surfaces for signage consistent with applicable zoning law and other legal restrictions. It is further agreed that it is the intention of CPBC that the Stadium shall maximize advertising including signage that would be visible from nearby roadways, as well as concourse signage, and such other fixed sign areas as CPBC may determine consistent with other professional league baseball facilities. The installation of such Stadium Signage shall be the sole cost and exclusive responsibility of CPBC. All Stadium Signage and Scoreboard Advertising content shall be of good taste and appropriate for all patrons. CPBC shall be liable for any damages resulting from or directly or indirectly related to Stadium Signage and Scoreboard Advertising.

b. <u>601 Morris Street Warehouse Signage</u>.

i. The Warehouse at 601 Morris Street has historically donned two bands of signage around its exterior perimeter. The upper band extends from the bottom of the fourth-floor windows to the top of the third-floor windows. The lower band extends from the bottom of the third-floor windows to the top of the second-floor windows. The parties have agreed, to the extent permissible- by zoning or other laws, and consistent with good taste and the historic ambiance, to reproduce and maintain these signage bands.

1. CPBC shall have the exclusive right to sell signage on the upper and lower bands of the North facing exterior wall of the Warehouse. In addition, CPBC shall have the exclusive right to sell signage on the roof of the building to the extent permissible by zoning or other laws.
2. The City shall have the exclusive right to sell or otherwise control the signage on the upper and lower bands of the East (Morris Street) and South (Lewis Street) facing walls.
3. Space is hereby reserved for a tenant on the first floor of the Warehouse structure. The occupant of that space shall be offered the option, to be consistent with the terms set forth herein, of putting signage on one of the two bands located on the West (Brooks Street) facing exterior wall. If the tenant fails to exercise this option, the City shall elect which band shall be reserved for other or future tenant use and until such time as another or future tenant negotiates the right to the signage, shall control the same.
4. CPBC shall have the exclusive right to sell signage on the West (Brooks Street) facing wall band which is not elected as set forth in subsection 3 above.
5. The placement of all Warehouse Signage shall be subject to the prior approval of the City, with such approval not to be unreasonably withheld, and of consistent color, font, and size, unless otherwise mutually agreed upon with consideration being given to the historic nature of such signage on the building, and subject to all zoning and other laws. No warranty or waiver is being made as to the legality of such signage, the content thereof, or the approval process for placing signage on buildings within the City. The installation and cost of such Warehouse Signage shall be the sole and exclusive responsibility of the party to whom the right belongs. If for any reason CPBC fails to exercise the assigned rights in relation to signage as set forth in this section, the City may, at its election and cost, extinguish and assume those rights for the purpose of balance and aesthetics.

B. <u>The City's Advertising Rights and Responsibilities.</u>

a. Permanently Affixed Stadium Signage. The City will sell no Permanently Affixed Stadium Signage. Warehouse signage is separate and apart from Stadium signage and is addressed above exclusively.
b. Advertising at City Events. Subject to the limitations contained in this Agreement, the City shall have the right to sell and retain without offset all revenue generated from the sale of advertising associated with City Events, including but not limited to, advertising on the scoreboard message center and video display, print media and broadcast media, provided that such advertising without the prior consent of CPBC, shall in no way materially interfere with CPBC's Stadium Signage or any right related to CPBC's exclusive license to provide Food and Beverage Concessions at all Stadium Events, including but not limited to pouring rights at the Stadium.

ARTICLE X.

BROADCAST RIGHTS

A. CPBC's Broadcast Rights. CPBC shall have exclusive ownership and control over Broadcast Rights associated with CPBC Baseball Games and CPBC Special Events. In the exercise of such ownership and control, however, CPBC shall take all steps reasonably necessary to protect from diminution the sale of Paid Admission tickets to CPBC Baseball Games. All revenue generated by CPBC relating to such Broadcast Rights shall be retained, without offset, exclusively by CPBC.

B. City's Broadcast Rights. The City shall have exclusive ownership and control over Broadcast Rights associated with City Events and all other events and matters associated with the Stadium that do not involve the conduct of CPBC Baseball Games or CPBC Special Events. All revenue generated by the City relating to such Broadcast Rights shall be retained, without offset, exclusively by the City.

ARTICLE XI.

UTILITIES

A. City Obligations. During the term of this Agreement, the City shall be obligated to pay for the cost of all utilities, including but not limited to electric, gas, sewage, and water used at the Stadium; provided that, said obligation shall not result in an amount owed by the City in excess of two hundred fifty thousand dollars ($250,000.00) annually and CPBC shall exercise such use in a reasonable and non-abusive manner.

B. CPBC Obligations. CPBC shall be responsible for trash removal, cable, telephone, wireless, and any other service not defined or allocated by this Agreement. In the event that the amount for the City obligated utilities exceeds two hundred fifty thousand dollars ($250,000.00), CPBC shall be responsible for all excess amounts, however denominated and from whatsoever utility source. The City shall provide reasonable notice of such excessive amounts on an annual basis by January 31 of the following year and CPBC shall pay said utility excess obligation on a reimbursement basis by March 1 of that year following the excess amounts.

ARTICLE XII.

FINANCIAL TERMS

A. CPBC's Rights and Obligations.
   a. License Fee. In consideration for the License granted to it by the City pursuant to this Agreement, CPBC shall pay the minimum guaranteed payment as follows:
      i. CPBC shall pay to the City annually TWO HUNDRED AND FORTY THOUSAND DOLLARS ($240,000.00) per year each year commencing year one (1) and ending for year five (5) of the license period. CPBC shall make quarterly payments to the City, four (4) installments of sixty thousand dollars ($60,000.00), with the first installment (March 31, 2021 installment) due within ten (10) days from execution of this Agreement, and continuing on the following dates: March 31, June 30, September 30 and December 31 of each year of the license period.
   b. CPBC's obligation to perform. Subject to all of the provisions of this Agreement to the contrary, CPBC's obligation to pay the license payment is absolute and unconditional and is not subject to set-off or deduction for any reason. If CPBC is in default of its license payment obligation, all revenues of CPBC and the Stadium shall be automatically deposited with a trustee in a "lock-box" account. "Default" shall not be deemed to occur until CPBC has received written notice of such event and default and CPBC shall have been given thirty (30) days to cure such default or such additional time reasonably required to cure such default in the event it cannot be cured within the thirty (30) day cure period. The City will retain a first security interest in such account for purposes of payment of all sums owed and proof of CPBC's ability to timely fund the license payment.
   c. Interest. Upon default and proper notice thereof, the unpaid balance owed to the City shall begin accruing interest at a rate of four (4%) percent compounding per annum.
   d. Remainder. CPBC shall retain exclusive ownership of all revenue that is generated from the Club from any source or through any means specified within this Agreement, whether or not now known, directly related to CPBC Baseball Games and CPBC Special Events.

B. City's Rights and Obligations. The City shall retain ownership of all income and sources of income that are related to City Events or Stadium usage, whether or not now known, and that are not specifically granted to CPBC herein.

ARTICLE XIII.

EQUIPMENT

A. CPBC's Obligations. At no cost to the City, CPBC will provide all baseball related equipment that is typically provided by a Professional Baseball Club, including but not limited to batting cages, pitching machines, and batting practice equipment. In addition, CPBC shall provide certain items of equipment necessary to fulfill its Stadium Services and Food and Beverage Concessions Services. Any items currently located in the Stadium that are property of the City shall remain in place for use by CPBC. All property herein referenced shall be maintained and replaced by CPBC, at CPBC's sole cost and expense, as need during the term of this Agreement. All City owned equipment shall constitute for treatment as property of CPBC until the expiration of this Agreement, or upon termination of this Agreement by the City pursuant to the provisions of this Agreement, at which time it shall become the property of City.

B. City's Obligations. The City, upon reasonable notice, will provide the use of certain heavy equipment and operators thereof to assist CPBC in certain activities related to the Stadium usage, at no cost to CPBC. CPBC hereby acknowledges the presence of certain City owned heavy equipment currently located in the Stadium which shall remain for use by CPBC as listed on *Exhibit D*. However, CPBC shall, in all respects, indemnify the City from all liabilities arising from such use provided that such liabilities are not the results of intentional or reckless acts or omissions on the part of the City or the equipment operator. All such equipment provided for such use shall remain the property of the City.

ARTICLE XIV.

COVENANTS

A. CPBC's Covenants.

a. Taxes and Encumbrances. CPBC shall pay promptly when due any and all personal property taxes imposed on its personal property located in the Stadium and any and all taxes which are the responsibility of CPBC under the laws of the United States of America, the State of West Virginia and the City of Charleston. CPBC shall register as a business with the Office of the City Collector in the City of Charleston and timely remit all taxes due, including but not limited to, Business License Tax, Business and Occupation Tax, City Service Fee, and Admission Tax, as applicable. CPBC shall not permit any mechanics liens or other encumbrances or liens to exist against the Stadium and shall within thirty (30) days of any such lien or encumbrance being asserted against the Stadium as a result of action or inaction by CPBC either cause the same to be released of record or obtain title insurance coverage satisfactory to the City over such lien and proceed diligently to contest the same in good faith.

b. CPBC Baseball Games. CPBC covenants and agrees that it will play all of its home baseball games at the Stadium whether such games be designated preseason, regular season, post-season, or exhibition games, unless otherwise agreed to by City.

c. Membership in the Atlantic League of Professional Baseball or equivalent. CPBC shall, during the term of this Agreement, abide by all rules and regulations of the Atlantic League of Professional Baseball. CPBC agrees and covenants to the City that it will maintain membership in good standing with the Atlantic League of Professional Baseball or an Equivalent Professional Baseball League, and that it will not seek, authorize, or consent to the transfer of its franchise to an area outside Charleston, West Virginia, without the prior written consent of the City or unless this Agreement is terminated or expired pursuant to the terms herein.

d. Franchise Nontransferable. CPBC hereby agrees and covenants not to relocate the playing site of its home games without the prior written consent of the City, which may be withheld in the sole and absolute discretion of the City. In the event of a breach of the non-relocation covenant, the City shall have the right to enforce this covenant by any and all legal means, including but not limited to, injunctive relief from the Circuit Court of Kanawha County.

e. Equal Employment Opportunity. CPBC agrees and covenants to the City that it is presently and will continue to be an equal opportunity employer and at all times shall comply with the laws and regulations that prohibit discrimination and that CPBC explicitly states that it will not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, sexual orientation, gender identity, or national origin.

f. Use of Matters Subject to Copyright. Should CPBC, its agents, employees, invitees or guests use or allow the use of any composition, work or material, CPBC agrees to indemnify and save the City harmless from loss, damage or expenses arising from any claim of infringement of such copyright or the use of unlicensed composition, work, or material.

g. Prohibition Against Dangerous Materials and Substances. CPBC agrees not to bring into the Stadium any material, substance, equipment or object that is likely to endanger the life or to cause bodily injury to any person within the Stadium, or which is likely to constitute a hazard to property therein without the approval of the City. The City shall have the right to refuse to allow any such materials, substances or equipment to be brought into the Stadium and the further right to require its immediate removal therefrom if found thereon.

B. City Covenants.

a. Stadium Compliance. The City represents, covenants and warrants that throughout the term of this Agreement, the Stadium has been constructed and shall be maintained in compliance with (i) all applicable building, health, safety, bidding, procurement, traffic and zoning ordinances, applicable standards for streets and roadways (if any are constructed by the City in connection with the Stadium), and covenants and restrictions, if any, which apply to the Stadium property upon which the Stadium is located, and (ii) all applicable Environmental Law.

ARTICLE XV.

INDEMNIFICATION AND INSURANCE

A. Indemnification.

a. Indemnification of the City by CPBC. CPBC agrees to indemnify and hold harmless the City and its respective officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including reasonable attorney fees, which is in any way in connection with the operation of the Stadium, any Stadium Event, or the general operations of CPBC or its duly authorized agents, including but not limited to the conduct of any patrons or players at the Stadium, at any Stadium Event, or involved in the general operations of CPBC, or any breach of this Agreement, in connection with CPBC's activities pursuant to this Agreement.

b. Indemnification of CPBD by City. The City agrees to indemnify and hold harmless CPBD and its respective officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including reasonable attorney fees, which are a direct result of action or inaction by City employees during a City event. The City's indemnification amount shall not exceed the amount of insurance coverage as specified in an event specific policy.

B. Insurance Policies.

a. Insurance Required of CPBC. CPBC shall, effective as of the date that CPBC is permitted to occupy the Stadium pursuant to the terms herein, obtain and maintain throughout the term of this Agreement, public liability coverage including personal injury liability and contractual liability; if on a commercial general liability form, the limit per occurrence shall be not less than One Million Dollars ($1,000,000.00) and an aggregate of not less than Three Million Dollars ($3,000,000.00) combined single limit (CSL) per occurrence and include bodily injury and property damage liability; automobile coverage with liability limits of not less than One Million Dollars ($1,000,000.00) combined single limits (CSL) bodily injury and property damage per accident; workers compensation coverage to protect CPBC's permanent and temporary employees; employers liability insurance (including broad form *Mandolidis* coverage) with minimum limits of One Million Dollars ($1,000,000.00) per occurrence; and excess or umbrella liability insurance (covering over commercial general liability, auto liability, and employers liability) with minimum limits of no less than Four Million Dollars ($4,000,000.00) per occurrence. CPBC shall also obtain and maintain personal property insurance on its personal property located at and within the Stadium. CPBC will name the City as additional insured on the public liability policy and provide certificates of all insurance or original policies as they shall be on file prior to the beginning of the term of this Agreement. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of West Virginia.

b. Insurance Required by the City. Throughout the term of this Agreement, the City shall procure and pay for insurance for the full replacement value of the Stadium, at its cost and expense, against damage destruction, from whatever cause. The Parties acknowledge that the City may use its self-insurance program to provide this insurance. Notwithstanding anything contained herein to the contrary, CPBC's liability insurance shall be and remain the primary insurance for all occurrences.

ARTICLE XVI.

CONDEMNATION

In the event that any portion of the Stadium is taken from the City pursuant to any right of eminent domain exercised by any governmental entity or pursuant to any governmental order and such taking renders the Stadium unfit for its intended purpose, CPBC shall receive no portion of the award granted with respect to such taking.

ARTICLE XVII.

FORCE MAJEURE

CPBC and the City agree that with respect to any services to be provided, payments to be made, or action to be taken by either Party during the term of this Agreement, upon reasonable notice, the Party required to furnish or perform the same shall in no event be liable for failure to do so when prevented by any cause beyond the reasonable control of such Party such as strike, lock-out, suspension of play of baseball, breakdown, accident, order or regulation of or by any governmental authority, the Atlantic League of Professional Baseball or any entity controlling the Atlantic League of Professional Baseball (or the Equivalent Professional Baseball League to which CPBC is a member, if applicable), or failure of supply, or inability, by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to furnish such services, or because of war or other emergency. The time within which such services, payments, or actions shall be performed or rendered shall be extended for a period of time equivalent to the delay of such cause. If a Force Majeure event results in CPBC not being able to play home baseball games at the Stadium then obligations of either party to make payments, as herein provided, shall be suspended for the duration of such event and the term of this lease shall be extended for an equal period of time and said party’s obligations to make payments shall continue.

ARTICLE XVIII.

ASSIGNABLITY AND TRANSFERABILITY

In the event CPBC is sold or ownership is transferred, as a condition precedent to such sale or transfer, the purchaser or transferee shall agree in writing to comply, without qualification, with all of the terms, covenants and restrictions of this Agreement. Further, CPBC acknowledges the desire of the City that local individuals or entities have an opportunity to purchase the interest in the baseball club owned by CPBC should CPBC determine to sell such interest. Consistent with such desire of the City, CPBC agrees to take reasonable actions as may be appropriate to offer such a sale of such interest to local individuals should CPBC determine to sell such interest. The City agrees and acknowledges that the terms of any sale of the interest in the baseball club owned by CPBC and CPBC’s ability to accept or reject offers to purchase such interest are within the sole discretion of CPBC. The City may assign this Agreement at any time and for any reason. The Parties agree that the assignee of the City, if such an assignment should be made, shall be able to enforce the provisions of this Agreement pursuant to such assignment without the further consent of the City. Any entity assuming this agreement from the City shall be able to fully comply with the terms and conditions of this agreement, or City shall continue to be fully liable for all obligations under this Agreement.

ARTICLE XIX.

TERMINATION UPON DEFAULT

In addition to the termination provisions above, the following events of default may result in termination of this Agreement by the non-breeching party:

A. Failure by CPBC to pay the License Fee and other fees in the manner and at the times provided for in Article XIII of this Agreement. In the event CPBC shall default in the payment of the License Fees or any other fees as aforesaid and such default shall not be remedied within thirty (30) days after receipt by CPBC of written notice of such default from the City, this Agreement may be subject to immediate termination by the City upon giving CPBC prior written notice of such termination. CPBC shall be entitled to receive the aforesaid thirty (30) day notice only once within any twelve (12) month period and any subsequent failure to pay the License Fee or any other fees described above shall be deemed an immediate default by CPBC and the City shall have the right to terminate this Agreement upon giving CPBC prior written notice of such termination.

B. If either Party hereto shall otherwise materially breach, violate or fail to fully perform any obligation, covenant or representation contained in this Agreement, including, but not limited to, Articles XII ("UTILITIES"), XIV ("EQUIPMENT") or XV ("COVENANTS") of this Agreement, the non-breaching Party may upon ninety (90) days written notice thereof, terminate this Agreement; provided, however, that the defaulting Party shall have the right and opportunity to cure the default within said ninety' (90) day period or if such breach, violation or non-performance cannot be cured within a ninety (90) day period, to continue diligently and in good faith to effect such cure within such period, provided that, in no event shall such opportunity to cure exceed one hundred eighty (180) days after receipt of such notice. In the event that such breach, violation or non-performance is not cured within said ninety (90) day period or any authorized extension thereof, then, this Agreement shall terminate upon the expiration of such period and the non-breaching Party shall thereupon have the right to exercise such additional rights or remedies as they may have by law.

ARTICLE XX.

PERMITS

The City acknowledges the need of CPBC to obtain necessary permits for the operation of the Stadium. These permits include (but are not limited to) alcohol permits, fireworks permits, signage permits and other permits consistent with the operation of a Atlantic League of Professional Baseball club. City agrees to cooperate in any reasonable way possible to assist CPBC in successfully obtaining these permits.

ARTICLE XXI.

MISCELLANEOUS

A. Anti-Discrimination. CPBC shall not discriminate in any manner on the basis of age, ancestry, citizenship, color, creed, disability, handicap ethnic origin, family status, marital status, height, weight, national origin, race, sex, and sexual orientation with respect to any applicant or employee, and shall conform in all respects to the pertinent provisions of federal, state or local laws, ordinances, rules and regulations of employment practices. CPBC further agrees that in serving the public, its employees shall not, on the grounds of age, ancestry, citizenship, color, creed, disability, handicap ethnic origin, family status, marital status, height, weight, national origin, race, sex, and sexual orientation, discriminate or permit discrimination or refuse to serve a person or group of persons in any manner prohibited by federal, state or local laws, rules, ordinances and regulations.

B. Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of West Virginia. The Parties agree that any action arising from or relating to this Agreement shall be instituted in the Circuit Court of Kanawha County, West Virginia. The Parties agree to participate in good-faith negotiation and mediation to resolve any potential issues arising out of this Agreement before initiating any judicial proceedings.

C. Entire Agreement. This Agreement constitutes the final, complete, and exclusive written expression of the intent of the Parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

D. Authority. CPBC and the City, respectively, each represent that the individuals acting as signatories to this Agreement have the authority to bind the CPBC and the City and that this Agreement, when properly executed by both Parties, will constitute a valid and binding agreement, enforceable in accordance with this terms.

E. Cost and Attorney Fees. The Parties hereto agree that each party shall bear their own reasonable expenses and cost incurred in enforcing any of the provisions of this Agreement, this shall include but is not limited to attorney fees, costs and expenses.

F. Dependency and Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of CPB to perform and have access to the Stadium as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

G. Notice and Addresses. All notices required to be given under this Agreement shall be given by certified or registered mail, addressed to the proper Party to the following addresses, or at such other address as may be subsequently given pursuant to this Section and shall be deemed given when deposited in the U.S. mails, postage prepaid:

IF TO CPBC: Mr. Andrew Shea, Charleston Professional Baseball Company, LLC, 917 Belmere Drive, Lexington, Kentucky 40509.

IF TO THE CITY: The City of Charleston, City Manager, 501 Virginia Street, East, Charleston, West Virginia 25301.

H. Amendment, Modification, or Alteration. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.

I. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

J. Essence. Time is of the essence for this Agreement.

K. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

L. Headings. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.

M. Valid Limited Liability Company. CPBC represents that as of the date of the execution of this Agreement it is organized and in good standing under the laws of the State of West Virginia, that it is duly authorized to enter into this Agreement and has taken all requisite corporate action to obtain such authorization and that no consent of or notice to any other individual, private or public entity or governmental authority is required in connection with the execution, delivery and performance of the Agreement.

N. Prohibition Against Food and Beverage Being Brought into the Stadium. Signs shall be posted in appropriate locations in the Stadium which shall prohibit patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Stadium.

O. Status of Parties. Parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Agreement shall be determined to be created a partnership or joint venture between CPBC and the City with respect to CPBC's activities conducted at the Stadium pursuant to the terms of this Agreement.

P. Waiver. The waiver by either the CPBC or the City of any default or breach by the other Party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other Party of the same or another provision of this Agreement.

Q. Improvements. CPBC shall make no improvements in the Stadium without the prior approval of the City. Any improvements made that shall be thereby affixed to the Stadium shall become the absolute property of the City upon termination or expiration of this Agreement.

R. Waste or Nuisance. CPBC shall not commit or permit any waste on or about the Stadium during the term of this Agreement nor shall it maintain, commit or permit the maintenance or commission of any nuisance on or about the Stadium or use the Stadium for any unlawful purposes or in violation of Municipal Code.

S. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

T. References to the City. All references to the City in this Agreement shall be deemed to also be references to such officers or employees or other designees of the City as may be appropriate to implement the terms of this Agreement.

U. Exhibits. All exhibits attached hereto are incorporated into and are a part of this Agreement as if fully set out herein.

V. CPBC's Property Damage and Loss. Nothing herein shall be construed to create a bailment relationship between the City and CPBC or the Club concerning any property brought on the premises of the Stadium by CPBC or the Club unless such property is delivered into the possession of the City.

W. Employee Status. It is understood and agreed that no agent, servant or employee of CPBC or the Club or any of its subcontractors shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant or employee of CPBC or the Club.

X. Judicial Relief in the Event of Termination. Anything in this Agreement to the contrary notwithstanding, neither Party shall have the right to terminate this Agreement before the expiration of the period required for the giving of notice before termination, if the defaulting party in good faith commences a judicial proceeding to contest the existence of any such plain default and uses reasonable diligence in prosecuting such action and complies with the final judgment of the court in such action; but nothing herein shall prevent a court from granting such protective orders, injunctions and interlocutory judgments as might otherwise be appropriate.

Y. Property Remaining in the Stadium Post-Termination or Expiration. Any and all property belonging to CPBC, or anyone claiming through or under CPBC, which may be found on the premises after termination or expiration of the Agreement may be handled, removed or stored by the City at the risk and expense of CPBC and the City shall be responsible for the preservation or the safe-keeping thereof. CPBC shall pay to the City any and all expenses incurred for such removal and all storage charges. After 30 days notice from City to CPBC to remove such property, City may remove such property and dispose of such property in any manner determined by City without liability to CPBC.

Z. Limited Obligation. Notwithstanding anything in this Agreement to the contrary, in no event shall any financial obligation of the City to CPBC or any other third party described in this Agreement be payable by the City or otherwise enforceable against the City as a remedy unless the City has provided within its budget for the payment of such financial obligations in the fiscal year during which such financial obligation is incurred. In no event is this Agreement to be construed to create nor shall there be available to CPBC or any other third party a remedy for any financial obligation of the City which is in violation of the Constitution of the State of West Virginia or any of the laws of the State of West Virginia. However, it is the intention of the City to provide for the obligations created herein consistent with the laws of the State of West Virginia and the Constitution of the State of West Virginia so as to prevent any default in the terms of this Agreement.

AA. Nature of Interest in the Stadium. The Parties hereto agree and declare that any leasehold interest of CPBC or any other third party in and to the Stadium and this Agreement created under this Agreement shall have no separate, ascertainable taxable value, it being the intent of the parties hereto that so long as the Stadium is owned by the City, the State of West Virginia, any agency thereof, or any county, municipality or political subdivision or agency thereof, the real and personal property comprising the Stadium shall be entered by the Assessor of Kanawha County, West Virginia as exempt from ad valorem taxes upon the land and personal property books (or such other documents or media upon which the assessment of real and personal property appears), and none of the parties shall request the Assessor of Kanawha County, West Virginia to separately assess or list the leasehold interest separately from the freehold interests. Notwithstanding the foregoing, if the Assessor of Kanawha County, West Virginia assess ad valorem taxes upon the property of the Stadium, it shall be the sole and exclusive responsibility of CPBC to satisfy any such assessment.

BB. Financial Statements. CPBC agrees to provide the City access to yearly financial statements and information within 30 days upon request by the City.

IN WITNESS WHEREOF, by the duly authorized signatures below, the City and CPBC hereby agree and accept the terms set forth in this Agreement and acknowledge that they are freely signing this Agreement after reading and understanding the entire Agreement.

CITY OF CHARLESTON	**CHARLESTON PROFESSIONAL BASEBALL COMPANY, LLC**
_________________________	_________________________
Signature	Signature
_________________________	_________________________
Title	Title

EXHIBIT A.

FOOD AND BEVERAGE CONCESSIONS EQUIPMENT

Ice makers
Hot dog rollers
Stand up refrigerators
Walk-in cooler
Wall-in freezer
Soda Fountains
Portable concessions stands
Popcorn makers
Condiment carts
Smallwares
Hot boxes
Serving carts
Linens
Pretzel warmers
Pizza makers
Beer systems
Dishwashers
Ovens
Stoves
Grilles
Storage racks
Coffee/hot chocolate makers
Fryers
Steamer
Boilers
Broilers
Pizza Tables
3-compartment sinks
Chafers
Speed racks

[CPBC confirm the receipt of the above equipment]

_____________ ______________________________

Initials Date

EXHIBIT B.

DESCRIPTION OF STADIUM REAL ESTATE

ALL THAT TRACT OR PARCEL OF LAND with the buildings and improvements thereon, situate in the City of Charleston, County of Kanawha, State of West Virginia, sometimes known as the “Morris Square Block” which is approximately 278,443 square feet (6.39 acres) and including the buildings located on the parcel at 601 Morris Street and 603 Morris Street.

EXHIBIT C.

MAP OF PARKING LOTS

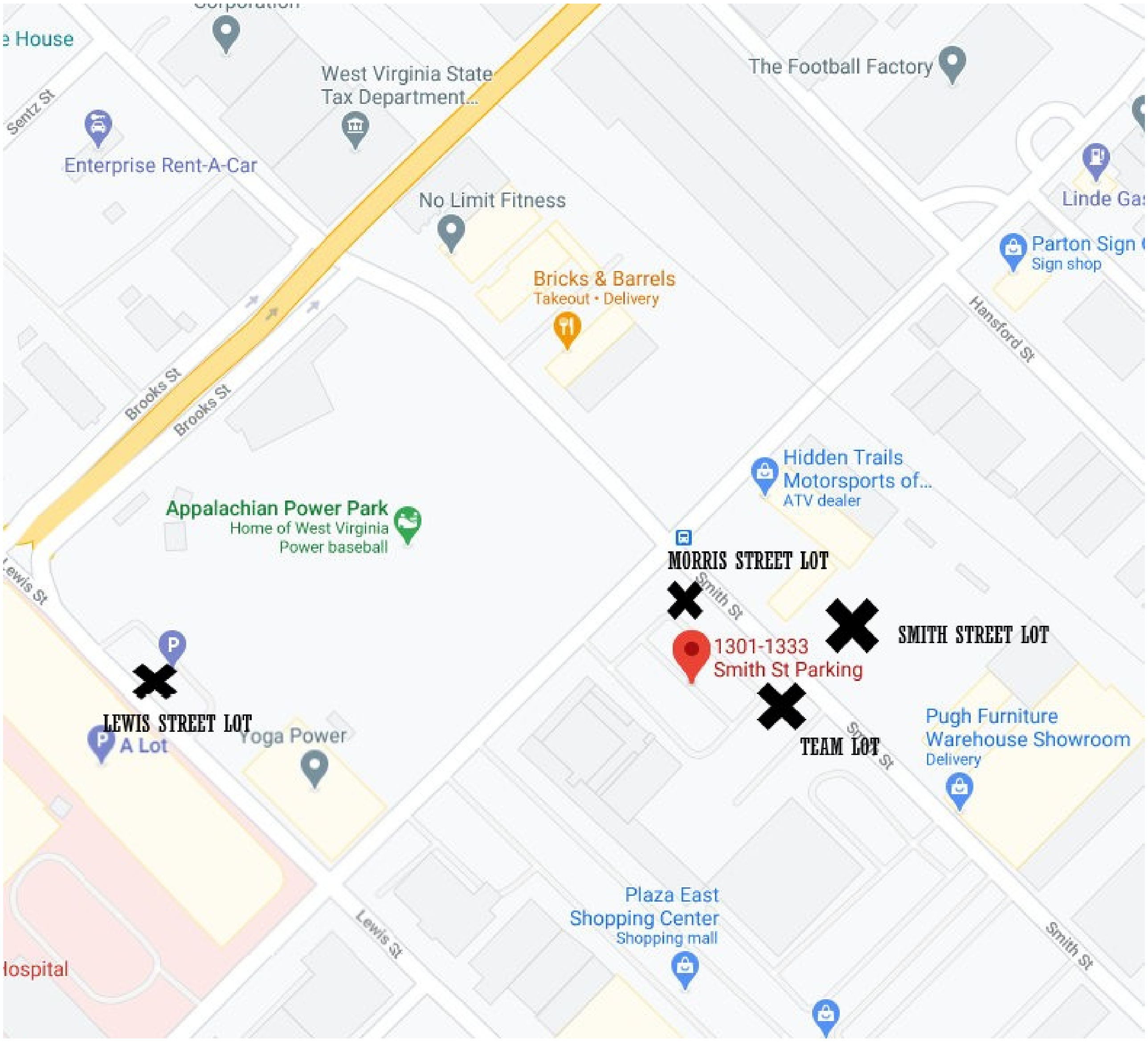


EXHIBIT D.

CITY OWNED EQUIPMENT LIST

Sod cutter
Rototiller
Cherry picker
Air compressor
Palate jack
Forklift
Aerator
Roller for field
Pin spiker
Top dresser

[CPBC confirm the receipt of the above equipment]

______________ ________________________________
Initials Date

Resolution No. 477-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

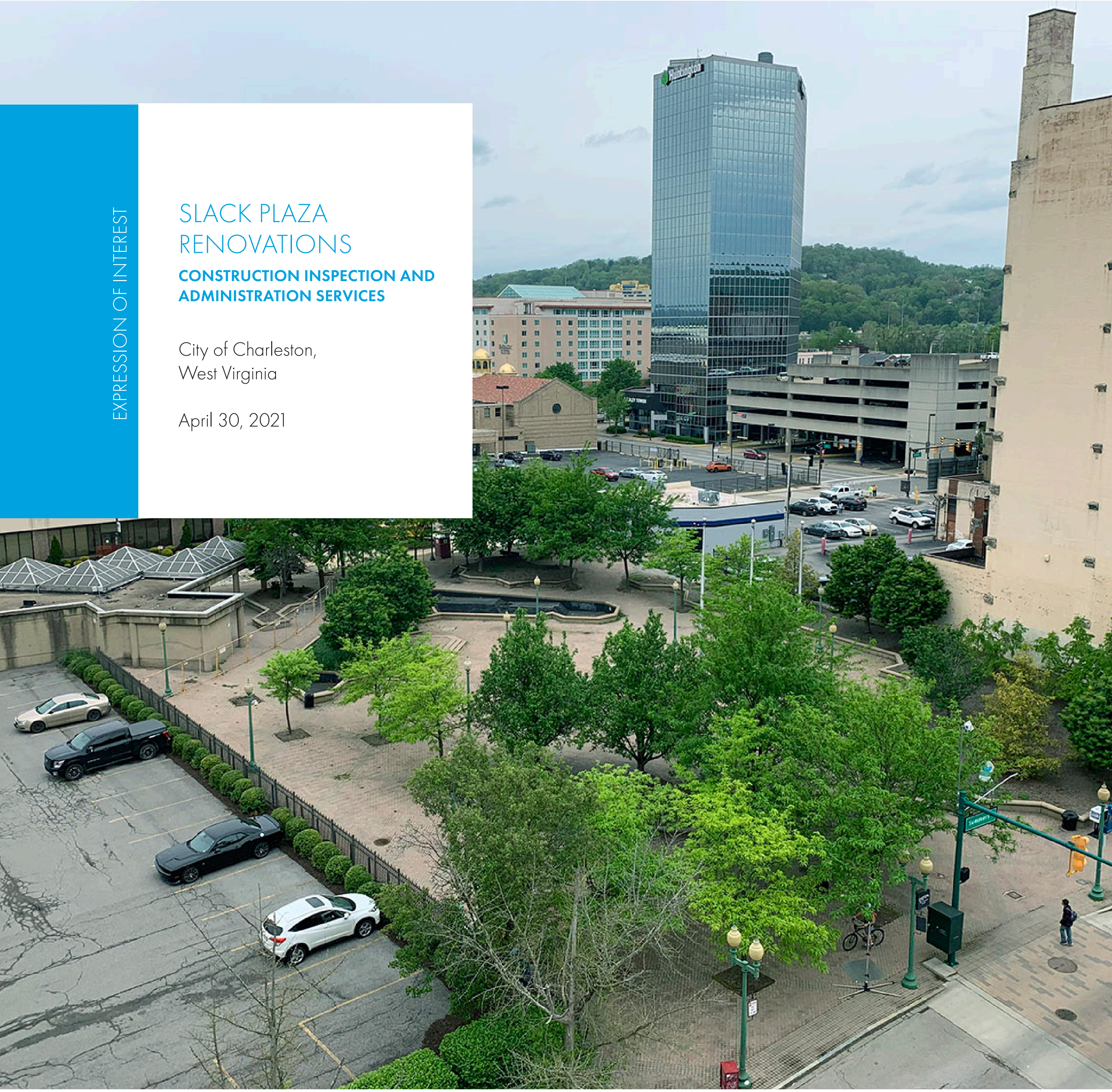
Joseph Jenkins Finance Committee

Resolution No. 477-21 – Authorizing the Mayor or City Manager to enter into a contract with Mead and Hunt, Inc., for the provision of contract administration and quality assurance/quality control services for the Slack Plaza / City Center construction project in an amount not to exceed $109,934, where the vendor was selected through a shortlist interview process.

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

That the Mayor or City Manager is authorized to enter into a contract with Mead and Hunt, Inc., for the provision of contract administration and quality assurance/quality control services for the Slack Plaza / City Center construction project in an amount not to exceed $109,934, where the vendor was selected through a shortlist interview process.

Mead & Hunt
EXPERIENCE EXCEPTIONAL



EXPRESSION OF INTEREST

SLACK PLAZA RENOVATIONS

CONSTRUCTION INSPECTION AND ADMINISTRATION SERVICES

City of Charleston,
West Virginia

April 30, 2021

Mead & Hunt

APRIL 30, 2021

Jamie Bowles
Purchasing Director
City of Charleston
501 Virginia Street East, Room 101
Charleston, WV 25301

Subject: Expression of Interest for Slack Plaza Renovations Construction Inspection and Administration Services

Dear Ms. Bowles:

With more than 120 total years of experience on transportation infrastructure projects, Mead & Hunt has proudly served the State of West Virginia and its municipalities for over 20 years and values our relationships. Our local Charleston office has built a full-service team of construction engineering and inspection (CEI) professionals. We are proud to offer you a 17-person CEI team of highly qualified engineers and inspectors who take pride in being an extension of the City of Charleston. Our team provides the following benefits:

Quality Construction Inspection Services. Project Manager Aaron Gillispie, PE will work at the field level to see that inspectors comply with our high standards as well as contract requirements. Aaron possesses over 27 years of experience in the construction industry. His background includes over 20 years working in construction and materials, seven of which he served as the West Virginia Division of Highways (WVDOH) State Materials Engineer. Aaron also served as District One Engineer over Kanawha County and then Chief State Highway Engineer over the WVDOH, during which time he also served as the State Americans with Disabilities Act (ADA) Chairman. Further strengthening our team is Dave Ferrell, PE. Prior to joining Mead & Hunt, Dave was a project engineer with WVDOH on several high-profile, accelerated-schedule projects including the Cantley Drive Lighting project on US 119 and the Tom Williams Bridges in Charleston. Inspector Carl Davis has over 40 years of construction experience, including supervising and inspecting the Smith Street Streetscape project in Charleston. The rest of our team is filled out by inspectors with ample experience on construction projects across West Virginia.

Experience on the State's Biggest CEI Projects. The strength of our CEI team is supported by our selection to work on several important transportation infrastructure projects right here in the Kanawha Valley, including the US 35 Pavement and Interchange project, the I-64/US 35 I/C to Nitro Widening project, and the Smith Street Streetscape project in Charleston. On each of these projects, Mead & Hunt's local CEI staff not only provided inspection, sampling and testing services, but we served as project supervisor and provided construction administration. We have the proven skills and experience to exceed the City's expectations on the Slack Plaza Renovation.

Local Support with National Knowledge. Mead & Hunt's local Charleston office is highly qualified, conveniently situated and completely dedicated to this project. We have the expertise right here locally. All personnel dedicated to this project work in our Charleston office, within minutes of the Engineering Department, and in a prime location to mobilize for this project with ease. We are familiar with many of the City of Charleston's staff and have the innate ability to hold face-to-face meetings on limited notice, and we can accommodate project visits within minutes.

Our team knows that customer service, commitment and communication are often the difference between a project's success and its failure. The Slack Plaza Renovation is an important revitalization project to the City of Charleston, and we are dedicated to making it an important project at Mead & Hunt. We are tested, qualified and trusted — Mead & Hunt pledges to be there for you every step of the way with the highest quality of service and care.

Sincerely,
Mead & Hunt, Inc.

Aaron C. Gillispie

Aaron Gillispie, PE | Project Manager

Mead & Hunt | 400 Tracy Way, Suite 200, Charleston, West Virginia 25311 | 304-345-6712 | meadhunt.com

CONTENTS

1 FIRM OVERVIEW

West Virginia Office Location

- 400 Tracy Way, Suite 200
  Charleston, West Virginia 25311
  304-345-6712

Transportation Services

- Construction administration and inspection
- Traffic engineering
- Bridge design
- Bridge inspection
- Highway and urban street design
- Rural roadway design
- Survey and right-of-way
- Agency and utility coordination
- GIS and mapping
- Environmental studies and permitting
- Transportation planning
- Cultural resources
- Public involvement and communications
- Value engineering

Mead & Hunt offers a full array of engineering, construction management/inspection, architectural and related services to public agencies and private clients throughout the United States. We have worked with numerous contractors on most methods employed by owners, including public-private partnerships and design-build alternative delivery methods. We have a documented reputation for the development of innovative solutions for projects that are on time and within budget.

ADAPTABLE

Our team is led by seasoned professionals with years of experience managing transportation projects. With offices along the east coast, we have the ability to facilitate the staffing, responsiveness and resource management necessary to maintain full-time representation on this project. Additionally, the location, size and experience of our local team will translate into cost savings for the City of Charleston.

LOCAL PRESENCE

Our local office in Charleston is located just minutes away from City Hall, the Engineering Department and the project location. This close proximity translates to faster response times and the ability to easily attend meetings, if requested. It is our goal to be when and where you need us at a moment's notice.

RESPONSIVE

As an agent of the owner, Mead & Hunt assumes a proactive role to anticipate potential problems and develop solutions before the project is adversely affected, allowing the owner to maintain schedule, cost and quality. We provide effective and responsive service by placing the utmost importance on listening to and understanding our clients' needs.

FAMILIAR

Our strong personal relationships with regulatory agencies and the City of Charleston enable us to meet any challenges that may arise. We have worked on many local projects over the years providing construction engineering inspection and administration services with a track record of high satisfaction.

EXPERIENCED

The construction inspection and administration services work required by the Slack Plaza Renovation project is precisely the work Mead & Hunt's Charleston CEI Department provides daily. Mead & Hunt combines more than a century of experience with the latest industry advances to meet your transportation needs. Our record of successful project execution and ability to provide continuity and quality of service is important. Our multidiscipline teams provide solutions for the most challenging projects. Mead & Hunt's principals are highly qualified, dedicated and fully involved in providing experienced leadership in undertaking any project.

2 PROJECT UNDERSTANDING

The Mead & Hunt team takes pride in our commitment to provide construction inspection and administration services that comply with the City of Charleston's requirements. Our team, which is comprised of engineers and inspectors who have distinguished careers in these areas, has a proven track record of high satisfaction.

We thoroughly understand the details of this project and the history of Slack Plaza. We share the City's vision of transforming this area into a modern greenspace where Charlestonians and visitors alike can enjoy their time in the Capitol City. We are familiar with project features such as sidewalks, crosswalks, greenspace, restrooms, amenities and pedestrian safety features. We realize that proper construction inspection and administration services are critical to the successful implementation of these features and completion of this project.

CONSTRUCTION INSPECTION

Mead & Hunt will monitor daily construction activities and all materials incorporated into the project to verify the work is in accordance with the plans and specifications. We will prepare daily work reports (DWRs) that record the Contractor's operations and activities. Our staff is fully certified in materials testing, including concrete, compaction, asphalt and aggregate testing. We understand the role of quality assurance and how it relates to the Contractor's quality control.

CONSTRUCTION ADMINISTRATION

Mead & Hunt fully understands the need to adhere to the project schedule and budget. We will begin by holding a pre-construction meeting and, per the City's direction, will hold bi-weekly progress meetings throughout the construction phase of this project. We will keep open communication with the City to make sure the project status is known. As part of the construction administration process, we will track project costs to determine if the project is on budget, and we will work with the City to provide justification for any necessary change orders. We will monitor and communicate the Contractor's progress to the City to verify the project is on schedule. All Contractor invoices and submittals will be reviewed for approval in a timely manner so that the project can be finalized as it is constructed. We will also review and respond to Contractor Requests for Information (RFIs). Mead & Hunt will maintain a robust system housing project reports, inspection records, test reports, submittals, as-built records/drawings and all other project information.

HIGH-QUALITY PROJECT DELIVERY

Mead & Hunt's Charleston office is fortunate to have successfully delivered multiple transportation projects over the years. Our local staff includes experienced engineers and inspectors with the expertise and understanding of the project plans and specifications, as well as the City's expectations to deliver a quality project on time and on budget. Through consistent and clear communication, Mead & Hunt will work with the City and the Contractor to provide an excellent renovation of Slack Plaza.

3 OVERALL CAPABILITIES

CEI EXPERTISE

We understand that the City of Charleston is searching for a team to provide construction inspection and administration services for the Slack Plaza Renovation. The selected firm, acting on the City's behalf, will perform all services in accordance with the plans and specifications. But more importantly, Mead & Hunt understands what it takes to provide excellence in the construction inspection and administration services we provide. We understand the selected team needs to provide CEI experience, an understanding of the client's expectations, a qualified staff, and communication and organization throughout the project.

OUR CHARLESTON TEAM

Mead & Hunt will provide a project manager and inspector with unparalleled experience. Project Manager Aaron Gillispie is a licensed Professional Engineer who has led the WVDOH District headquartered in Charleston. He has provided management of many transportation projects large and small and is prepared to fill the role of project manager for this project. As a resident of Charleston's west side, Aaron will work to make sure that this wonderful project adds to Charleston's downtown experience and feel. Additionally, Mead & Hunt has several local experienced engineers and inspectors available to assign to the full-time inspection of this project. The inspector assigned will have the experience of leading similar projects and will put that experience to work.

Mead & Hunt understands the client's expectations as it pertains to CEI. In the role of CEI, we represent the City. We are the "eyes and ears" of the City on this project. We believe that knowing your expectations and procedures while fostering a relationship of trust are imperative to effectiveness. As former employees of the WVDOH and other government entities, we consider ourselves part of the ownership of the project and dedicate ourselves to its success.

A well-qualified staff is critical to the success of a CEI project. Mead & Hunt will provide an inspector with the skill-set and certifications to verify the quality of the Contractor's workmanship and materials. Our inspectors are all currently certified in all the materials certifications, including compaction and concrete testing. Mead & Hunt will partner with Terracon, another local Charleston firm, for any needed laboratory testing for this project. Together, we will provide a qualified staff to meet the project needs.

COMMUNICATION WITH THE CITY

Effective communication and well-planned organization will be keys to this project's success. We recognize that this doesn't naturally occur on its own. Mead & Hunt's Charleston CEI team prides itself in providing built-in communication with our clients, providing the right balance of meetings, reports and communications throughout the construction project. Through well-planned organization, project information and records will be easily accessible so that the City can feel confident in a quality project.

Mead & Hunt's Charleston CEI team is assembled and ready to work for the City to provide quality construction inspection and administrative services to the Slack Plaza Renovation project.

CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES

The Mead & Hunt team has participated in a multitude of WVDOH, municipal and other transportation projects as the construction manager from both an owner and consultant perspective. Our team has many years of contract management experience ranging from simple guardrail installation projects, to streetscape projects, to multimillion-dollar interchanges and roadway widenings.

The proposed staff is comprised of many former WVDOH employees who have vast experience in the design, construction and maintenance of the local, state and federal transportation network. Having the experience working at a state transportation authority, these employees always think and act with the client's best interest in mind. Through these projects and previous WVDOH work experience, our staff has gained valuable experience in all areas of the construction process, from pre-construction and planning to the final inspection and completion of the final construction plans and estimate.

Our project manager will have the responsibility of tracking and forwarding all submittals to reduce the amount of interruption or delay. He will lead the inspector and maintain proper quality control and assurance throughout each stage of construction. Services provided include:

PROGRAM MANAGEMENT/PROJECT CONTROL

Mead & Hunt's project management team allows clients the flexibility to have their construction programs managed for them. We are able to provide oversight of projects, costs, schedules and the quality of the contractors' workmanship to earn our clients' satisfaction and protect their interests.

CPM SCHEDULING

Our team staffs individuals who are highly proficient in critical path method (CPM) scheduling. With the enforcement of a CPM schedule, cause and responsibility can be determined easily, making schedule review a valuable tool that our clients can use to avoid disputes and delays. Our team members are familiar with the latest versions of various CPM scheduling software packages, including Primavera P6, Microsoft Project and ASTA Power Project.

CONSTRUCTABILITY REVIEWS

Clients rely on our ability to determine whether a project can be completed as envisioned by the design engineers. By reviewing the sequence of construction, we can recommend improvements to save time and money. Our analysis of the project specifications helps to identify items on the construction bid documents that may be missing or need correction.

CONSTRUCTION MANAGEMENT AND INSPECTION

Our certified inspectors administer vital functions toward the successful completion of construction projects. Typical services we provide include: monitoring construction practices and schedules, verifying compliance with plans and specifications, materials testing, project documentation, pavement management, environmental protection and providing safe work zones for both the workers and the public.

We will utilize all applicable project specifications, standards and publications to evaluate the quality of work being performed. We propose the use of Inspectors Operations Specific Checklists to systematically complete our inspection activities to verify that the quality of work meets your expectations. Any work that does not meet requirements will be identified as such and corrective action will be required.

Effective schedule management is achieved by developing baseline schedules which include timelines for quality control activities, regularly scheduled progress meetings and open, transparent communications to the entire team regarding the current status of the project. Updates will be provided to the City on a bi-weekly basis as directed.

We have several technicians with WVDOH certifications, and we have taken the opportunity to expand those capabilities even further by attending certification classes when available. We also have technicians with American Concrete Institute (ACI) and other national certifications that State Departments of Transportation (DOTs) consider equivalent to their own certifications.

COST ESTIMATING

The Mead & Hunt team is experienced in the development of unit cost pricing and can prepare project cost estimates for you with ease.

CLAIMS/CHANGE ORDER ANALYSIS AND NEGOTIATION

Our team researches construction claims for virtually all issues that might arise during a project. We have team members certified in the Dispute Resolution Board by WVDOH. We analyze all project records and correspondence, conduct interviews with key personnel and review past Board and other court decisions to reach objective conclusions that can be used by the owner to resolve disputes successfully. We review change orders and Requests for Equitable Adjustment for patterns and inconsistencies, and we analyze prices submitted by contractors to compare them against actual costs for verification of reasonableness.

TRAINING

Our team shares its expertise through various seminars to construction personnel at the state and local levels. Training covers a variety of subjects, including CPM scheduling, traffic signal inspection, work zone traffic management and pavement management programs and techniques. Our seminars have been modified to serve as educational presentations to government agency officials.

QUALITY INSPECTION SYSTEM

While our inspectors are fully experienced and qualified in their duties, Mead & Hunt fulfills the need for adequate quality assurance. We believe that although our personnel maintain the training hours needed to perform their inspections, there can never be enough oversight.

Mead & Hunt realizes that with certifications come required training hours. All of our inspectors are required to spend adequate time in the classroom studying for their specific certifications. As safety to both the public and the inspectors is a top priority to our team, all inspection staff will complete 10-hour OSHA training, as well as hands-on safety training prior to any specialized operations. Each employee is offered hours in the classroom every year in conjunction with on-the-job training with either our senior construction staff or our project management team.

For this reason, our project management team makes regular site visits to all of our projects. This helps with both client interaction and quality assurance. Not only can we oversee our inspection team performing their duties in accordance with our high standards, but we can also address your concerns in an acceptable and timely manner. We offer you Project Manager Aaron Gillispie, PE, whose previous employment with WVDOH included more than seven years managing the Division's Quality Assurance System. This gives our team an in-depth, invaluable understanding of quality assurance and quality control on a construction project.

Mead & Hunt also understands that complaints are a real and serious part of every project. When a complaint is issued to our project management team, the matter is investigated by both our in-house management team and our Human Resources department. During the investigation, the inspector will be redirected and will no longer be a part of the construction team until the issue has been resolved. Before the inspector can be reinstated to the project, we will first obtain your clearance and approval that you are satisfied with the results of our inquiry.

MATERIALS TESTING

Mead & Hunt understands the importance of having accredited laboratory facilities with construction material testing capabilities for conducting standardized and specialized testing and analysis of construction materials. These labs must be available and qualified to provide materials testing and analysis for your projects as needed. We are happy to work with Terracon as a subconsultant for all required laboratory testing. Located just minutes from the project within the City, materials testing can be expedited, creating efficiencies and savings that would not be achieved using other facilities.

What separates us from other consultants is not only our ability to do the work with passion and pride, but our commitment, sense of ownership and unmatched responsiveness to our clients' needs.

EXPERIENCE ON SIMILAR PROJECTS

Role

- Construction supervision and inspection

SMITH STREET STREETSCAPE CEI

WVDOH DISTRICT 1 – CHARLESTON, WEST VIRGINIA

As part of a WVDOH District 1 Small Structures CEI contract, Mead & Hunt provided supervision and inspection services for the Smith Street Streetscape project in Charleston. The project involved placing all utilities underground and removing all existing utility poles, as well as adding new street lighting, sidewalks and ADA approved ramps. Additionally, the project added green spaces, signage, new approaches to all businesses and inlets to improve drainage.

Mead & Hunt's supervision work consisted of meeting with the contractor, designer and WVDOH for biweekly progress meetings, as well as performing pay estimates and change orders as needed. Change orders included time extensions, added work to allow utilities to be installed, adding additional curb and changing to a different type of drainage inlet. Mead & Hunt kept track of all materials used on the project to verify that they came from an approved source and completed all paperwork to final out the project. Inspection services consisted of observing all work performed on the project, including placement of materials to ensure correct locations and dimensions according to plans and specifications, all testing performed, and any monitor testing as required.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOT District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Project supervision, construction inspection

US 35 PAVING AND INTERCHANGE INSPECTION

WVDOH DISTRICT 1 – PUTNAM COUNTY, WEST VIRGINIA

US 35 is a heavily traveled, regionally significant corridor in southwestern West Virginia. This project completes the final 14.6-mile expressway section of the US 35 corridor between I-64 near Charleston, West Virginia and Gallipolis, Ohio.

Mead & Hunt is providing project supervision and inspection services for this $66 million four-lane expressway and grade-separated interchange project. The expressway portion involves cut-fill transitions, grading, subgrade placement, multiple lifts of asphalt, drainage, pavement markings, guardrail, signs, seeding and mulching, and continuous erosion and sediment control. This project will have temporary traffic control when it is tied into the existing section of US 35 at the north end. Mead & Hunt was originally selected to provide inspection services, and ultimately WVDOH selected Mead & Hunt to provide project supervision as well. As a result, Mead & Hunt is overseeing the inspection, materials testing and sampling work closely with the area engineer to verify the contractor's estimate is paid correctly and in a timely manner.

The interchange inspection contract involves traffic control, grading, subgrade placement, multiple lifts of asphalt, drainage, pavement markings, guardrail, roadway lighting, MSE walls, a pair of bridges, seeding and mulching, and continuous erosion and sediment control.

The completion of the project will increase the safety of the traveling public, improve access to existing industry and provide economic development opportunities to the region.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOH District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Materials management, project inspection, quality assurance, documentation services

I-64 MERRITTS CREEK TO BARBOURSVILLE WIDENING CEI

WVDOH DISTRICT 2 – BARBOURSVILLE, WEST VIRGINIA

This section of I-64 extends from the West Virginia state line through the Huntington area to Barboursville. The project expands the capacity of the interstate and improves safety for the traveling public. It is comprised of bridge and roadway widening and complex maintenance of traffic, and is one of the first full-depth interstate reconstruction projects in West Virginia.

Mead & Hunt is providing materials management and construction inspection on this $80 million project. The project is comprised of five sets of bridges, including the Merritts Creek Bridges. The project involves earthwork, widening bridges in phases, several walls, full-depth roadway construction and pavement reconstruction, as well as phased maintenance of traffic. Mead & Hunt is providing third-party inspection and materials coverage for the District 2 Construction Engineer.

This project is one of the Roads to Prosperity projects and is critical to WVDOH. It is adjacent to the 29th Street to Guyandotte Widening project, which Mead & Hunt designed. Together, these two projects will greatly improve the serviceability of this section of I-64.

Contact: Chris Collins | 304-528-5620 | james.collins@wv.gov
Client: WVDOH District 2 | 801 Madison Avenue | Huntington, WV 25712

Role

- Construction and materials inspection

WVDOH DISTRICT 1 RESURFACING, SMALL STRUCTURES AND MATERIALS INSPECTION SERVICES CONTRACTS

WVDOH DISTRICT 1 – KANAWHA, CLAY, PUTNAM, BOONE AND MASON COUNTIES, WEST VIRGINIA

Mead & Hunt provided on-call construction engineering, inspection and materials inspection services for the five counties of District 1. These contracts were specific to small structures, resurfacing and materials. Mead & Hunt inspectors served as an extension of the WVDOH on many assignments throughout District 1 from 2018 to 2020. Under the small structures contract we provided a Level IV Inspector on projects such as the I-64 Nitro-St. Albans Interstate Widening, Smith Street Streetscape, WV 601 Jefferson Road Improvement, Kanawha Two Mile Bridge replacement and White Oak Bridge replacement. We provided two Level III lead inspectors for the resurfacing projects throughout the District, including WV 61 Porter Road to Patrick Street, I-77 Edens Fork to Tuppers Creek and US 119 Oakwood Road to WV 61. For the materials inspection contract, we provided a Level IV lead inspector to review numerous Quality Control Plans. As a result, District 1 was able to verify that the construction work performed met the requirements of the standard specifications and all governing project documents.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOT District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Project management, project inspection, quality assurance, documentation services

I-64 US 35 I/C TO NITRO WIDENING CEI

WVDOH DISTRICT 1 – NITRO, WEST VIRGINIA

I-64 is a heavily traveled interstate that crosses West Virginia and links its population from west to east. The section of I-64 that comprises this project has the highest average daily traffic (ADT) of any road in West Virginia at over 100,000 vehicles per day. This project expands the interstate from four lanes to six lanes and entails several structures, including the Nitro-St. Albans Kanawha River crossing bridge.

Mead & Hunt is providing project supervision and inspection services for this $225 million interstate widening project — the largest design-build project in WVDOH history. The project is comprised of five sets of interstate bridges, including two large structures over the Kanawha River. The project will reconstruct two interchanges at St. Albans and Nitro and reconstruct the pavement throughout the project. The project involves earthwork; various structures including bridges, walls and an arch; roadway and pavement construction; environmental sensitivities; coastguard coordination; and maintenance of traffic. Mead & Hunt acts as an extension of the WVDOH in providing an experienced inspection staff, as well as the project supervisor. We are working with the WVDOH District 1 Area Engineer to verify the project is constructed per specifications and the contractor's estimate is paid correctly.

This project is one of the top priorities of WVDOH. Mead & Hunt is providing a quality team of CEI staff to meet the needs of this highly complex project. The completion of this project will provide a quality interstate with increased capacity and safety in the highest traveled roadway in West Virginia.

Mead & Hunt is partnering WVDOH to bring West Virginia a modern interstate with the capacity and safety needed to improve transportation for the traveling public.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOH District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Construction inspection

I-64 MILTON – US 35 CONSTRUCTION INSPECTION

WVDOT DISTRICT 1 – PUTNAM AND CABELL COUNTIES, WEST VIRGINIA

Mead & Hunt was utilized as a subconsultant by WVDOT to provide inspections, testing oversight, and environmental compliance monitoring and management for the $48 million major pavement rehabilitation roadway project on I-64 in Putnam and Cabell Counties. The project consisted of milling, drainage, rubblization of concrete base, reconstructive pavement and Percent Within Limits (PWL) asphalt testing.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOH District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Materials inspection

WVDOH DISTRICT 2 MATERIALS INSPECTION ON-CALL

WVDOH DISTRICT 2 – CABELL, WAYNE, LINCOLN, LOGAN AND MINGO COUNTIES, WEST VIRGINIA

Mead & Hunt performed on-call materials inspection services for the five counties in WVDOH District 2. Mead & Hunt inspectors served as an extension of the WVDOH on many projects and assignments from 2018 to 2020. Inspectors performed the materials inspection, sampling and testing on various projects such as the Dingess Street Bridge, Dingess Tunnel Liner, Big Rock 1 and 2, Fourteen Mile Bridge, South Cuba Bridge, Monterey Bridge, Blue Sulfur Overpass Bridge, Eighth Street Overpass Bridge, as well as ADA ramp projects. Inspectors also performed plant inspections, straight edge testing, District 2 laboratory gradation and cylinder break testing for AMRL certification, as well as turn-of-the-nut and rotational capacity testing for various projects. As a result, District 2 was able to verify that the materials being used met the requirements of the standard specifications and all governing project documents. By utilizing Mead & Hunt inspection services, WVDOH will be able to confirm the quality of all materials used in construction projects.

Contact: Chris Collins | 304-528-5620 | james.collins@wv.gov
Client: WVDOH District 2 | 801 Madison Avenue | Huntington, WV 25712

Role

- Construction supervision and inspection

KANAWHA TWO MILE BRIDGE INSPECTION

WVDOH DISTRICT 1 – KANAWHA COUNTY, WEST VIRGINIA

As part of WVDOT this District 1 on-call contract, Mead & Hunt is providing project management and inspection services for the $2 million 152-foot bridge in Kanawha County. Mead & Hunt's responsibilities include oversight of the project, review/approval of daily work reports within SiteManager, preparation of contractor estimates within SiteManager and preparation of change orders as necessary.

Contact: Gary Mullins | 304-356-3813 | gary.w.mullins@wv.gov
Client: WVDOT District 1 | 1340 Smith Street | Charleston, WV 25301

Role

- Project administration, management, inspection

CONTRACT ADMINISTRATION AND PS&E ASSISTANCE

WVDOH – CHARLESTON, WEST VIRGINIA

As part of this WVDOT statewide CEI services contract, Mead & Hunt provided contract development services for the contract administration division in Charleston. These services consisted of pre-bid preparation and coordination of project creations within ProjectWise, project proposal development and the development of initial BF98 funding forms.

Contact: Jason Boyd | 304-414-6972 | jason.m.boyd@wv.gov
Client: WVDOT | 1900 Kanawha Blvd East | Charleston, WV 25305

4 PERSONNEL QUALIFICATIONS

ORGANIZATIONAL CHART

WEST VIRGINIA DIVISION OF HIGHWAYS

Project Manager
Aaron Gillispie, PE

CONSTRUCTION INSPECTORS

PROFESSIONAL ENGINEER
David Ferrell, PE

LEVEL V
Andrew Buchan

LEVEL IV
Carl Davis
Andy Womack
Rick Carney
Paul Kelley

LEVEL III
Mike Stone
Jeff Goins
Greg Fields
Bobby Parsons
Josh Rein, EIT
Lane Ashley, EIT
Tim Stone

LEVEL II
Shawn Workman
Dusty Milam
Conner Mynes

LEVEL I
Mike Escue

EXPERIENCED CONSTRUCTION INSPECTORS

Our proposed construction inspectors have many years of experience working on road and bridge rehabilitation, reconstruction and maintenance projects.

Our inspectors are very thorough and will strive to perform their duties to the standards as expected by the City of Charleston. We maintain all the necessary certifications to see that each inspector can perform the duties required for this project. Inspectors have been cross-trained and have the flexibility to accept any and all types of inspection duties and will be ready on a moment's notice.

Our inspection staff upholds quality and accuracy of all necessary documentation including, but not limited to, materials certification and documentation, labor compliance documentation, safety documentation, processing contractor estimates, work orders and adjustments along with all other office duties.

KEY STAFF QUALIFICATIONS

Aaron Gillispie, PE

PROJECT MANAGER

Areas of Expertise

- Transportation program management (planning, design, right-of-way, traffic, construction, operations)
- Public involvement
- Construction management
- Materials control, sampling, testing and inspection
- Technician and inspection certification
- Bridge fabrication
- Pavement design and construction

Education

- BS, Mechanical Engineering, West Virginia University

Registration

- Licensed Professional Engineer – WV

As project manager, Aaron will apply his 27 years of leadership and construction inspection experience to oversee our team and keep the City of Charleston informed every step of the way. Aaron serves as Construction Services Manager of Mead & Hunt's Charleston office and can report to the City within minutes if needed. He is committed to working directly with the City construction staff to exceed expectations for all engineering and inspection assignments.

Aaron previously served as the Chief State Highway Engineer for the WVDOH, building on more than two decades of experience with the Division. As Chief Engineer, Aaron developed a strong skillset in communication as the liaison between the WVDOH and the West Virginia Legislature, public and media. His primary responsibilities included leading the WVDOH Divisions and Districts, delivering the WVDOH development and construction program, and managing the operational aspects of transportation in West Virginia. Under Aaron's leadership, the WVDOH delivered the Roads to Prosperity Program, consisting of over $2 billion in transportation projects throughout West Virginia. Aaron also served as the West Virginia representative on the AASHTO Council on Highways and Streets and served as the national chair of the AASHTO National Transportation Evaluation Program.

His background is in highway development and construction, including 20 years in construction materials. His responsibilities have involved pavement design and construction; roadway analysis; underwater bridge inspection; metals materials testing and certification; steel bridge fabrication and inspection; and seven years as the West Virginia State Materials Engineer. In this role, Aaron represented West Virginia on the American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Materials (Committee on Materials and Pavements), was the national chair of the AASHTO Product Evaluation List and was responsible for assuring the quality of all materials incorporated into WVDOH highways projects.

Aaron also previously served as District 1 Engineer, responsible for managing all engineering and transportation activities associated with roadway and bridge design; right-of-way acquisition and management; construction; and maintenance of the transportation network in the Capitol District. In this position, Aaron oversaw multiple ADA Washington Street projects similar to the Slack Plaza Renovations project.

With a demonstrated wealth of WVDOH experience and familiarity, Aaron will be able to work on the Division's behalf to see this project through from start to finish.

DAVID FERRELL, PE

Professional Engineer

Education

- BS, Civil Engineering, Fairmont State University

Registration

- Licensed Professional Engineer – WV
- WVDOH Soil and Aggregate Compaction
- WVDOH PCC Technician and Inspector
- WVDOH Aggregate Sampling

David has nine years of construction inspection experience, with expertise in high-profile, fast-tracked projects. His previous employment with WVDOH, including multiple project supervisor roles, has provided him with an in-depth understanding of department policies and procedures. As a licensed Professional Engineer, he brings a strong combination of education and field experience to the construction projects he serves on.

David is currently serving as a construction inspector and providing mentoring to other team members on the I-64 Merritt's Creek to Barboursville Widening QC contract. His experience while employed with WVDOH includes supervisor on the fast-tracked Tom Williams Bridge Deck Replacements project and the highly accelerated Milton to US 35 Pavement Reconstruction project. David also served as supervisor on the PFC Abraham G. Sams Memorial Bridge Replacement and Kanawha Turnpike Overpass Bridge Overlay.

ANDREW BUCHAN

Level V Inspector

Education

- BS, Engineering Technology, West Virginia Institute of Technology
- AS, Engineering Technology, West Virginia Institute of Technology

Registration

- WVTRET – Level V

Andrew has over 27 years of experience on transportation and telecommunications projects, often serving in the role of survey party crew chief. His experience includes Mead & Hunt's Quality Assurance Management (QAM) for Bridges Statewide, which involved the replacement, renovation or rehabilitation of approximately 55 bridges throughout West Virginia. As part of this contract, Andrew provided QAM services for several design-build projects, including Hardee's Bridge, Harmon Creek Bridge and Tague W-Beam Bridge.

Andrew has been involved with many of Mead & Hunt's active CEI projects, including I-64 US 35 I/C to Nitro, I-64 Merritts Creek to Barboursville and US 35 Interchange and Paving Inspection. He also provided survey on several of Mead & Hunt's design projects for WVDOH, including I-64 Widening from 29th Street to Guyandotte River Bridge.

CARL DAVIS

Level IV Inspector

Education

- Building Construction, Boone County Vocational School

Registration

- WVTRET – Level IV
- NICET Certification – Level IV
- WVDOH Aggregate Sampling
- WVDOH Compaction and Concrete Sampling

Carl has 40 years of experience in construction engineering, inspection and testing for various project assignments such as roadways, bridge replacements and utility projects. He was a project supervisor for 19 years and a project inspector for 20 years with WVDOH. During that time, he oversaw a variety projects, including fast-tracked bridge replacements, roadway widenings, piling wall projects, emergency flood repair and district-wide guardrail maintenance programs. He has monitored construction activities, documented project activities on daily work reports, supervised junior construction inspectors and coordinated with federal agencies.

Carl supervised and inspected the Smith Street Streetscape construction in Charleston, which consisted of project elements similar to the Slack Plaza Renovations such as green spaces, ADA ramps, lighting and utilities.

ANDY WOMACK

Level IV Inspector

Education

- AS, Highway Engineering Technology, Bridge Valley Community and Technical College

Registration

- WVTRET – Level IV

Andy has 11 years of construction inspection experience, including two years of project supervision with WVDOH. He has experience with roads, highways, steel girder bridges, precast box beam bridges, piling walls, overlays, pipe and drainage and FEMA work. He has taken on a wide array of responsibilities, including examination of plans, specifications, supplemental specifications, proposals, addenda, material procedures and quality control documents. He has completed daily reports and attachments, such as aggregate, guardrail, traffic control, asphalt pavement, reinforcing steel, drainage structures and pipe culverts, as well as weekly erosion and sediment control reports. Andy is authorized to inspect all work done and materials furnished, to reject materials which do not meet specification and call the attention of the contractor to any failure of the work.

Andy was appointed to project supervisor for the US 35 Paving and Inspection contract, which spans Putnam and Mason Counties.

RICK CARNEY

Level IV Inspector

Education

- AS, Science, West Virginia State College

Registration

- WVTRET – Level IV
- WVDOH Material Certification – Compaction
- WVDOH Asphalt (Plant and Field)
- WVDOH Concrete (Plant and Field)
- WVDOH Aggregate (Sampling and Technician)

Rick has over 16 years of construction and materials inspections and testing experience. He has extensive experience on West Virginia bridge construction projects both large and small, including the Ten Mile Creek Bridge and Kanawha Two Mile Bridge. His project experience also includes various ADA projects and numerous roadway resurfacing projects. Rick's responsibilities have included coordination of quality control plans with project engineers and supervisors. He visits project sites to verify compliance and continue updates or addenda to keep projects moving in a timely manner.

Recently, Rick served as lead inspector for the WVDOH District 1 Materials Inspection project, reviewing numerous quality control plans. He is currently working on the I-64 Merritts Creek to Barboursville Design Review and US 35 Paving and Interchange Inspection projects.

PAUL KELLEY

Level IV Inspector

Education

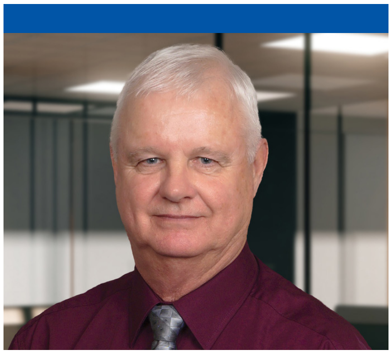
- AAS, Highway Engineering Technology, Bridge Valley Community and Technical College

Registration

- WVTRET – Level IV
- Transportation Engineering Technician Bridge Safety Inspector (BRSFIN) – Level IV
- WVDOH Soil and Aggregate Compaction
- WVDOH Aggregate Sampling

Paul is a construction inspector with an emphasis on bridge and roadway construction. He has a varied background that includes technical, bridge maintenance, bridge construction and equipment operation experience. He worked for WVDOH for nearly 40 years, including 12 years in a technical role. Paul has inspected bridges and other structures in accordance with all Federal Highway Association (FHWA) and WVDOH policies and procedures.

Currently, Paul is serving as a construction inspector with a focus on bridge inspection on the US 35 Paving and Inspection project. He prepares all required documentation for bridge inspection. Tasks associated with these structures include but are not limited to: driving the piles to refusal, rebar and formwork placement for the concrete substructures, placement of the beams and diaphragms, and verifying that all concrete is properly poured and cured.



MIKE STONE

Level III Inspector

Education

- High School Diploma, Buffalo High School

Registration

- WVTRET – Level III
- NICET Concrete Sampling – Level II
- NICET Compaction – Level II
- WVDOH Compaction and Concrete Sampling

Mike has 44 years of experience in construction engineering, inspection and testing for various project assignments such as roadways, bridge replacements and utility projects. He was a lead inspector for WVDOH for 15 years and during that time he oversaw a variety projects, including fast-tracked bridge replacements, roadway widenings and emergency flood repairs. Mike has successfully monitored construction activities, documented project activities on daily work reports, supervised junior construction inspectors and coordinated with federal agencies. He also has experience monitoring erosion control measures, overseeing sampling and materials testing, and assisting with commercial inspections.

Currently, Mike serves as a lead inspection for the $66 million US 35 Paving and Interchange Inspection project. He was the lead inspector on the $700 million US 35 Road Widening – Section 4 project which created a new four-lane interstate through Mason and Putnam Counties.

JEFF GOINS

Level III Inspector

Education

- High School Diploma, East Bank High School

Registration

- WVTRET – Level III
- WVDOH Aggregate Sampling
- WVDOH Soil and Aggregate Compaction
- WVDOH Asphalt Field and Compaction Technician
- WVDOH PCC Inspector

Jeff has 40 years of experience as a construction inspector, including extensive familiarity with WVDOH specifications and standards. His experience includes concrete and asphalt pavement, guardrail replacement, mill and fill, roadway rehabilitation, culvert placement, retaining walls, excavation and embankment, stone sampling and compaction testing.

Currently, Jeff is working on the US 35 Paving and Interchange Inspection project. He has served as the lead inspector on several projects in recent years, including the Clendenin Emergency Flood project, which required a roadway to be rebuilt quickly following a devastating summer flood. He recently served as a Level III inspector on Mead & Hunt's inspection contract with WVDOH District 1. He has inspected resurfacing projects throughout the District, including WV 61 Porter Road to Patrick Street, I-77 Edens Fork to Tuppers Creek and US 119 Oakwood Road to WV 6.

GREG FIELDS

Level III Inspector

Education

- High School Diploma, Stonewall Jackson High School

Registration

- WVTRET – Level III
- WVDOH Aggregate Sampling
- WVDOH Asphalt Field and Compaction Technician
- WVDOH PCC Inspector
- WVDOH Portable Nuclear Gauge Safety

Greg has worked in the inspection and materials testing field for more than 42 years. He was an inspector for WVDOH for over 40 years, where he inspected roadway and bridge projects ranging from minor road resurfacing projects and bridge rehabilitations to multi-million-dollar interstate widenings. He has provided supervisory inspection services for Department projects that have included soil, concrete, aggregate and asphalt testing and special inspections.

Greg is currently serving as an inspector on the I-64 Merritts Creek to Barboursville QC project, as well as the US 35 Paving and Interchange Inspection. He also served as a Level III inspector on resurfacing projects throughout District 1 under Mead & Hunt's CEI contracts. Greg also provided roadway inspections and field oversight on the US Route 2 milling project and field oversight on the Porter Road – 35th Street Bridge.

BOBBY PARSONS

Level III Inspector

Education

- High School Diploma, Ripley High School

Registration

- WVTRET – Level III
- WVDOH Aggregate Sampling
- WVDOH Soil and Aggregate Compaction
- WVDOH Aggregate Technician
- WVDOH PCC Inspector
- WVDOH Hot-Mix Asphalt Technician

Bobby has more than 35 years of experience in the construction industry, including 12 years as a senior staff technician and construction inspector. His experience includes highway and bridge construction, airport construction and rehabilitation, commercial building structures and other infrastructure projects. He has been responsible for monitoring construction activities, documenting project activities on daily work reports, and compiling and verifying contractor pay item quantities. He has also monitored quality control inspectors to verify that project materials and workmanship are in accordance with plans and specifications.

Bobby's substantial experience allows him to provide a wide range of inspection services to meet project needs. He is currently providing QA on the I-64 Merritts Creek to Barboursville QA project.

JOSH REIN, EIT

Level III Inspector

Education

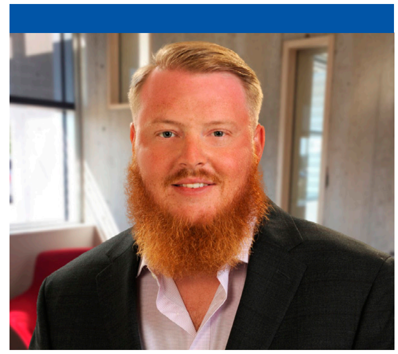
- BS, Civil and Environmental Engineering, West Virginia University

Registration

- Engineer-in-Training
- WVDOH Aggregate Sampling
- WVDOH Aggregate Technician
- WVDOH Soil and Aggregate Compaction
- WVDOH PCC Inspector

Josh is a construction inspector with two years of experience covering all aspects of quality control concrete inspections, including performing concrete field testing, plant operation checks, material storage and handling, verification of scales, lab equipment checks and inspection of concrete trucks. Josh has worked on a variety of roadway and bridge projects ranging from small road repavings, interstate widenings, precast bridge replacements and tunnel repair. His experience includes preparing preliminary plans, cost estimates and record drawings. Josh is proficient in various software, including MicroStation, AutoCAD, Civil 3D and ArcGIS.

Josh is currently working on the US 35 Paving and Interchange Inspection project as well as the I-64 Merritts Creek to Barboursville QC. He recently served as an inspector on the District 2 Materials Testing and Concrete Plant Inspection on-call contracts.



LANE ASHLEY, EIT

Level III Inspector

Education

- BS, Civil Engineering, Marshall University

Registration

- Engineer-in-Training
- WVTRET – Level III

Lane is a construction inspector with one year of professional experience. His responsibilities have included surveying, dirt work, concrete placing and finishing, underdrain pipe and surface grading. He also has experience calculating product quantities to prevent over-ordering. His combination of on-site experience and bachelor's degree in civil engineering have provided Lane with valuable professional skills, including field performance and productivity improvement.

Lane has been serving as a construction inspector on the US 35 Paving and Interchange Inspection project, as well as the I-64/US 35 I/C to Nitro Widening project.

TIM STONE

Level III Inspector

Education

- AAS, Architectural Drafting and Design, West Virginia State University

Registration

- WVTRET – Level III

Tim has 16 years of experience in construction, including project management and supervision. His responsibilities have included materials quantities and estimates, curb and sidewalk layout, and concrete finishing. His organizational and supervisory skills will be an asset to your project, bringing both professionalism and efficiency.

Since joining Mead & Hunt in the fall of 2020, Tim has been providing construction inspection on the US 35 Paving and Interchange Inspection project.

SHAWN WORKMAN

Level II Inspector

Education

- AS, Civil Engineering Technology, BridgeValley Community and Technical College

Registration

- WVTRET – Level II

Shawn is a construction inspector with more than two years of experience. While previously employed with WVDOH, Shawn was an inspector who continuously worked to follow state regulations and requirements and conduced daily reports. He also has experience as a mechanic, including performing repair work on semi-truck equipment to keep the vehicles in excellent working condition.

Since joining Mead & Hunt in fall of 2020, Shawn has been involved with the I-64 US 35 I/C to Nitro project.

DUSTY MILAM

Level II Inspector

Education

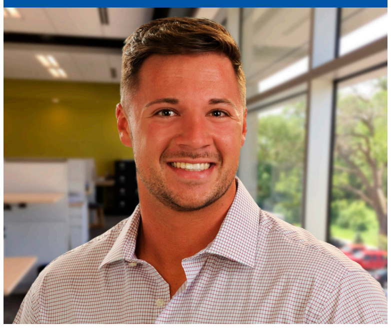
- Regent's BA, Literature, Marshall University

Registration

- WVTRET – Level 2
- WVDOH Hot Mix Asphalt Technician
- WVDOH Soil and Aggregate Compaction
- WVDOH Marshall Mix Design
- WVDOH Superpave Mix Design

Dusty is a materials inspector with 12 years of experience performing quality control tests on asphalt using physical and chemical processes. His testing experiencing includes specific gravity, bulk specific gravity, asphalt content, gradations and others. Dusty also has experience running compaction tests and operating a core drilling rig.

He is currently serving as a construction inspector on the US 35 Paving and Interchange Inspection project. Prior to joining Mead & Hunt, Dusty served as a lab technician on the I-64 Milton to Nitro Interstate Expansion, as well as runway replacements at the Raleigh County Memorial Airport and Huntington Tri-State Airport.



CONNER MYNES

Level II Inspector

Education

- AAS, Construction Management, BridgeValley Community and Technical College

Registration

- WVTRET – Level II
- OSHA 10 & 30
- National Center for Construction Education and Research (NCCER) Certified

Conner is a construction inspector with three years of experience in site supervision and maintenance. He has experience with project estimating, contractor and vendor communications, and coordination of project material deliveries. He has participated in the review of weekly construction budget reports, material and subcontractor invoice review and approval, and the building and updating of construction project schedules.

Conner is currently providing construction inspection for the US 35 Paving and Interchange Inspection project. His responsibilities include inspection of excavation work, seeding and mulching, ditch checks, scanning and signing asphalt tickets, and depth checks and temperature-taking of asphalt. His bridge experience on the project includes rebar, beams, deck pans, driving pilons, abutment concrete pours, bolt and nut testing, support beams and form building for abutment pours. His is also providing construction inspection on the I-64 US 35 I/C to Nitro project.

MIKE ESCUE

Level I Inspector

Education

- High School Diploma, Winfield High School

Registration

- WVTRET – Level I
- NICET Trainee

Mike's construction experience with the WVDOH spans more than 40 years, including crew leader and supervisor roles. He is experienced in highway maintenance and repair, including equipment operation and materials inspection. He has three years of experience as a TRET Level I construction inspector and brings a lengthy career of onsite construction work and familiarity with WVDOH standards and procedures to your project.

Currently, Mike is serving as a construction inspector on the $66 million US 35 Paving and Interchange Inspection project. As a construction inspector for WVDOH, Mike provided inspection of work and materials used on highway projects. He observed and documented all work performed on Daily Reports and other WVDOH worksheets. He also performed field measuring, sketching and calculation of quantities.

INSPECTOR CERTIFICATION MATRIX

Mead&Hunt	Years of Inspection Experience	WVTRET Level	BS, Civil Engineering	Certifications							
				Aggregate Sampling	Aggregate Technician Exam	Soil & Aggregate Compaction	Asphalt Field & Compaction	PCC Inspector	PCC Technician	Compaction and Concrete Sampling	Hot Mix Asphalt Technician
David Ferrell, PE	9	-	✓	✓		✓		✓	✓		
Andrew Buchan	27	V									
Carl Davis	40	IV		✓						✓	
Andy Womack	11	IV									
Rick Carney	16	IV									
Paul Kelley	40	IV		✓		✓					
Mike Stone	44	III								✓	
Jeff Goins	40	III		✓		✓	✓	✓			
Greg Fields	42	III		✓			✓	✓			
Bobby Parsons	35	III		✓	✓	✓			✓		✓
Josh Rein, EIT	2	III	✓	✓	✓	✓		✓			
Lane Ashley, EIT	1	III									
Tim Stone	16	III									
Shawn Workman	2	II									
Dusty Milam	12	II				✓					✓
Mike Escue	40	I									
Conner Mynes	3	II									

Resolution No. 478-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 478-21 – Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding (MOU) with other participating agencies comprising the Metro Drug Enforcement Network Team (MDENT), consistent with Attachment A hereto, that assists the Charleston area offices of the Drug Enforcement Administration, the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives to achieve maximum cooperation in combined law enforcement efforts to address drug and related violent crime offenses in Charleston and surrounding communities. The MOU is in effect for a one-year period starting July 1, 2021, and ending June 30, 2022.

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

That the Mayor or City Manager is authorized to enter into a Memorandum of Understanding (MOU) with other participating agencies comprising the Metro Drug Enforcement Network Team (MDENT), consistent with Attachment A hereto, that assists the Charleston area offices of the Drug Enforcement Administration, the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives to achieve maximum cooperation in combined law enforcement efforts to address drug and related violent crime offenses in Charleston and surrounding communities. The MOU is in effect for a one-year period starting July 1, 2021, and ending June 30, 2022.

MEMORANDUM OF UNDERSTANDING

The following agencies hereby enter into this Memorandum of Understanding (MOU) as of the date this MOU is signed by the agency's representative. The effective date of this MOU is July 1, 2021.

City of Charleston
City of St. Albans
City of Dunbar
City of Nitro
City of South Charleston
City of Hurricane
Putnam County Sheriff's Department
Kanawha County Sheriff's Department
West Virginia State Police
Federal Bureau of Alcohol, Tobacco, and Firearms
U. S. Attorney's Office for the Southern District of WV

PURPOSE: the purpose of this MOU is to memorialize the operating terms under which this task force, named the Metropolitan Drug Enforcement Network Team (MDENT), develop and enhance cooperation and information exchange between the parties to this MOU and to achieve maximum effective and efficient law enforcement efforts to address drug and violent crime related offenses in the Kanawha County, Putnam County, and Charleston, West Virginia, area.

DEFINITIONS: When used in this MOU, the following words shall be defined as:

1. AHIDTA—Appalachian High Intensity Drug Trafficking Act Program
2. Control Board – The oversight board for MDENT.
3. DCJS – The West Virginia Division of Criminal Justice Services
4. Employing agency – The law enforcement agency that hired, employs, and pays the applicable salary and benefits of the law enforcement officer assigned to MDENT.
5. Federal Agencies – The Federal Bureau of Investigations, the Drug Enforcement Agency and the Bureau of Alcohol, Tobacco and Firearms.
6. Grantee – The agency that prepares, submits, and oversees administration of funding applications on behalf of MDENT. For the purposes of this MOU the grantee is the City of Charleston.
7. Local Agencies – The City of Charleston, the City of Dunbar, the City of Nitro, the City of South Charleston, the City of St. Albans, the City of Hurricane, the Kanawha County Sheriff's Department, and the Putnam County Sheriff's Department.
8. MDENT – Metropolitan Drug Enforcement Network Team
9. MOU – Memorandum of Understanding
10. Operating Account – Monies maintained in an interest-bearing account by the grantee to be used to pay expenses incurred by MDENT in pursuit of its stated purpose. These monies come from funds lawfully secured as a result of

forfeiture of money and property from drug related seizures and monies contributed to MDENT by other entities.

11. Participating agencies – All of the federal and local agencies that are parties to this MOU.
12. PCNEU – Putnam County Narcotics Enforcement Unit.
13. PCSD – Putnam County Sheriff's Department.
14. Policy Board – West Virginia Drug Policy and Violent Crime Control Policy Board.

The participating agencies agree to the following terms:

1. FEDERAL JURISDICTION: The authority and participation in any investigation under the terms of this MOU by the Federal Agencies shall be pursuant to, and limited by, the jurisdictional laws of each respective federal agency. Because of statutory and policy considerations, the assigned federal personnel will not investigate crimes outside of the jurisdiction of their respective agency. The Federal Agencies shall follow the appropriate policies and guidelines of their respective agencies. Federally initiated cases will follow appropriate guidelines of the lead federal agency concerning case management.

2. LOCAL AGENCY REPRESENTATION: The representative authorized to sign this MOU for each of the participating agencies will appoint one individual to serve as a member on the Control Board, which will be the agencies' chief law enforcement officer or his/her designee. That individual will act on behalf of and represent the designating agency's interests concerning the operation of MDENT. The Mayor of the grantee, or his or her designee, shall serve as the Chairperson of the Control Board. The Chairperson shall appoint the MDENT Commander.

3. CONTROL BOARD: The Control Board shall meet on a regular basis as set by the grantee in accordance with DCJS requirements. Five members present shall constitute a quorum of the Control Board. Each member of the Control Board, or his or her alternate, shall have one vote and, subject to the terms herein, general issues shall require a majority vote of members present. However, actions by MDENT on the following matters shall be decided by unanimous vote of voting members of the Control Board:

a. Approval/disapproval of cases to be investigated by MDENT officers;

b. Amount of and use of funds to be authorized for specific case investigations and operation of the unit;

c. Key decisions critical to the management of case investigations;

d. Acquisition of real or personal property, including equipment;

e. Addition of law enforcement agencies as members of MDENT; and

f. Approval of officers to be assigned to MDENT from participating agencies.

Federal agencies, in compliance with all applicable ethical and regulatory DOJ/Treasury guidelines, will abstain from voting on funding issues that conflict with their department's guidelines.

4. ADMINISTRATION OF GRANT FUNDS; AGENCY RESOURCES: Each of the participating agencies shall cooperate with the grantee concerning the administration of grant funds awarded from DCJS or other entities and in the overall operation of MDENT. Additionally, each participating agency will provide whatever resources are available to that agency, in the reasonable opinion of its Chief Law Enforcement Officer or designee, to specific cases as appropriate and as approved by the Control Board to facilitate efficient and effective investigations.

5. AGENCY WITHDRAWAL FROM OR APPLICATION TO MOU: Participation in the multi-agency investigative efforts of MDENT is voluntary. If a participating agency desires to withdraw from this MOU, written notification of such withdrawal will be provided to each participating agency thirty days prior to withdrawal. Such withdrawal does not absolve the participating agency of any financial responsibilities incurred prior to the withdrawal. Additional agencies wishing to become members of MDENT may do so upon written application to and approval by the Control Board. Such new agencies must execute an addendum agreeing to the terms of the MOU in effect at the time of approval by the Control Board.

6. COMPLIANCE WITH FEDERAL GUIDELINES: Participating agencies agree to follow procedures relating to case management, reporting requirements, fiscal guidelines, and other appropriate policies as adopted by the Control Board and that are consistent with the Anti-Drug Abuse Act of 1986, subtitle K – State and Local Law Enforcement Assistance Act of 1986 and/or the Policy Board and DCJS.

7. OWNERSHIP AND USE OF MDENT EQUIPMENT: Equipment and other personal property purchased with Operating Account funds and utilized for fulfilling the purpose of MDENT will be retained by grantee after the requirements of all applicable DCJS grants have been satisfied or have expired. Grantee's retention of any such equipment or property will be made in accord with established policies and practices set by the Policy Board and the DCJS. It is further agreed that participating agencies may request use of this equipment and property, consistent with each agency's guidelines, at any future time so long as such request or use does not inconvenience or otherwise negatively impact grantee.

8. REAL PROPERTY PURCHASED, OWNED, OR LEASED FOR THE USE AND BENEFIT OF MDENT:

a. If any real property is purchased by one of the participating agencies on behalf of MDENT to be used as office space or any other MDENT purpose, such purchase will be paid for with Operating Account funds.

b. Any real property so purchased, donated, or leased for the use and benefit of MDENT as office space or other MDENT use, will be maintained with Operating Account funds. The Control Board shall have the oversight and responsibility of making the timely loan, lease, or other payments on the property, paying for all repairs and improvements, utilities, taxes, fees, insurance, and all other costs associated with the real property including any improvements thereto and/or appurtenances thereof. If at any time there are insufficient funds in the Operating Account for these expenses when due, such expenses will be shared by the participating local agencies in MDENT at the time such expenses are incurred. Each local agency will be responsible and liable for an amount equal to the amount of the shortfall divided by the number of local agency officers assigned to MDENT multiplied by the number of officers each local agency has assigned at the time of the shortfall.

c. If any real property owned for the use and benefit of MDENT is sold, the proceeds shall either be used to secure other office space for MDENT or placed in the Operating Account.

d. If at any time MDENT is dissolved, any real property owned for the use and benefit of MDENT shall be sold. The proceeds will be placed in the Operating Account and the funds will be handled as set forth in paragraph number nine (9) of this MOU.

9. MDENT DISSOLUTION: In the event that MDENT is dissolved, the Control Board will ensure that all applicable financial responsibilities of MDENT are paid from the Operating Account. Any remaining balance in the Operating Account after all financial responsibilities are met, excluding any federal funds, shall be distributed to the local agencies participating in MDENT at the time of its dissolution. If there are insufficient funds in the Operating Account to satisfy all financial responsibilities or liabilities, any remaining financial responsibilities and liabilities will be divided among these same local agencies. The formula for the distribution of assets or liabilities shall be the total applicable amount divided by the number of local agency officers assigned to MDENT multiplied by the number of officers each local agency has assigned at the time of dissolution.

10. SALARY, BENEFIT, AND OVERTIME REIMBURSEMENT:

a. Reimbursement to local agencies for officers assigned to MDENT will be made for base salary and benefits as set by the Policy Board, but such reimbursement shall not exceed $28,000. Unless specifically authorized by grant award, reimbursement will not be made for overtime earned by officers assigned to MDENT.

b. Federal Agencies will not receive reimbursements, including any reimbursement for salary, benefits, or overtime.

c. For overtime reimbursement for officers authorized by a grant award, each local agency will be limited to the overtime hours or amounts authorized by the award.

d. Monies awarded for overtime reimbursement will be distributed upon submission of applicable documentation to the grantee in an amount not to exceed the limit set by the Policy Board.

e. Any AHIDTA overtime funds awarded for compensation shall be reimbursed in accordance with the policies and guidelines of that program.

11. FORFEITURES: Forfeitures will be administratively processed pursuant to the following terms:

a. Forfeitures may be utilized as approved by the Control Board to meet MDENT's stated purpose.

b. The participating Federal Agencies do not receive any share of assets secured by direct forfeiture or by an "open bid" sale in most state and local cases. In any case where a Federal Agency elects to receive a share of the forfeiture, the Federal Agency will process the forfeiture pursuant to federal guidelines. It shall be the responsibility of each participating local agency that desires to seek a portion of the federally forfeited property to complete a United States Department of Justice DAG-71 Application for Transfer of Federally Forfeited Property. If a Federal Agency processes the forfeiture, then the provisions of subparagraph (f.) of this paragraph eleven (11) do not apply.

c. Forfeitures conveyed to local agencies through equitable sharing or pursuant to a completed DAG-71 are to be utilized for law enforcement purposes only, consistent with federal and Policy Board forfeiture guidelines.

d. Real or personal property forfeited to MDENT that cannot be directly used to meet the stated purpose of MDENT will either be sold by an "open bid" process or disposed of in a manner approved by the Control Board in accordance with established federal and Policy Board guidelines for such forfeitures. Any monies secured by the sale of such property that are not processed federally will be deposited in the Operating Account, as required by subparagraph (e.) of this paragraph eleven (11).

e. Cash, either directly forfeited or secured by the sale of real or personal property, that are not processed federally will be maintained in the Operating Account until spent for MDENT purposes or distributed to the local agencies consistent with this paragraph. The Policy Board sets a required minimum percentage of forfeited funds, less administrative costs, that must be used to cover the day-to-day operations of a drug task force during each grant award period. For the term of this MOU the Policy Board has MDENT's minimum percentage at forty (40) percent. The Policy Board also permits each drug task force to establish a percentage greater than the set minimum. As of January 1, 2003, the Control Board established a minimum of fifty (50) percent of all monies secured as a result of forfeitures, after administrative costs have been removed, be held in the Operating Account to be used for day-to-day operations, with the remaining fifty (50) percent to be distributed among the local agencies as consistent with subparagraph (f.) of this paragraph eleven (11).

f. Forfeited funds that are not processed by a Federal Agency shall be distributed as follows:

1. 50% of all such non-federal forfeited funds, after payment of any administrative costs, shall be deposited in the Operating Fund. The remaining amount will be distributed to each local agency participating at the time of the seizure by dividing the total applicable amount by the number of local agency officers assigned to MDENT at the time of the seizure multiplied by the number of officers each local agency has assigned at the time of the seizure, not including any offers assigned to the Interdiction Team.

2. For seizures made by the Interdiction Team, 50% of all such non-federal forfeited funds, after payment of any administrative costs, shall be deposited in the MDENT Operating Fund. The remaining amount will be distributed to each local agency which have officers assigned to the Interdiction Team at the time of the seizure by dividing the total applicable amount by the number of officers assigned to the Interdiction Team at the time of the seizure multiplied by the number of officers each local agency has assigned to the Interdiction Team at the time of the seizure.

12. PROTOCOL FOR INTERACTION WITH THE NEWS MEDIA:

a. The Control Board shall set policy and procedures for media releases and/or press conferences.

b. All media releases shall be made in the name of MDENT. Each release shall name all of the participating agencies.

c. Unless special circumstances exist, individual MDENT officers will not be identified or photographed.

d. No information about MDENT operations or individual investigations will be released to the media until approved by the official with applicable prosecutorial authority.

1. If jurisdiction involves a federal prosecution, the United States Attorney of the Southern District of West Virginia must approve any release of information to the media.

2. If jurisdiction involves a state prosecution, the Prosecuting Attorney in the county where the case will be prosecuted must approve any release of information to the media.

13. REPLACEMENT/REMOVAL OF OFFICERS ASSIGNED TO MDENT:

a. All employing agencies will allow officers assigned to MDENT to complete all material assignments prior to the officer's removal from, or replacement on, MDENT, unless conditions involving willful misconduct or other extenuating circumstances exist which would adversely affect MDENT operations and/or reputation if such removal is delayed.

b. If any MDENT officer engages in misconduct, conduct unbecoming an officer, or any activity which requires an administrative investigation to determine the propriety of disciplinary action, the employing agency shall be solely responsible for any and all disciplinary action. The Task Force Commander shall immediately notify the Control Board members and the employing agency of any such behavior of which he or she becomes aware. Notwithstanding, the Control Board may remove any officer from MDENT upon reasonable belief that the officer engaged in misconduct, conduct unbecoming, or any other improper behavior or of activities. The employing agency shall be notified of any decision by the Control Board to remove an assigned officer and the employing agency may submit the name of a replacement officer for the Control Board's consideration and approval.

14. LIABILITY AND INSURANCE OBLIGATIONS:

a. Each employing agency shall be solely responsible for the negligent acts, omissions, and/or wrongdoing of its officers, whether alleged or established, and for any and all claims of liability related thereto. As between the parties to this MOU, unless otherwise agreed in writing, each employing agency shall be solely responsible for defending against any claim against its officer, and for payment of any and all resulting fees, costs, or damages related thereto.

b. Unless otherwise agreed in writing, no employing agency shall be responsible for defending against or paying for any civil liability arising out of negligent acts, omissions, and/or wrongdoing of officers or other personnel assigned to MDENT from another employing agency. For the purpose of this MOU, civil liability includes, but is not limited to, damages of any kind, attorney fees, and any and all costs and/or expenses incident to any civil lawsuit or administrative claim filed by any person, business, corporation, partnership organization, or government entity, or otherwise related to any administrative or judicial proceeding, finding, judgment, or settlement in compromise of any claim.

c. The employing agencies to this MOU agree that each officer assigned to MDENT is solely an employee of his or her employing agency. The parties to this MOU further agree that each employing agency shall be solely responsible for providing workers compensation coverage and unemployment coverage to each and every officer assigned to MDENT by that employing agency.

d. Each employing agency shall maintain liability insurance coverage in an amount of at least $1,000,000 to satisfy the liability obligations herein related to claims arising from the alleged negligent, acts, omissions, and/or wrongdoing of its officers/employees assigned to MDENT, and such insurance policy shall include coverage for damage to the assigned officer/employee's vehicle and claims resulting from the assigned officer/employee's operation thereof, regardless of which agency actually owns the vehicle. In other words, and by example only, each agency shall be responsible for insuring, defending against and paying every claim or civil liability arising out of the conduct of its officer/employee, regardless of where the incident giving arise to the claim or civil liability arose and regardless of who owned any vehicle or equipment involved. Provided: That the parties recognize that the Federal Tort Claims Act shall be applicable to all liability issues relating to the actions of the officers assigned to MDENT from federal agencies.

e. As between the parties to this Agreement, the agency employing any officer/employee assigned to MDENT will be solely responsible for any damage to property caused by the intentional or other conduct by the employing agency's officer/employee which results in any denial of insurance coverage.

15. PARTICIPATING AGENCIES: Effective July 1, 2021, the Task Force is composed of 23 officers as follows:

7 from Charleston Police Department

2 from St. Albans Police Department

1 from Nitro Police Department

1 from Dunbar Police Department

2 from South Charleston Police Department

1 from Hurricane Police Department

3 from Kanawha County Sheriff's Department

3 from Putnam County Sheriff's Department

1 from West Virginia State Police

1 from the US Drug Enforcement Agency

1 from Homeland Security

These officers will work directly with the agents from the Charleston area offices of the participating Federal Agencies.

16. FUNDING TERM. For the purpose of funding obtained through the DCJS, the term of this agreement shall be for the fiscal year covering the period of July 1, 2021, through June 30, 2022. Subsequent contract renewal with the DCJS for similar continued funding will serve to extend this agreement.

17. SUPERSEDING AGREEMENT. This MOU supersedes any and all prior MOU's implemented and agreed to by the participating agencies.

This MOU is hereby entered into by the participating agencies on pages 9 and 10 of this MOU, which may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

BY: ______________________________ DATE: _______________
Amy Goodwin
Mayor (City of Charleston)

BY: ______________________________ DATE: _______________
Scott James
Mayor (City of St. Albans)

BY: ______________________________ DATE: _______________
Dave Casebolt
Mayor (City of Nitro)

BY: ______________________________ DATE: _______________
Scott Elliot
Mayor (City of Dunbar)

BY: ________________________________ DATE: ________________
Frank Mullens
Mayor (City of South Charleston)

BY: ________________________________ DATE: ________________
Scott Edwards
Mayor (City of Hurricane)

BY: ________________________________ DATE: ________________
Michael Y. Rutherford
Sheriff of Kanawha County

BY: ________________________________ DATE: ________________
Bobby Eggelton
Sheriff of Putnam County

BY: ________________________________ DATE: ________________
Colonel J.L. Cahill
Superintendent WV State Police

BY: ________________________________ DATE: ________________
Lisa G. Johnston
U.S. Attorney, Southern District of WV

BY: ________________________________ DATE: ________________

Alcohol, Tobacco, and Firearms

BY: ________________________________ DATE: ________________

Federal Bureau of Investigation

Resolution No. 479-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 479-21 – Authorizing the Mayor or City Manager to renew a software license and maintenance agreement with Aztecs Systems, LLC, for a period of three years—at a cost not to exceed $25,000 per year—in order to continue the use of the Cityworks asset management system, which is used daily by the Public Works Department, Traffic Engineering Department, and Engineering Department. The Software License & Maintenance Agreement is attached as Exhibit A.

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

That the Mayor or City Manager is authorized to renew a software license and maintenance agreement with Aztecs Systems, LLC, for a period of three years—at a cost not to exceed $25,000 per year—in order to continue the use of the Cityworks asset management system, which is used daily by the Public Works Department, Traffic Engineering Department, and Engineering Department. The Software License & Maintenance Agreement is attached as Exhibit A.

CITYWORKS®
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement ("Agreement") is made by and between Azteca Systems, LLC ("Azteca Systems" or "Azteca") a Delaware limited liability company, with a place of business set forth on Addendum #1 below, and the **City of Charleston, West Virginia**, (hereinafter referred to as "Licensee" or "Customer"), using certain of Azteca Systems Licensed Products. This Software License and Maintenance Agreement is effective upon the date of signature by Licensee below (the "Effective Date").

Azteca Systems Products are licensed under the terms and conditions of this Agreement. This Agreement, when executed by the Licensee and Azteca Systems, as licensor of the Software, or the Online Services, and Documentation licensed under this Agreement, will supersede any previous agreements.

This Agreement includes (i) this Software License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support, and (iv) Addendum #3 – Third-Party Contractor Acknowledgment.

This Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party's original signature is not delivered.

ARTICLE 1—DEFINITIONS

1.1 **Definitions**. The terms used are defined as follows:

a. "Agreement" means this Software License and Maintenance Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda, and other documents incorporated by reference.

b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account username and password, or other mechanism required for use of a Product.

c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee's employees; (ii) Licensee's consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software's public web portal (if applicable). Other than limited use of the Products through the software's web portal, the public is not considered an authorized user.

d. "Beta" means any alpha, beta, or other prerelease version of a Product.

e. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.

f. "Cloud Services" means both Azteca Systems Managed Cloud Services and Online Services.

g. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.

h. "Concurrent Use License" means that Licensee may install and use the Software on computer(s) on a network, but the number of simultaneous users (logins) may not exceed the number of licenses required.

i. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee's internal use to provide testing License rights prior to deployment.

j. "Documentation" means all user reference documentation that is supplied to the Licensee by Azteca Systems pursuant to this Agreement for aiding or enabling the use of the Software and is deemed to include any Azteca Systems-provided revisions thereof.

k. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee's internal operations but does not include access of the Licensed Products by or use of the Licensed Products in the provisions of services to Licensee's clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing, or other means of providing service to any third party shall not be considered Internal Use.

l. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified in Addendum #1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software and Documentation licensed under the terms of this Agreement.

m. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.

n. "Malicious Code" means software viruses; worm time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

o. "Named User(s) is Licensee's employee, agent, consultant, or contractor to whom Licensee has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product or subscription to Online Services for Licensee's exclusive benefit.

p. "Online Services" means the commercially available, internet-based asset management system that Azteca Systems provides (commonly known as Cityworks Online), including applications and associated APIs, for storing, managing, publishing, and using maps, data, and other information. Online services exclude Data and Content.

q. "Online Services Subscription" means a limited-term subscription conveying the right for one or more named users to access and use Online Services.

r. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.

s. "Preview" means any alpha, beta, or prerelease Product.

t. "Product(s)" means Software and Documentation licensed under the terms of this Agreement.

u. "Sample(s)" means sample code, sample applications, sample add-ons, or sample extensions of Products.

v. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.

w. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, documentation, updates, upgrades, and service packs. Without limitation, the Software is deemed to include any alpha, beta, prerelease or restricted version(s), or final commercial release(s), provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, sample code, or merged copies permitted hereunder or subsequently supplied under this Agreement. Unless otherwise indicated by the context herein, the term Software is also deemed to include its associated Documentation.

x. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.

y. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

All Azteca Systems Offerings are the copyrighted works of Azteca Systems. Azteca Systems or its licensors own the Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights, including trade secrets. This Agreement does not transfer ownership rights of any description in the software, materials, products, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. All rights not specifically granted in this Agreement are reserved to Azteca Systems and its licensor(s). Azteca Systems does not acquire any rights in Customer Content under this Agreement other than as needed to provide Azteca Offerings and Services to Customer.

ARTICLE 3—GRANT OF LICENSE

3.1 **Grant of License**. Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) licenses. Licensee may allow Third-Party Contractors to access and use the licensed Software, provided Licensee and Third-Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third-Party Contractor Acknowledgment (if applicable) collectively, are incorporated by reference into this Agreement.

a. *Software.* Use and license for specific Software products are set forth in Addendum #1– Product Licensing, which is incorporated by reference.
b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum #2 – Standard Maintenance and Support, which terms are incorporated by reference.
c. *Third Party Contractor.* Terms of use for Third-Party Contractor software usage (if applicable) are set forth in Addendum #3 – Third-Party Contractor Acknowledgment, which is incorporated by reference.

3.2 **Delivery**. Unless otherwise agreed, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Products by electronic download and a license key to activate the Licensed Products.

ARTICLE 4—SOFTWARE AND ONLINE SERVICES

4.1 Software Terms of Use

a. For Products delivered to Licensee, Licensee may:

1. Install, access, and store Products on electronic storage device(s);
2. Make archival copies and routine computer backups;
3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
4. Move the Software in the licensed configuration to a replacement server.

b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca Systems and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [*Licensee will insert the actual copyright date(s) from the source materials*] Azteca Systems, LLC. and its licensors. All rights reserved."

c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third-Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca Systems. Licensee shall be solely responsible for compliance by Third-Party Consultants and Contractors with this Agreement and shall ensure that the Third-Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third-Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

4.2 Online Services Terms of Use

a. **Use of Online Services** is also subject to the Cloud Services Terms found in Addendum #2.
b. **Modification of Online Services**. Azteca Systems may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Azteca Systems may, at its discretion, attempt to repair, correct, or provide a

workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Azteca Systems will issue a prorated refund.

4.3 **Named User Licenses**. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. **Named Users**.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

4.4 **Limited-Use Programs**.

a. **Trial, Evaluation, and Beta Programs**. Products acquired under a trial, evaluation, or beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
b. **Educational Programs**. Licensee agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Licensee shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
c. **Other Azteca Systems Emergency or Limited-Use Programs**. If Licensee acquires Products under any limited-use program not listed above, Licensee's use of the Products may be subject to the terms set forth in the applicable launching page, letter, or enrollment form or as described on Azteca’s website in addition to the nonconflicting terms of this Agreement.

4.5 **Uses Not Permitted**. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

a. Sell, rent, lease, sublicense, lend, assign, or time-share Licensed Software or Products;
b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
c. Act as a service bureau or Commercial ASP;
d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
f. Distribute Authorization Codes to third parties;
g. Reverse engineer, decompile, or disassemble Products;
h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Licensed Products;
i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
k. Unbundle or independently use the individual or component parts of Software or Online Services;
l. Incorporate any portion of the Software into a product or service that competes with the Software;

m. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or

n. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—AZTECA SYSTEMS MANAGED CLOUD SERVICES

5.1 **Definitions**. The following are supplemental definitions provided in Article 1.

a. "Azteca Managed Cloud Services" means the hardware, Software, Data, network platform that Azteca Systems or its third-party supplier provides as part of Azteca Managed Cloud Services.

b. "Hosting" means the business of housing and making accessible Licensee Content via the internet.

5.2 **Provision of Azteca Managed Cloud Services.**

a. **General Terms**. Use of Azteca Systems Managed Cloud Services is subject to the Cloud Services terms found in Addendum #2 of this Agreement.

b. **Requirements Planning**. It is Customer's responsibility to plan for and address with Azteca Systems changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.

c. **Compensation and Expenses**. Azteca Systems will invoice Customer annually for the Azteca Systems Managed Cloud Services to be provided the upcoming year. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Azteca Systems or removal of Customer Content from the Azteca Systems Managed Cloud Services environment.

d. **Risk of Loss**. Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content.

e. **Personally Identifiable Information**. Prior to providing any Customer Content under this Agreement, Customer shall notify Azteca Systems if Customer Content includes personally identifiable information.

f. **Public Software**. Customer may not use, and may not authorize its end users or contractors to combine or use any Azteca Systems Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Azteca Systems Offering to be (i) disclosed or distributed in source code form, (ii) made available free of charge to third parties, or (iii) modifiable without restriction by third parties.

g. **Monitoring**. Licensee will provide information and other materials related to its Licensee Content as reasonably requested by Azteca Systems or its Hosting partner to verify Azteca's or Licensee's compliance with this Agreement. Azteca Systems or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Licensee Content solely for the purpose of verifying compliance with this Agreement.

ARTICLE 6—TERM AND TERMINATION

6.1. The initial term of this Agreement will begin on the Effective Date, or upon such latter dates set forth in Addendum #1, and in each case provided a valid purchase authorization is issued. This Agreement may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum #1.

6.2. Either party may terminate this Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination shall be deemed to have immediate effect for a material breach that is impossible to cure.

6.3. **Termination by Licensee**. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement, Licensee may terminate subsequent Term Maintenance Periods by giving Azteca Systems thirty (30) days' written notice prior to the end of the current Term Maintenance Period. The effective date of such termination will be the start of the subsequent Term.

6.4. **Termination by Azteca Systems**. Azteca Systems may terminate this Software License and Maintenance Agreement and/or any license granted hereunder if:

a. Licensee violates its obligations under this Software License and Maintenance Agreement and fails to cure the breach within thirty (30) days after Azteca Systems' written notification, provided however, that no cure period prior to termination will be required as noted in section 6.2.

b. Licensee ceases to do business in the ordinary course, or becomes insolvent, enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, whether voluntary or involuntary, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors. Such termination shall be effective upon notice to such party or as soon thereafter as is permitted by applicable law.

6.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the Software License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

6.6. If this Agreement is terminated per section 6.3, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance, and support services rendered or products and software received and accepted prior to the effective date of termination.

6.7. If this Agreement is terminated per section 6.3 or 6.4, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then, for no additional charge to Licensee and at Licensee's option, either grant a license to the Licensee for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software, or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

6.8. If Licensee has an Online Services Subscription, Managed Cloud Services, or Online Services Product, then upon termination per section 6.3 or 6.4, Azteca Systems will provide Licensee the ability for 30 days to download, backup, or otherwise archive all Licensee Data.

6.9. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach or termination of any kind occur.

ARTICLE 7—LIMITED WARRANTIES AND DISCLAIMERS

7.1 **Limited Warranties**. Except as otherwise provided in this Article 7, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

7.2 **Special Disclaimer**. **Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and beta Products are delivered "as is" and without warranty of any kind.**

7.3 **Disclaimers**.

a. **Internet Disclaimer**. Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the internet or to regulation of the internet that might restrict or prohibit the operation of Cloud Services.

b. **Third-Party Websites; Third-Party Content**. Azteca Systems is not responsible for any third-party website or third-party content that appears in or is referenced by Azteca Systems Products or Azteca Systems websites, including www.cityworks.com and www.mycityworks.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

7.4 **General Disclaimer**. **Except for the express limited warranties set forth in this Agreement, Azteca Systems disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, or non-infringement of intellectual property rights. Azteca Systems is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Licensee Content caused by Licensee's modification of any Azteca Systems Product or Service other than as specified in the Documentation. Azteca Systems does not warrant that Products and Services hereunder or Licensee's operation of the same, will be uninterrupted, error free, fault-tolerant, or fail-safe or that all nonconformities can or will be corrected. Products are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property/environmental damage. Licensee should not follow any suggestions or instructions that appear to be hazardous, unsafe, or illegal. Any such use shall be at Licensee's own risk and cost.**

7.5 **Exclusive Remedy**. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Section shall be limited to replace any defective media; (i) repair, correct, or provide a workaround for the applicable Products or Services and subject to the Azteca Systems Maintenance Services and Support Addendum; or (ii) at Azteca Systems election, terminate Licensee's right to use and refund the fees paid for Azteca Systems Products or Services that do not meet Azteca Systems limited warranties, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

ARTICLE 8—LIMITATION OF LIABILITY

8.1 **Disclaimer of Liability. Neither Licensee, Azteca Systems, nor any Azteca Systems distributor or third party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees paid for the current Term support period, or current Subscription fees, or Services fees actually paid to Azteca Systems for the Azteca Systems Products or Services giving rise to the cause of action**.

8.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Licensee's infringement, misuse, or misappropriation of Azteca Systems or Azteca Systems licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

8.3 **Applicability of Disclaimers and Limitations**. Azteca Systems (or its authorized distributor if any) has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

8.4 The foregoing warranties, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Licensee's jurisdiction. Licensee may have additional rights under law that may not be waived or disclaimed. Azteca Systems does not seek to limit Licensee's warranty or remedies to any extent not permitted by law.

ARTICLE 9—INDEMNIFICATIONS

9.1 **Definitions**. The following definitions supplement the definitions provide in Article 1:

a. "Claim" means any claim, action, or demand by a third party.
b. "Indemnitees" means Customer and its directors, officers, and employees.

c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to any Azteca Systems Products or Services infringes a patent, copyright, trademark, or trade secret.

d. "Loss(es)" means expenditure, damage award, settlement amount, cost, or expense, including awarded attorney's fees.

9.2 **Infringement Indemnity**.

a. Azteca Systems will defend, hold all indemnitees harmless from and against any Loss arising out of an Infringement Claim.

b. If Azteca Systems determines that an Infringement Claim is valid, Azteca Systems may, at its expense, either (i) obtain rights for Customer to continue using the Azteca Systems Products or Services or (ii) modify the Azteca Systems Products or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Azteca Systems may terminate Licensee's right to use the Azteca Systems Products or Services and will refund any unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.

c. Azteca Systems has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Azteca Systems Products or Services with a product, process, or system or element not supplied by Azteca Systems or specified by Azteca Systems in its Documentation, (ii) alteration of Azteca Systems Products or Services by anyone other than Azteca Systems or its subcontractors, (iii) compliance with Licensee's specifications, or (iv) use of Products or Services after Azteca Systems either provides a modified version to avoid infringement or terminates Licensee's right to use the Products or Services.

9.3 **General Indemnity**. Azteca Systems will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Azteca Systems or its directors, officers, employees, or agents performing Services while on Customer's site.

9.4 **Conditions for Indemnification**. As conditions for indemnification, Indemnitee will (i) promptly notify Azteca Systems in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Azteca Systems sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Azteca Systems request and expense.

9.5 **This section sets forth the entire obligation of Azteca Systems, its authorized distributor (if any), and its third-party licensors (if any) regarding any Claim for which Azteca Systems must indemnify Licensee**.

ARTICLE 10—GENERAL PROVISIONS

10.1 **Export Control Regulations**. Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country, (ii) any person on the US Treasury Department's list of Specially Designated Nationals, (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List, or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

10.2 **Taxes and Fees, Shipping Charges**. License and Subscription fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

10.3 **No Implied Waivers**. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

10.4 **Severability**. The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

10.5 **Successor and Assigns**. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This Agreement shall be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this Agreement.

10.6 **Survival of Terms**. The provisions of Articles 2, 6, 7, 8, 9 and 10 of this Agreement, and the provisions of section 4.1 of Addendum #2, shall survive the expiration or termination of this Software License and Maintenance Agreement.

10.7 **US Government Licensee**. The Products are commercial items, developed at private expense, provided to Licensee under this Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

10.8 **Governing Law**. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- **Government Entities**. If Licensee is a government entity, the applicable laws of the Licensee's jurisdiction govern this Agreement.
- **Nongovernment Entities**. US federal law and the law of the State of Utah exclusively govern this Agreement, excluding their respective choice of law principles.

10.9 **Dispute Resolution**. The parties will use the following dispute resolution process:

- **Equitable Relief**. Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- **US Government Agencies**. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).
- **Other Government Entities**. Azteca Systems will comply with mandatory dispute resolutions under applicable law.
- **Negotiation and Arbitration**. The parties will attempt negotiation in good faith and a spirit of mutual cooperation. Except as noted above, if the parties are unable to settle through negotiation or mediation, then it shall be finally settled by the Court in Kanawah county, except that in matters of intellectual property, federal law shall govern. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

10.10 **Maintenance**. Maintenance for qualifying Software consists of updates (provided on a when-and-if available basis) and other benefits, such as access to technical support, which are provided during the Term. Maintenance is specified as set forth in Addendum #2.

10.11 **Audit**. Upon Azteca System's written request, Licensee shall certify in a signed writing that its use of the Licensed Product is in full compliance with the terms of this Agreement (including any restrictions herein). Azteca Systems, or its authorized representative, may, upon prior reasonable notice of at least ten (10) days, inspect and audit Licensee's records and use of the Licensed Products to confirm compliance with this Agreement. All such inspections and audits will be conducted during regular business hours and in a manner that does unreasonably interfere with ordinary business activities. Licensee shall be responsible for any audit costs only in the event that such audit reveals that Licensee's use is not in accordance with the permitted uses under this Agreement, and for unpaid license fees.

10.12 **Feedback**. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Software or Products, and any related intellectual property, are owned by Azteca Systems.

10.13 **Patents**. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

10.14 **Force Majeure**. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber-attacks, laws, regulations, government orders, or any other force majeure event.

10.15 **Independent Contractor**. Azteca Systems is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Azteca Systems and the Licensee. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

10.16 **Entire Agreement**. This Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective by their respective authorized representatives.

AZTECA SYSTEMS, LLC	**CITY OF CHARLESTON WV** – (LICENSEE)
By: ______________________	By: ______________________
Name: Brian L. Haslam	Name: ______________________
Title: President - CEO	Title: ______________________
Date: ____/____/____	Date: ____/____/____

ADDENDUM #1

PRODUCT LICENSING

1. **Licensed Software:**

Server AMS Standard Cityworks Departmental Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products for **Public Works Department; Traffic, Parking & Transportation Department; and Engineering Department Only**: Office Respond Mobile Native Apps (for iOS/Android) --Includes the following Add-ons: Storeroom Equipment Checkout Contracts Cityworks for Excel Cityworks Analytics for AMS eURL (Enterprise URL) Workload Web Hooks CCTV Interface for PACP Pavement Management Citizen Engagement API Local Government Templates (LGT) Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners

Additional Software Products & Licenses & Annual Renewals: Additional Software Products & Licenses may be added to this Agreement as well as annual renewals of this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

2. **Notices & Licensee Information: Until or unless otherwise modified, all notices relevant to this agreement shall be sent to the following address:**

Azteca Systems, LLC 11075 South State, Suite 24 Sandy, Utah 84070	**City of Charleston** 501 Virginia St. E Charleston, WV 25301	
	Attn:	Adam Cottrell
	E-mail:	adam.cottrell@cityofcharleston.org
	Phone:	304.348.8048 ext. 201

3. **Effective Date of Software (Date Software made available)**

MM/DD/YYYY
07/01/2021

4. **Schedule of Payments and/or Fees under Agreement**

Annual Period	Date From/To (mm/dd/yyyy)	Amount
Period 1	**07/01/2021 – 06/30/2022**	**$25,000.00**
Period 2	**07/01/2022 – 06/30/2023**	**$25,000.00**
Period 3	**07/01/2023 – 06/30/2024**	**$25,000.00**

5. **Additional Items (If Any):**

   a. Annual fee herein is based on a 25,0001 – 50,000 population range.

ADDENDUM #2

STANDARD MAINTENANCE AND SUPPORT

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca Systems, LLC ("Azteca Systems" or "Azteca"). Maintenance and support are provided subject to the terms and conditions of the signed Software License and Maintenance Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT**: Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license and maintenance fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support services consist of the following benefits: maintenance items (provided on a when-and-if available basis) which may include subsequent version releases of the licensed software, service packs, upgrades and updates, and technical support.

1.1. Azteca Systems will ensure upward compatibility for the licensed software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for licensed software applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

a. **Software Updates**. Software Updates includes upgrades and service packs which are a collection of files that enhance or correct the licensed software, and which will be available for Licensee to download during the Maintenance Term/Period. Updates and upgrades may also include new versions;
b. Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
c. Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

1.3 The following items, among others, however, are specifically excluded as support services under this Addendum:

a. Support for applying or installing upgrades and service packs;
b. Assistance with questions related to third-party software, computer hardware, networking, and other similar items that are not provided by Azteca;
c. Assistance with computer operating system questions not directly pertinent to the licensed software;
d. Licensee Data debugging and/or correcting;
e. Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the licensed software, including but not limited to neglect, abuse, unauthorized modifications, and/or unauthorized updates;
f. Consulting regarding customizations created to function with the licensed software unless the customization is identified and listed as licensed software in Addendum #1;
g. Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
h. Questions such as configuration, implementation, and walk-throughs.

1.4 Support Periods are renewable unless terminated as provided in Section 3 below.

1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers**. Licensee may designate a limited number of authorized callers per software product listed in Addendum #1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal**. Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at http://www.mycityworks.com.

1.8. **Additional Support Items**.

a. On a when-and-if available basis, updates to the licensed software (Addendum #1) means subsequent releases of the program which Azteca generally makes available to its customers who are under an active Software License and Maintenance Agreement for which fees have been paid for the relevant support period.
b. Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed in Addendum #1 changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license or maintenance fees have been paid.
c. Updates may not always include any release, option, or future program that Azteca licenses separately. Updates are provided on a when-and-if available basis as determined by Azteca Systems. Azteca Systems is under no obligation to develop any future programs or functionality. Any updates made available will made available to you for download. Customer is responsible for copying, downloading, and installing the updates.

2. PROCEDURES FOR ACCESSING SUPPORT

2.1. All problem categories from routine, non-critical and critical, that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within four (4) hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is the Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within four (4) hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems, Licensee will submit support requests during normal business hours as outlined in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.

3. **CHARGES/FEES**

3.1. License, Maintenance, and Support Services herein are included in the payment of annual fees as set forth in Addendum #1 and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1 and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum #1 subsequent to year one (1) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. "CPI" shall mean for all Urban Consumers, the U.S. City Average, for all items, 1982-84=100 (the "CPI-U"), as published by the Bureau of Labor Statistics, U.S. Department of Labor. Azteca Systems will notify Licensee of the new pricing no later than sixty (60) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration**. Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance**. Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

4. **MANAGED CLOUD AND ONLINE SERVICES**

4.1. **Prohibited Uses**. Licensee shall not provide Customer Content or otherwise access or use Cloud Services in a manner that:

a. Creates or transmits spam, spoofings, phishing emails, or offensive or defamatory material; or stalks or makes threats of physical harm;

b. Stores or transmits any Malicious Code;
c. Violates any law or regulation;
d. Infringes or misappropriates the rights of any third party;
e. Probes, scans, or tests the vulnerability of Cloud Services or breaches any security or authentication measures used by Cloud Services without written approval from Azteca Systems product security officer; or
f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

4.2. **Service Interruption**. System failures or other events beyond Azteca's reasonable control may interrupt Customer's access to Cloud Services. Azteca Systems may not be able to provide advance notice of such interruptions.

4.3. **Licensee Content**.

a. Licensee grants Azteca Systems and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Licensee Content as needed to provide Cloud Services to Licensee. Azteca Systems will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Azteca Systems under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
b. If Customer accesses Cloud Services with an application provided by a third party, Azteca Systems may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
c. Azteca Systems may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Azteca Systems will reasonably attempt to limit the scope of disclosure.
d. When Customer's use of Cloud Services ends, Azteca Systems will either:
    1. Make Customer Content available to Customer for download for a period of thirty (30) days unless Customer requests a shorter window of availability or Azteca Systems is legally prohibited from doing so; or
    2. Download all Customer Content in Azteca Systems' possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Azteca Systems will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

4.4. **Removal of Customer Content**. Azteca Systems may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Azteca Systems will notify Customer before removing Customer Content. Azteca Systems will respond to any Digital Millennium Copyright Act takedown notices in accordance with Azteca Systems copyright policy, available at www.cityworks.com/legal.

4.5. **Service Suspension**. Azteca Systems may suspend access to Cloud or Online Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach, (ii) if Azteca Systems reasonably believes that Customer's use of Cloud Services will subject Azteca Systems to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services, (iii) for scheduled maintenance, (iv) to enjoin a threat or attack on Cloud Services, or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Azteca Systems will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Azteca Systems is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

4.6. **Notice to Azteca Systems**. Licensee will promptly notify Azteca Systems if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

5. MISCELLANEOUS

5.1. **Data Confidentiality Statement**. Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing the Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements, and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

5.2. **No Implied Waivers**. No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

5.3. Azteca Systems will use commercially reasonable efforts to ensure that Azteca Systems Products and Offerings will not transmit any Malicious Code to Licensee. Azteca Systems is not responsible for Malicious Code that Licensee introduces to Azteca Systems Products or Offerings or that is introduced through Third-Party Content. Malicious Code means software viruses; worms, time bombs, Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

ADDENDUM #3

THIRD-PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Licensee engages any third party or contractor (Third Party) and desires to grant access to use the Licensed Software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by Third Party is solely for Licensee's benefit;

2. Third Party (or, if applicable, its employee) shall be considered the Authorized User for purposes of the applicable license type, and all use shall be in accordance with the terms and conditions of the Cityworks Software License and Maintenance Agreement with Licensee;

3. Before accessing the Licensed Products, Third Party agrees that (i) the software shall be used solely in accordance with the terms of this Agreement, and (ii) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;

4. Licensee hereby agrees and acknowledges that Licensee will be responsible for all use by Third Party with respect to the use of the Licensed Products;

5. Upon expiration or termination of this Agreement, the rights of usage of Third Party shall immediately terminated;

6. Use of the Products by Third Party will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by Third Party; and

7. Licensee will ensure that Third-Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee.

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third Party, by their signature below, acknowledges that it has a copy of the License Agreement and agrees to the terms herein. Licensee shall provide a signed copy of this Addendum to Azteca Systems at contracts@cityworks.com.

Third Party (Print):_________________________ **Licensee**: **City of Charleston, WV**

By: ____
Third Party/Contractor Authorized Signature

Title: ______________________________

Date: ________________________

Third Party Information

Address City, State, Zip	
Contact Name	
Phone Number	
Email	

Resolution No. 480-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 480-21 – Appointing an Audit Committee in accordance with the West Virginia State Auditor's Office Chief Inspector Division Procedures Manual for Procuring and Conducting Audits and Reviews of Local Governments for the purposes of procuring audit services and overseeing any correction associated with any audit findings or concerns. The committee shall be made up by those serving in the positions of Council Finance Committee Chairman, City Auditor, Assistant City Auditor, City Manager, and Finance Director. The appointments are effective for a period ending June 30, 2023. The City Auditor shall serve as the primary contact for the audit procurement process.

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

That there is hereby appointed an Audit Committee for the purposes of procuring audit services and overseeing any correction associated with any audit findings or concerns. The committee shall be made up by those serving in the positions of Council Finance Committee Chairman, City Auditor, Assistant City Auditor, City Manager, and Finance Director. The appointments are effective for a period ending June 30, 2023. The City Auditor shall serve as the primary contact for the audit procurement process.

Resolution No. 481-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 481-21 – Authorizing the Mayor or City Manager to enter into a contract with McClanahan Construction in the amount of $559,750.00 for concrete street repair work, where the cost was determined through a competitive bidding process and the low bidder qualified for local vendor preference.

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

That the Mayor or City Manager is authorized to enter into a contract with McClanahan Construction in the amount of $559,750.00 for concrete street repair work, where the cost was determined through a competitive bidding process and the low bidder qualified for local vendor preference.

Concrete Street Repair
Bid Opening Date 5/12/21

Item	Unit	Qty	McClanahan Construction 744 Poca Road Poca WV 25159 304-766-3355 Bruce@mcclanahanconstruction.com		Gracie Marker & Sons 1119 Jefferson Road South Charleston WV 25309 304-7440590 grmarkersons@aol.com		Jim Construction PO Box 3926 Charleston WV 25339 304-3437448 russkerkes@suddenlinkmail.com	
			Unit Cost	Item Total	Unit Cost	Item Total	Unit Cost	Item Total
Item 3.01 Mobilization	LS	1	$25,730.00	$25,730.00	$5,000.00	$5,000.00	$47,000.00	$47,000.00
Item 3.02 Aggregate Base	TON	550	$135.00	$74,250.00	$75.00	$41,250.00	$175.00	$96,250.00
Item 3.03 Class K Portland Cement Concrete Pavement	CY	650	$608.00	$395,200.00	$845.00	$549,250.00	$1,308.00	$850,200.00
Item 3.04 Integral Rolled Concrete Curb	LF	1200	$8.00	$9,600.00	$35.00	$42,000.00	$24.00	$28,800.00
Item 3.05 Concrete Curb and Gutter	LF	200	$55.00	$11,000.00	$75.00	$15,000.00	$147.00	$29,400.00
Item 3.06 Diamond Grinding	SY	1000	$44.00	$44,000.00	$20.00	$20,000.00	$32.00	$32,000.00
Base Bid Total			$559,780.00		$672,500.00		$1,083,650.00	
Local Vendor Preference (4%)			($5,000) $554,780.00		($5,000) $667,500.00		($5,000) $1,078,650.00	

CONCRETE STREET REPAIR LIST

- Kanawha Boulevard: (Elk River Bridge to Pennsylvania Avenue)
- Bethel Road
- McGovern Road

Resolution No. 482-21

Introduced in Council: Adopted by Council:

May 17, 2021

Introduced by: Referred to:

Joseph Jenkins Finance Committee

Resolution No. 482-21 – Authorizing the Mayor to sign and submit to the West Virginia Development Office a CDBG-DR application, in the amount of $5,000,000., including all understandings and assurances contained therein, and directing and authorizing the MOECD Director as the official representative of the applicant to act in connection with the application and provide such additional information as may be required.

Now, therefore, 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 to the West Virginia Development Office a CDBG-DR application, in the amount of $5,000,000., including all understandings and assurances contained therein, and directing and authorizing the MOECD Director as the official representative of the applicant to act in connection with the application and provide such additional information as may be required.

Community Development Block Grant

ASSURANCES

The applicant hereby assures and certifies that:

A. It possesses the legal authority for the grant and ability to execute the proposed program.

B. Its governing body has duly adopted or passed an official act as resolution, motion, or similar action, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. Prior to submission of its application to the state, the applicant has met the citizen participation requirements of the Act.

D. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with the Title I funds by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Title I funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than Title I funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of low- and moderate-income who are not persons of very low income, it certifies to the state that it lacks sufficient Title I funds to comply with the requirements of clause (a).

E. It is following a **written and detailed** citizen participation plan which:

1. Provides for, and encourages, citizen participation, with particular emphasis on participation by persons of low- and moderate-income who are residents of slums and blighted areas and of areas in which funds are proposed to be used and provides for participation of residents in low- and moderate-income neighborhoods as defined by the local jurisdiction;

2. Provides citizens with reasonable and timely access to local meetings, information, and records relating to the Grantee's proposed use of funds, as required by regulations of the Secretary of the U.S. Department of Housing and Urban Development and relating to the actual use of funds under this title;

3. Provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals with the level and type of assistance to be determined by the Grantee;

4. Provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development needs, the review of proposed activities, and review of program performance, the hearings which shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the disabled;

5. Provides for a timely, written answer to written complaints and grievances within 15 working days were practicable; and

6. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

F. The applicant further certifies that it has, prior to submitting its Final Statement to the State:

Bill No. 7909

Introduced in Council: **Adopted by Council:**

May 3, 2021 ______________

Introduced by: **Referred to:**

Joseph Jenkins, Chad Robinson
And Mary Beth Hoover **Finance Committee**

Bill No. 7909 - A BILL to amend and reenact Sections 2-554 and 2-556 of the Municipal Code of the City of Charleston, as amended; and to repeal Section 82-4 of said code, all relating to providing that the schedule of rates and fees for the Charleston Coliseum and Convention Center shall be approved by City Council by resolution; removing the listing of rates from the parks and recreation chapter of code; clarifying that capital improvement fees shall continue; and removing the requirement that the rates be posted on the convention center website.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Sections 2-554 and 2-556 of the Municipal Code of the City of Charleston, as amended, shall be amended and reenacted; and that Section 82-4 of said code shall be repealed, all to read as follows:

CHAPTER 2 – ADMINISTRATION.
ARTICLE VII – BOARDS, COMMITTEES AND COMMISSIONS.
DIVISION 3. – CHARLESTON COLISEUM AND CONVENTION CENTER/MUNICIPAL AUDITORIUM BOARD.
Sec. 2-554. – Finances; capital improvement fees.

(a) All revenue derived from the use and operation of the Charleston Coliseum and Convention Center and the Auditorium shall be paid into the city treasury, in a special fund dedicated to the Charleston Coliseum and Convention Center and the Auditorium. All expenditures from the special fund shall be requisitioned and accounted for in the same manner as general fund expenditures, and pursuant to all of the purchasing requirements of article IV of this chapter.

(b) In addition to the revenue from the rates for rentals, there shall also be assessed capital improvement fees for the Charleston Coliseum and Convention Center and the Auditorium. Revenue from these capital improvement fees shall be deposited in a separate special fund for the facility where the fee was generated and is to be used to fund building improvements and renovation, repair or replacement of equipment or mechanical systems at each respective facility that are not normally provided for in current fiscal year operating budgets. Items costing less than $15,000.00 will be funded from the operating budgets unless they are unexpected. The capital improvement funds are not intended to be used to fund ordinary maintenance and repairs. The capital improvement funds are not considered to be in lieu of ordinary maintenance and capital improvement items historically included in the Coliseum and Convention Center or Auditorium budgets.

Sec. 2-556. - Schedule of rates, rentals and other charges for use of services and facilities.

(a) A true copy of the schedule of fees, rates and charges for the use of the Charleston Coliseum and Convention Center and the Auditorium, as approved by the city council pursuant to the provisions of section 2-553, shall be maintained on file in the office of the Charleston Coliseum and Convention Center/Municipal Auditorium Board or the general manager of the Charleston Coliseum and Convention Center and Auditorium ~~and on the Charleston Coliseum and Convention Center's website~~.

(b) All fees, rates and charges for the use of the Charleston Coliseum and Convention Center and the Auditorium established or approved by the city council and in effect immediately prior to the effective date of this Code are continued in full force and effect until such time as new fees, rates and charges are determined, prescribed and approved by resolution of City Council pursuant to the provisions of section 2-553~~, as set forth in chapter 82, article 1, section 82-4, Schedule of rates and rentals~~.

CHAPTER 82 – PARKS AND RECREATION.

ARTICLE 1 – IN GENERAL.

~~**Sec. 82-4. - Schedule of rates and rentals.**~~

~~(a) The following schedule of rates and rentals shall apply for the use of the services and facilities of the Municipal Auditorium and the Charleston Coliseum and Convention Center, owned and operated by the city, including any additions, extensions or improvements:~~

~~(1) Municipal Auditorium (3,483 permanent seats):~~

~~a. Regular rate, per day or evening—or 10 percent of gross admissions, after taxes, whichever is greater .....$1,500.00~~

~~b. Regular rehearsal .....$800.00~~

~~c. Cultural rate .....$1,200.00~~

~~d. Cultural rehearsal .....$700.00~~

~~e. Preceding rates for the Municipal Auditorium include only space, air conditioning and janitorial services.~~

~~f. Qualified technicians, approved by the center, are required for handling all lighting, sound and stage at the lessees cost.~~

~~g. In addition to the rates set forth in this subsection (1), a capital improvement fee will be imposed upon the event ticket price as follows:~~

~~$0.00—$9.99 .....$0.00~~

~~$10.00—$19.99 .....$1.00~~

~~$20.00—$39.99 .....$1.50~~

~~$40.00 and up .....$2.00~~

~~A fee of $50.00 will be imposed for all full day rentals not qualifying under ticket fees.~~

~~h. All receipts from this capital improvement fee shall be dedicated to a special fund to be used solely for capital improvements at the Municipal Auditorium. Such special fund to be established and maintained by the city.~~

~~(2) Coliseum (seats up to 13,500 concerts, 12,500 basketball):~~

~~a. Regular rental rate (all usuage except those qualifying under b., c., per day or evening—or 12 percent of gross admissions, after taxes, whichever is greater .....$5,000.00~~

~~b. Local charitable and cultural events as approved by the Charleston Coliseum and Convention Center/Municipal Auditorium Board, per day or evening .....$3000.00~~

~~c. Exhibit shows (using floor space) .....$3,950.00~~

~~d. The preceding rates for Coliseum are for space rentals and include heat, air conditioning, lights and janitorial services.~~

~~e. In addition to the rates set forth in this subsection (2), a capital improvement fee will be imposed upon the event ticket price as follows:~~

~~$0.00—$9.99 .....$0.00~~

~~$10.00—$19.99 .....$1.00~~

~~$20.00—$39.99 .....$1.50~~

~~$40.00 and up .....$2.00~~

~~For rentals not qualifying under ticket fees .....$50.00~~

~~f. All receipts from this capital improvement fee shall be dedicated to a special fund to be used solely for capital improvements at the Charleston Coliseum and Convention Center. Such special fund to be established and maintained by the city.~~

~~(3) a. Meeting rooms Coliseum:~~

~~Parlor A (1,469 sq. ft.) .....$325.00~~

~~Parlor B (1,320 sq. ft.) .....$325.00~~

~~Parlor C (1,320 sq. ft.) .....$325.00~~

~~Parlor D (2,700 sq. ft.) .....$375.00~~

~~Parlors A—D Combined .....$1,250.00~~

~~b. Preceding rates for meeting rooms include heat, air conditioning, lights and janitorial services.~~

~~c. In addition to the rates set forth in this subsection (3), a capital improvement fee of $5.00 will be imposed upon the rental rate. All receipts from this capital improvement fee shall be dedicated to a special fund to be used solely for capital improvements at the Charleston Coliseum and Convention Center. Such special fund to be established and maintained by the city.~~

~~(4) Exhibition Hall:~~

~~a. Grand Hall (50,086 sq. ft.), daily rate)—or 12 percent of gross ticket sales after taxes whichever is greater .....$4,000.00~~

~~b. North or South Hall (19,285 sq ft.)—or 12 percent of gross ticket sales after taxes whichever is greater .....$1,600.00~~

~~c. West Hall I or II (5,767 sq. ft.)—or 12 percent of gross ticket sales after taxes whichever is greater .....$475.00~~

~~d. Conference rooms: .....~~

~~Room 202 (971 sq. ft.) .....$325.00~~

~~Room 203 (971 sq. ft.) .....$325.00~~

~~Room 204 (971 sq. ft.) .....$325.00~~

~~Room 205 (971 sq. ft.) .....$325.00~~

~~Rooms 202—205 combined (3,884 sq. ft.) .....$1,100.00~~

~~Room 206 .....$225.00~~

~~Room 210 (1,190 sq. ft.) .....$400.00~~

~~Room 211 (860 sq. ft.) .....$300.00~~

~~Room 212 (1,130 sq. ft.) .....$400.00~~

~~Room 213 (1,115 sq. ft.) .....$400.00~~

~~Room 214 (1,140 sq. ft.) .....$400.00~~

~~Room 215 (1,390 sq. ft.) .....$400.00~~

~~Room 216 (1,310 sq. ft.) .....$400.00~~

~~Room 217 (1,225 sq. ft.) .....$475.00~~

~~Rooms 212—214 combined (3,385 sq. ft.) .....$1,000.00~~

~~Rooms 215—217 combined (3,925 sq. ft.) .....$1,100.00~~

~~e. Ballroom: .....~~

~~1.Friday and Saturday rates: .....~~

~~Ballroom (25,000 sq. ft.) .....$15,000.00~~

~~Ballroom A (3,666 sq. ft.) .....$2,500.00~~

~~Ballroom B (3,666 sq. ft.) .....$2,500.00~~

~~Ballroom C (7,333 sq. ft.) .....$5,000.00~~

~~Ballroom D (3,666 sq. ft.) .....$2,500.00~~

~~Ballroom E (3,666 sq. ft.) .....$2,500.00~~

~~Ballroom A and B Combined (7,332 sq. ft.) .....$5,000.00~~

~~Ballroom D and E Combined (7,332 sq. ft.) .....$5,000.00~~

~~2.Sunday through Thursday rates: .....~~

~~Ballroom (25,000 sq. ft.) .....$12,000.00~~

~~Ballroom A (3,666 sq. ft.) .....$2,000.00~~

~~Ballroom B (3,666 sq. ft.) .....$2,000.00~~

~~Ballroom C (7,333 sq. ft.) .....$4,000.00~~

~~Ballroom D (3,666 sq. ft.) .....$2,000.00~~

~~Ballroom E (3,666 sq. ft.) .....$2,000.00~~

~~Ballroom A and B Combined (7,332 sq. ft.) .....$4,000.00~~

~~Ballroom D and E Combined (7,332 sq. ft.) .....$4,000.00~~

~~f. The preceding rates for exhibition halls, conference rooms, and ballrooms are for space rentals and include heat, air conditioning, lights and janitorial services.~~

~~g. In addition to the rates set forth in this subsection (3), a capital improvement fee in accordance with the following schedule will be imposed upon the rental rate:~~

~~Grand Hall .....$50.00~~

~~North or South Hall .....$25.00~~

~~West Halls I or II, each .....$25.00~~

~~Ballroom A—E, combined .....$100.00~~

~~Ballroom A—E, each .....$25.00~~

~~Conference Rooms, each .....$5.00~~

~~h. All receipts from this capital improvement fee shall be dedicated to a special fund to be used solely for capital improvements at the Charleston Coliseum and Convention Center. Such special fund to be established and maintained by the city.~~

~~(5) Civic theater (738 permanent seats):~~

~~a. Regular rate, per day or evening—or ten percent of gross admissions, after taxes, whichever is greater. .....$750.00~~

~~b. Regular rehearsal .....$400.00~~

~~c. Cultural rate .....$500.00~~

~~d. Cultural rehearsal .....$200.00~~

~~e. Meeting rate (less than four consecutive hours, no access to stage) .....$500.00~~

~~f. The preceding rates for the Civic Theater include only space, heating, air conditioning and janitorial services.~~

~~g. Qualified technicians, approved by the center, are required for handling all lighting, sound and staging at the lessee's cost.~~

~~h. In addition to the rates set forth in this subsection (5), a capital improvement fee of $25.00 will be imposed upon the rental rate for the full rental or cultural performances only. All receipts from this capital improvement fee shall be dedicated to a special fund to be used solely for capital improvements at the Charleston Coliseum and Convention Center. Such special fund to be established and maintained by the city.~~

~~(b) The fees used to establish the capital improvement funds for the Charleston Coliseum and Convention Center (CCCC) and the Municipal Auditorium (MA) are to be used to fund CCCC and MA building improvements and renovation, repair or replacement of equipment or mechanical systems that are not normally provided in standard operating budgets. Items costing less than $15,000.00 will be funded from standard operating budgets unless they are unexpected. The capital improvement funds are not intended to be used to fund ordinary maintenance and repairs. The capital improvement funds are not considered to be in lieu of ordinary maintenance and capital improvement items historically included in the CCCC and MA budgets.~~

~~(c) Special arrangements and exceptional conditions, which call for a different fee or rate to be charged than what is specified in this ordinance, may be negotiated by the manager subject to board approval.~~

~~(d) All other rates, fees, rentals and other charges incidental to the operation of the CCCC and MA facilities shall be set and approved by the Charleston Coliseum and Convention Center Auditorium Board, pursuant to the provisions of section 2-553 of the Code of the City of Charleston.~~