CHARLESTON CITY COUNCIL

Regular Meeting

March 6, 2023
at 7:00 PM

THIS MEETING WILL TAKE PLACE IN PERSON AND CAN BE VIEWED LIVE VIA
https://charlestonwv.civicclerk.com/web/home.aspx

Council Chambers, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. INTERESTED PUBLIC SPEAKERS MUST REGISTER AT THE CLERK'S TABLE IN PERSON NO EARLIER THAN 15 MINUTES BEFORE THE MEETING STARTS. FIVE (5) SPEAKERS WILL BE PERMITTED (RULE NO. 22 (B)).
2. Claims 3-6-2023

PROCLAMATIONS

1. 3-6-2023

COMMUNICATIONS

1. 3-6-2023
2. APPOINTMENT OF CITY MANAGER

REPORTS OF STANDING COMMITTEES

PLANNING, STREETS AND TRAFFIC

1. Bill No. 7984 - A Bill to Amend and reenact Ordinance 329 to prohibit parking on the easterly side of Greendale Drive from Swarthmore Avenue to Price Street while allowing parking on the westerly side of Greendale Drive from Swarthmore Avenue to Price Street and amending the Traffic Control Map

and Traffic Control File.

FINANCE

1. Resolution No. 775-23 – Authorizing the Mayor to sign and submit Charleston's HOME-ARP Allocation Plan for the HOME-American Rescue Plan funds.

2. Resolution No. 776-23 - Proclaiming that the Council for the City of Charleston acknowledges and accepts the terms and conditions of the West Virginia statewide settlement agreements with Walgreens, Bypass Pharmacy, Rhonda Pharmacy, The Pharmacy, Clendenin Pharmacy, and Fruth Pharmacy, Inc. and affirming the Mayor's authorization to execute the exhibits acknowledging and agreeing to such terms in the settlement agreement.

3. Resolution No. 777-23 - Authorizing the Mayor or City Manager to enter into a contract for workers' compensation insurance and related services with an effective date of the policy from March 31, 2023 through March 31, 2024.

REPORTS OF OFFICERS

1. 3-6-2023

NEW BILLS

1. 3-6-2023

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

REMARKS BY MEMBERS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE MARCH 20, 2023 AT 7:00 PM.

THE AGENDA WAS AMENDED ON 3-2-2023

***Meetings may be recorded and broadcast via internet https://charlestonwv.civicclerk.com**

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CITY OF CHARLESTON
OFFICE OF THE MAYOR

TO:	**MILES CARY** **CITY CLERK**
FROM:	**AMY SHULER GOODWIN** **MAYOR**
RE:	**COUNCILMAN COMMITTEE ASSIGNMENTS**
DATE:	**MARCH 6, 2023**

I am appointing Councilman Sam Minardi as Chair of the Facilities Committee and Councilman Brent Burton as Chair of the Environment and Recycling Committee.

ASG/mls

RECEIVED
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OFFICE OF CITY CLERK

P.O. BOX 2749 • CHARLESTON, WV 25330 • (304) 348-8174 OFFICE • (304) 348-8034 FAX

PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

COMMITTEE REPORT

To: **Miles Carey, City Clerk**

From: **Council's Committee on Planning, Streets and Traffic**

Date: **February 27, 2023**

Subject: **Bill No. 7984**

The Committee on Planning, Streets and Traffic has had under consideration:

> **Bill No. 7984** - A Bill to Amend and reenact Ordinance 329 to prohibit parking on the easterly side of Greendale Drive from Swarthmore Avenue to Price Street while allowing parking on the westerly side of Greendale Drive from Swarthmore Avenue to Price Street and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

and reports the same to Council with the recommendation that the bill do pass.

Rebecca C. Capeley   Mary Beth Hoover
Chair

JOHN GIANOLA VIA PHONE
JENNIFER PHARR VIA PHONE

Bill No. 7984

Passed by Council:

Introduced in Council

____

February 2, 2023

Introduced by:

Referred to:

Jeanine Faegre

Planning, Streets and Traffic

Bill No. 7984 - A Bill to Amend and reenact Ordinance 329 to prohibit parking on the easterly side of Greendale Drive from Swarthmore Avenue to Price Street while allowing parking on the westerly side of Greendale Drive from Swarthmore Avenue to Price Street and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. A Bill to Amend and reenact Ordinance 329 to prohibit parking on the easterly side of Greendale Drive from Swarthmore Avenue to Price Street while allowing parking on the westerly side of Greendale Drive from Swarthmore Avenue to Price Street

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

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

Resolution No. 775-23

Introduced in Council: | Adopted by Council:

March 6, 2023

Introduced by: | Referred to:

Joseph Jenkins | Finance

Resolution No. 775-23 - Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the City of Charleston's HOME-ARP Allocation Plan for the HOME-American Rescue Plan funds and all required certifications and agreements, including Sub-recipient project contracts relating to the HOME-ARP Allocation Plan.

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 City of Charleston's HOME-ARP Allocation Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the HOME-ARP Allocation Plan.

CITY of CHARLESTON

501 Virginia St. East
Charleston, WV 25301

HOME-ARP Allocation Plan

For Submission to HUD for the
HOME Investment Partnerships Program -
American Rescue Plan (HOME-ARP)

March 2023

Honorable Amy Shuler Goodwin
Mayor, City of Charleston

URBAN DESIGN VENTURES
BUILT ON EXPERIENCE

Table of Contents

Introduction

The City of Charleston, West Virginia is an entitlement community under the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant Program (CDBG) and HOME Investment Partnership Program (HOME). The City of Charleston is the Participating Jurisdiction (PJ) for the City of Charleston/Kanawha County HOME Consortium of West Virginia for the HOME Program. The City of Charleston/Kanawha County HOME Consortium consists of the following municipalities: City of Charleston, Kanawha County, Town of Belle, Town of Cedar Grove, Town of Clendenin, City of Dunbar, City of Marmet, City of Nitro, City of St. Albans, and the City of South Charleston.

Congress appropriated $5 billion in funds under the American Rescue Plan (ARP) Act of 2021. These funds are to be used to assist the homeless and those persons and families who are at risk of becoming homeless. The U.S. Department of Housing and Urban Development (HUD) is administering this program and the City of Charleston was allocated $2,554,912 in HOME-ARP funds.

The City of Charleston Mayor's Office of Economic and Community Development is the lead entity and the administrator for the HOME-ARP funds, along with the CDBG and HOME Programs.

The City of Charleston prepared its HOME-ARP Allocation Plan to address its local needs and to establish priorities of HOME-ARP funds. The City must submit its Allocation Plan to HUD by March 31, 2023. In order to determine the City's needs, interviews and video conferences were held with various housing providers, social service agencies, the Continuum of Care members, advocacy agencies, etc. Qualifying populations for these funds include the homeless, households who are at-risk of homelessness, persons fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, and households with the greatest risk of housing instability.

HOME-ARP Eligible Projects/Activities:

The following projects/activities are eligible with the HOME-ARP funds:

1. **Production or Preservation of Affordable Rental Housing**
    - Acquisition, construction of affordable rental housing for individuals and families that are part of the Qualifying Populations. This can include single family or multifamily housing, transitional or permanent housing, group homes, single room occupancy (SRO) units, and manufactured housing.

2. **Tenant Based Rental Assistance**
   - Payments to a tenant to cover housing and housing-related costs, including rental assistance, security deposit assistance, utility deposits, and utility payments to households that are part of the Qualifying Populations.

3. **Supportive Services**
   - Supportive services to members of the Qualifying Populations under three categories:
     - McKinney-Vento Supportive Services
     - Homelessness Prevention Services
     - Housing Counseling Services

4. **Purchase and Development of Non-Congregate Shelter**
   - Acquisition, construction, or rehabilitation of non-congregate shelter units to service individuals and families that are part of the Qualifying populations.

HOME-ARP Qualifying Populations:

The HOME-ARP Program has the following four (4) Qualifying Populations for this program:

1. **Homeless**

2. **At Risk of Homelessness**
   - An individual or family who is extremely low income (<30% AMI), does not have support networks, and meets at least one of the conditions for homelessness (24 CFR 91.5).

3. **Fleeing, or Attempting to Flee Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking**

4. **Other populations who do not qualify under any of the populations above but meet one of the following criteria:**
   - Those who are currently housed due to temporary or emergency assistance or need additional assistance or services to avoid a return to homelessness.
   - Populations at Greatest Risk of Housing Instability.
     - Households whose income is <30% AMI and are experiencing severe cost burden.
     - Households whose income is <50% AMI and meet one of the criteria for being At Risk of Homelessness.

The City of Charleston Mayor's Office of Economic and Community Development (MOECD) has been in collaboration with the local Continuum of Care (CoC), the Kanawha Valley Collective (KVC) for numerous years. The Kanawha Valley Collective is a consortium of individuals and organizations working to enrich the quality of life for individuals and families in the Kanawha Valley and surrounding areas. The Kanawha Valley Collective provides a seamless service delivery system through direct services, advocacy, education and prevention which address homelessness, the impact of poverty, and other social problems. The City of Charleston's CARE Department Director represents the City of Charleston as a member of the Kanawha Valley Collective since its inception. Currently a staff member of MOECD serves on the Board of Directors and other committees, including the Project Resource Committee (formerly the ESG committee) and the Homeless Management Information System (HMIS) Committee. The City of Charleston staff works with the Kanawha Valley Collective Project Resource Committee, made up of board members, ESG sub-recipients and HUD grant recipients, to determine how to allocate ESG funds for eligible activities.

In compliance with the HUD regulations, the City of Charleston has prepared a substantial amendment to its FY 2022 Annual Action Plan in order to submit the HOME-ARP Allocation Plan.

A "draft" of the FY 2022 Annual Action Plan – Substantial Amendment - HOME-ARP Allocation Plan was placed on display on the City's website at https://www.charlestonwv.gov/government/city-departments/moecd. The display period started on Friday, February 17, 2023 through Friday, March 3, 2023 for a 15-day display period. A Virtual Public Hearing was held on Thursday, March 2, 2023 to discuss the proposed HOME-ARP Allocation Plan and solicit resident comments. Upon completion of the 15-day comment period, the City of Charleston submitted the FY 2022 Annual Action Plan - Substantial Amendment - HOME-ARP Allocation Plan to the U.S. Department of Housing and Urban Development through IDIS on or before the Friday, March 31, 2023 deadline.

Consultation

Describe the consultation process including methods used and dates of consultation:

During the consultation process, the City of Charleston met with stakeholders, agencies/organizations, housing providers, and services that are part of the following categories:

- CoC(s) serving the jurisdiction's geographic area,
- homeless service providers,
- domestic violence service providers,
- veterans' groups,
- public housing agencies (PHAs),
- public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities.

The HOME-ARP consultation milestones are the following:

HOME-ARP Consultation Milestones	
Consultation	September 2022 through March 2023
Newspaper Notice	February 16, 2023
Social Media Notice	February 16, 2023
On Display	February 17, 2023
Public Hearing	March 2, 2023 at 12:30 PM
Off Display	March 3, 2023

The City of Charleston held virtual meetings with stakeholder agencies and organizations between the time period of November 9, 2022 through November 29, 2022. The City followed up with agencies/organizations through a survey to be able to gather as much additional information as possible.

The City ran a newspaper notice in the "Charleston Gazette-Mail" on Thursday, February 16, 2023 and posted it on social media that the notice of the "Draft" HOME-ARP Allocation Plan was on public display for fifteen (15) days on the City's MOECD website. The posting also referenced the day and time of the public hearing.

The Virtual Public Hearing was held on Thursday, March 2, 2023 at 12:30 PM to discuss the proposed HOME-ARP Allocation Plan and solicit resident comments on the Plan.

List the organizations consulted:

Agency/Organizations Consulted	Type of Agency/ Organizations	Method of Consultation	Feedback
City of Charleston	Government	Virtual Meeting	The City of Charleston was involved in all meetings and was responsible for gathering a list of contacts and participated in asking questions and communicating with local stakeholders.
Coordinated Addiction Response Effort	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/14/2022)	Identified the following needs: • Substance abuse treatment is needed for the homeless or those at risk of homelessness • Shelters are facing staffing issues • A day shelter • Homeless are typically between 20-50 years old • Large number of homeless aged 18-24
WV Olmstead Council	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/14/2022)	Identified the following needs: • More services for disabled population of WV, especially for the elderly ○ There are more work injuries in WV, which lead to disability • Serious staffing shortages among agencies • More affordable housing
Kanawha Institute for Social Research & Action (KISRA)	Public Agencies that Address the Needs of the Qualifying Populations, and	Virtual Meeting (11/15/2022)	Identified the following needs: • Large number of city residents at risk of homelessness

	Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities		• Mental illness is a large problem for the homeless • Homeless or at-risk population is typically in their 30s-40s, especially among those served for behavioral health • Transportation is a big issue for many in a rural state.
Appalachian Service Project	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/15/2022)	Identified the following needs: • Accessibility improvements in housing stock
Charleston-Kanawha Housing Authority	Public Housing Agency	Virtual Meeting (11/15/2022)	Identified the following needs: • Supportive services to help formerly homeless remain in housing • Many people are given CKHA units, then evicting them 3-6 months later because of behavioral issues • 1,889 on housing waiting list • Fewer landlords are working with the Housing Authority • Increase in domestic violence noted, especially among elderly
Religious Coalition for Community Revival (RCCR)	Public Agencies that Address the Needs of the	Virtual Meeting (11/15/2022)	Identified the following needs:

	Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities		• Greatest need is for permanent affordable housing
United Way of Central WV	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/15/2022)	Identified the following needs: • Low-barrier shelter • Permanent supportive housing case management to help teach and reinforce life skills • Recent increase in 211 calls among elderly who can't afford rent or utilities • Supportive services are #1 priority need
YWCA Sojourner Center	Homeless and Domestic Violence Service Providers	Virtual Meeting (11/15/2022)	Identified the following needs: • 400 people served per year at women and family emergency center • Low-barrier shelter • Supportive services are #1 priority need, low-barrier shelter is #2
YWCA Charleston	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities, Homeless and	Virtual Meeting (11/16/2022)	Identified the following needs: • Fewer children in programming, but it's rising back to pre-pandemic levels • Mental health services • Not enough group homes in Charleston • Day shelters and home visitors • Has experienced severe staffing issues

	Domestic Violence Service Providers		• Current security in their shelters is not enough • DV makes other problems worse (disability, homelessness)
Disability Rights of WV	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/17/2022)	Identified the following needs: • Some landlords don't want to rent to people with specific disabilities • Problems with transitioning out of disability/treatment programs because of housing • Supportive services are #1 priority, affordable housing is #2
Kanawha Valley Collective Continuum of Care (City of Charleston, YWCA, McCormick Homes, RCCR, WV Covenant House)	CoC(s) serving the jurisdiction's geographic area	Virtual Meeting (11/17/2022)	Identified the following needs: • More accessible housing units for the homeless • Huge issues with NIMBYs preventing a low-barrier or day shelter. People do not want more shelters • Fewer seasonal "snowbird" homeless more recently • Homeless men are generally in their 40s • The number of landlords in the area has decreased • More human trafficking in the region, made worse by some victims not seeing themselves as trafficking victims • Highest priorities are low-barrier shelters, supportive services, transitional housing for DV survivors, and

			permanent housing as a next step from transitional housing
Salvation Army	Homeless and Domestic Violence Service Providers	Virtual Meeting (11/18/2022)	Identified the following needs: • Case management and life skills training is needed • Utility bills in the region are expensive, especially with the aging housing stock • Senior citizens and single people are the most common recipients of aid. • Affordable housing and transportation options are needed
Catholic Charities	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/18/2022)	Identified the following needs: • Utilities are particularly expensive in the region, partially because of aging housing stock. • Transportation, affordable housing, and supportive services are the biggest need.
West Virginia Human Rights Commission	Public Agencies that Address the Needs of the Qualifying Populations, and Public or Private Organizations that Address Fair Housing, Civil Rights, and the Needs of Persons with Disabilities	Virtual Meeting (11/21/2022)	Identified the following needs: • More people are asking about disability accommodations • More need for affordable, accessible housing • Women and family shelters

Daymark	Homeless and Domestic Violence Service Providers	Virtual Meeting (11/29/2022)	Identified the following needs: • Youth shelter where residents are victims of abuse and neglect • All programs are almost always full. • More transitional programs • Fewer decent landlords in the area than before • Life skills training is needed to help people find and maintain housing • Affordable housing is greatest need

Summarize feedback received and results of upfront consultation with these entities:

During the HOME-ARP Consultation, the following priority needs for the qualifying populations were stressed:

- Need for more affordable rental housing.
- Need for supportive services such as counseling, life skills training, case management, childcare, transportation, legal services, and job training.
- Need for transitional housing.
- Lack of available shelter capacity.
- Funds to rehabilitate emergency shelters, SRO’s, transitional and permanent housing.
- A day shelter

Public Participation

Describe the public participation process, including information about and the dates of the public comment period and public hearing(s) held during the development of the plan:

- ***Date(s) of public notice:*** *2/16/2023*
- ***Public comment period:*** *start date – 2/17/2023 end date – 3/3/2023*
- ***Date(s) of public hearing:*** *3/2/2023*

Describe the public participation process:

The City of Charleston held a public hearing for the consultation with City residents, non-profit agencies and/or organizations, public housing authority, housing providers, Continuum of Care members, etc. on the "Draft" HOME-ARP Allocation Plan. During the public hearing, the City staff and the City consultants discussed the development of the HOME-ARP Allocation Plan.

The public hearing notice for the City of Charleston's "Draft" HOME-ARP Allocation Plan was published in the "Charleston Gazette-Mail" on Thursday, February 16, 2023. In addition, the City posted the notice on its social media and the City's MOECD Webpage.

The fifteen (15) day public comment period on the "Draft" HOME-ARP Allocation Plan was from Friday, February 17, 2023 through Friday, March 3, 2023. The City of Charleston placed the "Draft HOME-ARP Allocation Plan on the City's website at https://www.charlestonwv.gov/government/city-departments/moecd.

The public was able to provide comments, via email at Paige.Hill@CityofCharleston.org or via phone at (304) 348-8035. Written comments were addressed to the Mayor's Office of Economic and Community Development, attention Mr. Andrew Backus, Director, 105 McFarland Street, Charleston, WV 25301.

Describe efforts to broaden public participation:

To broaden public participation, the City of Charleston sent out an email blast to its list of non-profit agencies and housing providers that the "Draft" HOME-ARP Allocation Plan was on public display and when the public hearing was to take place. This list consists of 207 email addresses of names and organizations that have previously submitted funding requests or requested to be added to this list so they can be notified of future emails on funding options and public hearings.

In addition, the City posted the Public Hearing Notice on the City's MOECD website and the City's Facebook page.

Summarize the comments and recommendations received through the public participation process either in writing, or orally at a public hearing:

A summary of comments and recommendations will be included after they are received.

Summarize any comments or recommendations not accepted and state the reasons why:

A summary of any comments or recommendations that were not accepted will be included after the comment period is concluded.

Needs Assessment and Gaps Analysis

*In accordance with Section V.C.1 of the Notice (page 14), a PJ must evaluate the size and demographic composition of **all four** of the qualifying populations within its boundaries and assess the unmet needs of each of those populations. If the PJ does not evaluate the needs of one of the qualifying populations, then the PJ has not completed their Needs Assessment and Gaps Analysis. In addition, a PJ must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A PJ should use current data, including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services.*

OPTIONAL Homeless Needs Inventory and Gap Analysis Table

Homeless													
	Current Inventory					Homeless Population				Gap Analysis			
	Family		Adults Only		Vets	Family HH (at least 1 child)	Adult HH (w/o child)	Vets	Victims of DV	Family		Adults Only	
	# of Beds	# of Units	# of Beds	# of Units	# of Beds					# of Beds	# of Units	# of Beds	# of Units
Emergency Shelter	62	17	211	211	0								
Transitional Housing	6	2	19	19	12								
Permanent Supportive Housing	6	3	150	150	62								
Other Permanent Housing	0	0	64	64	0								
Sheltered Homeless						21	210	32	51				
Unsheltered Homeless						0	22	1	9				
Current Gap										0	0	0	0

Data Sources: 1. 2022 Point in Time Count (PIT); 2. 2022 Continuum of Care Housing Inventory Count (HIC)

OPTIONAL Housing Needs Inventory and Gap Analysis Table

Non-Homeless			
	Current Inventory	Level of Need	Gap Analysis
	# of Units	# of Households	# of Households
Total Rental Units	9,630		
Rental Units Affordable to HH at 30% AMI (At-Risk of Homelessness)	3,025		
Rental Units Affordable to HH at 50% AMI (Other Populations)	4,625		
0%-30% AMI Renter HH w/ 1 or more severe housing problems (At-Risk of Homelessness)		2,250	
30%-50% AMI Renter HH w/ 1 or more severe housing problems (Other Populations)		1,105	
Current Gaps			3,355

Suggested Data Sources: 1. American Community Survey (ACS); 2. Comprehensive Housing Affordability Strategy (CHAS)

Describe the size and demographic composition of qualifying populations within the PJ's boundaries:

Homeless as defined in 24 CFR 91.5

Based on the 2022 Point in Time Count, there were 298 homeless individuals identified in the Kanawha, Putnam, Boone, and Clay Counties CoC. Of those people experiencing homelessness, 44 (14.8%) were black, 245 (82.2%) were white, 0 were Asian, 2 were American Indian or Alaskan Native, 1 was Native Hawaiian or Other Pacific Islander, and 6 identified as having multiple races. Additionally, 181 (60.7%) were male, 114 (38.3%) were female, and 3 (1.0%) identified as transgender.

Among the population of those experiencing homelessness, there was a large portion that identified as severely mentally ill (98 individuals, or 32.9% of the surveyed population) or having chronic substance abuse issues (61 individuals or 20.5% of the surveyed population).

At Risk of Homelessness as defined in 24 CFR 91.5

24 CFR 91.5 defines "At Risk of Homelessness" as an individual or family that has an annual income below 30% of the HUD area median family income, does not have sufficient resources or support networks and meets one of several other conditions. According to the most recently available CHAS data, 10,320 households living in Kanawha County (or 13.1% of the total population) live at 30% or below the HUD Area Median Family Income and of those 10,320 households, 7,325 (70.1%) have one or more housing problems which include either incomplete kitchen facilities, incomplete plumbing facilities, more than one person per room, or have a cost burden greater than 30%. There are also currently 1,889 households on the public housing waiting list for the Charleston-Kanawha Housing Authority.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined by HUD in the Notice

During the 2022 Point in Time Count, there were 60 homeless individuals who identified themselves as victims of domestic violence in the Charleston/Kanawha, Putnam, Boone, Clay Counties CoC.

Between October and December 2022, 353 clients were served by the YWCA Resolve Family Abuse Program, which includes both residential and non-residential services. During that same period, YWCA Resolve recorded 5,990 shelter nights in their domestic violence shelter, with 6 requests for shelter not being met.

According to the Charleston Police Department, there were 458 incidents of Domestic Battery in the City in 2022. This shows that the instances of domestic violence are greater than the resources available to those fleeing domestic violence in the City and the HOME Consortium.

Other populations requiring services or housing assistance to prevent homelessness and other populations at greatest risk of housing instability, as defined by HUD in the Notice

Those with disabilities are at greatest risk of housing instability. According to the most recent American Community Survey (ACS) data from 2021, there were 8,518 residents (17.7% of the total civilian noninstitutionalized population) of the City of Charleston with a disability, showing that a significant portion of the City's population is at a high risk of housing instability.

According to the most recent 2021 ACS data, In Kanawha County, there were 29,435 residents (16.7% of the total civilian noninstitutionalized population) with a disability.

Among others that are at greatest risk of housing instability, those who are at or below 30% of the HUD Area Median Family Income or are burdened by their monthly housing costs are at a higher risk of becoming homeless. According to the most recent CHAS Data, 3,755 (16.9%) households in the City and 10,320 (13.1%) households in Kanawha County have incomes at or below 30% of the HAMFI.

6,120 (27.6%) households in the City have a housing cost burden of greater than 30% of their income. 16,160 (20.4%) households in Kanawha County have a housing cost burden of greater than 30% of their income.

A large number of households in the region have also received payments for rental assistance. According to the West Virginia Housing Development Fund, over 49,000 applications in the state for rental and utility assistance through the Mountaineer Rental Assistance Program (MRAP) were approved.

In the most recent data available for 2022, there were 1,889 households on the public housing waiting list.

Identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing (Optional):

The City of Charleston and the HOME Consortium has a variety of resources to assist households experiencing homelessness and at-risk of becoming homeless through Federal, State, and local programs. These programs range from emergency shelters for households experience homelessness, through the development of affordable rental housing for extremely low-income and low-income households. Below is a summary of the resources available through the City of Charleston:

- **Community Development Block Grant (CDBG) Program:**

  The City of Charleston is a federal entitlement grantee, which received $1,529,228 in FY 2022 Community Development Block Grant (CDBG) funds. These funds are used for public service activities, housing rehabilitation, after school and mentoring programs, public facility improvements, ADA accessibility improvements, park and recreation improvements, homeless services, youth services, health services, transportation services, substance abuse services, food programs, utility assistance, job training services, and emergency shelter. Funding is provided to agencies for services and support emergency shelters to the homeless and those who are at-risk of becoming homeless.

- **HOME Investment Partnership (HOME) Program:**

The City of Charleston is the Participating Jurisdiction (PJ) for the City of Charleston/Kanawha County HOME Consortium of West Virginia for the HOME Program. The City of Charleston/Kanawha County HOME Consortium consists of the following municipalities: City of Charleston, Kanawha County, Town of Belle, Town of Cedar Grove, Town of Clendenin, City of Dunbar, City of Marmet, City of Nitro, City of St. Albans, and the City of South Charleston.

The City of Charleston/Kanawha County HOME Consortium as a federal entitlement grantee, received $788,828 in FY 2022 of HOME Investment Partnership (HOME) funds. These funds are used for gap financing to non-profit developers for the acquisition and rehabilitation or new construction of rental housing primary for low- and moderate-income households and/or special needs populations. In addition, funds were used to assist first-time homebuyers with downpayment, closing costs, and mortgage subsidies. Funds support the development of affordable housing for the very low-income to assist those households who are at risk of becoming homeless.

- **Housing Inventory Count (HIC):**

The chart below is the Housing Inventory County (HIC) for 2022.

	Family Units	Family Beds	Adult Only Beds	Child Only Beds	Total Year Round Beds	Seasonal	Overflow/ Vouchers	Subset of Total Bed Inventory		
								Chronic Beds	Veteran Beds	Youth Beds
Emergency, Safe Haven and Transitional Housing:	**17**	**68**	**230**	**9**	**307**	**0**	**63**	**N/A**	**12**	**13**
Emergency Shelter	15	62	211	8	281	0	63	N/A	0	12
Safe Haven	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Transitional Housing	2	6	19	1	26	N/A	N/A	N/A	12	1
Permanent Housing:	**18**	**34**	**252**	**0**	**286**	**N/A**	N/A	**N/A**	**64**	**4**
Permanent Supportive Housing	3	6	150	0	286	N/A	N/A	N/A	62	2
Rapid Re-Housing	15	28	38	0	66	N/A	N/A	N/A	2	2

Other Permanent Housing	0	0	64	0	64	N/A	N/A	N/A	0	0
Grand Total:	35	102	482	9	593	0	63	91	76	17

The Kanawha Valley Collective CoC has a total 307 emergency, safe haven, and transitional housing beds and 2,916 units of permanent housing. Of those units, the CoC has 12 beds for veterans and 13 beds for youth under emergency, safe haven, and transitional housing. The CoC has 64 permanent housing beds for veterans and 4 for youth. There are 91 permanent supportive housing beds for the chronically homeless.

There are 281 year-round, emergency shelter beds, and 26 year-round, transitional housing beds. These resources and supportive services are as follows:

Emergency Shelter:

- **BVDS - Branches Putnam** - 8 beds
- **Daymark - Patchwork** - 8 beds
- **Kanawha Valley Collective - Ad Hoc Warming Station** - 63 beds
- **Kanawha Valley Collective - KVC I & Q** - 41 beds
- **Roark-Sullivan Lifeway Center - Giltinan** - 60 beds
- **Union Mission Ministries - Crossroads** - 75 beds
- **YWCA of Charleston - Hope House** - 14 beds
- **YWCA of Charleston - Sojourner's** - 75 beds

Transitional Housing:

- **Daymark - New Connections** - 3 beds
- **Roark-Sullivan Lifeway Center - Veterans Transition -** 12 beds
- **YWCA of Charleston - Alicia McCormick Transition** - 11 beds

Permanent Supportive Housing:

- **Charleston-Kanawha Housing Authority - Shelter+Care #1** - 26 beds
- **Covenant House - Housing First** - 47 beds
- **Roark-Sullivan Lifeway Center - Twin Cities Center** - 10 beds
- **Roark-Sullivan Lifeway Center - VASH Charleston Vouchers** - 62 beds
- **YWCA of Charleston - Shanklin Center** - 11 beds

Rapid Re-Housing:

- **BVDS - Branches Putnam - Branches Putnam RRH -** 1 bed
- **Covenant House - Rapid Re-housing COC** - 3 beds
- **Covenant House - RRH ESG** - 23 beds

- **Covenant House - Covenant House ESG RRH C** - 11 beds
- **YWCA of Charleston - Resolve RRH -** 28 beds

<u>Other Permanent Housing:</u>

- **Charleston-Kanawha Housing Authority - EHV -** 64 beds

Describe the unmet housing and service needs of qualifying populations:

Homeless as defined in 24 CFR 91.5

Based off the 2022 Point In Time Count there was 253 households which were currently experiencing homelessness, 231 households were sheltered and 22 households were unsheltered. The unmet housing need for this qualified population is to increase the number of shelter beds and permanent supportive housing units.

The supportive services which are needed include the following: educational services, employment assistance and job training, food, housing searches and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, case management, mediation, services for special populations, and financial assistance.

At Risk of Homelessness as defined in 24 CFR 91.5

The unmet housing needs of the at risk of homeless population is the lack of affordable housing units in the Consortium. This refers to that qualifying population who live at 30% or below the HUD Area Median Income and have one or more housing problems. This qualifying population needs short- and long-term rental and utility assistance, along with affordable permanent housing options.

The supportive services that are needed include the following: educational services, employment assistance and job training, food, housing searches and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, case management, mediation, services for special populations, and financial assistance.

Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined by HUD in the Notice

Based off the 2022 Point in Time Count, there were 60 homeless individuals who were identified as victims of domestic violence. The unmet housing need for this qualified population is to increase the number of domestic violence shelter beds and permanent supportive housing units.

The supportive services that are needed include the following: educational services, employment assistance and job training, food, housing searches and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, case management, mediation, services for special populations, and financial assistance.

Other populations requiring services or housing assistance to prevent homelessness and other populations at greatest risk of housing instability as defined by HUD in the Notice

The unmet housing and service needs for other populations who are at greatest risk of housing instability's supportive services to help decrease their risk of housing instability by providing wrap-around services. These individuals may have a substance abuse, mental health issues, and physical disabilities. To prevent housing instability, they need long term permanent housing assistance with case management and wrap-around support services. In addition, another population that is experiencing instability is the physically disabled and the developmentally challenged. There is a need for long-term permanent housing that is accessible for these persons with disabilities.

The supportive services that are needed include the following: educational services, employment assistance and job training, food, housing searches and counseling services, legal services, life skills training, mental health services, outpatient health services, outreach services, substance abuse treatment services, transportation, case management, mediation, services for special populations, and financial assistance.

Identify any gaps within the current shelter and housing inventory as well as the service delivery system:

The City of Charleston and the HOME Consortium's limited supply of affordable, accessible housing is the largest gap in the system. This gap is much larger than the available resources of the City and County, but they will use these funds to leverage other funds to spread these funds out as much as possible to develop as many affordable housing options as possible.

Based off the 2022 Point In Time Count (PIT), the CoC has 22 unsheltered homeless persons and 231 sheltered homeless. With the emergency shelter beds near capacity, this leaves 22 homeless persons living on the streets and waiting to access shelter beds. In addition, the CoC has its permanent supportive housing beds over 100% utilization rate.

To assist in meeting the need to provide permanent housing, the CoC works with the Charleston-Kanawha Housing Authority for housing assistance through either public housing units or through the Section 8 Housing Choice Voucher program. The Charleston-Kanawha Housing Authority has 1,111 units of Public Housing, 2,951 Housing Choice Vouchers, 62 VASH Vouchers, 32 Shelter+Care Vouchers, 22 Mod Rehab Vouchers, 13 Homeownership Vouchers, 121 Mainstream Vouchers, 1 Fostering Youth Voucher, 66 Emergency Housing Vouchers, and a waiting list of 1,889 persons. The waiting list is still open.

Under Section IV.4.2.ii.G of the HOME-ARP Notice, a PJ may provide additional characteristics associated with instability and increased risk of homelessness in their HOME-ARP allocation plan. These characteristics will further refine the definition of "other populations" that are "At Greatest Risk of Housing Instability," as established in the HOME-ARP Notice. If including these characteristics, identify them here:

The City of Charleston is not providing additional characteristics associated with instability and increase risk of homelessness in the City's HOME-ARP Allocation Plan.

Identify priority needs for qualifying populations:

During the HOME-ARP Consultation, the following priority needs for the qualifying populations were stressed:

- Need for more affordable rental housing.
- Need for supportive services such as counseling, life skills training, case management, childcare, transportation, legal services, and job training.
- Need for transitional housing.
- Lack of available shelter capacity.
- Funds to rehabilitate emergency shelters, SRO's, transitional and permanent housing.
- A day shelter

Explain how the PJ determined the level of need and gaps in the PJ's shelter and housing inventory and service delivery systems based on the data presented in the plan:

The City of Charleston as the PJ for the HOME Consortium determined the level of need and gaps in the shelter inventory, housing inventory, and service delivery system from the stakeholders' consultations, agency surveys, the 2022 Point In Time Count (PIT), Housing Inventory Count (HIC), Homeless Management Information System (HMIS), in addition, the City analyzed the 2017-2021 American Community Survey Data (ACS Data) and the 2015-2019 Comprehensive Housing Affordability Strategy (CHAS).

Based on the above sources the City of Charleston determined the level of need and gaps in its shelter inventory, housing inventory, and service delivery systems.

HOME-ARP Activities

Describe the method(s)that will be used for soliciting applications for funding and/or selecting developers, service providers, subrecipients and/or contractors:

The City of Charleston as the PJ for the HOME Consortium will solicit HOME-ARP applications from non-profit, for-profit, developers and/or social service providers to undertake eligible HOME-ARP projects/activities. The City will release a Notice of Funding for Available HOME-ARP funds in the Charleston Gazette Mail. Potential applicants will be able to download the HOME-ARP Funding Application on the City's website (https://www.charlestonwv.gov/government/city-departments/moecd). The City's Mayor Office of Economic and Community Development staff will send out an email to its List Serve that consists of 207 email addresses notifying them of the release of the HOME-ARP Funding Request. In addition, the City will use social media by posting the release of the HOME-ARP Funding Request on their Facebook page.

On the Mayor's Office of Economic and Community Development website potential applicants will be directed to the HOME-ARP Funding Application and can gather additional information on the HOME-ARP Program.

The City will review the HOME-ARP Funding Applications and rank them to see which applications best meet the needs identified in the HOME-ARP Allocation Plan. This will help develop affordable housing options in the City of Charleston and the City of Charleston/Kanawha County HOME Consortium. In addition, the City will use HOME-ARP funds to help support the development of new housing by providing funds for supportive services to assist the residents of the new affordable rental housing. The City will look to leverage the HOME-ARP funds with private and public funding sources as part of its review and ranking of the funding requests.

Describe whether the PJ will administer eligible activities directly:

The City of Charleston Mayor's Office of Economic and Community Development will manage the HOME-ARP program administration and planning. The projects/activities will be managed by subrecipients that are awarded the HOME-ARP funds. During the process the MOECD staff will monitor these projects directly to make sure they are being carried out as per the Subrecipient Agreement.

If any portion of the PJ's HOME-ARP administrative funds are provided to a subrecipient or contractor prior to HUD's acceptance of the HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the PJ's entire HOME-ARP grant, identify the subrecipient or contractor and describe its role and responsibilities in administering all of the PJ's HOME-ARP program:

The City has not provided any HOME-ARP funds to subrecipient(s) or contractors prior to HUD's acceptance of the HOME-ARP Allocation Plan. The Mayor's Office of Economic and Community Development staff has only expended a portion of the 5% HOME-ARP Administration Allocation funds to cover the cost for its staff to participate in HOME-ARP Training and time it has spent working on the HOME-ARP Allocation Plan.

In accordance with Section V.C.2. of the Notice (page 4), PJs must indicate the amount of HOME-ARP funding that is planned for each eligible HOME-ARP activity type and demonstrate that any planned funding for nonprofit organization operating assistance, nonprofit capacity building, and administrative costs is within HOME-ARP limits.

Use of HOME-ARP Funding

	Funding Amount	Percent of the Grant	Statutory Limit
Supportive Services	$ 650,000.00		
Acquisition and Development of Non-Congregate Shelters	$ 0.00		
Tenant Based Rental Assistance (TBRA)	$ 0.00		
Development of Affordable Rental Housing	$ 1,521,676.00		
Non-Profit Operating	$ 0.00	0 %	5%
Non-Profit Capacity Building	$ 0.00	0 %	5%
Administration and Planning	$ 383,236.00	15 %	15%
Total HOME ARP Allocation	**$ 2,554,912.00**		

Describe how the PJ will distribute HOME-ARP funds in accordance with its priority needs identified in its needs assessment and gap analysis:

The City of Charleston developed the HOME-ARP Budget based on the needs identified from the consultation with the community stakeholders and the assessment of the data the City obtained from the Point In Time Count (PIT), Continuum of Care Housing Inventory Count (HIC), American Community Survey (ACS), Comprehensive Housing Affordability Strategy (CHAS) Data, and other statistical data provide from the CoC.

The City is going to allocate 25% of the funds for Supportive Services, 60% of the funds for the Development of Affordable Rental Housing, and 15% of the funds for Administration and Planning. These allocations were determined from the data analysis and the key points that were raised in the community stakeholders' meetings. Stakeholders felt there is a need to develop affordable rental housing options in the City and County for the homeless and/or at risk of homelessness. In addition, the need for supportive services was mentioned to help provide wrap around services to help keep these households housed.

The City is not allocating HOME-ARP funds to Acquisition and Development of Non-Congregate Shelters, Tenant Based Rental Assistance (TBRA), Non-Profit Operating, and Non-Profit Capacity Building based on the analysis of the needs for the City.

Describe how the characteristics of the shelter and housing inventory, service delivery system, and the needs identified in the gap analysis provided a rationale for the plan to fund eligible activities:

The 2022 Point in Time Count has 250 persons or 209 households in Emergency Shelters and 22 persons/households are not sheltered. The City of Charleston's housing market is seeing housing options being reduce because of the increase in housing sales prices, increase in monthly rents, low vacancy rates, and increases in utility costs. These trends are leading to the lack of affordable housing options and the increase of households becoming cost burdened. Based on the statistics and the community consultation, the stakeholders stated repeatedly the need for more affordable housing options in the City and in the HOME Consortium Area. In addition, the stakeholders mention the need for supportive services and case management to make sure that the clientele being served will stay housed. Funds will be used to help the homeless and the persons at-rick of becoming homeless be able to stay in housing and off the streets. The HOME-ARP funds will be used to assist the extremely low-income Consortium area residents that are homeless; at-risk of becoming homeless; housing instability; and fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking.

HOME-ARP Production Housing Goals

Estimate the number of affordable rental housing units for qualifying populations that the PJ will produce or support with its HOME-ARP allocation:

The City of Charleston estimates it will assist the development of seven (7) supportive affordable housing units using the HOME-ARP funds. This number was developed by the City, based on other new housing development projects that are currently being developed by other non-profit housing developers. The City is estimating a cost of $200,000 per unit, which would cover the acquisition cost, architectural/engineering fees, permits, and construction costs. In addition, the City is budgeting funds to provide supportive services to these new HOME-ARP units. These affordable units will be available to all HOME-ARP qualifying populations because all four (4) qualifying populations needs are greater than the amount of HOME-ARP funds allocated to the City.

Describe the specific affordable rental housing production goal that the PJ hopes to achieve and describe how the production goal will address the PJ's priority needs:

The City of Charleston is looking to leverage the HOME-ARP funds with other Federal, State, local, private, foundation etc. funding sources. The goal of the City is to use these other funding sources to develop at least seven (7) affordable housing units or more, depending on the amount of funds the HOME-ARP subrecipient can leverage from other sources. If other funds are not available, the City will just fund projects with HOME-ARP funds.

Preferences

Identify whether the PJ intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project:

Not Applicable. The City of Charleston does not intend to give preference to one qualifying population versus another, because there is a need for assistance among all four (4) qualifying populations. The needs for all four (4) qualifying populations are greater than the amount of HOME-ARP funds the City of Charleston has been allocated.

If a preference was identified, explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or subpopulation of qualifying population, consistent with the PJ's needs assessment and gap analysis:

Not Applicable.

Referral Methods

Identify the referral methods that the PJ intends to use for its HOME-ARP projects and activities. PJ's may use multiple referral methods in its HOME-ARP program. (Optional):

The City of Charleston intends to use the Coordinated Entry System (CES) for its HOME-ARP projects and activities. The Coordinated Entry System covers the Kanawha Valley Collective CoC (KVC). KVC uses the Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT) created by OrgCode Consulting, Inc. and Community Solutions as the standard triage assessment tool. This assessment will be used for all homeless individuals and households in KVC.

There are three versions of the VI-SPDAT in use for different populations:

- Individuals
- Families
- Transition Age Youth
- Justice Discharge
- Prevention

The VI-SPDAT is to be completed for all individuals and families who are homeless under Category 1 (Literally Homeless) and Category 4 (Fleeing Domestic Violence) of HUD's definition of homelessness. The VI-SPDAT will be conducted as part of the standard HMIS intake.

The Vulnerability Index of the Services Prioritization Decision Assistance Tool (VI-SPDAT) is a product of OrgCode and measures acuity across five basic dimensions:

1. Wellness
2. Socialization and Daily Functioning
3. History of Housing and Homelessness
4. Risks
5. Family Unit

- Individuals are pre-screened using the VI-SPDAT Prescreen tool when seeking shelter or when working with an outreach worker. VI-SPDAT's will be completed through the Centralized Assessment Team office, or by an approved street outreach worker.

- VI-SPDAT scores categorize people into three different housing priority categories:
    - **Not recommended for full assessment:** People who would otherwise solve their own homelessness, but are often accepted into emergency shelter or transitional housing nonetheless. They do not screen in for a Rapid Re-Housing or Housing First assessment.

- **Moderate priority:** Individuals who have general housing barriers and are referred for a full SPDAT assessment to determine if appropriate for Rapid Re-Housing and Case Management.
- **Top priority:** Individuals with intensive needs who are referred for the full SPDAT Assessment to determine need for Housing First or Permanent Supportive Housing.

If the PJ intends to use the coordinated entry (CE) process established by the CoC, describe whether all qualifying populations eligible for a project or activity will be included in the CE process, or the method by which all qualifying populations eligible for the project or activity will be covered. (Optional):

All qualifying populations that are eligible for a project or activity will be included in the CoC Coordinated Entry (CE) process. While the CoC Coordinated Entry process uses its own definitions of homelessness and at-risk of homelessness, programs that provide HOME-ARP services will use the accepted definitions for the Qualifying Populations. All households seeking service are provided fair and equal access regardless of their location or method by which they access the system.

If the PJ intends to use the CE process established by the CoC, describe the method of prioritization to be used by the CE. (Optional):

The Kanawha Valley Collective CoC prioritizes households experiencing homelessness within the CoC's geographic area for referral to housing and services. Priorities are consistent with CoC written standards approved by the HAB.

If the PJ intends to use both a CE process established by the CoC and another referral method for a project or activity, describe any method of prioritization between the two referral methods, if any. (Optional):

Not Applicable. The City intends to only use the Coordinated Entry System (CE) Process for the HOME-ARP funded projects.

Limitations in a HOME-ARP rental housing or NCS project

Describe whether the PJ intends to limit eligibility for a HOME-ARP rental housing or NCS project to a particular qualifying population or specific subpopulation of a qualifying population identified in section IV.A of the Notice:

The City of Charleston is not intending to limit eligibility for a HOME-ARP rental housing projects to a particular qualifying population or specific subpopulation. The need for affordable rental housing is necessary for all four (4) qualifying populations. The City of Charleston will solicit proposals for rental housing projects in general, which will serve the HOME-ARP qualifying populations. Evaluations of the Funding Requests will be made and funding awards will be based on the Mayor's Office of Economic and Community Development staff reviews.

If a PJ intends to implement a limitation, explain why the use of a limitation is necessary to address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or subpopulation of qualifying population, consistent with the PJ's needs assessment and gap analysis:

Not Applicable. The City of Charleston does not intend to implement a limitation on the HOME-ARP Program.

If a limitation was identified, describe how the PJ will address the unmet needs or gaps in benefits and services of the other qualifying populations that are not included in the limitation through the use of HOME-ARP funds (i.e., through another of the PJ's HOME-ARP projects or activities):

Not Applicable.

HOME-ARP Refinancing Guidelines

The City of Charleston and the HOME Consortium does not intend to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds. Not Applicable.

- ***Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity***

  Not Applicable.

- ***Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.***

  Not Applicable.

- ***State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.***

  Not Applicable.

- ***Specify the required compliance period, whether it is the minimum 15 years or longer.***

  Not Applicable.

- ***State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including CDBG***.

  Not Applicable.

- ***Other requirements in the PJ's guidelines, if applicable:***

  Not Applicable.

Citizen Participation

VIRTUAL PUBLIC HEARING & PUBLIC COMMENT
HOME-ARP ALLOCATION PLAN

The City of Charleston will conduct a virtual public hearing on **Thursday, March 2, 2023 at 12:30 PM**.

To join the Zoom Meeting, use the following link (or scan the QR Code): https://us02web.zoom.us/j/89368359216?pwd=K092S3RlOVZWUElISVBtTFBUckdSQT09.

Meeting ID: 893 6835 9216 | Passcode: 979621

To join by phone, dial one of the following telephone numbers: (301) 715-8592, (305) 224-1968, (309) 205-3325 then enter Meeting ID: 893 6835 9216.

SCAN ME

Persons requiring assistance due to hearing, speech, vision impairments, or limited English proficiency should contact Ms. Paige Hill, Mayor's Office of Economic and Community Development, City of Charleston, at: Paige.Hill@CityofCharleston.org or (304) 348-8035.

The TDD telephone number for the hearing impaired is 711.

The purpose of the public hearing is to present the City of Charleston's HOME-ARP Allocation Plan for the HOME-American Rescue Plan funds. The City intends to submit its HOME-ARP Allocation Plan in the amount of $2,554,912 to the U.S. Department of Housing and Urban Development (HUD) on or before Friday, March 31, 2023.

The HOME-ARP Allocation Plan is required by HUD in order for the City of Charleston to receive federal HOME-ARP grant funds. The HOME-ARP Allocation Plan is a strategic plan detailing the process the City will use to allocate funds to assist individuals or households who are experiencing homelessness, at risk of becoming homeless, and other vulnerable populations, by providing affordable housing, rental assistance, supportive services, and non-congregate shelter, to reduce homelessness and increase housing stability.

In order to obtain the views of residents, public agencies, and other interested parties, the draft HOME-ARP Allocation Plan will be posted online for review at www.charlestonwv.gov/government/city-departments/moecd starting Friday, February 17, 2023 and ending on Friday, March 3, 2023, at which time the Allocation Plan will be presented to Charleston City Council for approval at its regularly scheduled meeting at 7 PM on Monday, March 6, 2023.

All interested residents are encouraged to sign on to this virtual public hearing and they will be given the opportunity to present oral testimony concerning the draft HOME-ARP Allocation Plan.

Written comments may be submitted online (scan QR Code): https://forms.office.com/g/uaCZ82Pefd or via phone at (304) 348-8035 [dial 711 for the hearing impaired], or mailed to the attention of Ms. Paige Hill, Mayor's Office of Economic and Community Development, City of Charleston, 105 McFarland Street, Charleston, WV 25301; by Friday, March 3, 2023.

SCAN ME

Resolution No. 776-23

Introduced in Council: Adopted by Council:

March 6, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 776-23 - Proclaiming that the Council for the City of Charleston acknowledges and accepts the terms and conditions of the West Virginia statewide settlement agreements with Walgreens, Bypass Pharmacy, Rhonda Pharmacy, The Pharmacy, Clendenin Pharmacy, and Fruth Pharmacy, Inc. and affirming the Mayor's authorization to execute the exhibits acknowledging and agreeing to such terms, which is attached to, and incorporated in, the settlement agreement.

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

That the Council for the City of Charleston proclaims that it acknowledges and accepts the terms and conditions of the West Virginia statewide settlement agreements with Walgreens, Bypass Pharmacy, Rhonda Pharmacy, The Pharmacy, Clendenin Pharmacy, and Fruth Pharmacy, Inc. relating to opioid-related claims made on behalf of the State of West Virginia and its political subdivisions, and affirms the Mayor's authorization to execute the exhibit acknowledging and agreeing to such terms, which is attached to, and incorporated in, the state-wide settlement agreements as an exhibit.

FRUTH PHARMACY WEST VIRGINIA STATE-WIDE OPIOID

Settlement Agreement

I. OVERVIEW

This Settlement Agreement dated as of **_______** sets forth the terms and conditions of a settlement between and among the Plaintiffs (defined herein) and Fruth Pharmacy, Inc., Fruth Inc., and Fruth Pharmacy of Ohio, Inc. (defined herein) (collectively, "Fruth Pharmacy") to resolve opioid-related Claims (defined herein) against Fruth Pharmacy asserted in the lawsuit captioned *Roane County Commission et al v. Fruth Pharmacy, et al.*, Civil Action No. 19-C-96 to 19-C-108 (W. Va. Cir. Ct. Marshall County)(hereinafter *Roane County Action*".

Fruth Pharmacy has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of law, or of any liability or wrongdoing, all of which Fruth Pharmacy expressly denies. No part of this Agreement, including its statements and commitments shall constitute evidence of any liability, fault, or wrongdoing by Fruth Pharmacy.

II. DEFINITIONS

A. "*Action*" means the *Roane County* Action.

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of a Product, non-exclusive examples of which are described in the documents listed on Exhibit A, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Fruth Pharmacy.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with the Exhibits thereto.

D. "*Bar*" means (1) a ruling by the highest court of the State setting forth the general principle that no Local Governments in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Local Governments in the State from maintaining or asserting Released Claims against Released Entities (Either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Bar.

E. "*Case-Specific Resolution*" means either (1) a law barring specified Local Governments from maintaining Released Claims against Released Entities (Either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (2) a ruling by a court of competent jurisdiction over a particular Local Government that has the legal effect of barring the Local Government from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) a release consistent with Section VII below. For the avoidance of doubt, a law, ruling, or release that is considered or predicated upon a post-Effective Date payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Case-Specific Resolution.

F. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

G. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

H. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

I. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

J. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

K. "*Common Benefit Fund Commissioner*" means the Honorable Christopher C. Wilkes, acting with the authority granted to him pursuant to the Court's Order Authorizing Common Benefit Fund and Appointing Common Benefit Fund Commissioner, dated October 4, 2021 (Transaction ID 66985632), and the Court's Order Establishing Common Benefit Fund, dated November 4, 2021 (Transaction ID 67071292).

L. "*Consent Judgment*" means a consent decree, order, judgment, or similar action; in connection with this Agreement, the Parties have agreed to the entry of the Consent Judgment attached hereto as Exhibit F, which provides for, among other things, the release set forth below, the dismissal with prejudice of any Released Claims that the State has brought against Released Entities, and the dismissal with prejudice of all other Actions pending before the Court, on the terms and conditions specified herein.

M. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

N. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

O. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) in any line of business arising from or relating in any way to a Product, including without limitation: (1) the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, health insurance or prescription-drug coverage, purchases, reimbursement, discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, or use or abuse of a Product; orders, prescriptions, formularies, guidelines, payments or rebates for a Product; policies, practices and/or operating procedures, statement, contracts, health or prescription drug insurance, health or prescription-drug claim administration, health or prescription-drug benefit administration, health or prescription-drug claim adjudication, health or prescription-drug plan design, data and sales thereof, and any other act or failure to act relating to a Product; and any system, plan, policy or advocacy relating to any Product; (3) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulator of orders, prescriptions related to a Product; (4) the purchasing, selling, acquiring, disposing of, importing, exporting, handling, processing, packaging, supplying, distributing, converting, or otherwise engaging in any activity relating to a Product; and (5) controls against diversion, corresponding responsibility, and suspicious order monitoring related to any Product. For avoidance of doubt, products other than Products are not included in Covered Conduct. This definition shall not preclude the Attorney General from bringing antitrust, overpricing, or kickback claims of general applicability, the allegations of which (i) include prescription pharmaceutical products generally and are not specific or limited to Products and (ii) do not in any way concern, relate to, or arise from the nature and characteristics of Products; the use, misuse, abuse or diversion of, or addiction to, Products and/or the potential thereof; any alleged oversupply of Products; the legality, legitimacy and/or appropriateness of any prescription for Products and/or the legality; legitimacy and/or appropriateness of any dispensing of Products; asserted violations of state or federal controlled substances laws; or any alleged direct or indirect effects or harms resulting from any of the above.

P. "*Fruth Pharmacy*" means Fruth Pharmacy and all of its past and present direct and indirect parents and subsidiaries including Fruth Pharmacy, Inc. and Fruth Pharmacy of Ohio, Inc. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.HH.

Q. "*Effective Date*" means the date on which Fruth Pharmacy makes the payment described in Section III.A.

R. "*Execution Date*" means the date on which this Agreement is executed by the last Party to do so.

S. "*Finality*" means:

1. the Agreement and the Consent Judgment have been approved and entered by the Court as to Fruth Pharmacy, including the release of all Released Claims against Released Entities as provided in this Agreement; and

2. (a) the time for appeal or to seek review of or permission to appeal from such approval and entry has expired; or (b) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described above have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

T. “*Later Litigating Local Government*” means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date. It may also include a Litigating Local Government whose Claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the Execution Date, when such Litigating Local Government takes any affirmative step in its lawsuit other than seeking a stay or removal.

U. “*Litigating Local Government*” means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date. Exhibit B includes Litigating Local Governments identified by the Parties as of the Execution Date but is subject to amendment in the event it proves to be incomplete and other entities that satisfy the definition for “Litigating Local Governments” are subsequently identified.

V. “*Litigation Cost Amount*” has the meaning specified in Section II.A below.

W. “*Local Government*” means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* A list of Counties, and lists of Class I, II, III, and IV Local Governments, are attached as Exhibit C. Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. For the avoidance of doubt, “Local Government” does not include special districts or school boards.

X. “*Non-Litigating Local Government*” means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

Y. “*Non-Participating Local Government*” means a Local Government that is not a Participating Local Government.

Z. “*Participation Date*” means one hundred twenty (120) days after the Agreement is executed.

AA. "*Participating Local Government*" means a Local Government that signs the Election and Release Form annexed as Exhibit D and meets the requirements for becoming a Participating Local Government under subsection VIII.A or VIII.C.

BB. "*Plaintiff*" means the Roane County Commission and all governmental entities named as Plaintiffs in civil action 19-C-96 to 19-C-108.

CC. "*Product*" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentianil, or any variant of these substances or any similar substance.

DD. "*Qualified Settlement Fund*" means the Wet Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

EE. "*Qualified Settlement Fund Administrator*" means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by the Court. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator's fees and costs, will be set forth by Court Order.

FF. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State and Releasors take no position on the availability of such defense, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

GG. "*Released Entities*" means (i) Fruth Pharmacy, Inc.; (ii) all of the foregoing entities' respective past and present, direct or indirect: parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (iii) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (i) through (iii) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (vii)-(viii) shall be a Released entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

HH. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing, (b) any public entities or public instrumentalities and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release form (in the form attached as Exhibit D to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VI.F.

II. "*Remediation Amount*" has the meaning specified in Section III.A below.

JJ. This agreement does not impose any costs or obligations on Fruth Pharmacy other than those specifically provided for in the Agreement.

KK. "*Settlement Sum*" means the total sum to be paid pursuant to this Agreement by or on behalf of Fruth Pharmacy and all Released Entities as specified in Section III.A below. Neither Fruth Pharmacy nor any Released Entity shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

LL. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. CONSIDERATION TO BE PROVIDED BY FRUTH PHARMACY

A. *Settlement Sum*. The Settlement Sum is $500,000.00. The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the Plaintiffs' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Fruth Pharmacy and the Released Entities in the Actions, and to be disbursed as provided by the Court; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State On or before the Participation Date, the Plaintiffs shall provide to Fruth Pharmacy Election and Release Forms (in the form annexed as Exhibit D) demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local

Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Fruth Pharmacy pay the Settlement Sum pursuant to this Agreement shall become binding only upon the Plaintiff's provision to Fruth Pharmacy of Election and Release Forms demonstrating that it has met the Participation Threshold.

B. *No Other Payments by Releasees*. Other than the Payment described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

C. *Consent Judgment.* As soon as practicable following the Effective Date, and prior to the Initial Payment, Plaintiff shall file in the Court a proposed Dismissal Order approved by the Court effectuating the dismissal with prejudice, as to Fruth Pharmacy and all other Released Entities, and the Actions of Participating Local Governments pending before the Court. The Dismissal Order shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to determine the allocation of the Settlement Sum. The Parties shall confer and agree as to the final form and time of filing of the Dismissal Order prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Remediation Amount to the State and Participating Local Governments as provided in the Order of the Panel and the West Virginia First Memorandum of Understanding, attached as Exhibit E.

B.

V. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant.

VI. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Initial Payment and the Subsequent Payments shall be the sole payments made by the Released Entities to the Releasors

involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to Fruth Pharmacy pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VII.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the

avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement.* To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Fruth Pharmacy in subsection VII.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection VII.B.2, or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection VI.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, Fruth Pharmacy and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Fruth Pharmacy under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section VII.C. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* On or before the Participation Date, the State will provide an election and release form confirming that the State will settle and release (1) its claims; (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts; and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Attorney General is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement. While the Plaintiffs take no position on the availability of such defenses, in any action arising from or relating to the Covered Conduct or the Alleged Harms, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Fruth Pharmacy and any other Released Entities dismissed as part of the Consent Judgment to be entered pursuant to Section III.E above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Fruth Pharmacy and any other Released Entities within fourteen (14) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VII. PARTICIPATION BY LOCAL GOVERNMENTS

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (Exhibit D); or (2) having its claims extinguished by operation of law or released by the State's Office of the Attorney General.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law or released by the State's Office of the Attorney General.

D. *Representation With Respect to Local Government Participation.* Plaintiffs' counsel represent and warrant that they have a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. Plaintiffs' counsel acknowledge the materiality of the foregoing representation and warranty. Further, Plaintiffs' counsel will use their best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments. To the extent any Local Governments do not become Participating Local Governments, the West Virginia

Attorney General shall take all appropriate steps to resolve any remaining Claims by such Local Governments against Fruth Pharmacy, which may include seeking the enactment of a legislative Bar or pursuit of a Settlement Class Resolution.

E. *Representation With Respect to State Abatement Claims.* The Plaintiffs represent and warrant that the Remediation Amount being paid in this Agreement for Alleged Harms shall be used to fund opioid abatement and treatment activities throughout the State, and that the Settlement is intended to release any and all Claims for abatement within the State. The Plaintiffs acknowledge the materiality of the foregoing representation and warranty.

F. Non-Participating Local Governments shall be ineligible to receive any portion of the Settlement Sum.

1. Counsel believes the Settlement Agreement to be fair and has made and will make best efforts to recommend that each of his or her Local Government clients become Participating Local Governments.
2. Counsel submits to the jurisdiction of the Court for purposes of the application, knowingly and expressly agrees to be bound by the determination of the Court with respect to allocation of the Litigation Cost Amount, and waives the ability to appeal that determination.

VIII. <u>ENFORCEMENT AND DISPUTE RESOLUTION</u>

A. This Agreement shall only be enforceable by Fruth Pharmacy and the Plaintiffs.

B. If either the Plaintiffs or Fruth Pharmacy believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, The Parties by and through their counsel shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may bring an action to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes identified in this Section X.

IX. <u>MISCELLANEOUS</u>

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between Fruth Pharmacy and Plaintiffs and between the Released Entities and all Releasors. Fruth Pharmacy is entering into this Settlement Agreement solely for the purposes of settlement and to resolve all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. Fruth Pharmacy denies the allegations in the Actions and denies any civil or criminal liability in the Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by Fruth Pharmacy of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Product in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial*. Plaintiffs agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes*. Fruth Pharmacy makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Remediation Amount or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by Fruth Pharmacy in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law*. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter*. None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Fruth Pharmacy may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability*. In the event any one or more immaterial provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement. Material provisions are those in Sections III, V, VII, and VIII of this Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

Fruth Pharmacy:

Lynne Fruth, CEO
Fruth Pharmacy
lfruth@fruthpharmacy.com
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Point Pleasant, WV 25550
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******SIGNATURE PAGE FOLLOWS******

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On behalf of Plaintiffs

RHONDA'S PHARMACY, LLC'S WEST VIRGINIA STATE-WIDE OPIOID SETTLEMENT AGREEMENT

I. OVERVIEW

This Settlement Agreement dated as of _______ sets forth the terms and conditions of a settlement between and among the Plaintiffs (defined herein) and Rhonda's Pharmacy, LLC., (defined herein) (hereinafter, "Rhonda's Pharmacy") to resolve opioid-related Claims (defined herein) against Rhonda's Pharmacy as asserted in the lawsuit captioned *City of Beckley, West Virginia v. Rhonda's Pharmacy, LLC., et al*., Civil Action No. 20-C-34 (W. Va. Cir. Ct. Marshall County) (hereinafter "*City of Beckley Action").*

Rhonda's Pharmacy has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of law, or of any liability or wrongdoing, all of which Rhonda's Pharmacy expressly denies. No part of this Agreement, including its statements and commitments shall constitute evidence of any liability, fault, or wrongdoing by Rhonda's Pharmacy. The payment of the settlement sum herein shall not constitute evidence of insurance coverage for the alleged acts and harms set forth in the Action.

II. DEFINITIONS

A. "*Action*" means the lawsuit captioned *City of Beckley, West Virginia v. Rhonda's Pharmacy, LLC, et al.*, Civil Action No. 20-C-34 (W. Va. Cir. Ct. Marshall County).

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the allegations set forth in the Action, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Rhonda's Pharmacy.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with any Exhibits thereto.

D. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

F. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

G. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

H. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

I. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

J. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

K. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) including without limitation the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, purchases, reimbursement, discovery, orders, prescriptions, formularies, guidelines, policies, practices and/or operating procedures, statement, contracts, and any other act or failure to act relating to Opioid Drugs, or any alleged direct or indirect effects or harms resulting from any of the above.

L. "*Rhonda's Pharmacy*" means Rhonda's Pharmacy, LLC, sometimes doing business with the tradename of Rhonda's Pineville Pharmacy, (Rhonda's Pineville Pharmacy is formally known as Pharmacare, Inc.), as well as all of its past and present direct and indirect parents and subsidiaries. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.AA.

M. "*Effective Date*" means the date on which Rhonda's Pharmacy pays the Settlement Sum.

"*Execution Date*" means the date on which this Agreement is executed by the last Party to do so.

N. "*Later Litigating Local Government*" means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date.

O. "*Litigating Local Government*" means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date.

P. "*Local Government*" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity. For the avoidance of doubt, "Local Government" does not include special districts or school boards.

Q. "*Non-Litigating Local Government*" means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

R. "*Non-Participating Local Government*" means a Local Government that is not a Participating Local Government.

S. "*Participation Date*" means one hundred twenty (120) days after the Agreement is executed.

T. "*Participating Local Government*" means a Local Government that signs the Election and Release Form annexed as **Exhibit A** and meets the requirements for becoming a Participating Local Government.

U. "Opioid Drugs" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

V. "*Qualified Settlement Fund*" means the Wet Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

W. "*Qualified Settlement Fund Administrator*" means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by the Court. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator's fees and costs, will be set forth by Court Order.

X. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State and Releasors take no position on the availability of such defense, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

Y. "*Released Entities*" means "Rhonda's Pharmacy" as defined in II.L. above, as well as any and all of the foregoing entities' respective past and present, direct or indirect: parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (iii) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (i) through (iii) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (vii)-(viii) shall be a Released entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

Z. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing, (b) any public entities or public instrumentalities and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release form (in the form attached as **Exhibit A** to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VI.F.

AA. This agreement does not impose any costs or obligations on Rhonda's Pharmacy other than those specifically provided for in the Agreement.

BB. "*Settlement Sum*" means the total sum to be paid pursuant to this Agreement by or on behalf of Rhonda's Pharmacy and all Released Entities as specified in Section III.A below. Neither Rhonda's Pharmacy nor any Released Entity shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

CC. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. <u>CONSIDERATION TO BE PROVIDED BY RHONDA'S PHARMACY</u>

A. *Settlement Sum*. The Settlement Sum is $30,000.00 (Thirty Thousand Dollars). The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the Plaintiffs' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Rhonda's Pharmacy and the Released Entities in the Actions, and to be disbursed as provided by the Court; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State. On or before the Participation Date, the Plaintiffs shall provide to Rhonda's Pharmacy **Election and Release Forms (in the form annexed as Exhibit A)** demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Rhonda's Pharmacy pay the Settlement Sum pursuant to this Agreement shall become binding only upon the Plaintiff's provision to Rhonda's Pharmacy of Election and Release Forms demonstrating that it has met the Participation Threshold. The Settlement Sum shall be paid within fifteen (15) days after delivery of all Election and Release Forms required under this Section.

B. *No Other Payments by Releasees*. Other than the Payment described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

C. *Dismissal Order.* As soon as practicable following the Effective Date, , Plaintiff shall file in the Court a proposed Dismissal Order approved by the Court effectuating the dismissal with prejudice, as to Rhonda's Pharmacy and all other Released Entities, and the Actions of Participating Local Governments pending before the Court. The Dismissal Order shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to determine the allocation of the Settlement Sum as set forth in the West Virginia First Memorandum of Understanding, discussed in greater detail below. The Parties shall confer and agree as to the final form and time of filing of the Dismissal Order prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Settlement Sum as provided in the Orders of the Panel and the West Virginia First Memorandum of Understanding, including the payment of attorney fees and costs.

V. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant.

VI. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Settlement Sum set forth in III.A. shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to Rhonda's Pharmacy pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VI.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this

prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. Non-Party Settlement. To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Rhonda's Pharmacy in subsection VI.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. Claim-Over. In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition , or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement , and such Non-Released Entity asserts a Claim-Over against a Released Entity, Rhonda's Pharmacy and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Rhonda's Pharmacy under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* On or before the Participation Date, the State will provide an election and release form confirming that the State will settle and release (1) its claims; (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts; and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Attorney General is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Rhonda's Pharmacy and any other Released Entities dismissed as part of the Dismissal Order above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Rhonda's Pharmacy and any other Released Entities within fourteen (14) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VII. PARTICIPATION BY LOCAL GOVERNMENTS

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (**Exhibit A**); or (2) having its claims extinguished by operation of law.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law..

D. *Representation With Respect to Local Government Participation.* Plaintiffs' counsel represent and warrant that they have a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. Plaintiffs' counsel acknowledge the materiality of the foregoing representation and warranty. Further, Plaintiffs' counsel will use their best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments.

VIII. ENFORCEMENT AND DISPUTE RESOLUTION

A. This Agreement shall only be enforceable by Rhonda's Pharmacy and the Plaintiffs.

B. If either the Plaintiffs or Rhonda's Pharmacy believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, The Parties by and through their counsel shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may file a motion to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes.

IX. MISCELLANEOUS

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between Rhonda's Pharmacy and Plaintiffs and between the Released Entities and all Releasors. Rhonda's Pharmacy is entering into this Settlement Agreement solely for the purposes of settlement and to resolve all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. Rhonda's Pharmacy denies the allegations in the Actions and denies any civil or criminal liability in the Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by Rhonda's Pharmacy of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Opioid Drugs in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial*. Plaintiffs agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation,* Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes*. Rhonda's Pharmacy makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Settlement Sum or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by Rhonda's Pharmacy in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law*. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter*. None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Rhonda's Pharmacy may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability.* In the event any one or more provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

Rhonda's Pharmacy:

Rhonda M. Rose
P.O. Box 1167
Pineville, WV 24874

Counsel for Rhonda's Pharmacy:

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
Ashworth Nord LLC
WV: 314 Ninth Street, Suite 100B, Huntington, WV 25701
OH: 307 Putnam Street, Marietta, OH 45750
Mailing: P.O. Box 240, Marietta, OH 45750
Telephone: Main: (740) 371-7121

Counsel for Plaintiffs

Bob Fitzsimmons, Esq.
Mark Colantonio, Esq.
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

******SIGNATURE PAGE FOLLOWS******

Approved by:

____

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
Ashworth Nord LLC
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Email: steve.nord@ashworth-nord.com
ryan.ashworth@ashworth-nord.com
jenny.honaker@ashworth-nord.com

On behalf of Rhonda's Pharmacy

Approved by:

____

Bob Fitzsimmons (WVSB# 1212)
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

On behalf of Plaintiffs

____

Mark Colantonio (WVSB# 4238)
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1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

On behalf of Plaintiffs

Walgreens West Virginia State-Wide Opioid
Settlement Agreement

I. OVERVIEW

This Settlement Agreement dated as of January 13, 2023 sets forth the terms and conditions of a settlement between and among the State of West Virginia (defined herein) and Walgreens (defined herein) (collectively, "the *Parties*") to resolve opioid-related Claims (defined herein) against Walgreens.

Walgreens has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Walgreens expressly denies. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Walgreens. Unless the contrary is expressly stated, this Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose.

This Agreement resolves as to Walgreens, among other things, the lawsuit captioned *State of West Virginia ex rel. Patrick Morrisey, Attorney General* v. *Walgreens Boots Alliance, Inc., et al.*, Civil Action No. 20-C-82 PNM (W. Va. Cir. Ct. Putnam County) (the "*West Virginia AG Action*"), pending within *In re: Opioid Litigation,* Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and Actions brought and/or Claims possessed by Participating Local Governments.

II. DEFINITIONS

A. "*Actions*" means the West Virginia AG Action and any lawsuit by a Local Government asserting any Released Claim against one or more Released Entities.

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of a Product, non-exclusive examples of which are described in the documents listed on Exhibit A, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Walgreens.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with the Exhibits thereto.

D. "*Bar*" means (1) a ruling by the highest court of the State setting forth the general principle that no Local Governments in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Local Governments in the State from maintaining or asserting Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Bar.

E. "*Case-Specific Resolution*" means either (1) a law barring specified Local Governments from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (2) a ruling by a court of competent jurisdiction over a particular Local Government that has the legal effect of barring the Local Government from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) a release consistent with Section VII below. For the avoidance of doubt, a law, ruling, or release that is considered or predicated upon a post-Effective Date payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Case-Specific Resolution.

F. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

G. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

H. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

I. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

J. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

K. "*Common Benefit Fund Commissioner*" means the Honorable Christopher C. Wilkes, acting with the authority granted to him pursuant to the Court's Order Authorizing Common Benefit Fund and Appointing Common Benefit Fund Commissioner, dated October 4, 2021 (Transaction ID 66985632), and the Court's Order Establishing Common Benefit Fund, dated November 4, 2021 (Transaction ID 67071292).

L. "*Consent Judgment*" means a consent decree, order, judgment, or similar action; in connection with this Agreement, the Parties have agreed to the entry of the Consent Judgment attached hereto as Exhibit F, which provides for, among other things, the release set forth below, the Court's approval of the Litigation Cost Amount, the dismissal with prejudice of any Released Claims that the State has brought against Released Entities, and the dismissal with prejudice of all other Actions pending before the Court, on the terms and conditions specified herein.

M. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

N. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation,* Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

O. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (1) compounding, counseling and documentation relating to any Product or class of Products (2) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy or advocacy relating to any Product or class of Products, including, but not limited to, any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (3) the characteristics, properties, risks, or benefits of any Product; (4) the reporting, disclosure, non-reporting or nondisclosure to federal, state or other regulators of orders placed with any Released Entity; or (5) diversion control programs or suspicious order monitoring related to any Product. For avoidance of doubt, products other than Products are not included in Covered Conduct.

P. "*Effective Date*" means the date on which Walgreens makes the payment described in Section III.A.

Q. *"Execution Date"* means the date on which this Agreement is executed by the last Party to do so.

R. *"Finality"* means:

1. the Agreement and the Consent Judgment have been approved and entered by the Court as to Walgreens, including the release of all Released Claims against Released Entities as provided in this Agreement; and

2. (a) the time for appeal or to seek review of or permission to appeal from such approval and entry has expired; or (b) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described above have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

S. *"Global Settlement"* means the Settlement Agreement between Walgreens, other states and political subdivisions in the United States dated December 9, 2022 setting forth the terms of settlement of claims against Walgreens in the multi-district litigation *In re: Nationwide Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) and related state court prescription opiate litigation.

T. *"Later Litigating Local Government"* means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date. It may also include a Litigating Local Government whose Claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the Execution Date, when such Litigating Local Government takes any affirmative step in its lawsuit other than seeking a stay or removal.

U. *"Litigating Local Government"* means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date. Exhibit B includes Litigating Local Governments identified by the Parties as of the Execution Date but is subject to amendment in the event it proves to be incomplete and other entities that satisfy the definition for "Litigating Local Governments" are subsequently identified.

V. *"Litigation Cost Amount"* has the meaning specified in Section III.A below.

W. "*Local Government*" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code§§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* A list of Counties, and lists of Class I, II, III and IV Local Governments, are attached as Exhibit C. Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. For the avoidance of doubt, "Local Government" does not include special districts or school boards.

X. "*Non-Litigating Local Government*" means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

Y. "*Non-Participating Local Government*" means a Local Government that is not a Participating Local Government.

Z. "*Participation Date*" means one hundred twenty (120) days after the Agreement is executed.

AA. "*Participating Local Government*" means a Local Government that signs the Election and Release Form annexed as Exhibit D and meets the requirements for becoming a Participating Local Government under subsection VIII.A or VIII.C.

BB. "*Plaintiff*" means the State of West Virginia, acting by and through its Attorney General.

CC. "*Product*" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

DD. "*Qualified Settlement Fund*" means the West Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

EE. "*Qualified Settlement Fund Administrator*" means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by this Agreement. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator's fees and costs, will be set forth in a separate document to be prepared by the Parties and filed with the Court to establish the fund and be attached later to this Agreement.

FF. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State takes no position on the availability of such defenses, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

GG. "*Released Entities*" means Walgreens and (1) all past and present subsidiaries, divisions, predecessors, successors, and assigns (in each case, whether direct or indirect) of Walgreens; (2) all past and present subsidiaries and divisions (in each case, whether direct or indirect) of any entity described in subsection (1); (3) the respective past and present officers, directors, members, trustees, and employees of any of the foregoing (each for actions that occurred during and related to their work for, or employment with, any of Walgreens or the foregoing entities); (4) all past and present joint ventures (whether direct or indirect) of Walgreens or its subsidiaries, including in any Walgreens or subsidiary's capacity as a participating member in such joint venture; (5) all direct or indirect parents and shareholders of Walgreens (solely in their capacity as parents or shareholders of Walgreens with respect to Covered Conduct); and (6) any insurer of Walgreens or any person or entity otherwise described in subsections (1)-(5) (solely in its role as insurer of such person or entity).

HH. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, public service districts, unincorporated districts, water districts, law enforcement districts, emergency services districts, highway authorities, conservation districts, development authorities, reclamation districts, recreation districts, economic development authorities, housing authorities, sanitary districts, solid waste authorities, urban mass transportation authorities, and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasisovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release Form (in the form attached as Exhibit D to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VII.F.

II. "*Remediation Amount*" has the meaning specified in Section III.A below.

JJ. "*Settlement Class Resolution*" means a class action resolution in a court of competent jurisdiction in the State with respect to a class of Local Governments in the State that (1) conforms with the State's statutes, case law, and/or rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in the State and has achieved Finality; (3) is binding on all Non-Participating Local Governments in the State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Local Governments may not bring Released Claims against Released Entities, whether on the ground of the Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Walgreens other than those provided for in the Agreement, or contain any provision inconsistent with any provision of the Agreement. If applicable State law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Local Governments collectively representing 1% or more of the State's population opt out. In seeking certification of any Settlement Class, the State and applicable Local Governments shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case.

KK. "*Settlement Sum*" means the aggregate total sum to be paid pursuant to this Agreement by or on behalf of Walgreens and all Released Entities as specified in Section III.A below. Neither Walgreens nor any Released Entities shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

LL. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

MM. "*Walgreens*" means Walgreens Co. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.GG.

III. CONSIDERATION TO BE PROVIDED BY WALGREENS

A. *Settlement Sum.* The Settlement Sum is $83,000,000 reflecting a substantial premium for the State given the unique facts and circumstances associated with the Actions, including without limitation the trial date and the impact of opioid abuse and misuse in the State. The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the State's and Participating Local Governments' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Walgreens and the Released Entities in the Actions, and to be disbursed as provided in Section IX below; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State and disbursed as provided in Section IV below. Walgreens does not concede that these activities constitute cognizable abatement. For the avoidance of doubt, the Remediation Amount equals the aggregate amount paid or incurred by Walgreens hereunder other than amounts that constitute the Litigation Cost Amount. The Qualified Settlement Fund Administrator shall place the Litigation Cost Amount and the Remediation Amount into separate sub-funds within the Qualified Settlement Fund pending their disbursement as provided in this Settlement Agreement. On or before the Participation Date, the State shall provide to Walgreens Election and Release Forms (in the form annexed as Exhibit D) demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Walgreens pay the Settlement Sum pursuant to this Agreement shall become binding only upon the State's provision to Walgreens of Election and Release Forms demonstrating that it has met the Participation Threshold.

B. *Timeline for Settlement Sum Allocation and Payments.* Provided that the State has met the Participation Threshold, within three (3) business days of the earliest of either Walgreens' receipt of Election and Release Forms demonstrating that the Participation Threshold has been met or the Participation Date, the Parties shall jointly file with the Court a request that the Court determine what portion of the Settlement Sum constitutes the Litigation Cost Amount. The State agrees that it will not seek a Litigation Cost Amount percentage greater than that sought from any other settling party, and it is the Parties' expectation and intent that the Litigation Cost Amount percentage shall be no greater than for any other settling party. If the Court has not issued an order regarding the portion of the Settlement Sum that constitutes the Litigation Cost Amount by May 1, 2023, the Parties will meet and confer and will agree by May 8, 2023 on an allocation as between the Remediation Amount and the Litigation Cost Amount, subject to revision by the Court. If the Parties agree on an allocation as between the Remediation Amount and the Litigation Cost Amount and the Court later orders a different allocation as between the Remediation Amount and the Litigating Cost Amount, the State agrees to cooperate with Walgreens in preparing any tax forms reasonably requested by Walgreens, including but not limited those set out in Section XI.F. Walgreens shall, within fifteen (15) days after the occurrence of (1) the Participation Date; (2) the Court issuing a ruling determining what portion of the Settlement Sum constitutes the Litigation Cost Amount or an agreement by the Parties on such allocation, whichever comes first; (3) Walgreens's receipt of Election and Release Forms demonstrating that the Participation Threshold has been met; and (4) the date the Qualified Settlement Fund has been established under the authority and jurisdiction of the Court and Walgreens has received from the West Virginia Attorney General a W-9 and wire instructions for the Qualified Settlement Fund, pay into the Qualified Settlement Fund the total sum of $11,066,666.67 (the "Initial Payment"). Beginning one year after the Initial Payment, WALGREENS shall pay into the Qualified Settlement Fund $11,066,666.67per year for payment years 2 and 3, and $9,960,000 per year for payment years 4 through 8 (the "Subsequent Payments") pursuant to the schedule set forth in Exhibit H.

C. *No Other Payments by Releasees.* Other than the Initial Payment and the Subsequent Payments described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

D. *Consent Judgment.* As soon as practicable following the Effective Date, and prior to the Initial Payment, Plaintiff shall file in the Court a proposed Consent Judgment substantially in the form of Exhibit F. The Consent Judgment shall be approved by the Court and include the dismissal with prejudice, as to Walgreens and all other Released Entities, of the West Virginia AG Action and the Actions of Participating Local Governments pending before the Court. The Consent Judgment shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to (1) determine the allocation of the Litigation Cost Amount as provided in Section IX, and (2) enter an Amended Consent Judgment imposing injunctive terms as set out in Section V.A. The Parties shall confer and agree as to the final form and time of filing of the Consent Judgment and any amended Consent Judgment prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Remediation Amount to the State and Participating Local Governments as provided in the Order of the Panel and the West Virginia First Memorandum of Understanding, attached as Exhibit E. For the avoidance of doubt, the Qualified Settlement Fund Administrator shall not allocate or distribute any of the Remediation Amount to any Non-Participating Local Government.

B. Walgreens shall have no duty, liability, or influence of any kind with respect to the apportionment and use of the Remediation Amount. Plaintiff specifically represents, however, that any such apportionment and use shall be made in accordance with this Agreement and all applicable laws, unless otherwise ordered by the Court.

V. INJUNCTIVE RELIEF

A. The State and Walgreens agree that the Consent Judgment shall provide that the Court shall retain jurisdiction to enter an Amended Consent Judgment imposing injunctive terms that match the injunctive terms imposed in the Global Settlement upon effectiveness of the Global Settlement. If the Global Settlement does not go into effect within one year of the Effective Date, then the State may elect by no later than three years of the Effective Date and upon 90 days' notice to Walgreens for the injunctive terms attached as Exhibit F to Walgreens' settlement agreement with the Florida Attorney General to apply instead.

VI. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant. The State shall use best efforts to cause Litigating Local Governments to cease all activities in accordance with the foregoing understanding.

VII. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Initial Payment and the Subsequent Payments shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to WALGREENS pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.,* 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-

Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VII.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement.* To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Walgreens in subsection VII.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection VII.B.2, or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection VI.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, Walgreens and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Walgreens under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section VII.C. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* The State's Attorney General expressly represents and warrants that it will, on or before the Participation Date, have (or have obtained) the authority to settle and release Claims of (1) the State, (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts, and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement. While the State takes no position on the availability of such defenses, in any action arising from or relating to the Covered Conduct or the Alleged Harms, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Walgreens and any other Released Entities dismissed as part of the Consent Judgment to be entered pursuant to Section III.E above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Walgreens and any other Released Entities within seven (7) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VIII. <u>PARTICIPATION BY LOCAL GOVERNMENTS</u>

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (Exhibit D); or (2) having its claims extinguished by operation of law or released by the State's Office of the Attorney General.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law or released by the State's Office of the Attorney General.

D. *Representation With Respect to Local Government Participation.* The State represents and warrants that it has a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. The State acknowledges the materiality of the foregoing representation and warranty. Further, the State will use its best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments. To the extent any Local Governments do not become Participating Local Governments, the West Virginia Attorney General shall take all appropriate steps to resolve any remaining Claims by such Local Governments against Walgreens, which may include seeking the enactment of a legislative Bar or pursuit of a Settlement Class Resolution.

E. *Representation With Respect to State Abatement Claims.* The State represents and warrants that the Remediation Amount being paid in this Agreement for Alleged Harms shall be used to fund opioid abatement and treatment activities throughout the State, and that the Settlement is intended to release any and all Claims for abatement within the State. The State acknowledges the materiality of the foregoing representation and warranty.

F. *Representation With Respect to Claims by Later Litigating Local Governments.* The State represents and warrants that, if any Later Litigating Local Government brings any Released Claim(s) against any Released Entity after the Execution Date, the State will take appropriate steps to cease the litigation as soon as reasonably possible. Depending on facts and circumstances, such steps may include intervening in the Action to move to dismiss or otherwise terminate the Later Litigating Local Government's Claims as to the Released Entities in the Action, commencing a declaratory judgment or other action that establishes a Bar to the Later Litigating Local Government's Claims as to the Released Entities, or other means.

G. Non-Participating Local Governments shall be ineligible to receive any portion of the Settlement Sum.

H. Concurrently with Plaintiff's submission of the Consent Judgment per Section III.E above, the Parties will jointly ask the Court to enter the Case Management Order annexed hereto as Exhibit G, which is applicable only to Non-Participating Local Governments and Later Litigating Local Governments.

IX. ATTORNEY FEES, COSTS AND EXPENSES; DISBURSEMENT OF LITIGATION COST AMOUNT

A. Counsel for any Participating Local Government may submit applications to the Common Benefit Fund Commissioner seeking an allocation from the Litigation Cost Amount for reasonable attorney fees, costs and/or expenses, if any, including MDL Participation Fees, incurred by it prior to the Execution Date in connection with the Actions against Walgreens. The State may submit applications to the Common Benefit Fund Commissioner or may otherwise petition the Court for an award of reasonable attorney fees, costs and/or expenses to be paid from the Litigation Cost Amount.

B. The Parties recognize that the goal of this Agreement is one hundred percent (100%) participation by Local Governments. In determining the allocation among Counsel of the Common Benefit Fund, the Common Benefit Fund Commissioner shall consider such factors as whether the Counsel and his or her clients have contributed to increasing (or reducing) the payments awarded to the State through participation and whether the Counsel represents any Non-Participating Local Governments and/or any Later Litigating Local Governments. It is the Parties' expectation and intent that no portion of the Litigation Cost Amount will be distributed to Counsel for attorney fees, costs and/or expenses incurred in connection with the representation of any Non-Participating Local Government and/or any Later Litigating Local Governments, and the State agrees that it will not take any positions to the contrary before the Court, except to the extent it is part of the consideration of Common Benefit fees or cost.

C. The Common Benefit Fund Commissioner shall recommend, subject to the Court's review upon request, an allocation of the Litigation Cost Amount among the various Counsel who submitted applications in accordance with Section IX.A. Such allocations shall be subject to the limitations and conditions set forth in this Agreement, the provisions of the West Virginia First Memorandum of Understanding, West Virginia law, and the Orders of the Court. Any objections to the Common Benefit Fund Commissioner's recommended allocation shall be resolved by the Court.

D. Notwithstanding provisions herein, an attorney may include any work done or time spent on the implementation of, or in furtherance of completion of, this Settlement Agreement prior to or after the Effective Date in a fee request or application. In the event the total amount of fees, costs, and expenses awarded pursuant to this Section IX is less than the Litigation Cost Amount, the remainder shall be added to the Remediation Amount and distributed as provided in this Agreement and the West Virginia First Memorandum of Understanding.

E. For the avoidance of doubt, nothing in this Section IX shall require any payment by Walgreens beyond the Settlement Sum, nor shall Walgreens have any responsibility or authority regarding the allocation of the Litigation Cost Amount, except that the Common Benefit Fund Commissioner and/or the Court may receive information from Walgreens as to (1) the identity of Participating, Non-Participating, Litigating, Later Litigating, and Non-Litigating Local Governments, and (2) such other information as Walgreens may voluntarily elect to provide.

F. The Litigation Cost Amount is intended to compensate Counsel for the State and Participating Local Governments for reasonable attorney fees, costs and/or expenses, if any, including MDL Participation Fees paid on behalf of Participating Local Governments, incurred by them prior to the Execution Date in connection with the Actions against Walgreens, whether those Actions were filed in state or federal court.

G. No portion of the Litigation Cost Amount may be allocated on the basis of attorney fees, costs, or expenses incurred (1) after the Execution Date, (2) in connection with the representation of Non-Participating Local Governments, or non-governmental persons or entities, or (3) in connection with Claims against persons or entities other than the Released Entities.

H. To be eligible for any award from the Litigation Cost Amount, Counsel must certify each of the following in an application submitted pursuant to this Section IX:

1. The fees, costs, and/or expenses sought are for work performed or costs or expenses incurred by such Counsel before the Execution Date in connection with representing the State and/or one or more Participating Local Government(s) in connection with Claims against Walgreens concerning the Covered Conduct.

2. No portion of the fees, costs, or expenses sought is for work performed or costs or expenses incurred in connection with representing a Non-Participating Local Government.

3. Counsel will accept the allocation awarded by the Court and will not seek the payment of fees, costs, or expenses from any Participating Local Government in connection with this Settlement or the Released Claims.

4. Counsel will not assert, and instead expressly waives, any right to collect a contingency fee from any Participating Local Government related to the payments made by Walgreens.

5. Counsel has notified each West Virginia Local Government represented by such Counsel of the amount(s) sought in the application.

6. Counsel has no present intent to represent or participate in the representation of any Later Litigating Local Government or any Releasor with respect to Released Claims against Released Entities.

7. Counsel will not charge or accept any referral fees for any Released Claims brought against Released Entities.

8. Counsel will not engage in any advertising or solicitation related to Released Claims against Released Entities.

9. Counsel does not have a Claim for fees, costs or expenses related to a Later Litigating Local Government, except any Common Benefit Fee as allowed by Court Order.

10. Counsel believes the Settlement Agreement to be fair and has made and will make best efforts to recommend that each of his or her Local Government clients become Participating Local Governments.

11. Counsel submits to the jurisdiction of the Court for purposes of the application, knowingly and expressly agrees to be bound by the determination of the Court with respect to allocation of the Litigation Cost Amount, and waives the ability to appeal that determination.

I. If it is later determined that any certification made in support of an application pursuant to this Section IX is false, Counsel that submitted the application shall promptly repay to the Qualified Settlement Fund all amounts previously paid to that Counsel from the Litigation Cost Amount. Any such forfeited amount shall be added to the Remediation Amount and distributed as provided in this Agreement and the West Virginia First Memorandum of Understanding.

X. <u>ENFORCEMENT AND DISPUTE RESOLUTION</u>

A. This Agreement shall only be enforceable by Walgreens and the State.

B. If either the State or Walgreens believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, Walgreens and the State shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may bring an action to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes identified in this Section X.

C. To the extent allowed by applicable law, this Agreement shall not be deemed to create a lien or encumbrance against any real property owned by Walgreens or its affiliates, unless in the event of a default or breach of the payment provisions by Walgreens. Nothing in this <u>Section X.C</u> shall be construed to limit any remedy of the State or a Participating Subdivision in the event of a default or breach of this Agreement by Walgreens.

XI. <u>MISCELLANEOUS</u>

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between Walgreens and Plaintiff and between the Released Entities and all Releasors. Walgreens is entering into this Settlement Agreement solely for the purposes of settlement and to resolve the West Virginia AG Action, all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. Walgreens denies the allegations in the West Virginia AG Action and the other Actions and denies any civil or criminal liability in the West Virginia AG Action and the other Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by Walgreens of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the West Virginia AG Action, in any other Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Product in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the West Virginia AG Action or the other Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial.* The State agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation,* Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes.* Each of the Parties acknowledges, agrees, and understands that it is its intention that, for purposes of Section 162(f) of the Internal Revenue Code, the Remediation Amount paid by Walgreens constitutes restitution or remediation, as defined in Treasury Regulation § 1.162-21(e)(4), for damage or harm allegedly caused by the potential violation of a law and is an amount paid for the purpose of remediating the damage or harm allegedly caused, including to restore the affected persons, the State and Participating Local Governments to the same or substantially similar position or condition as existed prior to such damage or harm allegedly caused. The Parties acknowledge, agree and understand that only the Litigation Cost Amount represents reimbursement to the State, any Participating Local Government or other person or entity for the costs of any investigation or litigation; that no portion of the Remediation Amount represents reimbursement to the State, any Participating Local Government or any other person or entity for the costs of any investigation or litigation; and that no portion of the Remediation Amount or the Litigation Cost Amount represents or should properly be characterized as the payment of fines, penalties, or other punitive assessments. The State and Participating Local Governments acknowledge, agree and understand that Walgreens intends to allocate the cost of the Remediation Amount among the Released Entities using a reasonable basis. The State shall complete and file, on behalf of the State and every Participating Local Government, a Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of each year following a calendar year in which Walgreens makes an Initial Payment or a Subsequent Payment. On the Form 1098-F, the State shall identify the Remediation Amount, as agreed to by the Parties or as determined by the Court, as restitution/remediation amounts and shall furnish Copy B of such Form 1098-F to Walgreens by January 31 of each year following a calendar year in which Walgreens makes an Initial Payment or a Subsequent Payment. Alternatively, if reasonably requested by Walgreens for any year in which the Initial Payment or a Subsequent Payment is made, the State and every Participating Local Government shall complete and file Form 1098-F with the Internal Revenue Service, identifying the Remediation Amount as remediation/restitution amounts, and shall furnish Copy B of such Form 1098-F to Walgreens. Walgreens makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Remediation Amount or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by Walgreens in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law.* Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter.* None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Walgreens may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability.* In the event any one or more immaterial provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement. Material provisions are those in Sections III, V, VII, and VIII of this Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

WALGREENS:

Michael J. Freeman
104 Wilmot Road, MS#144Q
Deerfield, IL 60015
michael.j.freeman@walgreens.com

Copy to WALGREENS's attorneys:

Harlan Levy
Foley Hoag LLP
1301 Avenue of the Americas
New York, New York 10019
hlevy@foleyhoag.com

Kristyn DeFilipp
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02110
kbuncedefilipp@foleyhoag.com

and

Wayne B. Mason
Faegre Drinker
1717 Main Street, Ste. 5400
Dallas, TX 75201-7367
Wayne.Mason@faegredrinker.com

For the State:

Vaughn T. Sizemore
Deputy Attorney General

Office of the Attorney General
P.O. Box 1789
Charleston, WV 25326
vaughn.t.sizemore@wvago.gov

Abby G. Cunningham
Assistant Attorney General
Office of the Attorney General
P.O. Box 1789
Charleston, WV 25326
abby.g.cunningham@wvago.gov

SIGNATURE PAGE FOLLOWS

APPROVED:

Date: 1-13-23

WALGREENS CO.

By: ______________________________
Name: Michael Freeman
Title: Vice President, Head of Litigation, Employment and Regulatory Law

Date: 1-13-23

THE STATE OF WEST VIRGINIA

By: ______________________________
Name: Patrick Morrisey
Title: Attorney General

EXHIBIT ___

WEST VIRGINIA LOCAL GOVERNMENT ELECTION AND RELEASE FORM

This Election and Release Form for West Virginia Participating Local Governments resolves opioid-related Claims against "The" Pharmacy, Bypass Pharmacy, Rhonda's Pharmacy, Clendenin Pharmacy and Fruth Pharmacy under the terms and conditions set forth in the attached West Virginia State-Wide Opioid Settlement Agreements ("Agreements") the provisions of which are incorporated by reference in their entirety.

Upon executing this Election and Release Form, a Participating Local Government agrees that, in exchange for the consideration described in the Agreements, the Participating Local Government is bound by all the terms and conditions of the "Agreements". By executing this Election and Release Form, the Participating Local Government submits to the jurisdiction of the panel overseeing the mass litigation proceeding captioned *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County) (the "Court").

To the extent the Participating Local Government has asserted Claims against "The" Pharmacy, Bypass Pharmacy, Rhonda's Pharmacy, Clendenin Pharmacy and Fruth Pharmacy, in Actions that are pending before the Court, the Participating Local Government hereby grants all necessary right and authority to the Plaintiffs and/or their attorneys in the Action to seek dismissal of the Participating Local Government's Action as contemplated in the "Agreements". If a Participating Local Government's Action is pending in another court as of the Effective Date, the Participating Local Government hereby agrees to dismiss (or if necessary move to dismiss) that Action as to "The" Pharmacy, Bypass Pharmacy, Rhonda's Pharmacy, Clendenin Pharmacy and Fruth Pharmacy and any other Released Entities within seven (7) business days of the Effective Date.

Dated:_______________

[WEST VIRGINIA LOCAL GOVERNMENT]

By:___________________________________
[NAME, TITLE]
[ADDRESS]
[TELEPHONE]
[EMAIL ADDRESS]

THE PHARMACY'S WEST VIRGINIA STATE-WIDE OPIOID SETTLEMENT AGREEMENT

I. OVERVIEW

This Settlement Agreement dated as of _______ sets forth the terms and conditions of a settlement between and among the Plaintiffs (defined herein) and "The" Pharmacy, Inc., (defined herein) (hereinafter, "The" Pharmacy") to resolve opioid-related Claims (defined herein) against "The" Pharmacy as asserted in the lawsuit captioned *City of Huntington, West Virginia, et al., v. "The" Pharmacy, Inc., et al.,* Case No. 1:18-op-45984-DAP (S.D. W.Va.), pending in MDL No. 1:17-MD-2804 (hereinafter "*City of Huntington Action").*

"The" Pharmacy has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of law, or of any liability or wrongdoing, all of which "The" Pharmacy expressly denies. No part of this Agreement, including its statements and commitments shall constitute evidence of any liability, fault, or wrongdoing by "The" Pharmacy. The payment of the settlement sum herein shall not constitute evidence of, or existence of, insurance coverage for "The" Pharmacy or any other similarly situated insured of an insurer of "The" Pharmacy for the alleged acts and harms set forth in the Action.

II. DEFINITIONS

A. "*Action*" means the lawsuit *City of Huntington, West Virginia, et al., v. "The" Pharmacy, Inc., et al.,* Case No. 1:18-op-45984-DAP (S.D. W.Va.), pending in MDL No. 1:17-MD-2804

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the allegations set forth in the Action, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by "The" Pharmacy.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with any Exhibits thereto.

D. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

F. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

G. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

H. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

I. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

J. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

K. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) including without limitation the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, purchases, reimbursement, discovery, orders, prescriptions, formularies, guidelines, policies, practices and/or operating procedures, statement, contracts, and any other act or failure to act relating to Opioid Drugs, or any alleged direct or indirect effects or harms resulting from any of the above.

L. *"The" Pharmacy*" means "The" Pharmacy, Inc., as well as all of its past and present direct and indirect parents and subsidiaries. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.AA.

M. "*Effective Date*" means the date on which "The" Pharmacy pays the Settlement Sum.

"*Execution Date*" means the date on which this Agreement is executed by the last Party to do so.

N. "*Later Litigating Local Government*" means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date.

O. "*Litigating Local Government*" means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date.

P. "*Local Government*" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity. For the avoidance of doubt, "Local Government" does not include special districts or school boards.

Q. "*Non-Litigating Local Government*" means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

R. "*Non-Participating Local Government*" means a Local Government that is not a Participating Local Government.

S. "*Participation Date*" means one hundred twenty (120) days after the Agreement is executed.

T. "*Participating Local Government*" means a Local Government that signs the Election and Release Form annexed as **Exhibit A** and meets the requirements for becoming a Participating Local Government.

U. "Opioid Drugs" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

V. "*Qualified Settlement Fund*" means the Wet Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

W. "*Qualified Settlement Fund Administrator*" means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by the Court. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator's fees and costs, will be set forth by Court Order.

X. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the

Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State and Releasors take no position on the availability of such defense, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

Y. "*Released Entities*" means ""The" Pharmacy" as defined in II.L. above, as well as any and all of the foregoing entities' respective past and present, direct or indirect: parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (iii) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (i) through (iii) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (vii)-(viii) shall be a Released entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

Z. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys,

including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing, (b) any public entities or public instrumentalities and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release form (in the form attached as **Exhibit A** to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VI.F.

AA. This agreement does not impose any costs or obligations on "The" Pharmacy other than those specifically provided for in the Agreement.

BB. "*Settlement Sum*" means the total sum to be paid pursuant to this Agreement by or on behalf of "The" Pharmacy and all Released Entities as specified in Section III.A below. Neither "The" Pharmacy nor any Released Entity shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

CC. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. CONSIDERATION TO BE PROVIDED BY "THE" PHARMACY

A. *Settlement Sum*. The Settlement Sum is $20,000.00 (Twenty Thousand Dollars). The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the Plaintiffs' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against "The" Pharmacy and the Released Entities in the Actions, and to be disbursed as provided by the Court; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State. On or before the Participation Date, the Plaintiffs shall provide to "The" Pharmacy **Election and Release Forms (in the form annexed as Exhibit A)** demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local

Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that "The" Pharmacy pay the Settlement Sum pursuant to this Agreement shall become binding only upon the Plaintiff's provision to "The" Pharmacy of Election and Release Forms demonstrating that it has met the Participation Threshold. The Settlement Sum shall be paid within fifteen (15) days after delivery of all Election and Release Forms required under this Section.

B. *No Other Payments by Releasees*. Other than the Payment described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

C. *Dismissal Order*. As soon as practicable following the Effective Date, , Plaintiff shall file in the Court a proposed Dismissal Order approved by the Court effectuating the dismissal with prejudice, as to "The" Pharmacy and all other Released Entities, and the Actions of Participating Local Governments pending before the Court. The Dismissal Order shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to determine the allocation of the Settlement Sum as set forth in the West Virginia First Memorandum of Understanding, discussed in greater detail below. The Parties shall confer and agree as to the final form and time of filing of the Dismissal Order prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Settlement Sum as provided in the Orders of the Panel and the West Virginia First Memorandum of Understanding, including the payment of attorney fees and costs.

V. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant.

VI. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim,

or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Settlement Sum set forth in III.A. shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to "The" Pharmacy pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VI.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the

avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement.* To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from "The" Pharmacy in subsection VI.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition , or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement , and such Non-Released Entity asserts a Claim-Over against a Released Entity, "The" Pharmacy and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by "The" Pharmacy under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* On or before the Participation Date, the State will provide an election and release form confirming that the State will settle and release (1) its claims; (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts; and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Attorney General is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against "The" Pharmacy and any other Released Entities dismissed as part of the Dismissal Order above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to "The" Pharmacy and any other Released Entities within fourteen (14) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VII. PARTICIPATION BY LOCAL GOVERNMENTS

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (**Exhibit A**); or (2) having its claims extinguished by operation of law.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law..

D. *Representation With Respect to Local Government Participation.* Plaintiffs' counsel represent and warrant that they have a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. Plaintiffs' counsel acknowledge the materiality of the foregoing representation and warranty. Further, Plaintiffs' counsel will use their best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments.

VIII. ENFORCEMENT AND DISPUTE RESOLUTION

A. This Agreement shall only be enforceable by "The" Pharmacy and the Plaintiffs.

B. If either the Plaintiffs or "The" Pharmacy believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, The Parties by and through their counsel shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may file a motion to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes.

IX. <u>MISCELLANEOUS</u>

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between "The" Pharmacy and Plaintiffs and between the Released Entities and all Releasors. "The" Pharmacy is entering into this Settlement Agreement solely for the purposes of settlement and to resolve all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. "The" Pharmacy denies the allegations in the Actions and denies any civil or criminal liability in the Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by "The" Pharmacy of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Opioid Drugs in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial*. Plaintiffs agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes*. "The" Pharmacy makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Settlement Sum or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by "The" Pharmacy in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law*. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter.* None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the

Consent Judgment, "The" Pharmacy may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability.* In the event any one or more provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

"The" Pharmacy:

Heloise Swanepole
957 Ridgemont Road
Charleston, WV 25314

Counsel for "The" Pharmacy:

Steven K. Nord, Esq.		(WV # 2748)
Ryan Q. Ashworth, Esq.		(WV # 10451)
Ashworth Nord LLC		
WV:	314 Ninth Street, Suite 100B, Huntington, WV 25701	
OH:	307 Putnam Street, Marietta, OH 45750	
Mailing:	**P.O. Box 240, Marietta, OH 45750**	
Telephone:	Main:	(740) 371-7121

<u>*Counsel for Plaintiffs*</u>

Bob Fitzsimmons, Esq.
Mark Colantonio, Esq.
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

******SIGNATURE PAGE FOLLOWS******

Approved by:

____

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
Ashworth Nord LLC

WV:	314 Ninth Street, Suite 100B, Huntington, WV 25701	
OH:	307 Putnam Street, Marietta, OH 45750	
Mailing:	**P.O. Box 240, Marietta, OH 45750**	
Telephone:	Main:	(740) 371-7121
	RQA Direct:	(740) 371-7122
	SKN Direct:	(740) 760-1604
	Fax:	(740) 760-1601
Email:	steve.nord@ashworth-nord.com	
	ryan.ashworth@ashworth-nord.com	
	jenny.honaker@ashworth-nord.com	

On behalf of "The" Pharmacy

Approved by:

____

Bob Fitzsimmons (WVSB# 1212)
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705
On behalf of Plaintiffs

____

Mark Colantonio (WVSB# 4238)
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1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705
On behalf of Plaintiffs

BYPASS PHARMACY, INC'S WEST VIRGINIA STATE-WIDE OPIOID
<u>SETTLEMENT AGREEMENT</u>

I. OVERVIEW

This Settlement Agreement dated as of _______ sets forth the terms and conditions of a settlement between and among the Plaintiffs (defined herein) and Bypass Pharmacy, Inc., (defined herein) (hereinafter, "Bypass Pharmacy") to resolve opioid-related Claims (defined herein) against Bypass Pharmacy as asserted in the lawsuit captioned *City of Beckley, West Virginia v. Bypass Pharmacy, Inc., et al*., Civil Action No. 20-C-34 (W. Va. Cir. Ct. Marshall County) (hereinafter "*City of Beckley Action").*

Bypass Pharmacy has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of law, or of any liability or wrongdoing, all of which Bypass Pharmacy expressly denies. No part of this Agreement, including its statements and commitments shall constitute evidence of any liability, fault, or wrongdoing by Bypass Pharmacy. The payment of the settlement sum herein shall not constitute evidence of insurance coverage for the alleged acts and harms set forth in the Action.

II. DEFINITIONS

A. "*Action*" means the lawsuit captioned *City of Beckley, West Virginia v. Bypass Pharmacy, Inc., et al.,* Civil Action No. 20-C-34 (W. Va. Cir. Ct. Marshall County).

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the allegations set forth in the Action, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Bypass Pharmacy.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with any Exhibits thereto.

D. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

F. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

G. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

H. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

I. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

J. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

K. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) including without limitation the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, purchases, reimbursement, discovery, orders, prescriptions, formularies, guidelines, policies, practices and/or operating procedures, statement, contracts, and any other act or failure to act relating to

Opioid Drugs, or any alleged direct or indirect effects or harms resulting from any of the above.

L. "Bypass *Pharmacy*" means Bypass Pharmacy, Inc., sometimes doing business with the tradename of Bypass Pharmacy #2 through #6, as well as all of its past and present direct and indirect parents and subsidiaries, including BP3, LLC., BP4, LLC., BP5, LLC., and BP6, LLC. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.AA.

M. "*Effective Date*" means the date on which Bypass Pharmacy pays the Settlement Sum.

"*Execution Date*" means the date on which this Agreement is executed by the last Party to do so.

N. "*Later Litigating Local Government*" means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date.

O. "*Litigating Local Government*" means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date.

P. "*Local Government*" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity. For the avoidance of doubt, "Local Government" does not include special districts or school boards.

Q. "*Non-Litigating Local Government*" means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

R. "*Non-Participating Local Government*" means a Local Government that is not a Participating Local Government.

S. "*Participation Date*" means one hundred twenty (120) days after the Agreement is executed.

T. "*Participating Local Government*" means a Local Government that signs the Election and Release Form annexed as **Exhibit A** and meets the requirements for becoming a Participating Local Government.

U. "Opioid Drugs" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

V. "*Qualified Settlement Fund*" means the Wet Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

W. "*Qualified Settlement Fund Administrator*" means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by the Court. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator's duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator's fees and costs, will be set forth by Court Order.

X. "*Released Claims*" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the

Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State and Releasors take no position on the availability of such defense, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

Y. "*Released Entities*" means "Bypass Pharmacy" as defined in II.L. above, as well as any and all of the foregoing entities' respective past and present, direct or indirect: parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (iii) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (i) through (iii) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (vii)-(viii) shall be a Released entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

Z. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys,

including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing, (b) any public entities or public instrumentalities and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release form (in the form attached as **Exhibit A** to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VI.F.

AA. This agreement does not impose any costs or obligations on Bypass Pharmacy other than those specifically provided for in the Agreement.

BB. "*Settlement Sum*" means the total sum to be paid pursuant to this Agreement by or on behalf of Bypass Pharmacy and all Released Entities as specified in Section III.A below. Neither Bypass Pharmacy nor any Released Entity shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

CC. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. <u>CONSIDERATION TO BE PROVIDED BY BYPASS PHARMACY</u>

A. *Settlement Sum*. The Settlement Sum is $20,000.00 (Twenty Thousand Dollars). The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the Plaintiffs' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Bypass Pharmacy and the Released Entities in the Actions, and to be disbursed as provided by the Court; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State. On or before the Participation Date, the Plaintiffs shall provide to Bypass Pharmacy **Election and Release Forms (in the form annexed as Exhibit A)** demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local

Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Bypass Pharmacy pay the Settlement Sum pursuant to this Agreement shall become binding only upon the Plaintiff's provision to Bypass Pharmacy of Election and Release Forms demonstrating that it has met the Participation Threshold. The Settlement Sum shall be paid within fifteen (15) days after delivery of all Election and Release Forms required under this Section.

B. *No Other Payments by Releasees*. Other than the Payment described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

C. *Dismissal Order*. As soon as practicable following the Effective Date, , Plaintiff shall file in the Court a proposed Dismissal Order approved by the Court effectuating the dismissal with prejudice, as to Bypass Pharmacy and all other Released Entities, and the Actions of Participating Local Governments pending before the Court. The Dismissal Order shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to determine the allocation of the Settlement Sum as set forth in the West Virginia First Memorandum of Understanding, discussed in greater detail below. The Parties shall confer and agree as to the final form and time of filing of the Dismissal Order prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Settlement Sum as provided in the Orders of the Panel and the West Virginia First Memorandum of Understanding, including the payment of attorney fees and costs.

V. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant.

VI. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim,

or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Settlement Sum set forth in III.A. shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to Bypass Pharmacy pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VI.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the

avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement.* To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Bypass Pharmacy in subsection VI.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition , or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement , and such Non-Released Entity asserts a Claim-Over against a Released Entity, Bypass Pharmacy and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Bypass Pharmacy under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* On or before the Participation Date, the State will provide an election and release form confirming that the State will settle and release (1) its claims; (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts; and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Attorney General is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Bypass Pharmacy and any other Released Entities dismissed as part of the Dismissal Order above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Bypass Pharmacy and any other Released Entities within fourteen (14) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VII. PARTICIPATION BY LOCAL GOVERNMENTS

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (**Exhibit A**); or (2) having its claims extinguished by operation of law.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law..

D. *Representation With Respect to Local Government Participation.* Plaintiffs' counsel represent and warrant that they have a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. Plaintiffs' counsel acknowledge the materiality of the foregoing representation and warranty. Further, Plaintiffs' counsel will use their best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments.

VIII. ENFORCEMENT AND DISPUTE RESOLUTION

A. This Agreement shall only be enforceable by Bypass Pharmacy and the Plaintiffs.

B. If either the Plaintiffs or Bypass Pharmacy believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, The Parties by and through their counsel shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may file a motion to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes.

IX. <u>MISCELLANEOUS</u>

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between Bypass Pharmacy and Plaintiffs and between the Released Entities and all Releasors. Bypass Pharmacy is entering into this Settlement Agreement solely for the purposes of settlement and to resolve all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. Bypass Pharmacy denies the allegations in the Actions and denies any civil or criminal liability in the Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by Bypass Pharmacy of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Opioid Drugs in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial*. Plaintiffs agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes*. Bypass Pharmacy makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Settlement Sum or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by Bypass Pharmacy in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law*. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter.* None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the

Consent Judgment, Bypass Pharmacy may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability.* In the event any one or more provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

Bypass Pharmacy:

Siddarthan Ilangovan
104 S. Eisenhower Dr.
Beckley, WV 25801

Counsel for Bypass Pharmacy:

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
Ashworth Nord LLC
WV: 314 Ninth Street, Suite 100B, Huntington, WV 25701
OH: 307 Putnam Street, Marietta, OH 45750
Mailing: **P.O. Box 240, Marietta, OH 45750**
Telephone: Main: (740) 371-7121

Counsel for Plaintiffs

Bob Fitzsimmons, Esq.
Mark Colantonio, Esq.
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

******SIGNATURE PAGE FOLLOWS******

Approved by:

____

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
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ryan.ashworth@ashworth-nord.com
jenny.honaker@ashworth-nord.com

On behalf of Bypass Pharmacy

Approved by:

____

Bob Fitzsimmons (WVSB# 1212)
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On behalf of Plaintiffs

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On behalf of Plaintiffs

CLENDENIN PHARMACY, INC.'S WEST VIRGINIA STATE-WIDE OPIOID SETTLEMENT AGREEMENT

I. OVERVIEW

This Settlement Agreement dated as of _______ sets forth the terms and conditions of a settlement between and among the Plaintiffs (defined herein) and Clendenin Pharmacy, Inc., (defined herein) (hereinafter, "Clendenin Pharmacy") to resolve opioid-related Claims (defined herein) against Clendenin Pharmacy as asserted in the lawsuit captioned *City of Huntington, West Virginia, et al., v. Clendenin Pharmacy, Inc., et al.,* Case No. 1:18-op-45984-DAP (S.D. W.Va.), pending in MDL No. 1:17-MD-2804 (hereinafter "*City of Huntington Action").*

Clendenin Pharmacy has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of law, or of any liability or wrongdoing, all of which Clendenin Pharmacy expressly denies. No part of this Agreement, including its statements and commitments shall constitute evidence of any liability, fault, or wrongdoing by Clendenin Pharmacy. The payment of the settlement sum herein shall not constitute evidence of, or existence of, insurance coverage for Clendenin Pharmacy or any other similarly-situated insured of an insurer of Clendenin Pharmacy for the alleged acts and harms set forth in the Action.

II. DEFINITIONS

A. "*Action*" means the lawsuit *City of Huntington, West Virginia, et al., v. Clendenin Pharmacy, Inc., et al.,* Case No. 1:18-op-45984-DAP (S.D. W.Va.), pending in MDL No. 1:17-MD-2804

B. "*Alleged Harms*" means the alleged past, present, and future financial, societal, and related expenditures arising out of the allegations set forth in the Action, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Clendenin Pharmacy.

C. "*Agreement*" and "*Settlement Agreement*" mean this settlement agreement together with any Exhibits thereto.

D. "*Claim*" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. "*Class I Local Government*" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

F. "*Class II Local Government*" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

G. "*Class III Local Government*" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

H. "*Class IV Local Government*" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

I. "*Counsel*" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

J. "*Court*" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

K. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) including without limitation the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, purchases, reimbursement, discovery, orders, prescriptions, formularies, guidelines, policies, practices and/or operating procedures, statement, contracts, and any other act or failure to act relating to Opioid Drugs, or any alleged direct or indirect effects or harms resulting from any of the above.

L. “*Clendenin Pharmacy*” means Clendenin Pharmacy, Inc., as well as all of its past and present direct and indirect parents and subsidiaries. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.AA.

M. “*Effective Date*” means the date on which Clendenin Pharmacy pays the Settlement Sum.

“*Execution Date*” means the date on which this Agreement is executed by the last Party to do so.

N. “*Later Litigating Local Government*” means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date.

O. “*Litigating Local Government*” means any Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date.

P. “*Local Government*” means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity. For the avoidance of doubt, “Local Government” does not include special districts or school boards.

Q. “*Non-Litigating Local Government*” means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

R. “*Non-Participating Local Government*” means a Local Government that is not a Participating Local Government.

S. “*Participation Date*” means one hundred twenty (120) days after the Agreement is executed.

T. “*Participating Local Government*” means a Local Government that signs the Election and Release Form annexed as **Exhibit A** and meets the requirements for becoming a Participating Local Government.

U. “Opioid Drugs” means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. “Product” also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or “cocktail” of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, “Product” does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. “Product” shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

V. “*Qualified Settlement Fund*” means the Wet Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

W. “*Qualified Settlement Fund Administrator*” means the Administrator appointed to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. The duties of the Qualified Settlement Fund Administrator shall be governed by the Court. The identity of the Qualified Settlement Fund Administrator and a detailed description of the Qualified Settlement Fund Administrator’s duties and responsibilities, including a detailed mechanism for paying the Qualified Settlement Fund Administrator’s fees and costs, will be set forth by Court Order.

X. “*Released Claims*” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims” include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Local Governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the

Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. While the State and Releasors take no position on the availability of such defense, in any action arising from or relating to such Claims or the Covered Conduct, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Government that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

Y. "*Released Entities*" means "Clendenin Pharmacy" as defined in II.L. above, as well as any and all of the foregoing entities' respective past and present, direct or indirect: parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (iii) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (i) through (iii) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (vii)-(viii) shall be a Released entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

Z. "*Releasors*" means (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys,

including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing, (b) any public entities or public instrumentalities and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release form (in the form attached as **Exhibit A** to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VI.F.

AA. This agreement does not impose any costs or obligations on Clendenin Pharmacy other than those specifically provided for in the Agreement.

BB. "*Settlement Sum*" means the total sum to be paid pursuant to this Agreement by or on behalf of Clendenin Pharmacy and all Released Entities as specified in Section III.A below. Neither Clendenin Pharmacy nor any Released Entity shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below.

CC. "*State*" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. <u>CONSIDERATION TO BE PROVIDED BY CLENDENIN PHARMACY</u>

A. *Settlement Sum*. The Settlement Sum is $20,000.00 (Twenty Thousand Dollars). The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the Plaintiffs' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Clendenin Pharmacy and the Released Entities in the Actions, and to be disbursed as provided by the Court; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State. On or before the Participation Date, the Plaintiffs shall provide to Clendenin Pharmacy **Election and Release Forms (in the form annexed as Exhibit A)** demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local

Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Clendenin Pharmacy pay the Settlement Sum pursuant to this Agreement shall become binding only upon the Plaintiff's provision to Clendenin Pharmacy of Election and Release Forms demonstrating that it has met the Participation Threshold. The Settlement Sum shall be paid within fifteen (15) days after delivery of all Election and Release Forms required under this Section.

B. *No Other Payments by Releasees*. Other than the Payment described in Section III.A, none of the Released Entities shall have any obligation to make any further or additional payment under this Agreement.

C. *Dismissal Order*. As soon as practicable following the Effective Date, , Plaintiff shall file in the Court a proposed Dismissal Order approved by the Court effectuating the dismissal with prejudice, as to Clendenin Pharmacy and all other Released Entities, and the Actions of Participating Local Governments pending before the Court. The Dismissal Order shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to determine the allocation of the Settlement Sum as set forth in the West Virginia First Memorandum of Understanding, discussed in greater detail below. The Parties shall confer and agree as to the final form and time of filing of the Dismissal Order prior to its filing with the Court.

IV. INTRA-STATE ALLOCATION AND DISBURSEMENT OF REMEDIATION AMOUNT

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Settlement Sum as provided in the Orders of the Panel and the West Virginia First Memorandum of Understanding, including the payment of attorney fees and costs.

V. CESSATION OF LITIGATION ACTIVITIES

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant.

VI. RELEASE AND DISMISSAL

A. *Scope*. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim,

or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. *Claim-Over and Non-Party Settlement*

1. *Statement of Intent.* It is the intent of the Parties that:

a. Released Entities shall not seek indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

b. The Settlement Sum set forth in III.A. shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waives its right to seek reallocation to Clendenin Pharmacy pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

c. Claims by Releasors against non-Parties shall not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and

d. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party under any theory, including on the basis of contribution, indemnity or other claim-over (a "*Claim-Over*").

e. The provisions of this subsection VI.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the

avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. Non-Party Settlement. To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Clendenin Pharmacy in subsection VI.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

4. Claim-Over. In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition , or any Releasor files a Non-Party Covered Conduct Claim against a non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement , and such Non-Released Entity asserts a Claim-Over against a Released Entity, Clendenin Pharmacy and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Clendenin Pharmacy under this Settlement Agreement).

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

D. *Cooperation.* Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

E. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

F. *Representation and Warranty.* On or before the Participation Date, the State will provide an election and release form confirming that the State will settle and release (1) its claims; (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts; and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Attorney General is sufficient to demonstrate that the appropriate releases have been obtained.

G. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement.

I. *Dismissal of Actions.* The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Clendenin Pharmacy and any other Released Entities dismissed as part of the Dismissal Order above. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Clendenin Pharmacy and any other Released Entities within fourteen (14) business days of the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VII. PARTICIPATION BY LOCAL GOVERNMENTS

A. *Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments.* A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (**Exhibit A**); or (2) having its claims extinguished by operation of law.

B. *Notice.* As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. *Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments.* A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law..

D. *Representation With Respect to Local Government Participation.* Plaintiffs' counsel represent and warrant that they have a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. Plaintiffs' counsel acknowledge the materiality of the foregoing representation and warranty. Further, Plaintiffs' counsel will use their best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments.

VIII. ENFORCEMENT AND DISPUTE RESOLUTION

A. This Agreement shall only be enforceable by Clendenin Pharmacy and the Plaintiffs.

B. If either the Plaintiffs or Clendenin Pharmacy believes the other is not in compliance with any term of this Agreement, then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "*Cure Period*"). In the event the alleged noncompliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, The Parties by and through their counsel shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may file a motion to enforce the terms of the Agreement in Court. The Parties consent to the jurisdiction of the Court for the limited purpose of resolution of disputes.

IX. MISCELLANEOUS

A. *No Admission of Liability.* The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between Clendenin Pharmacy and Plaintiffs and between the Released Entities and all Releasors. Clendenin Pharmacy is entering into this Settlement Agreement solely for the purposes of settlement and to resolve all Actions and Released Claims and thereby avoid significant expense, inconvenience and uncertainty. Clendenin Pharmacy denies the allegations in the Actions and denies any civil or criminal liability in the Actions. Nothing contained herein may be taken as or deemed to be an admission or concession by Clendenin Pharmacy of: (1) any violation of any law, regulation, or ordinance; (2) any fault, liability, or wrongdoing; (3) the strength or weakness of any Claim or defense or allegation made in the Action, or in any other past, present or future proceeding relating to any Covered Conduct; (4) the legal viability of the claims and theories in the Actions, including but not limited to the legal viability of the relief sought; or (5) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Opioid Drugs in accordance with applicable laws and regulations.

B. *Use of Agreement as Evidence.* Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement: (1) is or may be deemed to be or may be used as an admission or evidence relating to any matter of fact or law alleged in the Actions, the strength or weakness of any Claim or defense or allegation made in those cases, or any wrongdoing, fault, or liability of any Released Entities; or (2) is or may be deemed to be or may be used as an admission or evidence relating to any liability, fault or omission of Released Entities in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that Released Entities may file or use this Agreement in any action or proceeding (1) involving a determination regarding insurance coverage, (2) involving a determination of the taxable income or tax liability of any Released Entities; (3) to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or on any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; (4) to support a claim for contribution and/or indemnification; or (5) to support any other argument or defense by a Released Entity that the Settlement Agreement provides full or partial compensation for asserted harms or otherwise satisfies the relief sought.

C. *Use of Evidence at Trial*. Plaintiffs agrees that none of the Released Entities will be a defendant in any trial of any Claims brought by any Releasors within *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and that any evidence that references Released Entities or Products will be used solely against other defendants in such a trial.

D. *Voluntary Settlement.* This Settlement Agreement was negotiated in good faith and at arm's-length over several months, and the exchange of the Remediation Amount and Litigation Cost Amount for the releases set forth herein is agreed to represent appropriate and fair consideration.

E. *Taxes*. Clendenin Pharmacy makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Settlement Sum or the Litigation Cost Amount or any portion thereof.

F. *Federal, State and Local Laws Prevail.* Nothing in this Agreement shall be construed to authorize or require any action by Clendenin Pharmacy in violation of applicable federal, state, or other laws.

G. *No Third-Party Beneficiaries.* Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

H. *Binding Agreement.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

I. *Choice of Law*. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

J. *No Conflict Intended.* The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. *No Party Deemed to be the Drafter.* None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

L. *Modification.* This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Clendenin Pharmacy may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. *Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.

O. *Counterparts.* This Agreement may be executed in counterparts, and a facsimile or pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

P. *Severability.* In the event any one or more provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Settlement Agreement.

Q. *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

<ins>*Clendenin Pharmacy:*</ins>

William J. Ore
P.O. Box 657
225 Skyview Lane
Clendenin, WV 25045

<ins>*Counsel for*</ins> <ins>*Clendenin Pharmacy:*</ins>

Steven K. Nord, Esq. (WV # 2748)
Ryan Q. Ashworth, Esq. (WV # 10451)
Ashworth Nord LLC
WV: 314 Ninth Street, Suite 100B, Huntington, WV 25701
OH: 307 Putnam Street, Marietta, OH 45750
Mailing: P.O. Box 240, Marietta, OH 45750
Telephone: Main: (740) 371-7121

Counsel for Plaintiffs

Bob Fitzsimmons, Esq.
Mark Colantonio, Esq.
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

******SIGNATURE PAGE FOLLOWS******

Approved by:

____

Steven K. Nord, Esq.		(WV # 2748)
Ryan Q. Ashworth, Esq.		(WV # 10451)
Ashworth Nord LLC		
WV:	314 Ninth Street, Suite 100B, Huntington, WV 25701	
OH:	307 Putnam Street, Marietta, OH 45750	
Mailing:	**P.O. Box 240, Marietta, OH 45750**	
Telephone:	Main:	(740) 371-7121
	RQA Direct:	(740) 371-7122
	SKN Direct:	(740) 760-1604
	Fax:	(740) 760-1601
Email:	steve.nord@ashworth-nord.com	
	ryan.ashworth@ashworth-nord.com	
	jenny.honaker@ashworth-nord.com	

On behalf of Clendenin Pharmacy

Approved by:

____

Bob Fitzsimmons (WVSB# 1212)
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1609 Warwood Avenue
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Telephone: (304) 277-1700
Facsimile: (304) 277-1705

On behalf of Plaintiffs

____

Mark Colantonio (WVSB# 4238)
Fitzsimmons Law Firm, PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
Telephone: (304) 277-1700
Facsimile: (304) 277-1705

On behalf of Plaintiffs

Resolution No. 777-23

Introduced in Council: March 6, 2023

Adopted by Council:

Introduced by: Joseph Jenkins

Referred to: Finance

Resolution No. 777-23 - Authorizing the Mayor or City Manager to enter into contract with Encova Insurance for workers' compensation insurance coverage for a premium of $265,448, including surcharges, and with an additional claims handling charge of 10% of paid claims, and authorizing leaving the WV self-insurance system, as detailed in Exhibit A;

Authorizing the Mayor or City Manager to enter into contract with USI Insurance Services LLC ("USI") for insurance broker, risk management, and loss control services related to the City's property, liability, and workers' compensation insurance coverages for a cost of $100,000 as detailed in Exhibit B; and

Authorizing the Mayor or City Manager to enter into contract with the West Virginia Counties Group Self Insurance Risk Pool, Inc, D/B/A West Virginia Communities Risk Pool ("WVCorp"), for Third Party Administration (TPA) services related to legacy claims incurred while the City was self-insured for workers' compensation at a fee not to exceed $35,000 as detailed in Exhibit C.

This procurement is based on the results of a competitive insurance quote review process and the Memorandum of Understanding among the City, USI, and WVCorp entered into under Resolution No. 617-22.

The effective dates of the policies/contracts above will be from March 31, 2023 through March 31, 2024.

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

That the Mayor or City Manager is authorized to enter into contract with Encova Insurance for workers' compensation insurance coverage for a premium of $265,448, including surcharges, and with an additional claims handling charge of 10% of paid claims, and authorizing leaving the WV self-insurance system, as detailed in Exhibit A; to enter into contract with USI Insurance Services LLC for insurance broker, risk management, and loss control services related to the City's property, liability, and workers' compensation insurance coverages for a cost of $100,000 as detailed in Exhibit B; and to enter into contract with the West Virginia Counties Group Self Insurance Risk Pool, Inc, D/B/A West Virginia Communities Risk Pool, for Third Party Administration (TPA) services related to legacy claims incurred while the City was self-insured for workers' compensation at a fee not to exceed $35,000 as detailed in Exhibit C, all to be effective from March 31, 2023 through March 31, 2024.

Self Insurance Proposal
February 16, 2023

City of Charleston
Claim Handling

Package coverages, terms, conditions, and exclusions are only briefly outlined. For complete provisions, please refer to the coverage contract.

For additional information, please contact: Member Services at (844) 986-2705 or info@riskprograms.com

WELCOME TO WVcorp

WVcorp was established in 2007 at the request of West Virginia counties seeking to break from the status quo of the commercial insurance industry and assert more control over their risk management and coverage needs. Today, we are the only self-insurance risk pool for public entities in the state. We provide coverage to more counties and county-related agencies than any other provider, and we attribute our extraordinary success to the strength of our members. As a member, you are so much more than a customer. You are a part of WVcorp itself! Our membership is at the heart of everything we do, and this member-centric focus has driven us to emerge as a leader in developing coverage solutions. We are a one-stop-shop when it comes to safeguarding your peace of mind – capable of addressing all of your risk management needs, including coverage for:

Property	General Liability	Workers' Compensation
Inland Marine	Public Officials Liability	Business Automobile
Equipment Breakdown	Law Enforcement Liability	Cyber Risk
Crime	Environmental Liability	Excess Liability Limits

WELCOME TO WVcorp

YOU'RE CHOOSING OWNERSHIP

At WVcorp, you are an owner of the program and its assets. Unlike traditional insurance providers, we have no outside owners, investors or shareholders expecting dividends or profits to be generated from our programs. Rather than profit-minded executives making decisions, we have a Supervisory Board elected from and by our members. The Board approves all major risk pool decisions, and as a voting member, you have a direct voice in the decisions that matter most to your organization.

In choosing WVcorp, you are choosing a partner that is unlike any traditional insurance provider for one reason: you are truly our primary concern.

YOU'RE CHOOSING PRICE STABILITY

No one likes surprises. The pool was founded to provide an alternative to the commercial insurance marketplace, in part based on the principle of providing price stability. This long-standing ideal has guided our decisions since day one. While the commercial market has seen considerable volatility and rate increases, and competitors have stripped away coverages to combat rate increases, the pool has enjoyed rate stability for more than a decade, even as we've consistently expanded coverages. It all adds up to giving you peace of mind that rates will remain predictable, aiding in long-term planning and budgeting.

YOU'RE CHOOSING SPECIALIZED PROTECTION

We were created by public entities, service only public entities, and are directed by our Board elected from within our membership. This gives our organization remarkable focus, and it's allowed us to grow our team with experts that know your organization and its unique needs, because serving partners like you is all we do. It also means we're able to keep ahead of regulatory and other changes as or even before they happen, adjusting coverages or creating new programs as needed.

Our expert Risk Control team works directly with members to provide employee training, safety audits, or consult on relevant risk management topics to help prevent claims from occurring. It's all part of our commitment to address your need for protection holistically.

YOU'RE CHOOSING TRANSPARENCY

We're proud of the products and services we offer, so we feel there's no need to play games or hide behind gimmicks. Although our policy period begins on July 1, renewal quotes are distributed as early as mid-March, giving you ample time to prepare your budget. We empower members to run your own loss reports at the click of a button on our website without having to request that information through an agent. Because we're partners when it comes to protecting your assets, we openly share every bit of information we have for each of your claims. With our online claim viewer, we bring you behind the curtain and give you the same access to financials and notes that our adjusters have themselves.

MEMBERSHIP HIGHLIGHTS

WEBSITE

- Intuitive, user-friendly design
- Claims reporting with instantaneous claim number
- Risk management tools and templates
- Downloadable employee training presentations and webinars
- Customizable loss reports
- Claim viewer giving access to claim summaries, financials, and adjuster notes
- Property and vehicle schedule editing tool
- Certificates of insurance request feature

RISK CONTROL

- Facility safety assessments
- Certified Playground Safety Inspectors (CPSI)
- Risk management policy creation and consultation
- In person and web-based employee training – safety, liability, human resource, cyber security, and more
- Loss analysis
- Safety committee assistance and participation
- Up to 14 hours of approved CE-credits for law enforcement
- Hot topic workshops presented at various conferences across West Virginia

For more than a decade, WVcorp has been a leader in creating innovative, member-centric solutions to the unique challenges faced by West Virginia's public sector entities. As a pool participant, you can take advantage of WVcorp's vast array of membership benefits.

WORKERS' COMPENSATION

- Medical Bill Review provides savings across multiple medical provider networks to ensure cost effective treatment
- First Fill program so employees have no “out of pocket” for prescriptions

CYBER RISK

- Comprehensive cyber risk coverage like no other West Virginia provider
- No deductible
- Optional limits up to $5,000,000
- Designated breach coach guides legal guidance on cyber incidents
- Live and webinar based cyber security training available

SERVICES

- Property valuations provided at no charge
- Investigations unit available for claim surveillance and analysis
- Tenant User Liability Insurance Program (TULIP) makes it simple to acquire short-term event coverage for facility users
- Contract and lease review to ensure adequate coverage requirements
- Safelite Auto Glass direct billing allows for quick and painless glass replacement; with a deductible waiver with glass repairs

COVERAGE

- Guaranteed replacement cost on property coverage
- No annual aggregate on general liability coverage
- Pollution liability coverage for first party and third party clean up
- Optional increased crime coverage limits available Defense
- coverage for EEOC and HCR complaints included

2023 – 2024 Workers Compensation Claim Handling Quote for City of Charleston

- Lost Time and Litigated Claims - $850 per claim
- Medical Only Claims - $200 per claim
- Minimum Handling Fee of $20,000/Maximum Handling Fee of $35,000 (Expected fee to be $25,000)
- WC Bill Review $7.50 Per Bill & 22% of Audit or any PPO Savings
- $5,000 for Data Migration

The City of Charleston will be responsible for any Self Insurance Assessments and Regulatory Surcharges after 3/31/2023.
WVcorp will need to create a deposit account funded by the City to pay claims since we would no longer be collecting WC premium. All billings will be quarterly.

Resolution No. 617-22

Introduced in Council: Adopted by Council:

March 21, 2022

Introduced by: Referred to:

Joseph Jenkins Council

Resolution No. 617-22 – Approving the March 14, 2022, Memorandum of Understanding among the City of Charleston, USI Insurance Services LLC, and West Virginia Counties Group Self-Insurance Risk Pool, Inc., as shown in Exhibit A; authorizing the Mayor or City Manager to enter into a 3-year service contract with USI Insurance Services LLC to provide insurance agent/broker services to City, where the fee for the first year is $175,000; and authorizing the Mayor or City Manager to enter into contracts with West Virginia Counties Group Self-Insurance Risk Pool, Inc., at a price of $1,497,770, for comprehensive insurance coverages and including third-party claims administration services for the period March 31, 2022, through March 31, 2023, in accordance with the costs referred to as Coverage Option 3 in Exhibit B. Underinsured motorists coverage is specifically rejected. Uninsured motorists coverage with statutory minimum limits of $25,000/$50,000/$25,000 is accepted only.

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

That the March 14, 2022, Memorandum of Understanding among the City of Charleston, USI Insurance Services LLC, and West Virginia Counties Group Self-Insurance Risk Pool, Inc., as shown in Exhibit A, is approved; that the Mayor or City Manager is authorized to enter into a 3-year service contract with USI Insurance Services LLC to provide insurance agent/broker services to City, where the fee for the first year is $175,000; and that the Mayor or City Manager is authorized to enter into contracts with West Virginia Counties Group Self-Insurance Risk Pool, Inc., at a price of $1,497,770, for comprehensive insurance coverages and including third-party claims administration services for the period March 31, 2022, through March 31, 2023, in accordance with the costs referred to as Coverage Option 3 in Exhibit B. Underinsured motorists coverage is specifically rejected. Uninsured motorists coverage with statutory minimum limits of $25,000/$50,000/$25,000 is accepted only. All agent/broker fees for years two and three of the City's contract with USI Insurance Services LLC must be authorized by the City Council at the time the Council approves each subsequent insurance program renewal.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into among the City of Charleston ("City"), USI Insurance Services LLC ("USI"), and the West Virginia Counties Group Self-Insurance Risk Pool, Inc. ("WVcorp"). The purpose and terms of the MOU are set forth herein. This MOU is effective upon its execution by all Parties, subject to limitations outlined in Paragraph 6.

WITNESSETH

WHEREAS, the majority of the City's insurance policies are set to expire on March 31, 2022;

WHEREAS, the City has become familiar with the qualifications, skills, experience, customer service, and insurance programs and coverages offered by both USI and WVcorp;

WHEREAS, on March 7, 2022, the City's Select Committee on Insurance Agent Relations made a recommendation that was rejected by City Council;

WHEREAS, the City's Administration has evaluated the considerable advantages that would come with USI and WVcorp each playing a role in managing the City's insurance affairs;

WHEREAS, the City specifically recognizes the benefit of having a local insurance broker (USI) assisting with monitoring the City's insurance program and making meaningful, thorough, and complete recommendations to the City's Administration relating to risk management and insurance policy options;

WHEREAS, the City specifically recognizes the benefit of selecting insurance coverages and claims handling administration through WVcorp, as doing so provides the most complete coverage at the lowest cost offered during the 2022 renewal process;

WHEREAS, the City engaged in discussions with both USI and WVcorp to determine whether the two companies would be able and willing to enter into a cooperative arrangement to manage the City's insurance affairs;

WHEREAS, both USI and WVcorp have confirmed that they are able and willing to cooperate in managing the City's insurance affairs; and

WHEREAS, by USI and WVcorp agreeing to cooperate during the 2022 renewal year, the City will pay less for insurance coverage compared to its expiring plan of insurance.

NOW, THEREFORE, the Parties agree to the following terms:

1. The City will award a 3-year broker contract to USI, wherein USI will agree to act in the City's best interests to evaluate and monitor the City's insurance program, including but not limited to advising, consulting, reviewing, and recommending risk mitigation

measures and policies/programs of insurance. No insurance carrier or pool will be excluded from offering furture renewal quotes to the City though USI unless such carriers or pools are explicitly excluded by the written direction of the City Manager.

2. The City will pay directly to USI $175,000, which represents USI's service fee for the first year of its contract. Payment and other governing terms will be detailed in a separate service agreement between the City and USI.

3. The City will award a 1-year contract to WVcorp to provide insurance coverages and claims handling/management services, as proposed in WVcorp's February 7, 2022, "Option 3" plan, which will be further detailed in contract and policy documents entered after approval by the Charleston City Council.

4. USI and WVcorp agree to work cooperatively, honestly, and in good faith with one another in the handling of the City's insurance affairs.

5. USI and WVcorp agree to and do hereby waive any rights they may have to protest the City's procurement process and decision relating to the 2022 insurance renewal.

6. The Parties acknowledge and understand that this MOU is subject to the approval of the Charleston City Council. Should the City Council reject this MOU or take no action on it at all, it will be of no force or effect. If the City Council fails to either approve or reject this MOU by 11:59 p.m. (EDT) on March 21, 2022, the MOU will become automatically ineffective.

7. DISPUTE RESOLUTION, JURISDICTION AND VENUE – If any breach, default, or other dispute arises out of this MOU, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation and/or mediation. If the Parties cannot resolve the matter without litigation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the United States District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation.

8. GOVERNING LAW – The MOU shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by the laws of the State of West Virginia.

9. ASSIGNMENT – USI and WVcorp agree not to assign the MOU to any person or entity without the City's prior written consent.

10. AMENDMENTS – All amendments, modifications, alterations or changes to the MOU shall be by mutual agreement, in writing, and signed by the Parties.

11. LIABILITY OF INDIVIDUALS – LIABILITY OF INDIVIDUALS – The Parties agree that the MOU shall not be construed to extend any personal liability to individuals executing or administering the MOU on behalf of City, USI, or WVcorp. Notwithstanding, this provision shall not be construed to prevent City, USI, or WVcorp from taking any and all legal action against any individual who commits fraud related to this MOU.

AGREED TO BY THE FOLLOWING PARTY REPRESENTATIVES:

CITY OF CHARLESTON

Signature

City Manager

Title

3-14-2022

Date

USI INSURANCE SERVICES LLC

James P Rouse

Signature

Practice Leader for WV

Title

3/14/2022

Date

WEST VIRGINIA COUNTIES GROUP SELF-INSURANCE RISK POOL, INC.

Signature

Administrator

Title

3/14/2022

Date

encova
INSURANCE

Quotation for Workers' Compensation Insurance Program
Quote Number: Q353423-005

For

City of Charleston:

Program Type: Large Deductible

Policy Period: 03/31/2023 **to** 03/31/2024

Agency/Producer:
Stacy, Dave
USI Insurance Services LLC
One Hillcrest Dr E Ste 300
Charleston, WV 25311

Prepared By:
Harrison, Jason
Senior Underwriter, WV Large
Phone: (304)941-1000 x55090

Quote Date: 02/14/2023
Effective Date: 03/31/2023
Valid Until: A maximum of 30 days calculated from the Quote Date, but no later than the Effective Date of coverage.

ENCOVA 360° TEAM APPROACH

Claims Services:

- Twenty four (24) Hour Contact
- Cost Reduction Programs
- Case Management Services
- Medical Cost Containment
- Procedure/Bill Review by Medical Specialists
- Return to Work/Rehabilitation Services
- Medical Provider Selection Assistance
- Vendor Management
- Special Investigative/Fraud Units
- Pro-Active Claims handling
- Specialized Services

Loss Control Services:

- On-site Risk Assessment
- Documented Workplace Safety Recommendations
- OSHA Approved Safety Training
- National Safety Council Approved Training
- Free Access to Extensive Safety Video Library
- Web Based Safety Resources
- Industry Experienced Safety Specialists

Audit Services:

- On-Site Payroll and Classification Verification
- Telephonic and Mail Audit Options
- Recordkeeping Assistance
- Class Dispute Resolution Assistance
- Detailed Audit Results Statement
- Extensive Classification Consultation Resource
- Industry Experienced Premium Auditors

Underwriting Services:

- Competitive Coverage and Pricing Options
- Prompt Response to Coverage Questions
- Flexible Premium Payment Options
- Small and Large Deductible Programs
- Association Safety Discount Programs
- Premium Finance Availability
- Specialized Team Approach

Litigation Management:

- Reduce frequency and extent
- Panel counsel
- Litigation strategy
- Savings to policyholders

IMPORTANT TOPICS

THE PROPOSAL

Changes, such as additional locations, changes in exposure, or other variations in underwriting information, may make it necessary to reevaluate this proposal, the premium calculations or other portions of this Quote. Any modification we make shall be based upon our evaluation of these changes and whether the changes represent a measurable difference from the Quote offered.

COVERAGE

The workers' compensation coverage outlined in this document is for reference purposes. The policy we issue to you will contain the complete terms, conditions, exclusions and coverages. Upon receipt of your policy, please review the policy thoroughly with your agent and promptly notify your underwriting representative if you have any questions or concerns.

PREMIUM ESTIMATE

The calculation of estimated premium is based on the information you and your agent have provided to us. All payroll and premium calculations are estimates and do not represent a final calculation even though the Quote documents may use terms such as Total Premium. All estimated amounts are subject to program adjustments.

NAMED INSUREDS

Named Insureds are those shown on the policy and those Named Insureds added by endorsement.

REGULATORY AND FILING REQUIREMENTS

We are required to follow all regulatory and filing requirements in effect for the various states in which you have exposure. We shall adhere to all state regulatory requirements. We shall not issue any form or apply any program that is in contravention to a governing rule or statute. Any form that is void, unapproved or inapplicable in any jurisdiction shall apply in jurisdictions where the application is permissible.

QUESTIONS?

You should direct any questions regarding this Quote to your Underwriter shown on the Cover Page of this document. If changes are desired, we may issue a new Quote. No alterations to this Quote document may be made.

DESCRIPTION: WORKERS' COMPENSATION PROGRAM

INSURER: SummitPoint Insurance Company

NAMED INSUREDS

First Named Insured: City of Charleston

Other Named Insureds:

No Other Additional Named Insured

POLICY PERIOD: 03/31/2023 - 03/31/2024

PROGRAM TYPE: Large Deductible Plan

STATES COVERED:

WV

COVERAGE & LIMITS

Part One - Workers' Compensation Insurance	**Limit**
Bodily Injury by Accident or Disease	Statutory Limits
Part Two - Employers Liability Insurance	
Bodily Injury by Accident, Each Accident	$1,000,000.00
Bodily Injury by Disease, Policy Limit	$1,000,000.00
Bodily Injury by Disease, Each Employee	$1,000,000.00
West Virginia Broad Form Employers' Liability	
Bodily Injury by Accident, Each Accident	$1,000,000.00
Bodily Injury by Disease, Policy Limit	$1,000,000.00
Bodily Injury by Disease, Each Employee	$1,000,000.00

West Virginia - The Employers Liability Insurance limits above are inclusive of and not separate from limits for West Virginia Broad Form Employers' Liability.

DEDUCTIBLE AMOUNT

	Deductible Amount
Bodily Injury Each Accident	$300,000.00

Bodily Injury By Disease, Each Employee $300,000.00

The deductible includes medical, indemnity and ALAE (Allocated Loss Adjustment Expenses). The deductible applies separately to Part One - Workers Compensation and Part Three - Other States Coverage.

The deductible applies separately to Part Two - Employers Liability, but will not erode the limit of liability.

Policy Aggregate Limit

$1,000,000.00

The policy aggregate amount is the most you must reimburse us for the sum of all indemnity, medical benefits and damages for which you are legally obligated including allocated loss adjustment expense (unless excluded) for the policy period.

CLAIM HANDLING CHARGES

A Claim Handling Charge will be applied to your Large Deductible Plan Cost subject to the deductible amount.

Basis:10% of Deductible Plan Paid Loss

Subject to the following limit per Claim:

$30,000.00

DEDUCTIBLE PLAN PREMIUM

Deductible Plan Premium is calculated as follows:

Per the classes, rates and rating values provided in the Extension of Information Page Classification of Operations (WC 99 06 00).

MINIMUM DEDUCTIBLE PLAN COST

Minimum Deductible Plan Cost is $.00

COLLATERAL REQUIREMENTS

Total Collateral Requirement: $400,000.00
We may modify Collateral amounts during the Policy term.

Loss Fund: $75,000.00

(Deductible Loss Fund to be deposited in our approved bank and replenished monthly.)

Other Collateral: $325,000.00

Escrow Loss Fund requirements:

Amount Required for ALL Policy Years:$75,000.00

Currently Holding for Historical Policy Years: $.00

Additional Amount Due: $75,000.00

(Deductible Loss Fund to be deposited in our approved bank.)

Letters of Credit* (LOC) Collateral requirements:

Amount Required for ALL Policy Years: $325,000.00

Currently Holding for Historical Policy Years: $.00

Additional Amount Due: $325,000.00

***Letters of Credit** are required to be in Encova's approved format and issued by a NAIC-approved bank. An Encova-approved LOC form is attached. For a list of NAIC-approved banks please refer to the NAIC List of Qualified U.S. Financial Institutions.

ENDORSEMENTS (included but not limited to)

<u>COLLATERAL REQUIREMENTS</u> - OPTION 2

Total Collateral Requirement: $600,000.00
We may modify Collateral amounts during the Policy term.

Loss Fund: $600,000.00

Escrow Loss Fund Requirements:

Amount Required for ALL Policy Years: $600,000.00
Currently Holding for Historical Policy Years: $0.00
Additional Amount Due: $600,000.00
(Deductible Loss Fund to be deposited in our approved bank.)

You agree to provide the Collateral for your Large Deductible Plan using the installment plan presented below.

You agree that the installment plan schedule below is subject to change based upon our recalculation of Collateral in accordance with your Large Deductible Plan. We will notify you of any such change in your Collateral requirements.

LOSS FUND INSTALLMENT SCHEDULE	
Amount: $100,000.00	Due Date: 3/31/23
Amount: $50,000.00	Due Date: 4/30/23
Amount: $50,000.00	Due Date: 5/31/23
Amount: $50,000.00	Due Date: 6/30/23
Amount: $50,000.00	Due Date: 7/31/23
Amount: $50,000.00	Due Date: 8/31/23
Amount: $50,000.00	Due Date: 9/30/23
Amount: $50,000.00	Due Date: 10/31/23
Amount: $50,000.00	Due Date: 11/30/23
Amount: $50,000.00	Due Date: 12/31/23
Amount: $50,000.00	Due Date: 1/31/24

ITEMS DUE CHECKLIST

The following payments and documents are due prior to the effective date of your Policy or Policy Renewal.

- ☐ Premium Deposit - Please see Deposit Information on the next page
- ☐ A Signed Large Deductible Program Plan Agreement
- ☐ Loss Fund Amount of as specified
- ☐ Letter of Credit or Other Collateral as specified
    - o Must be in Encova's approved format (Attached)
    - o Must be issued by an Encova-approved bank

All documents requiring a signature must be signed by an authorized representative of the Insured.

Policyholder Disclosure

Notice of Terrorism Insurance Charge

Coverage for acts of terrorism is included in your quote. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act or acts that are certified by the Secretary of the Treasury --in consultation with the Secretary of Homeland Security, and the Attorney General of the United States --to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your quote may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds $100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is $2,035.00, and does not include any charges for the portion of losses covered by the United States government under the Act.

REVIEW PURPOSES ONLY
This Draft LOC is provided to you in the preparation of Security. It is our approved language. Any requests to change must be approved by our Legal and Financial Departments.

DRAFT LOC ATTACHED

ESTIMATED PAYROLLS AND PREMIUMS

State	Classification Code	Classification Description	Estimated Payrolls
WV - 501-9 Virginia Street, E.	8820-000	ATTORNEY-ALL EMPLOYEES & CLERICAL, MESSENGERS, DRIVERS	$408,645.00
WV - 501-9 Virginia Street, E.	8810-000	CLERICAL OFFICE EMPLOYEES NOC	$7,630,757.00
WV - 501-9 Virginia Street, E.	8864-000	SOCIAL SERVICES ORGANIZATION-ALL EMPLOYEES & SALESPERSONS, DRIVERS	$277,351.00
WV - 501-9 Virginia Street, E.	8380-000	AUTOMOBILE SERVICE OR REPAIR CENTER & DRIVERS	$792,512.00
WV - 501-9 Virginia Street, E.	7720-000	POLICE OFFICERS & DRIVERS	$11,289,869.00
WV - 501-9 Virginia Street, E.	9102-000	PARK NOC-ALL EMPLOYEES & DRIVERS	$1,225,990.00
WV - 501-9 Virginia Street, E.	5506-000	STREET OR ROAD CONSTRUCTION: PAVING OR REPAVING & DRIVERS	$2,072,435.00
WV - 501-9 Virginia Street, E.	9015-000	BUILDING OR PROPERTY MANAGEMENT - ALL OTHER EMPLOYEES	$473,012.00
WV - 501-9 Virginia Street, E.	9410-000	MUNICIPAL, TOWNSHIP, COUNTY OR STATE EMPLOYEE NOC	$2,696,679.00
WV - 501-9 Virginia Street, E.	9220-000	CEMETERY OPERATIONS & DRIVERS	$150,554.00
WV - 501-9 Virginia Street, E.	0042-000	LANDSCAPE GARDENING & DRIVERS	$783,820.00
WV - 501-9 Virginia Street, E.	9403-000	GARBAGE, ASHES OR REFUSE COLLECTION & DRIVERS	$2,012,552.00
WV - 501-9 Virginia Street, E.	7710-000	FIREFIGHTERS & DRIVERS	$10,881,145.00

[redacted]

Estimated Annual Premium	$241,390.00
WV Fire and Casualty Surcharge	$110.00
WV Regulatory Budget Surcharge	$23,948.00

Total Amount Due	$265,448.00

Experience Modification: The Workers' Compensation and Employers' Liability premiums are based on the following modification as promulgated by the applicable rating organization:

INSTALLMENT SCHEDULE

Bill Date	Amount Due
03/31/2023	$39,818.00
05/01/2023	$22,563.00
05/31/2023	$22,563.00
07/01/2023	$22,563.00
07/31/2023	$22,563.00
08/31/2023	$22,563.00
10/01/2023	$22,563.00
10/31/2023	$22,563.00
12/01/2023	$22,563.00
12/31/2023	$22,563.00
01/31/2024	$22,563.00

400 Quarrier St.
Charleston, WV 25301

NOTICE OF DEPOSIT PREMIUM DUE

City of Charleston
PO Box 2749
Charleston, WV, 25330

Quote Number:	Q353423-005
Renewal Of:	
Quote Date:	02/14/2023
Deposit Due Date:	03/31/2023
Total Policy Premium:	**$265,448.00**

Agency: USI Insurance Services LLC

Phone: (304)347-0611

Workers' Compensation Policy Effective 03/31/2023-03/31/2024

Total Premium:	$241,390.00
Total Surcharge:	$24,058.00
Total Policy Premium:	$265,448.00
Quote Deposit:	$39,818.00
Payments Applied to Quote:	$.00
Minimum Deposit Premium Due	**$39,818.00**

You must pay the minimum deposit amount due to activate coverage.

If you have any questions concerning account payment, please call between the hours of 8:00AM and 5:00PM Monday through Friday at 1-866-452-7425 or 1-304-941-1000 or visit us at www.encova.com

Remove the stub below and return with your payment

Make checks payable to:
Encova Insurance
Credit Card Payments:
Please pay online at www.encova.com
* please do not remit cash

Quote Number: Q353423-005
Due Date: 03/31/2023

PAYMENT MUST BE RECEIVED BY DUE DATE

Amount Enclosed: .

City of Charleston
PO Box 2749
Charleston, WV, 25330

Send Payments to:
Encova Insurance
PO BOX 11285
CHARLESTON, WV 25339-1285

0000000000 53368901 0000000

BROKERAGE SERVICE FEE AGREEMENT

THIS AGREEMENT, effective as of April 1, 2023, is by City of Charleston (City), 501 Virginia Street, Charleston, WV 25301and USI Insurance Services LLC ("USI"), located at One Hillcrest Drive, East, Suite 300, Charleston, WV 25311.

WHEREAS, Client has appointed USI as its broker of record for Client's insurance program described below, and

NOW, THEREFORE, in consideration of the following, Client agrees to engage USI, and USI hereby agrees to perform the services described below.

1. LINES OF INSURANCE COVERAGE

THIS AGREEMENT is entered into with respect to the following line(s) of insurance coverage and for which Client agrees to retain USI as its Risk Manager & Insurance Consultant:

Liability
Property
Workers Compensation

2. SCOPE OF SERVICES

Risk Management

Organization for Loss Control - Safety Programs, Safety Committee Activities, Employee Training, Orientation of Seasonal Employees, Accident Reporting/ Investigation/ Follow-up Procedures, Employee Responsibilities, Management Support, ADA, Personnel Administration, Workplace Violence, Harassment, Contract Provisions, Council/ Board Training, Emergency Response/ Contingency Planning, Business Interruption,

Workers Compensation- OSHA Activities, Cost Containment Programs, Return to Work, Light Duty Programs, Designated Medical Provider, Physical Demands Assessment, Hazard Communication, Ergonomics

Fleet Operations- Hiring Procedures, Background Checks, Defensive Driving Training, Safety Meetings, Vehicle Selection Criteria, Motor Vehicle Record Reviews, Inspection and Maintenance, Recordkeeping, Accident Procedures, Accident Reporting and Recordkeeping, Accident Follow-up and Review, Remedial Actions, Safety Rules, Seatbelt Use, Cell Phone Use Policy, DOT Standards, Commercial Driver Recordkeeping Practices

Public Safety- Haz Mat Programming, Mutual Aid Agreements, Infection Control

Public Works, Parks and Recreation- Complaint Procedures, Work Zone Safety, Locating/ Marking of Utilities, Lock Out Program, Confined Space Training, Trenching Cross Connection Program, Heavy Equipment Operation, Chemical and Pesticide Safety, Tree Program, Sidewalks and Streets Inspection, Parks and Recreation Facilities Inspections, Pool Operation/ Safety, Public Events, Informed Consent/ Waiver of Liability Forms, Waste and Water Treatment, Operator Qualification, Security, Sewer Inspection/ Back- up Prevention

Manage Relationships

Accountability – Ultimately accountable for all aspects of service delivery to the Client.

Direct and Organize service teams – Ensure that all teams servicing a Client are fully integrated, are clear as to Client expectations, and that resources are made available.

Frequent Client contact – Establish a program for visits for regular updates, reaffirmation of plans and objectives, and for the annual stewardship review.

Monitor Client objectives – Anticipate and probe for new information to adjust USI's services or the Client's risk management programs accordingly.

Review and Address Client Needs

Client needs analysis – Understand the Client's unique needs and be able to respond to those needs through the appropriate product and service offerings.

Industry knowledge – Understand the current issues in your education environment so that we can develop and maintain a responsive and dynamic risk management strategy.

Service delivery – Ensure that USI delivers high quality service, within the Client's expected timeframes, to meet or exceed the Client's expectations.

Compliance – Ensure strict adherence to laws and regulations involving the placement of insurance policies, payment of premiums, and giving and receiving of notices.

Partnership Development

Stewardship reviews – USI provides an annual stewardship review that summarizes the services provided in the previous year, special projects undertaken, coverage recommendations, and emerging issues.

Client satisfaction – USI asks for the Client's feedback on our performance annually at a minimum.

Procedural issues – USI ensure that there are written protocols in place, especially for claims handling.

As part of our ongoing assistance in managing the Client's risks, USI's account team can:

Communication and Reporting

At the beginning of our relationship with the City of Charleston and as part of an annual stewardship plan, our team of professionals will be available to meet regularly with Client representatives. USI believes regular meetings are important to address ongoing and changing exposures and frequent communication enhances our ability to satisfy the Client's business needs.

Stewardship Reporting

USI will provide the Client with an annual stewardship report. In addition to setting objectives, the report illustrates how USI service team manages the Client's risk management program and the Client's total cost of risk. The report reviews:

- Key accomplishments since the relationship inception.
- Status of goals and action plans for the current year, including our recommended renewal objectives.[1]
- An analysis of the current insurance market with projections of future conditions.
- The service team dedicated to serve you.
- USI support services, including risk control, claims, and financial services. A detailed listed of Risk Control Services are as follows:

[1] No insurance carrier or pool will be excluded from offering future renewal quotes to the City though USI unless such carriers or pools are explicitly excluded by the written direction of the City Manager.

List of Risk Control Services

USI consultants' partner with our clients to identify, target, and correct specific ergonomics issues and concerns. USI incorporates both engineering and administrative controls to reduce workplace risk factors and increase overall productivity. USI assists our Client by designing and re-designing projects to create work areas that are best suited to the staff and work processes. USI also offers a variety of training programs to educate the workforce on ergonomic principles and human factors, combining lecture and hands-on activities to maximize adult learning and retention. USI's philosophy is to use basic ergonomic principles to reduce injury, improve the overall work processes, and increase productivity. Programs are designed to sustain the improvements made after the consulting project has ended.

Injury Prevention

USI's process is to first identify the primary causes of injury and the areas in which they occur. USI targets those high frequency areas and develops customized solutions to best address and mitigate losses. USI's expertise lies in creating programs tailored to our Client's specific concerns using existing protocols and employee and management involvement to ensure that our programs are fully integrated into the existing culture and environment. USI can create customized programs addressing areas such as machine guarding, lockout/tagout, hazard communications, NFPA 101 Life Safety, manual materials handling, behavior-based safety and preventing slips, trips and falls.

Safety Management

USI's casualty specialists can provide a comprehensive examination of the Client's operational exposures. This evaluation can reveal the strengths and weaknesses of existing safety programs, management systems, and operational controls. USI will work with the Client's management team to develop and implement solutions to reduce risk.

Training and Education

Safe work practices are the key to success of any loss prevention program. Job safety education has been shown to increase not only safety performance, but quality and productivity as well. USI has developed management – and employee – oriented safety programs for many specific industries. USI maintains a technical resource library of the latest codes and applicable standards.

Fleet Safety

USI Insurance Services Fleet Services provides Clients with expertise in Department of Transportation (DOT) regulations and transportation best practices. USI consultants provide up-to-date information on state and federal regulations, provide driver training to comply with those regulations, and create customized policies specific to the Client's business. USI's goal is to provide clients and their drivers with the training and information necessary to enhance overall vehicle safety and ensure regulatory compliance.

Property Protection Consulting

USI assists our Clients in evaluating risk to their assets and determining loss scenarios to better enable them to protect and adequately insure their assets. Services include benchmarking, analyzing loss experiences, cost-benefit analysis, plan review, code dispute, and loss investigations. USI conducts interdependency studies and supply chain exposures to contingent business interruption exposures to determine vulnerabilities and solutions.

USI consultants can help the Client systematically identify critical business functions, prioritize their impact on the business, and develop cost-effective recovery strategies to minimize disruptions to these operations. Our plans address seasonal issues, supply chain, vendor and Client agreements, as well as communication protocols. USI can also assist Clients with plan maintenance and facilitate testing exercises. USI Business Continuity Practice Group is comprised of certified consultants with specific expertise in operational recovery, disaster recovery, emergency response, and crisis management.

Safety Management Seminars

USI's Loss Control Consultants (who average more than 20 years' experience) can conduct high insightful and timely seminars with managers and supervisors as our target audience. Two of our senior consultants hold teaching degrees and also have Federal Certifications as Training Instructors. USI has developed a number of seminar topics exclusively for municipality entities. USI will travel to the Client's location, provide our own audio/visual equipment and furnish all instructional materials. Depending on the topic, these seminars are usually from one to three hours in length and involve active audience participation. With adequate advance notice, these seminars can be customized to a specific target audience. Note: these seminars are proprietary in nature and the intellectual property of USI Insurance Services.

In respect to all Loss Control and Engineering services described above, USI does not offer any warranty, either express or implied, that such services shall result in either monetary savings or claim payments by insurers to Client. In addition, Client acknowledges that USI, in performing a Loss Control analysis, cannot identify or detect every possible hazard, risk or legal violation that may be present in Client's operation or premises.

The services to be provided by USI hereunder are provided for the exclusive benefit of the Client. The services, recommendations, proposals and information provided by USI are not to be distributed to, used by or relied upon by other parties. Furthermore, if the services to be provided by USI hereunder shall be deemed by Client to apply to any insurance policy/policies that was in effect prior to the effective date of this Agreement, then USI's services shall not be assumed by Client to remedy or resolve any deficiencies in such policy/policies. USI will neither assume nor accept liability for any deficiencies, errors or oversights inherent in such policy/policies until such time as USI has had adequate opportunity to review such policy/policies and to provide recommendations to Client concerning same.

Additional Services

The services described above are the only services to be provided by USI to Client under this Agreement. Any additional services requested by Client, and any related compensation, shall be separately negotiated by USI and Client and described in an amendment to this Agreement.

Notwithstanding the foregoing, to the extent that state law prohibits value added services that are unrelated to the insurance products being sold, this Agreement may be modified so that the scope of services and the corresponding compensation therefore is compliant under state law.

3. BASIS OF COMPENSATION

In consideration of the services provided by USI, Client will pay USI an annual fee of $100,000 for the first year of this agreement, and will be paid as follows:

04/01/2023	$25,000
07/01/2023	$25,000
10/01/2023	$25,000
01/01/2024	$25,000

In the event this Agreement is terminated prior to the expiration of the contract term, the fees will be prorated on a daily basis.

In the event of the renewal of this Agreement, payments of such fee installments shall continue to be made on the annual anniversaries of these payment dates.

In the event of mergers, acquisitions, or other substantial changes in Client's business which result in a material increase in the work required of USI under this Agreement, the fee set forth above shall be subject to good faith re-negotiation. **However, no renegotiation shall be valid until the Client signs a written memorandum specifying the additional compensation.** In the event that Client requests USI to place new lines of insurance, USI will be entitled to accept commissions on such placements, unless USI and Client modify this Agreement to take into account the additional services which will be provided to Client.

4. TERM OF CONTRACT

The initial term of this Agreement shall be for three years beginning on April 1, 2022 and ending on April 1, 2025.

5. TERMINATION OF AGREEMENT

Either Party may terminate this Agreement with 60 day's written notice to the other party for any reason and at any time. All notices to the City shall be sent to the attention of the City Manager, 501 Virginia Street East, Charleston, WV 25301. All notices to USI shall be sent to the attention of Dave Stacy, USI Insurance Services, LLC, One Hillcrest Drive, East, Suite 300, Charleston, WV 25311.

USI's obligation to render the services under this Agreement ends on the effective date of termination of this Agreement. USI will assist in the orderly transition of matters to Client or to a new insurance broker. Claims and premium or other adjustments may arise after our relationship ends, and we have no responsibility to handle these things after termination of the Agreement. Such items are normally handled by the insurance broker serving you at the time the claim or adjustment arises. However, USI may provide services after the termination of this Agreement for mutually agreed additional compensation. Nevertheless, we will, process all remaining deposit premium installments on the policy(ies) in effect at the time of change.

6. ASSIGNMENT

Neither Client nor USI shall assign, solicit or transfer their rights or obligations under this Agreement without prior written consent of the other, and such consent shall not be unreasonably withheld.

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7. CONFIDENTIALITY

"Confidential Information" shall mean non-public information revealed by or through a party to this agreement (a "Disclosing Party") to the other party (a "Receiving Party") including (a) information expressly or implicitly identified as originating with or belonging to third parties, or marked or disclosed as confidential, (b) information traditionally recognized as proprietary trade secrets, and (c) all forms and types of financial, business (including customer information), scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.

A. As to any Confidential Information disclosed by the Disclosing Party to the Receiving Party, the Receiving Party will take reasonable precautions in accordance with procedures it follows with respect to its own important confidential information to prevent disclosure, directly or indirectly, of all or any portion of the Confidential Information.

B. Except as may be required by law or legal process, the Receiving Party agrees not to otherwise use the Confidential Information obtained hereunder in the absence of a written letter agreement with Disclosing Party. The Receiving Party further agrees to return to Disclosing Party all Confidential Information received hereunder upon written request therefore.

C. The obligations hereunder remain in full force and effect until and unless: (a) the Receiving Party can show that such Confidential Information was in the Receiving Party's possession prior to the date of the disclosure by Disclosing Party; or (b) such Confidential Information was obtained by the Receiving Party after the date of this Agreement from a party other than Disclosing Party, and the receiving party has no knowledge that said party is under an obligation of confidentiality to the Disclosing Party with respect to such information; or (c) such Confidential Information becomes generally available to the trade, or to the public, through sources other than Receiving Party; or (d) such Confidential Information is developed at any time by the Receiving Party independent of information or materials disclosed by Disclosing Party to the Receiving Party.

D. In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information furnished by the Disclosing Party, it is agreed that the Receiving Party will cooperate with the Disclosing Party and provide the Disclosing Party with prompt notice of such request(s) or requirement(s) so that the Disclosing Party may seek an appropriate protective order, at its sole cost, or waive compliance by the Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is nonetheless, in the opinion of the Receiving Party, legally required to disclose the Confidential Information forwarded by the Disclosing Party, the Receiving Party may disclose such information without liability hereunder, provided, however, that the Receiving Party shall disclose only that portion of such Confidential Information which it considers that it is legally required to disclose.

E. Upon termination of this Agreement, or upon Disclosing Party's earlier request, Receiving Party shall promptly deliver to Disclosing Party all Confidential Information and any other material which Disclosing Party furnishes to Receiving Party in connection with this Agreement.

8. INTELLECTUAL PROPERTY

USI shall retain all title, copyright, patent, trademark, and all other intellectual property rights to all USI developed computer programs models and tools and to their output and to all USI developed methodologies and documents used in performance of the services under this agreement.

9. CONFLICTS OF INTEREST

USI shall report immediately to Client any circumstance in which USI is in a conflict-of-interest and cannot provide the services in accordance with the terms of this Agreement. Promptly thereafter, we shall meet and discuss in good faith what steps need to be undertaken with respect to the services and the provision thereof by USI.

10. PREMIUM /HANDLING OF FUNDS

Client shall provide immediately available funds for payment of premium by the payment dates specified in the insurance policies, invoices, or other payment documents. Failure to pay premium on time may prevent coverage from incepting or result in cancellation of coverage by insurers.

USI will handle any premiums you pay through us and any funds which we receive from insurers or intermediaries for payment or return to you in accordance with the requirements or restrictions of applicable state and federal laws and regulations.

In the ordinary course of business USI will receive and retain interest on premiums paid by Client from the date we receive the funds until we pay them to the insurers or their intermediaries, or until we return them to Client after we receive such funds.

11. SURPLUS LINES TAXES AND OTHER FEES

In the event that USI or a USI affiliate procures coverages for Client from a surplus lines insurance company, Client will be responsible for payment of surplus lines taxes on such coverage. Client will also be responsible for payment of fees or surcharges required by law. In all such cases, USI will endeavor to identify such taxes and fees to Client, but the liability for payment of these taxes, fees and surcharges is assumed by Client. USI will not under any circumstances pay, transmit or be responsible for the payment of any surplus lines tax or fee.

12. USI'S POLICY REGARDING COMPENSATION FROM INSURERS AND INTERMEDIARIES

As a licensed insurance producer, USI is authorized to confer with or advise our clients and prospective clients concerning substantive benefits, terms or conditions of insurance contracts, to sell insurance and to obtain insurance coverages for our clients. The Client agrees to pay compensation to USI for the placement of insurance pursuant to this written agreement. We may also receive from insurers and insurance intermediaries (which may include USI affiliated companies) additional compensation (monetary and non-monetary) based in whole or in part on the insurance contract we sell, which is contingent on volume of business and/or profitability of insurance contracts we supply to them and/or other factors pursuant to agreements we may have with them relating to all or part of the business we place with those insurers or through those intermediaries. Some of these agreements with insurers and/or intermediaries include financial incentives for USI to grow its business or otherwise strengthen the distribution relationship with the insurer or intermediary. Such agreements may be in effect with one or more of the insurers with whom the Client's insurance is placed, or with the insurance intermediary we use to place the Client's insurance. Such agreements do not affect or modify in any way USI's responsibilities to the Client. The Client may obtain information about the nature and source of such compensation expected to be received by USI, and, if applicable, compensation expected to be received on any alternative quotes pertinent to the Client's placement upon Client's request.

Generally speaking, USI will annually receive from the various insurers with which it places risks about 1% to 1.5% of its total annual premium placements as contingent compensation. Historically, such compensation has been computed based upon a variety of factors and variables, including but not limited to the loss history of Client's coverages, the volume of total coverages placed by USI with the insurer, the period of time over which the coverages were placed with the insurer, and other considerations. In any event, the Client is invited to obtain as much detail as it wishes from USI on the computation of the particular contingent compensation applicable to its placement.

13. REPORTING CHANGES IN EXPOSURE

Client shall promptly notify USI with respect to all material changes in exposure and all changes in loss-related information. USI shall promptly notify the affected insurance companies of such changes.

14. INSURER SOLVENCY

USI does not guarantee the solvency of any insurer with which it places Client's risks.

15. SEVERABILITY

If any part, term, or provision of this Agreement shall be found by a court to be legally invalid or unenforceable, then such provision or portion thereof shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity of any other provisions or portion of this Agreement.

16. AGREEMENT CONSTRUED UNDER STATE LAWS

This Agreement is to be executed and performed in the State of West Virginia and shall be construed in accordance with the laws of such State.

17. CHANGES TO BE IN WRITING

This Agreement may be amended only by a written agreement executed by both USI and Client.

18. WAIVERS

The failure of USI or Client to insist on strict compliance with this Agreement, or to exercise any right(s) hereunder shall not be construed as a waiver of any of the rights or privileges contained herein.

19. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties with respect to its subject matter. This Agreement supersedes all prior agreements, arrangements and understandings between the parties, whether oral or written, with respect to its subject matter.

20. RECORD RETENTION

USI will retain its records of all matters relating to this Agreement in accordance with USI's record retention policy, (a copy of which will be made available to Client upon request), and all applicable laws and regulations.

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IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

USI Insurance Services LLC	**City of Charleston**
Signature	Signature
Print Name	Print Name
Title	Title
Date	Date

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	Year To Date Budget	Year To Date Actual	Year To Date Variance	Year To Date %	Annual Budget	Annual Available
Mayor	409	Regular	24,147	22,075	2,072	8.58%	181,102	165,390	15,711	8.68%	313,910	148,520
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**24,147**	**22,075**	**2,072**	**8.58%**	**181,102**	**165,390**	**15,711**	**8.68%**	**313,910**	**148,520**
Mayor - CARE Office	409-02	Regular	20,781	21,335	(553)	-2.66%	155,860	159,297	(3,436)	-2.20%	270,158	110,861
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**5**	**Total**	**20,781**	**21,335**	**(553)**	**-2.66%**	**155,860**	**159,297**	**(3,436)**	**-2.20%**	**270,158**	**110,861**
City Council	410	Regular	13,000	18,250	(5,250)	-40.38%	97,500	87,250	10,250	10.51%	169,000	81,750
		IPT	-	-	-		-	-	-		-	-
Budget	**26**	OT	-	-	-		-	-	-		-	-
Actual	**26**	**Total**	**13,000**	**18,250**	**(5,250)**	**-40.38%**	**97,500**	**87,250**	**10,250**	**10.51%**	**169,000**	**81,750**
City Manager - Admin.	412-00	Regular	48,552	48,660	(108)	-0.22%	361,329	308,116	53,213	14.73%	631,172	323,056
		IPT	-	-	-		-	-	-		-	-
Budget	**8**	OT	-	-	-		-	-	-		-	-
Actual	**7**	**Total**	**48,552**	**48,660**	**(108)**	**-0.22%**	**361,329**	**308,116**	**53,213**	**14.73%**	**631,172**	**323,056**
City Treasurer	413	Regular	10,249	10,077	173	1.68%	76,868	74,890	1,978	2.57%	133,237	58,347
		IPT	692	869	(177)	-25.52%	5,192	6,281	(1,089)	-20.97%	9,000	2,719
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**10,941**	**10,946**	**(4)**	**-0.04%**	**82,060**	**81,171**	**889**	**1.08%**	**142,237**	**61,066**
City Collector	414	Regular	61,523	51,602	9,921	16.13%	461,425	375,991	85,434	18.52%	799,804	423,813
		IPT	-	-	-		-	-	-		-	-
Budget	**16**	OT	-	-	-		-	-	-		-	-
Actual	**13**	**Total**	**61,523**	**51,602**	**9,921**	**16.13%**	**461,425**	**375,991**	**85,434**	**18.52%**	**799,804**	**423,813**
City Clerk	415	Regular	10,563	10,348	215	2.03%	79,220	77,385	1,835	2.32%	137,315	59,930
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**10,563**	**10,348**	**215**	**2.03%**	**79,220**	**77,385**	**1,835**	**2.32%**	**137,315**	**59,930**
Municipal Court	416	Regular	23,823	22,620	1,204	5.05%	178,674	178,671	2	0.00%	309,701	131,030
		IPT	1,385	1,342	43	3.08%	10,385	10,976	(592)	-5.70%	18,000	7,024
Budget	**8**	OT	1,936	584	1,352	69.83%	14,519	12,391	2,128	14.66%	25,166	12,775
Actual	**8**	**Total**	**27,144**	**24,546**	**2,598**	**9.57%**	**203,577**	**202,038**	**1,539**	**0.76%**	**352,867**	**150,829**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (12/18/2022 - 1/14/2023)
YTD has 15 pay periods (6/19/2022 - 1/14/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
City Attorney	417	Regular	31,818	30,558	1,259	3.96%	238,632	236,528	2,104	0.88%	413,629	177,101
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**5**	**Total**	**31,818**	**30,558**	**1,259**	**3.96%**	**238,632**	**236,528**	**2,104**	**0.88%**	**413,629**	**177,101**
Accounting	418	Regular	23,401	14,666	8,736	37.33%	175,510	130,952	44,557	25.39%	304,217	173,265
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**23,401**	**14,666**	**8,736**	**37.33%**	**175,510**	**130,952**	**44,557**	**25.39%**	**304,217**	**173,265**
Engineering - General	420-00	Regular	40,631	34,330	6,301	15.51%	304,732	256,577	48,155	15.80%	528,202	271,625
		IPT	769	-	769		5,769	-	5,769		10,000	10,000
Budget	**7**	OT	-	-	-		-	-	-		-	-
Actual	**6**	**Total**	**41,400**	**34,330**	**7,070**	**17.08%**	**310,501**	**256,577**	**53,924**	**17.37%**	**538,202**	**281,625**
Engineering - Stormwater	420-01	Regular	11,259	10,951	307	2.73%	84,442	81,820	2,622	3.10%	146,366	64,546
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	-	-	-		-	-	-		-	-
Actual	**2**	**Total**	**11,259**	**10,951**	**307**	**2.73%**	**84,442**	**81,820**	**2,622**	**3.10%**	**146,366**	**64,546**
MOECD	421	Regular	31,999	30,529	1,470	4.60%	239,996	221,997	17,999	7.50%	415,993	193,996
		IPT	-	478	(478)		-	65,515	(65,515)		-	(65,515)
Budget	**7**	OT	-	-	-		-	929	(929)		-	-
Actual	**7**	**Total**	**31,999**	**31,007**	**993**	**3.10%**	**239,996**	**288,441**	**(48,445)**	**-20.19%**	**415,993**	**128,481**
Human Resources	422	Regular	32,145	25,597	6,547	20.37%	241,085	223,690	17,395	7.22%	417,881	194,191
		IPT	-	-	-		-	-	-		-	-
Budget	**7**	OT	-	-	-		-	-	-		-	-
Actual	**6**	**Total**	**32,145**	**25,597**	**6,547**	**20.37%**	**241,085**	**223,690**	**17,395**	**7.22%**	**417,881**	**194,191**
Mail Room	431	Regular	2,152	2,301	(148)	-6.89%	16,143	8,965	7,179	44.47%	27,982	19,017
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**2,152**	**2,301**	**(148)**	**-6.89%**	**16,143**	**8,965**	**7,179**	**44.47%**	**27,982**	**19,017**
Building Commission	436	Regular	56,085	53,984	2,101	3.75%	420,638	405,563	15,075	3.58%	729,106	323,543
		IPT	-	-	-		-	-	-		-	-
Budget	**13**	OT	-	-	-		-	-	-		-	-
Actual	**13**	**Total**	**56,085**	**53,984**	**2,101**	**3.75%**	**420,638**	**405,563**	**15,075**	**3.58%**	**729,106**	**323,543**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (12/18/2022 - 1/14/2023)
YTD has 15 pay periods (6/19/2022 - 1/14/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	YTD Budget	YTD Actual	YTD Variance	YTD %	Annual Budget	Annual Available
Planning	437	Regular	38,440	31,484	6,956	18.10%	288,301	244,740	43,562	15.11%	499,722	254,982
		IPT	-	-	-		-	3,634	(3,634)		-	(3,634)
Budget	**8**	OT	-	-	-		-	-	-		-	
Actual	**7**	**Total**	**38,440**	**31,484**	**6,956**	**18.10%**	**288,301**	**248,373**	**39,928**	**13.85%**	**499,722**	**251,349**
Information Systems	439	Regular	48,564	33,342	15,222	31.34%	364,229	244,628	119,601	32.84%	631,331	386,703
		IPT	-	-	-		-	-	-		-	-
Budget	**10**	OT	-	-	-		-	-	-		-	-
Actual	**7**	**Total**	**48,564**	**33,342**	**15,222**	**31.34%**	**364,229**	**244,628**	**119,601**	**32.84%**	**631,331**	**386,703**
General Services	440	Regular	33,936	33,655	280	0.83%	252,617	255,853	(3,236)	-1.28%	441,165	185,312
		IPT	3,462	-	3,462	100.00%	25,962	-	25,962	100.00%	45,000	45,000
Budget	**11**	OT	5,393	103	5,290	98.09%	40,446	46,281	(5,836)	-14.43%	70,106	23,825
Actual	**11**	**Total**	**42,790**	**33,758**	**9,032**	**21.11%**	**319,025**	**302,135**	**16,890**	**5.29%**	**556,271**	**254,136**
Constituient Services	442-01	Regular	17,715	10,462	7,253	40.94%	128,208	82,507	45,701	35.65%	230,292	147,785
		IPT	1,800	-	1,800	100.00%	13,500	-	13,500	100.00%	23,400	23,400
Budget	**4**	OT	-	-	-		-	-	-		-	-
Actual	**2**	**Total**	**19,515**	**10,462**	**9,053**	**46.39%**	**141,708**	**82,507**	**59,201**	**41.78%**	**253,692**	**171,185**
Morris Square Property	500	Regular	4,830	4,833	(3)	-0.06%	36,222	32,633	3,589	9.91%	62,784	30,151
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	775	63	713	91.93%	5,815	120	5,695	97.94%	10,080	9,960
Actual	**2**	**Total**	**5,605**	**4,895**	**710**	**12.66%**	**42,037**	**32,753**	**9,284**	**22.09%**	**72,864**	**40,111**
Public Works	566	Regular	14,673	15,282	(609)	-4.15%	110,049	112,261	(2,213)	-2.01%	190,751	78,490
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	247	-	247	100.00%	1,852	2,261	(409)	-22.07%	3,210	949
Actual	**3**	**Total**	**14,920**	**15,282**	**(362)**	**-2.43%**	**111,901**	**114,522**	**(2,621)**	**-2.34%**	**193,961**	**79,439**
Public Grounds - Adm.	567-00	Regular	69,034	65,755	3,278	4.75%	517,752	486,859	30,893	5.97%	897,437	410,578
		IPT	-	-	-		-	-	-		-	-
Budget	**26**	OT	2,074	3,809	(1,735)	-83.63%	15,556	30,859	(15,303)	-98.37%	26,964	(3,895)
Actual	**25**	**Total**	**71,108**	**69,564**	**1,544**	**2.17%**	**533,308**	**517,719**	**15,590**	**2.92%**	**924,401**	**406,682**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (12/18/2022 - 1/14/2023)
YTD has 15 pay periods (6/19/2022 - 1/14/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	Year To Date Budget	Year To Date Actual	Year To Date Variance	Year To Date %	Annual Budget	Annual Available
Public Grounds - C/T	567-01	Regular	5,388	5,852	(465)	-8.62%	40,408	42,520	(2,112)	-5.23%	70,040	27,520
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	346	989	(643)	-186.01%	2,593	11,129	(8,536)	-100.00%	4,494	(6,635)
Actual	**2**	**Total**	**5,733**	**6,841**	**(1,108)**	**-19.32%**	**43,000**	**53,649**	**(10,649)**	**-24.76%**	**74,534**	**20,885**
Police - Uniform	700-00	Regular	721,961	737,820	(15,859)	-2.20%	5,414,705	5,311,957	102,748	1.90%	9,385,488	4,073,531
		OT	225,260	174,178	51,082	22.68%	1,585,084	1,727,323	(142,239)	-8.97%	2,657,030	929,707
Budget	**173**	Reimb.	(3,077)	(3,296)	219	7.12%	(23,077)	(19,616)	(3,461)	-15.00%	(40,000)	(20,384)
Actual	**165**	**Total**	**944,144**	**908,702**	**35,442**	**3.75%**	**6,976,712**	**7,019,664**	**(42,952)**	**-0.62%**	**12,002,518**	**4,982,854**
Police - Civilian	700-01	Regular	68,695	65,764	2,932	4.27%	515,215	458,541	56,674	11.00%	893,040	434,499
		IPT	3,846	1,460	2,386	62.04%	28,846	12,077	16,769	58.13%	50,000	37,923
Budget	**23**	OT	7,744	4,913	2,831	36.56%	58,077	44,807	13,270	22.85%	100,666	55,859
Actual	**23**	**Total**	**80,285**	**72,136**	**8,149**	**10.15%**	**602,138**	**515,425**	**86,713**	**14.40%**	**1,043,706**	**528,281**
Fire - Uniform	706-00	Regular	809,458	967,933	(158,475)	-19.58%	5,714,708	5,933,585	(218,878)	-3.83%	9,596,763	3,663,178
		OT	144,399	70,661	73,738	51.07%	936,396	808,486	127,910	13.66%	1,496,036	687,550
Budget	**169**	Reimb.	(923)	(4,266)	3,343	362.12%	(6,923)	(13,032)	6,109	88.23%	(12,000)	1,032
Actual	**153**	**Total**	**952,934**	**1,034,328**	**(81,395)**	**-8.54%**	**6,644,180**	**6,729,039**	**(84,859)**	**-1.28%**	**11,080,799**	**4,351,760**
Fire - Civilian	706-01	Regular	7,956	4,399	3,557	44.71%	59,672	44,504	15,168	25.42%	103,431	58,927
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**7,956**	**4,399**	**3,557**	**44.71%**	**59,672**	**44,504**	**15,168**	**25.42%**	**103,431**	**58,927**
Traffic	712	Regular	33,369	34,770	(1,401)	-4.20%	250,266	254,845	(4,579)	-1.83%	433,794	178,949
		IPT	385	-	385	100.00%	2,885	4,559	(1,674)	-58.03%	5,000	442
Budget	**10**	OT	968	421	547	56.54%	7,259	11,439	(4,179)	-57.57%	12,583	1,144
Actual	**10**	**Total**	**34,721**	**35,191**	**(470)**	**-1.35%**	**260,410**	**270,842**	**(10,432)**	**-4.01%**	**451,377**	**180,535**
Emergency Services	716	Regular	6,438	-	6,438	100.00%	48,288	-	48,288	100.00%	83,699	83,699
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**0**	**Total**	**6,438**	**-**	**6,438**	**100.00%**	**48,288**	**-**	**48,288**	**100.00%**	**83,699**	**83,699**
Street	750	Regular	189,521	167,994	21,527	11.36%	1,411,406	1,237,049	174,357	12.35%	2,463,777	1,226,728
		IPT	-	-	-		-	-	-		-	-
Budget	**72**	OT	33,203	32,902	301	0.91%	168,023	165,163	2,860	1.70%	269,640	104,477
Actual	**63**	**Total**	**222,724**	**200,896**	**21,828**	**9.80%**	**1,579,429**	**1,402,212**	**177,217**	**11.22%**	**2,733,417**	**1,331,205**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (12/18/2022 - 1/14/2023)
YTD has 15 pay periods (6/19/2022 - 1/14/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	YTD Budget	YTD Actual	YTD Variance	YTD %	Annual Budget	Annual Available
Equipment Maintenance	754	Regular	56,349	59,495	(3,146)	-5.58%	422,615	413,415	9,199	2.18%	732,532	319,117
		IPT	-	-	-		-	-	-		-	-
Budget	**18**	OT	4,494	5,863	(1,369)	-30.46%	33,705	28,953	4,752	14.10%	58,422	29,469
Actual	**18**	**Total**	**60,843**	**65,358**	**(4,515)**	**-7.42%**	**456,320**	**442,369**	**13,951**	**3.06%**	**790,954**	**348,585**
Refuse & Recycling	800	Regular	161,339	183,533	(22,195)	-13.76%	1,210,039	1,234,633	(24,594)	-2.03%	2,097,401	862,768
		IPT	-	-	-		-	-	-		-	-
Budget	**66**	OT	19,359	4,181	15,178	78.40%	145,191	91,705	53,486	36.84%	251,664	159,959
Actual	**64**	**Total**	**180,697**	**187,714**	**(7,017)**	**-3.88%**	**1,355,230**	**1,326,338**	**28,892**	**2.13%**	**2,349,065**	**1,022,727**
Parks & Recreation	900	Regular	94,313	89,524	4,789	5.08%	707,351	627,617	79,734	11.27%	1,226,075	598,458
		IPT	5,600	12,693	(7,093)	-126.65%	168,000	201,296	(33,296)	-19.82%	280,000	78,704
Budget	**31**	OT	4,425	352	4,073	92.04%	33,186	50,582	(17,396)	-52.42%	57,523	6,941
Actual	**31**	**Total**	**104,338**	**102,569**	**1,769**	**1.70%**	**908,537**	**879,495**	**29,042**	**3.20%**	**1,563,598**	**684,103**
Public Arts	906	Regular	4,408	4,408	(0)	0.00%	33,063	32,933	130	0.39%	57,309	24,376
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**4,408**	**4,408**	**(0)**	**0.00%**	**33,063**	**32,933**	**130**	**0.39%**	**57,309**	**24,376**
Spring Hill Cemetery	952	Regular	25,069	24,357	713	2.84%	188,020	173,870	14,150	7.53%	325,902	152,032
		IPT	-	-	-	#DIV/0!	24,863	-	24,863	100.00%	46,800	46,800
Budget	**8**	OT	775	389	386	49.78%	5,815	1,566	4,250	73.07%	10,080	8,514
Actual	**8**	**Total**	**25,845**	**24,746**	**1,099**	**4.25%**	**218,698**	**175,436**	**43,262**	**19.78%**	**382,782**	**207,346**
General Fund		Regular	2,853,584	2,948,545	(94,960)	-3.33%	21,026,289	20,218,033	808,255	3.84%	36,170,406	15,952,373
		IPT	17,938	16,841	1,097	6.12%	285,401	304,338	(18,937)	-6.64%	487,200	182,862
		OT	451,397	299,407	151,990	33.67%	3,053,518	3,033,995	19,523	0.64%	5,053,664	2,020,598
Budget	**759**	Reimb.	(4,000)	(7,562)	3,562	89.04%	(30,000)	(32,647)	2,647	8.82%	(52,000)	(19,353)
Actual	**707**	**Total**	**3,318,920**	**3,257,231**	**61,688**	**1.86%**	**24,335,207**	**23,523,719**	**811,488**	**3.33%**	**41,659,270**	**18,136,480**

CITY OF CHARLESTON
Payroll Variance Analysis
January 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	Year To Date Budget	Year To Date Actual	Year To Date Variance	Year To Date %	Annual Budget	Annual Available
Business Improvement Dist.	568	Regular	3,414	3,154	260	7.62%	22,193	18,812	3,380	15.23%	44,385	25,573
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**3,414**	**3,154**	**260**	**7.62%**	**22,193**	**18,812**	**3,380**	**15.23%**	**44,385**	**25,573**
Coliseum & Conv. Center	910	Regular	54,128	50,924	3,205	5.92%	405,963	386,423	19,540	4.81%	703,670	317,247
		IPT	-	-	-		-	-	-		-	-
Budget	**17**	OT	3,077	866	2,211	71.85%	23,077	8,910	14,167	61.39%	40,000	31,090
Actual	**15**	**Total**	**57,205**	**51,790**	**5,416**	**9.47%**	**429,040**	**395,333**	**33,708**	**7.86%**	**743,670**	**348,337**
Parking System	571	Regular	56,594	51,240	5,354	9.46%	424,456	397,218	27,239	6.42%	735,724	338,506
		IPT	3,923	1,998	1,925	49.07%	29,423	15,483	13,940	47.38%	51,000	35,517
Budget	**21**	OT	1,385	346	1,038	74.99%	10,385	14,517	(4,133)	-39.80%	18,000	3,483
Actual	**20**	**Total**	**61,902**	**53,585**	**8,317**	**13.44%**	**464,264**	**427,218**	**37,046**	**7.98%**	**804,724**	**377,506**
Total		Regular	2,967,721	3,053,862	(86,141)	-2.90%	21,878,901	21,020,486	858,414	3.92%	37,654,185	16,633,699
		IPT	21,862	18,839	3,022	13.82%	314,824	319,821	(4,997)	-1.59%	538,200	218,379
		OT	455,859	300,620	155,239	34.05%	3,086,979	3,057,421	29,558	0.96%	5,111,664	2,054,243
Budget	**798**	Reimb.	(4,000)	(7,562)	3,562	-89.04%	(30,000)	(32,647)	2,647	-8.82%	(52,000)	(19,353)
Actual	**743**	**Total**	**3,441,441**	**3,365,760**	**75,682**	**2.20%**	**25,250,704**	**24,365,082**	**885,622**	**3.51%**	**43,252,049**	**18,886,967**

Vacancy Report:

City Manager	1
City Collector	3
Accounting	2
Engineering	1
HR	1
Planning	1
Information Systems	3
Constituent Services	2
Public Works (all)	12
Police - Uniform	8
Fire - Uniform	16
Fire - Civilian	1
Homeland Security	1
Total General Fund	**52**

Coliseum	2
Parking System	1
Total All	**55**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (12/18/2022 - 1/14/2023)
YTD has 15 pay periods (6/19/2022 - 1/14/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	Year To Date Budget	Year To Date Actual	Year To Date Variance	Year To Date %	Annual Budget	Annual Available
Mayor	409	Regular	24,147	22,075	2,072	8.58%	205,249	187,466	17,783	8.66%	313,910	126,444
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**24,147**	**22,075**	**2,072**	**8.58%**	**205,249**	**187,466**	**17,783**	**8.66%**	**313,910**	**126,444**
Mayor - CARE Office	409-02	Regular	20,781	21,335	(553)	-2.66%	176,642	180,631	(3,989)	-2.26%	270,158	89,527
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**5**	**Total**	**20,781**	**21,335**	**(553)**	**-2.66%**	**176,642**	**180,631**	**(3,989)**	**-2.26%**	**270,158**	**89,527**
City Council	410	Regular	13,000	12,500	500	3.85%	110,500	99,750	10,750	9.73%	169,000	69,250
		IPT	-	-	-		-	-	-		-	-
Budget	**26**	OT	-	-	-		-	-	-		-	-
Actual	**26**	**Total**	**13,000**	**12,500**	**500**	**3.85%**	**110,500**	**99,750**	**10,750**	**9.73%**	**169,000**	**69,250**
City Manager - Admin.	412-00	Regular	48,552	31,704	16,847	34.70%	409,881	339,821	70,060	17.09%	631,172	291,351
		IPT	-	-	-		-	-	-		-	-
Budget	**8**	OT	-	-	-		-	-	-		-	-
Actual	**7**	**Total**	**48,552**	**31,704**	**16,847**	**34.70%**	**409,881**	**339,821**	**70,060**	**17.09%**	**631,172**	**291,351**
City Treasurer	413	Regular	10,249	10,007	242	2.36%	87,117	84,897	2,219	2.55%	133,237	48,340
		IPT	692	946	(254)	-36.64%	5,885	7,227	(1,343)	-22.82%	9,000	1,773
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**10,941**	**10,953**	**(12)**	**-0.11%**	**93,001**	**92,124**	**877**	**0.94%**	**142,237**	**50,113**
City Collector	414	Regular	61,523	51,602	9,921	16.13%	522,949	427,594	95,355	18.23%	799,804	372,210
		IPT	-	-	-		-	-	-		-	-
Budget	**16**	OT	-	-	-		-	-	-		-	-
Actual	**14**	**Total**	**61,523**	**51,602**	**9,921**	**16.13%**	**522,949**	**427,594**	**95,355**	**18.23%**	**799,804**	**372,210**
City Clerk	415	Regular	10,563	10,348	215	2.03%	89,783	87,733	2,049	2.28%	137,315	49,582
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**10,563**	**10,348**	**215**	**2.03%**	**89,783**	**87,733**	**2,049**	**2.28%**	**137,315**	**49,582**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (1/15/2023 - 2/11/2023)
YTD has 17 pay periods (6/19/2022 - 2/11/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	Year To Date Budget	Year To Date Actual	Year To Date Variance	Year To Date %	Annual Budget	Annual Available
Municipal Court	416	Regular	23,823	24,732	(909)	-3.81%	202,497	203,403	(906)	-0.45%	309,701	106,298
		IPT	1,385	1,491	(106)	-7.65%	11,769	12,467	(698)	-5.93%	18,000	5,533
Budget	**8**	OT	1,936	1,386	550	28.41%	16,455	13,777	2,678	16.28%	25,166	11,389
Actual	**8**	**Total**	**27,144**	**27,608**	**(465)**	**-1.71%**	**230,721**	**229,647**	**1,074**	**0.47%**	**352,867**	**123,220**
City Attorney	417	Regular	31,818	30,558	1,259	3.96%	270,450	267,086	3,364	1.24%	413,629	146,543
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**5**	**Total**	**31,818**	**30,558**	**1,259**	**3.96%**	**270,450**	**267,086**	**3,364**	**1.24%**	**413,629**	**146,543**
Accounting	418	Regular	23,401	14,762	8,639	36.92%	198,911	145,714	53,197	26.74%	304,217	158,503
		IPT	-	-	-		-	-	-		-	-
Budget	**5**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**23,401**	**14,762**	**8,639**	**36.92%**	**198,911**	**145,714**	**53,197**	**26.74%**	**304,217**	**158,503**
Engineering - General	420-00	Regular	40,631	34,330	6,301	15.51%	345,363	290,907	54,456	15.77%	528,202	237,295
		IPT	769	-	769		6,538	-	6,538		10,000	10,000
Budget	**7**	OT	-	-	-		-	-	-		-	-
Actual	**6**	**Total**	**41,400**	**34,330**	**7,070**	**17.08%**	**351,901**	**290,907**	**60,994**	**17.33%**	**538,202**	**247,295**
Engineering - Stormwater	420-01	Regular	11,259	10,951	307	2.73%	95,701	92,772	2,929	3.06%	146,366	53,594
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	-	-	-		-	-	-		-	-
Actual	**2**	**Total**	**11,259**	**10,951**	**307**	**2.73%**	**95,701**	**92,772**	**2,929**	**3.06%**	**146,366**	**53,594**
MOECD	421	Regular	31,999	30,529	1,470	4.60%	271,995	252,526	19,469	7.16%	415,993	163,467
		IPT	-	1,083	(1,083)		-	66,598	(66,598)		-	66,598
Budget	**7**	OT	-	-	-		-	929	(929)		-	-
Actual	**7**	**Total**	**31,999**	**31,612**	**388**	**1.21%**	**271,995**	**320,053**	**(48,057)**	**-17.67%**	**415,993**	**230,065**
Human Resources	422	Regular	32,145	25,849	6,295	19.58%	273,230	249,540	23,690	8.67%	417,881	168,341
		IPT	-	-	-		-	-	-		-	-
Budget	**7**	OT	-	-	-		-	-	-		-	-
Actual	**6**	**Total**	**32,145**	**25,849**	**6,295**	**19.58%**	**273,230**	**249,540**	**23,690**	**8.67%**	**417,881**	**168,341**
Mail Room	431	Regular	2,152	2,215	(62)	-2.88%	18,296	11,179	7,116	38.90%	27,982	16,803
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**2,152**	**2,215**	**(62)**	**-2.88%**	**18,296**	**11,179**	**7,116**	**38.90%**	**27,982**	**16,803**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (1/15/2023 - 2/11/2023)
YTD has 17 pay periods (6/19/2022 - 2/11/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Building Commission	436	Regular	56,085	53,984	2,101	3.75%	476,723	459,546	17,177	3.60%	729,106	269,560
		IPT	-	-	-		-	-	-		-	-
Budget	**13**	OT	-	-	-		-	-	-		-	-
Actual	**13**	**Total**	**56,085**	**53,984**	**2,101**	**3.75%**	**476,723**	**459,546**	**17,177**	**3.60%**	**729,106**	**269,560**
Planning	437	Regular	38,440	36,209	2,231	5.80%	326,741	280,949	45,792	14.01%	499,722	218,773
		IPT	-	-	-		-	3,634	(3,634)		-	(3,634)
Budget	**8**	OT	-	-	-		-	-	-		-	
Actual	**8**	**Total**	**38,440**	**36,209**	**2,231**	**5.80%**	**326,741**	**284,582**	**42,159**	**12.90%**	**499,722**	**215,140**
Information Systems	439	Regular	48,564	33,342	15,222	31.34%	412,793	277,970	134,823	32.66%	631,331	353,361
		IPT	-	-	-		-	-	-		-	-
Budget	**10**	OT	-	-	-		-	-	-		-	-
Actual	**7**	**Total**	**48,564**	**33,342**	**15,222**	**31.34%**	**412,793**	**277,970**	**134,823**	**32.66%**	**631,331**	**353,361**
General Services	440	Regular	33,936	33,462	474	1.40%	286,553	289,316	(2,763)	-0.96%	441,165	151,849
		IPT	3,462	-	3,462	100.00%	29,423	-	29,423	100.00%	45,000	45,000
Budget	**11**	OT	5,393	491	4,902	90.90%	45,839	46,772	(934)	-2.04%	70,106	23,334
Actual	**11**	**Total**	**42,790**	**33,953**	**8,837**	**20.65%**	**361,815**	**336,088**	**25,727**	**7.11%**	**556,271**	**220,183**
Constituent Services	442-01	Regular	17,715	10,462	7,253	40.94%	145,923	92,968	52,954	36.29%	230,292	137,324
		IPT	1,800	-	1,800	100.00%	15,300	-	15,300	100.00%	23,400	23,400
Budget	**4**	OT	-	-	-		-	-	-		-	-
Actual	**3**	**Total**	**19,515**	**10,462**	**9,053**	**46.39%**	**161,223**	**92,968**	**68,254**	**42.34%**	**253,692**	**160,724**
Morris Square Property	500	Regular	4,830	4,834	(4)	-0.09%	41,051	37,466	3,585	8.73%	62,784	25,318
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	775	224	551	71.07%	6,591	344	6,246	94.78%	10,080	9,736
Actual	**2**	**Total**	**5,605**	**5,058**	**547**	**9.76%**	**47,642**	**37,811**	**9,831**	**20.64%**	**72,864**	**35,053**
Public Works	566	Regular	14,673	14,872	(199)	-1.36%	124,722	127,133	(2,412)	-1.93%	190,751	63,618
		IPT	-	-	-		-	-	-		-	-
Budget	**3**	OT	247	-	247	100.00%	2,099	2,261	(162)	-7.71%	3,210	949
Actual	**3**	**Total**	**14,920**	**14,872**	**48**	**0.32%**	**126,821**	**129,394**	**(2,573)**	**-2.03%**	**193,961**	**64,567**
Public Grounds - Adm.	567-00	Regular	69,034	65,262	3,772	5.46%	586,786	552,121	34,665	5.91%	897,437	345,316
		IPT	-	-	-		-	-	-		-	-
Budget	**26**	OT	2,074	2,105	(31)	-1.49%	17,630	32,964	(15,334)	-86.98%	26,964	(6,000)
Actual	**25**	**Total**	**71,108**	**67,367**	**3,741**	**5.26%**	**604,416**	**585,085**	**19,331**	**3.20%**	**924,401**	**339,316**

Prepared: 3/1/2023
Finance Director

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CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department		Type	Current Month				Year To Date				Annual	
Name	Code	Wages	Budget	Actual	Variance	%	Budget	Actual	Variance	%	Budget	Available
Public Grounds - C/T	567-01	Regular	5,388	5,567	(179)	-3.32%	45,795	48,087	(2,291)	-5.00%	70,040	21,953
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	346	800	(454)	-131.28%	2,938	11,929	(8,990)	-100.00%	4,494	(7,435)
Actual	**2**	**Total**	**5,733**	**6,366**	**(633)**	**-11.04%**	**48,734**	**60,015**	**(11,281)**	**-23.15%**	**74,534**	**14,519**
Police - Uniform	700-00	Regular	721,961	696,079	25,882	3.58%	6,136,665	6,008,036	128,630	2.10%	9,385,488	3,377,452
		OT	204,387	215,630	(11,243)	-5.50%	1,789,471	1,942,953	(153,482)	-8.58%	2,657,030	714,077
Budget	**173**	Reimb.	(3,077)	(3,906)	829	26.95%	(26,154)	(23,522)	(2,632)	-10.06%	(40,000)	(16,478)
Actual	**163**	**Total**	**923,271**	**907,802**	**15,468**	**1.68%**	**7,899,983**	**7,927,467**	**(27,484)**	**-0.35%**	**12,002,518**	**4,075,051**
Police - Civilian	700-01	Regular	68,695	60,598	8,097	11.79%	583,911	519,140	64,771	11.09%	893,040	373,900
		IPT	3,846	2,020	1,826	47.48%	32,692	14,097	18,595	56.88%	50,000	35,903
Budget	**23**	OT	7,744	4,801	2,942	38.00%	65,820	49,608	16,212	24.63%	100,666	51,058
Actual	**22**	**Total**	**80,285**	**67,420**	**12,865**	**16.02%**	**682,423**	**582,845**	**99,578**	**14.59%**	**1,043,706**	**460,861**
Fire - Uniform	706-00	Regular	738,213	707,758	30,455	4.13%	6,452,920	6,641,343	(188,423)	-2.92%	9,596,763	2,955,420
		OT	115,080	87,727	27,353	23.77%	1,051,476	896,213	155,263	14.77%	1,496,036	599,823
Budget	**169**	Reimb.	(923)	(10,130)	9,206	997.36%	(7,846)	(23,161)	15,315	195.19%	(12,000)	11,161
Actual	**171**	**Total**	**852,369**	**785,355**	**67,014**	**7.86%**	**7,496,550**	**7,514,395**	**(17,845)**	**-0.24%**	**11,080,799**	**3,566,404**
Fire - Civilian	706-01	Regular	7,956	4,399	3,557	44.71%	67,628	48,903	18,725	27.69%	103,431	54,528
		IPT	-	-	-		-	-	-		-	-
Budget	**2**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**7,956**	**4,399**	**3,557**	**44.71%**	**67,628**	**48,903**	**18,725**	**27.69%**	**103,431**	**54,528**
Traffic	712	Regular	33,369	34,323	(954)	-2.86%	283,635	289,168	(5,533)	-1.95%	433,794	144,626
		IPT	385	-	385	100.00%	3,269	4,559	(1,289)	-39.44%	5,000	442
Budget	**10**	OT	968	635	333	34.42%	8,227	12,073	(3,846)	-46.75%	12,583	510
Actual	**9**	**Total**	**34,721**	**34,958**	**(237)**	**-0.68%**	**295,131**	**305,800**	**(10,669)**	**-3.61%**	**451,377**	**145,577**
Emergency Services	716	Regular	6,438	-	6,438	100.00%	54,726	-	54,726	100.00%	83,699	83,699
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**0**	**Total**	**6,438**	**-**	**6,438**	**100.00%**	**54,726**	**-**	**54,726**	**100.00%**	**83,699**	**83,699**
Street	750	Regular	189,521	161,209	28,312	14.94%	1,600,927	1,398,259	202,668	12.66%	2,463,777	1,065,518
		IPT	-	-	-		-	-	-		-	-
Budget	**72**	OT	33,203	15,980	17,223	51.87%	201,226	181,143	20,083	9.98%	269,640	88,497
Actual	**63**	**Total**	**222,724**	**177,189**	**45,535**	**20.44%**	**1,802,153**	**1,579,401**	**222,752**	**12.36%**	**2,733,417**	**1,154,016**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (1/15/2023 - 2/11/2023)
YTD has 17 pay periods (6/19/2022 - 2/11/2023)

CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	YTD Budget	YTD Actual	YTD Variance	YTD %	Annual Budget	Annual Available
Equipment Maintenance	754	Regular	56,349	56,866	(517)	-0.92%	478,963	470,281	8,682	1.81%	732,532	262,251
		IPT	-	-	-		-	-	-		-	-
Budget	**18**	OT	4,494	4,561	(67)	-1.49%	38,199	33,514	4,685	12.26%	58,422	24,908
Actual	**18**	**Total**	**60,843**	**61,427**	**(584)**	**-0.96%**	**517,162**	**503,795**	**13,367**	**2.58%**	**790,954**	**287,159**
Refuse & Recycling	800	Regular	161,339	161,783	(445)	-0.28%	1,371,378	1,396,416	(25,038)	-1.83%	2,097,401	700,985
		IPT	-	-	-		-	-	-		-	-
Budget	**66**	OT	19,359	4,198	15,161	78.32%	164,550	95,903	68,647	41.72%	251,664	155,761
Actual	**62**	**Total**	**180,697**	**165,981**	**14,716**	**8.14%**	**1,535,927**	**1,492,319**	**43,608**	**2.84%**	**2,349,065**	**856,746**
Parks & Recreation	900	Regular	94,313	88,322	5,991	6.35%	801,664	715,939	85,726	10.69%	1,226,075	510,136
		IPT	5,600	13,814	(8,214)	-146.68%	173,600	215,110	(41,510)	-23.91%	280,000	64,890
Budget	**31**	OT	4,425	497	3,928	88.77%	37,611	51,079	(13,468)	-35.81%	57,523	6,444
Actual	**30**	**Total**	**104,338**	**102,633**	**1,705**	**1.63%**	**1,012,876**	**982,129**	**30,747**	**3.04%**	**1,563,598**	**581,469**
Public Arts	906	Regular	4,408	4,408	(0)	0.00%	37,471	37,342	130	0.35%	57,309	19,967
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**4,408**	**4,408**	**(0)**	**0.00%**	**37,471**	**37,342**	**130**	**0.35%**	**57,309**	**19,967**
Spring Hill Cemetery	952	Regular	25,069	24,506	564	2.25%	213,090	198,376	14,714	6.91%	325,902	127,526
		IPT	-	-	-		24,863	-	24,863	100.00%	46,800	46,800
Budget	**8**	OT	775	226	549	70.82%	6,591	1,792	4,799	72.81%	10,080	8,288
Actual	**8**	**Total**	**25,845**	**24,732**	**1,113**	**4.31%**	**244,543**	**200,168**	**44,375**	**18.15%**	**382,782**	**182,614**
General Fund		Regular	2,782,339	2,591,743	190,595	6.85%	23,808,628	22,809,777	998,851	4.20%	36,170,406	13,360,629
		IPT	17,938	19,353	(1,415)	-7.89%	303,339	323,692	(20,352)	-6.71%	487,200	296,704
		OT	401,205	339,260	61,945	15.44%	3,454,722	3,373,254	81,468	2.36%	5,053,664	1,681,338
Budget	**759**	Reimb.	(4,000)	(14,036)	10,036	250.89%	(34,000)	(46,683)	12,683	37.30%	(52,000)	(5,317)
Actual	**721**	**Total**	**3,197,482**	**2,936,321**	**261,161**	**8.17%**	**27,532,689**	**26,460,040**	**1,072,650**	**3.90%**	**41,659,270**	**15,333,355**

Prepared: 3/1/2023
Finance Director

Month has 2 pay periods (1/15/2023 - 2/11/2023)
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CITY OF CHARLESTON
Payroll Variance Analysis
February 2023

Department Name	Code	Type Wages	Current Month Budget	Current Month Actual	Current Month Variance	Current Month %	YTD Budget	YTD Actual	YTD Variance	YTD %	Annual Budget	Annual Available
Business Improvement Dist.	568	Regular	3,414	3,154	260	7.62%	25,607	21,966	3,640	14.22%	44,385	22,419
		IPT	-	-	-		-	-	-		-	-
Budget	**1**	OT	-	-	-		-	-	-		-	-
Actual	**1**	**Total**	**3,414**	**3,154**	**260**	**7.62%**	**25,607**	**21,966**	**3,640**	**14.22%**	**44,385**	**22,419**
Coliseum & Conv. Center	910	Regular	54,128	50,230	3,899	7.20%	460,092	436,653	23,439	5.09%	703,670	267,017
		IPT	-	-	-		-	-	-		-	-
Budget	**17**	OT	3,077	2,742	335	10.90%	26,154	11,651	14,503	55.45%	40,000	28,349
Actual	**15**	**Total**	**57,205**	**52,971**	**4,234**	**7.40%**	**486,246**	**448,304**	**37,942**	**7.80%**	**743,670**	**295,366**
Parking System	571	Regular	56,594	52,165	4,429	7.83%	481,050	449,382	31,668	6.58%	735,724	286,342
		IPT	3,923	1,341	2,582	65.82%	33,346	16,824	16,522	49.55%	51,000	34,176
Budget	**21**	OT	1,385	439	946	68.31%	11,769	14,956	(3,187)	-27.08%	18,000	3,044
Actual	**19**	**Total**	**61,902**	**53,944**	**7,957**	**12.86%**	**526,166**	**481,162**	**45,003**	**8.55%**	**804,724**	**323,562**
Total		Regular	2,896,476	2,697,292	199,184	6.88%	24,775,377	23,717,778	1,057,598	4.27%	37,654,185	13,936,407
		IPT	21,862	20,694	1,167	5.34%	336,686	340,516	(3,830)	-1.14%	538,200	197,684
		OT	405,666	342,440	63,226	15.59%	3,492,646	3,399,862	92,784	2.66%	5,111,664	1,711,802
Budget	**798**	Reimb.	(4,000)	(14,036)	10,036	-250.89%	(34,000)	(46,683)	12,683	-37.30%	(52,000)	(5,317)
Actual	**756**	**Total**	**3,320,004**	**3,046,390**	**273,613**	**8.24%**	**28,570,708**	**27,411,472**	**1,159,235**	**4.06%**	**43,252,049**	**15,840,577**

Vacancy Report:

City Manager	1	Homeland Security	1
City Collector	2	Parks & Recreation	1
Accounting	2	**Total General Fund**	**38**
Engineering	1	Coliseum	2
HR	1	Parking System	2
Information Systems	3	**Total All**	**42**
Constituent Services	1		
Public Works (all)	14		
Police - Uniform	10		
Police - Civilian	1		
Fire - Uniform	(2)		
Fire - Civilian	1		
Traffic Engineering	1		

Prepared: 3/1/2023
Finance Director

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MUNICIPAL COURT
CITY OF CHARLESTON
Post Office Box 2749
Charleston, West Virginia 25330
(304) 348-8079

Matt Smith, Judge **Adam Campbell, Clerk**

TO: Mayor Amy Shuler Goodwin
FROM: Adam Campbell, Clerk
DATE: Wednesday, March 1, 2023
RE: February 2023 Financial Information, Charleston Municipal Court

TOTAL CITATIONS FILED: 1,270
Criminal Violations: 194
Traffic Violations: 1,076
Parking: 0
Building Search Warrants: 0

RESTITUTION COLLECTED (paid to victims): $1,065.00
Primarily related to shoplifting cases, restitution monies are collected and refunded to the store/victim.

FINANCIAL REPORT ATTACHED

cc: Matt Smith, Judge
Miles Cary, City Clerk
Ben Adams, Treasurer
Scott Dempsey, Deputy Chief of Police
Tony Harmon, Building Department
David Potters, Office of the City Attorney
Captain Mike Pridemore, CPD
Nikki Smith, City Clerk's Office
Andrew Workman, Mayor's Office

MUNICIPAL COURT REPORT - FILED CASES

CHARLESTON MUNICIPAL COURT Page: 1

Report For February 1, 2023 Thru February 28, 2023 FILEDST

Violations by Filed Date...

TRAFFIC	1,076	
CRIMINAL	194	
Total Filed Violations		1,270

Completed Cases...

Paid Fine...

TRAFFIC	187	
CRIMINAL	4	
Total Paid Fines		191

Before Judge...

TRAFFIC	5	
CRIMINAL	3	
Total Before Judge		8
Total Completed		199

Other Completed...

DISMISS- OFFICER NOT WITH CITY

TRAFFIC	0	
CRIMINAL	3	
Total		3

DISMISSED (BY COMPLAINANT)

TRAFFIC	0	
CRIMINAL	1	
Total		1

DISMISSED OFFICER FAIL TO PROS

TRAFFIC	0	
CRIMINAL	3	
Total		3

DISMISSED(PRESENTED INSURANCE)

TRAFFIC	92	
CRIMINAL	0	
Total		92

DISMISSED E-PROOF

TRAFFIC	11	
CRIMINAL	0	
Total		11

DISMISSED (PRESENTED DL)

TRAFFIC	16	
CRIMINAL	0	

Total		16
DISMISSED MISTAKEN IDENTITY		
TRAFFIC	2	
CRIMINAL	1	
Total		3
DISMISSED STORE CLOSED		
TRAFFIC	0	
CRIMINAL	3	
Total		3
DISMISSED OFF FAIL TO PROV VIN		
TRAFFIC	24	
CRIMINAL	0	
Total		24
DISMISSED (PROSECUTOR'S ORDER)		
TRAFFIC	40	
CRIMINAL	31	
Total		71
Dismissed at Officers Request		
TRAFFIC	18	
CRIMINAL	1	
Total		19
DISMISSED PRESENTED RECORDS		
TRAFFIC	357	
CRIMINAL	0	
Total		357
DISMISSED AFTER PT DIVERSION		
TRAFFIC	16	
CRIMINAL	61	
Total		77
Dismissed Pursuant to Plea		
TRAFFIC	37	
CRIMINAL	110	
Total		147
DISMISSED VICTIM/WITNESS FTA		
TRAFFIC	0	
CRIMINAL	8	
Total		8
DISMISSED WITHOUT PREJUDICE		
TRAFFIC	11	
CRIMINAL	6	
Total		17
VOIDED DOCKET		
TRAFFIC	7	

CRIMINAL	2	
Total		9
Total Other Completed		861
Grand Total Completed		1,060
Net Difference Filed/Complete		210

Warrants...

Issued...

TRAFFIC	34	
CRIMINAL	314	
Total Violations		348
Total Warrants Issued		348

Cleared...

TRAFFIC	371	
CRIMINAL	338	
Total Violations		709
Total Warrants Cleared		709
Change in Total Warrants		361-

Other Paid Cases...

Paid Fine...

Total Other Paid Fines	148

FINE	FINE	$15,901.50
LAWFND	LAW ENFORCE. TRAIN STATE	$2,806.00
LAWLOC	LAW ENFORCE. TRAIN (LOCAL)	$1,142.00
CVC	CRIME VICTIM'S FUND	$1,987.00
ADMIN	ADMINISTRATIVE COST	$488.00
JAILF	REGIONAL JAIL CORR.	$9,816.00
CCF	COMMUNITY CORRECTIONS FUND	$162.00
REST	RESTITUTION	$1,065.00
NSF	NSF	$25.00
OP	OVER PAYMENT	$10.00
PCADM	PC ADMIN FEE	$100.00
Total Fees/Fines Paid		$33,502.50

Monthly Report – Definition Key

Violations by Filed Date:
Violations keyed into the Court software during the month
Completed Cases:
Cases where the fine and court costs were paid in full and the case was closed during the month.
Before Judge:
Number of violations where a case set for trial before the judge; the defendant was found guilty or entered a guilty plea at trial and the defendant paid off all costs/fines in full thereby closing the case.
Other Completed-Dismissed (By Complainant):
The City Attorney moved to dismiss cases because the person who filed the complaint no longer wishes to pursue the charges.
Defendant Deceased:
Cases dismissed because the defendant died.
Dismissed Officer Fail to Pros:
Cases dismissed because the officer failed to appear in Court.
Dismissed (presented insurance):
Cases dismissed because the defendant presented valid proof of insurance for the offense date.
Dismissed (presented DL):
Cases dismissed because the defendant presented a valid driver's license.
Dismissed Mistaken Identity:
Cases dismissed cases on the City Attorney's motion due to mistaken identity.
Dismissed (Prosecutor's Order):
Cases dismissed on the City Attorney's motion or as a result of a plea agreement.
Dismissed Presented Records:
Cases dismissed because the defendant presented records to satisfy a code or Court requirement.
Dismissed After PT Diversion:
Cases dismissed because the defendant entered into a Pre-Trial Diversion agreement with the City and satisfied the requirements of the Pre-Trial Diversion.
Dismissed Victim/Witness FTA:
Cases dismissed because the witness or victim did not appear in Court for trial.
Dismissed without prejudice:
Cases dismissed but the City having the option to re-file the case within one (1) year of the date of the offense.
Dismissed No Drug Results:
Drug results were not received for trial.
Dismissed – Officer Not With City
Officer/Witness is no long employed by the City.
Warrants
The Court issues warrants for Failure to Appear in Court for court sessions. These warrants are printed and copied to the CPD Warrants Division.
Cleared:
The Court clears warrants once the warrant is served by an officer or when a defendant self reports to the Court. The Court also clears warrants if a person is deceased, posts bond and or, in some cases, enters a plea.
Other Paid Cases:
The Court received a partial payment for a case; however, the defendant still has a balance due.
Search Warrant Issued:
A search warrant document was prepared and presented to the court by the City Attorney's office with regard to safety and public health concerns of a structure/property.

This report is <u>not</u> indicative of the case volume in Municipal Court. Rather, this information reflects payment status/coding for cases.

Bill No. 7985

Introduced in Council

March 6, 2023

Introduced by

Becky Ceperley

Passed by Council

Referred to

Finance Committee

Bill No. 7985 - A Bill granting Cabin Creek Health Systems, Inc. an easement in a portion of the right-of-way of the City of Charleston along Wyoming Street adjacent to the building commonly referred to as 303 Ohio Avenue for the purpose of constructing, operating, maintaining, repairing, and replacing, as necessary, a handicap accessible ramp and entrance in compliance with the Americans with Disabilities Act, in the area designated in Exhibit A attached hereto.

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

Subject to the minimum terms and conditions contained herein, the Mayor or City Manager is authorized to execute an easement for a portion of the right of way along Wyoming Street adjacent to 303 Ohio Avenue to Cabin Creek Health Systems, Inc. ("Cabin Creek"):

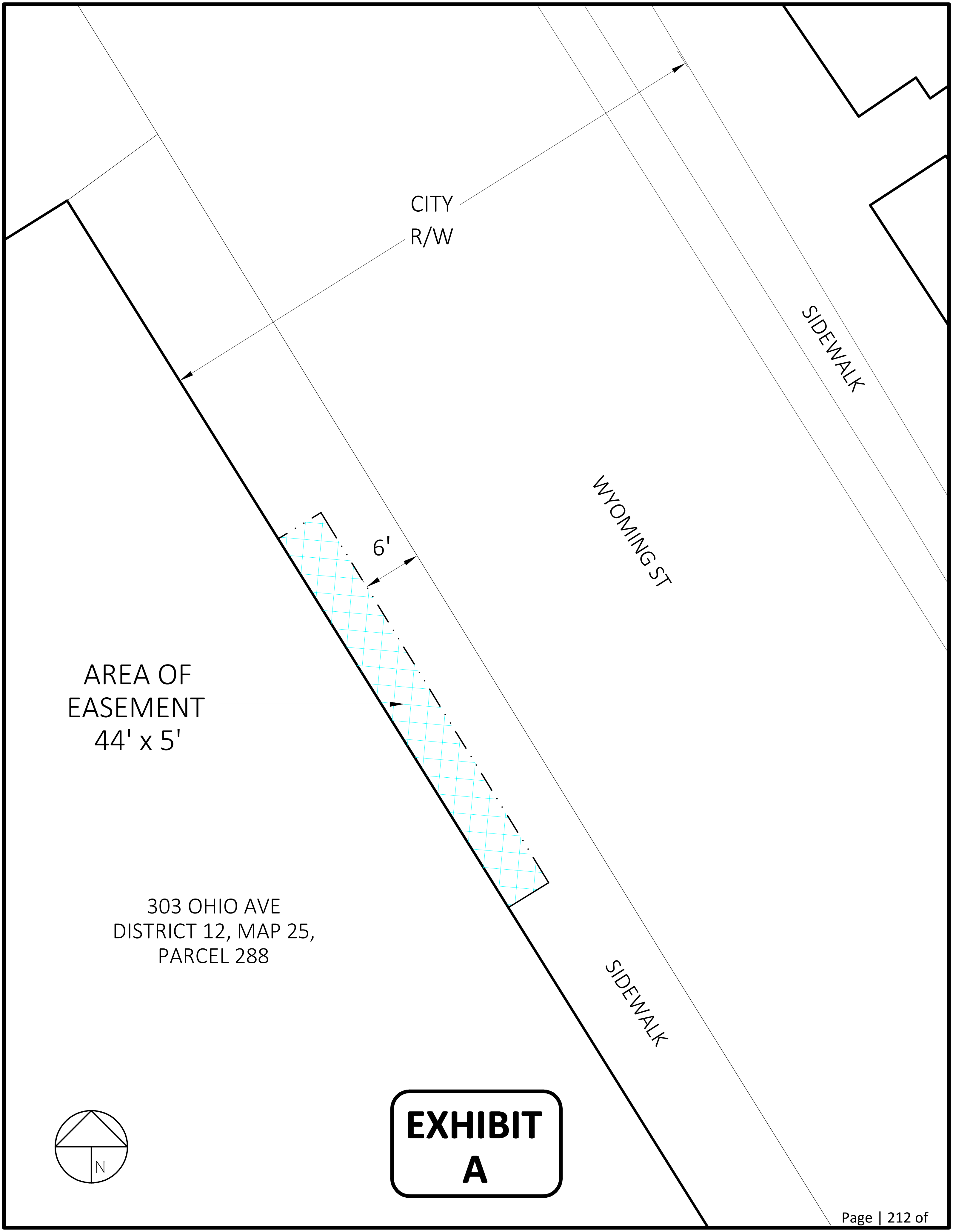
(1) Cabin Creek, and its lessees, successors or assigns, are hereby granted an easement in a portion of the right-of-way for the purpose of constructing, operating, maintaining, repairing, and replacing, as necessary, a handicap accessible ramp and entrance in compliance with the Americans with Disabilities Act, in the area designated in Exhibit A, incorporated herein, and made a part hereof. The easement is further defined to be 44 feet long by 5 feet wide running adjacent to the building at 303 Ohio Avenue parallel to Wyoming Street containing approximately 220 square feet, more or less; and

(2) Cabin Creek, its lessees, successors or assigns, shall indemnify, defend and save the City harmless from and against any damages to any person or property by reason of the construction, operation, maintenance, repair, and replacement, as necessary, of a handicap accessible ramp and entrance in compliance with the Americans with Disabilities Act, by Cabin Creek, its lessees, successors and assigns; and

(3) Cabin Creek shall maintain general liability insurance in the minimum amount of $1,000,000.00 and shall name City as an additional insured for purposes of the easement and the indemnity provisions specified in the easement agreement. All applicable policies shall provide primary coverage, shall reflect that Cabin Creek is responsible for any and all deductibles and shall otherwise be in such form and with such endorsements and riders as City shall reasonably specify; and

(4) Should there become a compelling public need for the area granted in the easement, the parties agree to cooperate in good faith to reach a resolution regarding removal, modification, or replacement of the ramp without the necessity of condemnation proceedings; and

(5) That upon review and approval by legal counsel for the City, and the City Engineer of the City of Charleston, the Mayor or City Manager of the City of Charleston are hereby authorized to execute an easement agreement and any other documents related hereto for the purpose of granting an easement for the purpose of constructing, operating, maintaining, repairing, and replacing, as necessary, a handicap accessible ramp and entrance in compliance with the Americans with Disabilities Act upon Cabin Creek, and its lessees, successors or assigns, consistent with paragraphs 1, 2, 3, 4, and 5 of this ordinance, and the payment of Nine Hundred and Fifty dollars and no cents ($950.00).


CITY
R/W
SIDEWALK
WYOMING ST
6'
AREA OF
EASEMENT
44' x 5'
303 OHIO AVE
DISTRICT 12, MAP 25,
PARCEL 288
SIDEWALK
N
EXHIBIT
A