CITY OF CHARLESTON
West Virginia

Council Member – 12th WARD

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

Finance Committee, Chair
Parking Committee, Chair
Ordinance and Rules Committee

AGENDA
FINANCE COMMITTEE MEETING
Monday, April 17, 2023
6:15 PM
AV ROOM #308, CITY HALL, CHARLESTON, WV
AVAILIABLE TO VIEW VIA LIVESTREAM AT https://charlestonwv.civicclerk.com/web/home.aspx

I. DISCUSSION:

a. Approval of Previous Minutes 4-3-2023

II. RESOLUTIONS:

a. Resolution No. 789-23 – Authorizing the Mayor or City Manager to submit an application to the FEMA Pre-Disaster Mitigation for the Chesterfield Avenue Stormwater Project.

b. Resolution No. 790-23 - Authorizing the Mayor or City Manager to submit an application for the RAISE Capital Connector Project to the U.S. Department of for funds to design east end pedestrian and bicycle accessibility from Magic Island to the 35th Street Bridge.

c. Resolution No. 791-23 - Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the Annual Action Plan for Program Year 2023, Year 4 of the Consolidated Plan.

d. Resolution No. 792-23 - Authorizing the Mayor or City Manager to purchase sixteen Self-Contained Breathing Apparatuses for the Charleston Fire Department from Atlantic Emergency Solutions.

e. Resolution No. 793-23 - Authorizing the Mayor or City Manager to execute (1) the Termination of Lease and Settlement Agreement with Roark-Sullivan Lifeway Center, Inc.; (2) the Ground Lease Agreement with Goodwill Industries of Kanawha Valley, Inc.; and (3) the Lease Agreement with Kanawha Valley Collective, Inc.,relating to the operations of the Giltinan Center and the Veterans Transitional Living Center and Service Center, located at 505 and 507 Leon Sullivan Way.

f. Resolution No. 794-23 - Authorizing the Mayor or City Manager to grant temporary and permanent easements from the City to the Charleston Sanitary Board for the Rolling Hills Sewer Improvements Project as referenced in the attached documents.

g. Resolution No. 795-23 - Authorizing the Mayor or City Manager to execute the Mediation Memorandum and Proposed Resolution between the City of Charleston and Kanawha County, pursuant to the West Virginia First Memorandum of Understanding.

h. Resolution No. 796-23 - Authorizing the Mayor or City Manager to execute a Right of Way and Easement Agreement between the City and Charmco Lofts Limited Partnership relating to an underground Water Utility on City property.

i. Resolution No. 797-23 - Authorizing the Mayor or City Manager to execute a contract for Cyber Security services with InterDev, LLC to provide cyber security and GIS services.

III. BILLS:

a. Bill No. 7987 - A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning July 1, 2023.

IV. THE AGENDA WAS AMENDED ON 4-13-2023 TO ADD ITEMS AND CHANGE THE MEETING TIME

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

MINUTES
FINANCE COMMITTEE MEETING
6:30 P.M., APRIL 3, 2023
AV ROOM #308, CITY HALL

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:30 p.m., March 20, 2023.

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

Joseph Jenkins, Chair
Brent Burton, Vice Chair
Becky Ceperley
Larry Moore
Chad Robinson (arrived after approval of previous minutes)
Shawn Taylor

Absent:
Mary Beth Hoover

Other Councilmembers present:
Emmett Pepper
Frank Annie
Beth Kerns
Joe Solomon

I. DISCUSSION:

a. Approval of Previous Minutes - Councilmember Burton asked for unanimous consent to dispense with the reading of the minutes for the March 20, 2023 meeting and that they be approved as distributed. There were no objections, and the minutes were approved.

II. RESOLUTIONS:

a. Resolution No. 784-23 – Authorizing the Mayor or City Manager to purchase a total of two 2023 Ram 1500 Classic Quad Cab Express pickup trucks, one for the Refuse Department and one for the Parks and Recreation Department, from National Auto Fleet Group, for a unit cost of $41,394.62 each and the total amount of $82,789.24 pursuant to a competitively sourced multi-state contract. These will replace Refuse unit 138 and Parks and Recreation unit 305 as part of the fleet rotation schedule.

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

   That the Mayor or City Manager is authorized to enter into a contract with National Auto Fleet Group in the amount of $82,789.24 for the purchase of two 2023 Ram 1500 Classic Quad Cab Express pickup trucks for the Refuse Department and Parks and Recreation Department, pursuant to a competitively sourced multi state contract.

City Manager, Ben Mishoe, added that the resolution is for the replacement of two vehicles that were originally budgeted for in FY 2022, but were not purchased due to lack of availability.

Councilmember Burton moved to approve the Resolution. With members present recorded thereon as voting unanimously in the majority as affirmative, Chairperson Jenkins declared Resolution No. 784-23 approved.

b. Resolution No. 785-23 – Authorizing the Mayor or City Manager to execute a change order with Ozark Materials, LLC in the amount of $35,060.30 for the renewal of the City's Traffic Marking Paint purchase, approved in Res. No. 591-22, changing the quantity purchased and unit price from last year's contract for an average price increase of $1.6352 per gallon, and where the original contract was determined through a competitive bidding process and included an optional two year renewal.

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

That the Mayor or City Manager is authorized to execute a change order with Ozark Materials, LLC in the amount of $35,060.30 for renewal of the City's Traffic Marking Paint contract, where the original purchase was determined through a competitive bidding process.

Mishoe added that the City entered into a contract with Ozark Materials in 2022 for the purchase of traffic marking paint. The contract provided for up to 2 years of renewal. For the renewal there is a price increase of $1.6352 per gallon. The contract was re-bid, and the response was more than the listed price increase.

Councilmember Taylor asked if there was a price cap or escalation cause. Mishoe replied that was no price cap, but both parties had to approve the renewal.

Councilmember Burton moved to approve the Resolution. With members present recorded thereon as voting unanimously in the majority as affirmative, Chairperson Jenkins declared Resolution No. 785-23 approved.

c. Resolution No. 786-23 – Authorizing the Mayor or City Manager to enter into an Agreement for LED Street Lights with Appalachian Power Company.

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

That the Council for the City of Charleston authorizes the Mayor or City Manager to enter into an Agreement for LED Street Lights with Appalachian Power Company that contains, among others, the following provisions: (1) that Appalachian Power will update all of the approximately 5,900 street lights that it owns within the City of Charleston to LED street lights as part of a project to help Appalachian Power determine the cost to install, operate, and maintain LED streetlighting and to demonstrate the benefits of such LED street lighting; (2) that all of the LED street lights will be installed with full cutoff lights of no more than 4,000 Kelvin to prevent light pollution in the sky; (3) that no installation fees or other assessments beyond the monthly fees will be charged to the City for the upgraded street lights; (4) that the City's monthly fees associated with the approximately 5,900 street lights under the Agreement will be no more than 4.8% more than what the City currently pays for HPS street lights; and (5) that if Appalachian Power's Schedule S.L. rate for LED street lights lowers to within 4.8% of agreed rate or falls below the agreed rate, then the City will pay the Schedule S.L. rate. The City Council's authorization is subject to the final review and approval of the Agreement by the City Attorney.

City Attorney, Kevin Baker, added that the resolution will authorize the City to enter into a contract with AEP that will ultimately replace all of the AEP streetlights with LED lights. Since this is a pilot project, the City is getting a rate different than the tariff rate.

Councilmember Robinson asked if there was a map of the approximately 5,100 lights. A representative from AEP replied that they did not have a map but did have a list of pole numbers with GPS locations and the type of light. This will be for lights owned by AEP that the City of Charleston pays for, which does not include most of the ones on McCorkle Avenue. Councilmember Robinson requested that the City receive a memo of all lighting for McCorkle Avenue from 32nd Street to 58th Street, and if the DOH intends to upgrade those as well.

From the audience, Councilmember Annie asked how long until the rates were established. Baker replied that AEP will use what they have learned from the pilot project to apply for a new tariff rate with the PSC, and that will most likely be the new rate for the City.

From the audience, Councilmember Pepper added that when something similar happened in Morgantown, it was discovered that there were streetlights they were paying for that didn't exist, and asked if that would be something they would be able to tell with this project. A representative from AEP replied that they will be installing smart lighting sensors that will be more accurately mapped and allow them to know exactly which lights need servicing. Their current inventory is tracked via spreadsheet, but they were confident that it was fairly accurate.

Councilmember Jenkins asked how long until the project was finished. A representative from AEP replied that they were not able to give an accurate timeline at this moment due to potential supply chain delays, etc. Once begun, it will probably take a few months.

Councilmember Moore asked if they intended to replace the lights by blocks. Matt Hartline, Traffic Engineering Director, replied that he has broken the City into four quadrants.

Councilmember Jenkins added that is was great the City is doing this.

Councilmember Burton moved to approve the Resolution. With members present recorded thereon as voting unanimously in the majority as affirmative, Chairperson Jenkins declared Resolution No. 786-23 approved.

d. Resolution No. 787-23 – Authorizing the Mayor or City Manager to enter into a contract with Ed's Home and Commercial Improvement in the amount of $44,800.00 to replace the EPDM roof system of the Little Theater at the Charleston Coliseum and Convention Center, where the contract price was determined following a competitive bidding process.

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

   That the Mayor or City Manager is authorized to enter into a contract with Ed's Home and Commercial Improvement in the amount of $44,800.00 to replace the EPDM roof system of the Little Theater at the Charleston Coliseum and Convention Center.

Mishoe added that the City received two bids.

Councilmember Burton moved to approve the Resolution. With members present recorded thereon as voting unanimously in the majority as affirmative, Chairperson Jenkins declared Resolution No. 787-23 approved.

III. Miscellaneous

Councilmember Robinson added that he is on the Charleston Coliseum and Convention Center Board and has spoken with the Mayor about the retractable lower-bowl seating in the Coliseum. Andrew, from the Convention Center, added that they were put in many decades ago, and that system (and replacement parts) is no longer made. They do have the system evaluated every year. The system will likely need completely replaced in three years, maybe sooner.

Councilmember Burton motioned to adjourn the meeting.
Meeting adjourned.

Resolution No. 789-23

Introduced in Council: Adopted by Council:

April 17, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 789-23 - Authorizing the Mayor or City Manager to submit an application to the FEMA Pre-Disaster Mitigation Program in the total amount of $626,000 that includes the required $157,000 cash match and in-kind engineering project management and administer any funds awarded. The City will utilize these funds for the Chesterfield Avenue Stormwater Project.

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

That the Mayor or City Manager is hereby authorized to submit an application to the FEMA Pre-Disaster Mitigation Program in the total amount of $626,000 that includes the required $157,000 cash match and in-kind engineering project management and administer any funds awarded. The City will utilize these funds for the Chesterfield Avenue Stormwater Project.

Resolution No. 790-23

Introduced in Council: April 17, 2023

Adopted by Council:

Introduced by: Joseph Jenkins

Referred to: Finance

Resolution No. 790-23 - Authorizing the Mayor or City Manager to enter into an agreement for the RAISE Capital Connector Project with the U.S. Department of Transportation in the amount of $1,975,000 with a $225,000 non-federal share. These funds will be utilized to design east end pedestrian and bicycle accessibility from Magic Island to the 35th Street Bridge.

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

That the Mayor or City Manager is hereby authorized to enter into an agreement for the RAISE Capital Connector Project with the U.S. Department of Transportation in the amount of $1,975,000 with a $225,000 non-federal share. These funds will be utilized to design east end pedestrian and bicycle accessibility from Magic Island to the 35th Street Bridge.

Resolution No. 791-23

Introduced in Council: Adopted by Council:

April 17, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 791-23 - Authorizing the Mayor to sign and submit to the U.S Department of Housing and Urban Development the Annual Action Plan for Program Year 2023 (FY 2023 to 2024), Year 4 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action 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 Annual Action Plan for Program Year 2023 (FY 2023 to 2024), Year 4 of the Consolidated Plan and all required certifications and agreements, including Sub-recipient project contracts relating to the Annual Action Plan.

2023-2024 CDBG Project List

Project	Amount Proposed
CD Admin	$ 298,214.00
CORP Rehab	$ 437,497.00
Capitol Market	$ 8,284.00
Charleston-Kanawha Housing Authority	$ 23,958.00
Children's Home Society	$ 35,000.00
Zion Child Development Center	$ 43,615.00
ADA Curb Cuts	$ 420,842.00
Bob Burdette Center	$ 10,000.00
Covenant House	$ 7,000.00
Daymark	$ 25,000.00
Kanawha Valley Collective	$ 5,000.00
Kanawha Valley Fellowship Home	$ 10,000.00
Manna Meal, Inc.	$ 30,000.00
Midian	$ 17,000.00
Rea of Hope Fellowship Home	$ 18,000.00
Religious Coalition for Community Renewal	$ 20,000.00
Salvation Army	$ 6,500.00
The Underprivileged Children Foundation	$ 10,000.00
United Way	$ 10,000.00
WV Health Right Inc.	$ 34,555.00
WV Women Work	$ 5,900.00
YWCA Resolve	$ 5,000.00
YWCA Sojourner's	$ 9,705.00
HOME Admin	$ 85,800.00
HOME Project	$ 643,506.00
HOME CHDO	$ 128,700.00

Resolution No. 792-23

Introduced in Council: Adopted by Council:

April 17, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 792-23 - Authorizing the Mayor or City Manager to purchase sixteen SCBA's (Self-Contained Breathing Apparatuses) with related equipment for the Charleston Fire Department from Atlantic Emergency Solutions for a total cost will be $151,374.00, which includes the 10% required match, where the pricing is available through an HGAC contract and the funding comes from the 2021 Assistance to Firefighters Grant award.

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

That the Mayor or City Manager is hereby authorized to purchase sixteen SCBA's (Self-Contained Breathing Apparatuses) with related equipment for the Charleston Fire Department from Atlantic Emergency Solutions for a total cost will be $151,374.00, which includes the 10% required match, where the pricing is available through an HGAC contract and the funding comes from the 2021 Assistance to Firefighters Grant award.

CITY OF CHARLESTON, West Virginia

Purchase Order Request Form

CHARLESTON FIRE DEPARTMENT

Purchase Order #: ________

Date: 03/28/23 **Account Number#:** ________

Vendor: Atlantic Emergency Solutions **Vendor#** 019941

Contact: Jay Parsons **Phone#** ________

Address: ________

(Street, City, State, Zip)

Quantity	Description	Unit Price	Total Price
16	SCBA's with spare cylinders		0.00
16	Spare 60 min. cylinders		0.00
6	Supplied Air Cylinders		0.00
			0.00
			0.00
			0.00
			0.00
			0.00
		TOTAL	151,374.00

Requested By: Chad Jones

Purpose of Request: AFG Grant Award

EMW-2021-FG-06052

Operations Chief:

☐ Denied ☐ Approved ________ **Date:** ________

Administrative Chief:

☐ Denied ☑ Approved Chad Jones **Date:** 3/28/2023

Fire Chief:

☐ Denied ☐ Approved ________ **Date:** ________

PR Form, Revised 10/20/09

HGACBuy	CONTRACT PRICING WORKSHEET For Catalog & Price Sheet Type Purchases	Contract No.:	EP11-17	Date Prepared:	3/27/2023

This Worksheet is prepared by Contractor and given to End User. Purchasing document wit with worksheet can be faxed to 713-993-4548 or emailed to veronica.johnson@h-gac.com Therefore please type or print legibly.

Buying Agency:	City of Charleston	**Contractor:**	Atlantic Emergency Soultuions
Contact Person:	Chad Jones	**Prepared By:**	Jay Parsons
Phone:	304-389-2002	**Phone:**	304-482-2944
Fax:		**Fax:**	
Email:	chad.jones@charlestonfire.com	**Email:**	jparsons@atlanticemergency.com

Catalog / Price Sheet Name:	3M Scott Fire Safety Pricing HGAC
General Description of Product:	X-3 PRO SCBA'S

A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary

Quan	Description	Unit Pr	Total
16	AIR-PAK X3 PRO SCBA P/N - X8814025005304	9386.34	150181.44
16	Cyl&Valve ASSY 200973-01 SC, 5.5, 60 MIN	2172.1	34753.6
6	Scott Safety/ SKA PACK PLUS 4500 15 MIN , AV 3000 SS Kevlar	2793.92	16763.52
			0
			0
			0
			0
			0
			0
			0
			0
			Section A Total: 0
			Total From Other Sheets, If Any: 0
			Subtotal A: 201698.56

B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary
(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
			0
			0
			0
			0
			Total From Other Sheets, If Any:
			Subtotal B: 0

Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	**For this transaction the percentage is:**	0%

C. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Preferred Customer Discount	-50324.56
Subtotal C:	-50324.56

Delivery Date:	**90-120 Days**	**D. Total Purchase Price (A+B+C):**	151374

QUOTE

ATLANTIC EMERGENCY SOLUTIONS
13051 Redwater Drive
Chester, VA 23836
(800) 442-9700
equipmentorders@atlanticemergency.com

Quote NO.	43293
Employee NO.	1141
CUSTOMER ID	70422
DATE	03/15/2023
EXPIRATION DATE	04/14/2023

Bill To
Charleston Fire & EMS Department W.V.
808 Virginia Street West
Charleston West Virginia 25302
United States

Ship To
Charleston Fire & EMS Department W.V.
United States

SALESPERSON	SALESPERSON CONTACT#	DELIVERY CONTACT	DELIVERY CONTACT#	PO#	PAYMENT TERMS	FREIGHT OPTIONS
Jay Parsons						Freight Included

QTY	ITEM #	NAME / VENDOR / DESCRIPTION	UNIT PRICE	LINE TOTAL
32	804721-01	804721-01 / SCOTT SAFETY / CYL&VLV ASSY CARB,30MIN,4500 SCOTT 4.5 30 MIN CYL	$554.00	$17,728.00
6	SAR424060442001	SAR424060442001 / SCOTT SAFETY / SPAT,E,45,15m,KEV,QD,SC, , SCOTT SKA PACKS	$2,364.00	$14,184.00
16	X3-PRO	X3-PRO / SCOTT SAFETY / CUSTOM AIRPACK CONFIGURATION SCOTT X3 PRO X8814025005304	$6,315.00	$101,040.00
16	804723-01	804723-01 / SCOTT SAFETY / CYL&VLV CARBON 60MIN (HM) SCOTT 4.5 60 MIN CYL	$732.00	$11,712.00
22	201215-22	201215-22 / SCOTT SAFETY / AV-3000 HT 4-ST, KEV, M SCOTT AV3000 HT FACEPIECE	$305.00	$6,710.00
			SUBTOTAL	$151,374.00
			TAX	0.00%
			FREIGHT ESTIMATE	$0.00
			TOTAL	$151,374.00

Quote Comments:
PRICING IS GOOD TILL MARCH 29, 2023
THERE IS A 6.5% INCREASE COMING APRIL 1, 2023
NEED TO HAVE ORDER PLACED BEFORE THE 29TH

THANK YOU FOR YOUR BUSINESS!

INSTRUCTIONS: This form must be submitted to the City Manager's Office for any purchase of materials or supplies costing **$2,500 or more**. A minimum of **3** quotes is required for this form.

CITY OF CHARLESTON

Purchase Request

Date: 3-28-2023

To: CITY MANAGER,

I request permission to purchase the following materials and/or supplies:

16 - SCBA's complete with spare 30 min cylinders

16 - 60 min SCBA cylinders, 6 - SAS Escape Packs

Purchase justification: These will be used for structural firefighting, hazardous materials incidents, confined space rescues, and USAR calls.

If approved, the total purchase price will be: 151,374

(Check One)

☐ The price is less than the $25,000 permitted for purchases without advertising for bids and needing approval from City Council. I have not purposefully split the purchase request to keep the purchase under the $25,000 threshold and have not favored a particular vendor. I have not shared competitive information with any vendor(s).

☒ The proposed vendor is a sole source provider for the materials/supplies requested. (Skip to **ITEM A** on page 2.)

I have contacted the following responsible vendors and have attached their written quotes for the requested item(s): (Minimum of 3 Quotes Required)

1. Atlantic (HGAC) Price Quote: $151,374

2. ________________________________ Price Quote: $________________

3. ________________________________ Price Quote: $________________

4. ________________________________ Price Quote: $________________

5. ________________________________ Price Quote: $________________

The apparent low-bid vendor *meeting specifications* is: Atlantic Emergency Solutions

AND

☒ The low-bid vendor is not delinquent on any financial obligations owed to the City of Charleston according to the City Collector's records, and I recommend authorizing the purchase through the low-bid vendor.

OR

☐ I recommend not contracting with the lowest bidder meeting specifications and instead recommend contracting with ____________________________ because:

____

____

Additionally, the recommended vendor is not delinquent on any financial obligations owed to the City of Charleston according to the City Collector's records.

ITEM A (For Sole Source Procurements ONLY)

Explain what is unique about this vendor/brand and why your department must purchase this product:

____

____

____

Identify at least 1 independent third party who has verified the vendor is a sole source for the item(s) requested to be purchased, and submit his/her written opinion regarding the vendor's sole source status:

(*Name & Phone Number*)____________________________________

REQUESTOR'S DECLARATION

I declare that I have fully complied with the letter and intent of the City Code as it pertains to procurement and have exercised reasonable precaution to procure the item(s) requested above at the lowest price, consistent with good service and quality.

I also declare that I have no personal or business relationship with the listed vendor(s) that would be considered a conflict of interest, except as follows:

(List Actual, Potential, or Perceived Conflicts of Interest) ____

____

Request Submitted By: ___________________________ Department: _____________________________

Is this purchase being paid with grant funds? ☐ Yes ☐ No

****

Funds Approval: ___________________________ Date: _______________
Authorized Financial Officer

Account Number: ____

City Manager Approval: ________________________________ Date:_______________________

3

Resolution No. 793-23

Introduced in Council: Adopted by Council:

April 17, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 793-23 - Authorizing the Mayor or City Manager to execute (1) the Termination of Lease and Settlement Agreement with Roark-Sullivan Lifeway Center, Inc.; (2) the Ground Lease Agreement with Goodwill Industries of Kanawha Valley, Inc.; and (3) the Lease Agreement with Kanawha Valley Collective, Inc., all attached hereto as exhibits and all relating to the operations of the Giltinan Center and the Veterans Transitional Living Center and Service Center, located at 505 and 507 Leon Sullivan Way.

WHEREAS, the City Council for the City of Charleston previously approved that certain Lease Agreement dated August 28, 2007 between the City and Roark-Sullivan Lifeway Center, Inc. ("Roark-Sullivan") related to the operation of the Giltinan Center and the Veterans Transitional Living Center and Service Center on Leon Sullivan Way; and

WHEREAS, the Board of Directors of Roark-Sullivan has decided to dissolve the nonprofit and sell all of its assets to Peak Living Services, Inc., a subsidiary of Goodwill Industries of Kanawha Valley, Inc. ("Goodwill"); and

WHEREAS, the City's burden in providing services for its homeless population and veteran population is greatly reduced by the operation of the Giltinan Center and the Veterans Transitional Living Center and Service Center, along with the general efforts of Kanawha Valley Collective, Inc. ("KVC") in providing services in the community; and

WHEREAS, the City Council hereby finds that it is in the best interest of the City to terminate the existing lease with Roark-Sullivan and enter into a new lease with KVC for the operation of the Giltinan Center and a ground lease with Goodwill that requires the continued operation of the Veterans Transitional Living Center and Service Center.

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

That the Mayor or City Manager is hereby authorized to execute (1) the Termination of Lease and Settlement Agreement with Roark-Sullivan Lifeway Center, Inc.; (2) the Ground Lease Agreement with Goodwill Industries of Kanawha Valley, Inc.; and (3) the Lease Agreement with Kanawha Valley Collective, Inc., all attached hereto as exhibits and all relating to the operations of the Giltinan Center and the Veterans Transitional Living Center and Service Center, located at 505 and 507 Leon Sullivan Way.

City of Charleston
and
Kanawha Valley Collective, Inc.

LEASE AGREEMENT

Giltinan Center
505 Leon Sullivan Way

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LEASE AGREEMENT

This Lease Agreement (the "Lease Agreement"), dated as of the ___ day of _____________ 2023, by and between the **CITY OF CHARLESTON**, a West Virginia municipal corporation (the "City") and the **KANAWHA VALLEY COLLECTIVE, INC.**, a West Virginia nonprofit corporation (the "Tenant");

RECITALS

WHEREAS, the City has power and authority to lease any of its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5 of the West Virginia Code of 1931, as amended, the City has power and authority to provide homeless services and lease its property to an independent entity for the purpose of operating a facility to provide homeless services in consideration for the provision of services for which the City otherwise would make direct expenditures; and

WHEREAS, the City Council by Resolution has authorized this Lease Agreement after notice and a hearing; and

WHEREAS, the Tenant has requested that the City lease to it the Premises (as defined in Article 6, Section A of this Lease Agreement) duly authorized by proper corporate action, and the Tenant is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement and affirmatively so represents to Issuer;

NOW THEREFORE, in consideration of the rents and mutual agreements set forth herein, City and Tenant hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Tenant, and Tenant hereby takes and hires from City, the Premises, as defined in Article 6, Section A herein.

B. Term

The term of this Lease Agreement shall be for a period of ten (10) years, commencing on the date as stated in the initial paragraph of this Lease Agreement, and expiring at midnight of its tenth anniversary (the "Initial Term"). The Initial Term will automatically renew for up to eight consecutive five (5) year renewal terms, each of which shall be known as a "Renewal Term" and more specifically referred to as the "First Renewal Term", "Second Renewal Term", etc. The terms of this Lease Agreement shall apply to the Initial Term and each Renewal Term. Either the

City or the Tenant may provide notice of non-renewal to the other party at least six (6) months before the end of the Initial Term or any Renewal Term in order to opt out of this Lease Agreement at the conclusion of said Initial Term or Renewal Term. The Initial Term and all Renewal Terms are collectively referred to as the "Term" of this Lease Agreement.

Any holding over by Tenant or retention of the Premises following the conclusion of the Eighth Renewal Term, or following the Initial Term or any Renewal Term where an effective non-renewal was provided pursuant to the preceding paragraph, shall not be construed as renewing or extending this Lease Agreement in any manner whatsoever; but it may, at the option of City, be construed as creating a tenancy from month to month and on the same other provisions and conditions herein contained insofar as applicable, terminable by either party on thirty (30) days written notice. Tenant shall be subject to all the conditions of this Lease excepting the term.

If Tenant has met all its obligations under this lease and is not in breach, Tenant may, at Tenant's option, terminate this Lease prior to the expiration hereof if City defaults in the performance of any of City's covenants, conditions or obligations hereunder and such default by City continues unremedied for a period of ninety (90) days from and after the date on which Tenant has mailed to City a written notice of such default; *Notwithstanding,* Tenant agrees and understands Tenant shall remain liable for any amounts owed to third parties and secured by this Leasehold.

C. Consideration

In exchange for the leasehold interest granted by this Lease, Tenant covenants and agrees to provide to the City the following fair and adequate consideration:

City Budget Reduction. Tenant will operate the Giltinan Center and provide social services within the City of Charleston without incurring expenses in the City's budget. The Tenant's operation of the Giltinan Center reduce significantly the City's burden in providing for its homeless population.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to City that as of the date of execution of this Lease Agreement:

A. Premises As Is

Tenant hereby acknowledges that it or its agents have inspected the Premises, and Tenant hereby agrees to accept the Premises "AS IS, WHERE IS" in its present condition.

B. Corporate Authority

Tenant is a non-profit corporation organized and existing under the laws of the State of West Virginia; and Tenant has full legal right, power and authority to enter into this Lease Agreement and to carry out and consummate all transactions contemplated hereby; and by proper corporate action has duly authorized the execution, delivery and performance of this Lease Agreement.

C. Executor's Authority

The officer of the Tenant executing this Lease Agreement is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease Agreement has been duly authorized, executed and delivered by the Tenant.

E. Binding

This Lease Agreement will constitute the legal, valid and binding agreement of Tenant enforceable against Tenant in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease Agreement and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under Tenant's Articles of Incorporation, its Bylaws or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Tenant is a party or by which any of it or its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental Issuer, pending, or to the knowledge of Tenant, after reasonable investigation, threatened, against or affecting Tenant or the assets, properties or operations of Tenant which, if determined adversely to Tenant or its interests, would have a material adverse effect upon this Lease Agreement. Tenant is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental Issuer, which default might have consequences that would materially and adversely affect the consummation of this Lease Agreement. All tax returns (federal, state and local) required to be filed by or on behalf of Tenant have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Tenant, in good faith, have been paid or adequate reserves have been made for the payment thereof.

H. Compliance with Law

Tenant currently complies in all material respects, with all federal, state and local laws, regulations and ordinances relating to its business.

I. Charitable Organization

Tenant, (1) is an organization described in Section 501(c)(3) of the Code; (2) has received a letter or letters from the Internal Revenue Service to that effect; (3) such letter or letters have not been modified, limited or revoked; (4) is in compliance with all terms, conditions and limitations, if any, continued in such letters; (5) the facts and circumstances which form the basis of such letters continue substantially to exist as represented to the Internal Revenue Service; (6) is not aware of any facts or circumstances that could cause a revocation of such letters; and (7) is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a non-profit entity described in Section 501(c)(3) of the Code, Tenant agrees that it will not take any action or omit to take any action, nor allow Tenant to take or omit any action if such action or omission would cause any revocation or adverse modification of such federal income tax status of Tenant.

ARTICLE 3. COVENANTS

A. Charity

Premises Shall Remain Charitable Facility. Tenant shall occupy and use the Premises only for the charitable purpose of operating a homeless shelter and providing other services for the homeless population of the City of Charleston, and other uses incidental thereto. Tenant's occupancy and use of the Premises shall be in compliance with all applicable laws, statutes, ordinances and rules.

Tenant Shall Remain Charity. Tenant will maintain its corporate existence and charitable status with the State of West Virginia and United States Internal Revenue Service. For purposes of this Lease Agreement, Tenant will not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

B. Prohibitions

Tenant shall not use or occupy the Premises or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;

2. May be dangerous to persons or properties;

3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the Premises;

4. Violates any restrictions, rules or regulations with respect to the Premises promulgated by City or imposed by any covenant or servitude of record;

5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Premises;

6. May cause damage to any of the improvements upon the Premises, ordinary wear and tear excepted;

7. May invalidate any policy or policies of insurance now or hereinafter carried on the Premises by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Tenant shall not mortgage, assign offer as collateral or otherwise encumber its rights under this Lease Agreement without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease Agreement.

D. Federal Laws and Regulations

Tenant hereby acknowledges that Federal funds were used to construct the improvements on the Premises, and Tenant hereby covenants and agrees to comply with all Federal laws and regulations applicable to the use and occupancy of the Premises, including, without limitation, such laws and regulations governing non-discrimination in the providing of services. If required by a grantor or otherwise, any construction by Tenant will be under guidelines City would normally use for City construction.

E. Alterations

1. *Prohibited.* Tenant shall not, without the prior written consent of City, make or cause to be made any alterations, improvements, additions or installations in or to the Premises. If City so consents in writing, all such alterations, improvements, additions or installations in and to the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or possession of the Premises without compensation or credit to Tenant. Notwithstanding, Tenant may remove trade fixtures used by Tenant in connection with Tenant's business provided that Tenant repairs any damage to the Premises arising from such removals; any such trade fixtures not so removed prior to the end of the Term of this Lease shall become the sole property of City and no accounting or reimbursement thereof will be made to Tenant or to Tenant's account. City shall be responsible for any alterations and improvements to only the roof and exterior of the Giltinan Center, but only as so long as such alteration or improvement is not necessitated in any way by Tenant's fault or negligence.

2. *Hold Harmless.* Tenant shall indemnify and save City harmless from any and all mechanics', materialmen's and laborers' liens associated with any such work performed on the Premises. Before the commencement of any such work, Tenant shall pay the amount of any increases in premiums on insurance policies for which this Lease provides because of policy endorsements necessary to cover the risk during the course of the work. In addition, if the estimated cost of work shall exceed Five Thousand Dollars ($5,000.00), Tenant shall on its own or via its building contractor, without cost to City, furnish City, unless City waives the same in writing, a performance bond written by a surety acceptable to City in an amount equal to the estimated cost of the work, guaranteeing the completion of work, free and clear of all liens, encumbrances and security interests according to plans and specifications approved in writing by City before the commencement of the work.

F. Maintenance of the Premises

Common Areas. City shall be responsible for maintenance of parking areas, sidewalks and steps, except that Tenant shall be responsible for snow and ice removal. Tenant shall be responsible for maintaining the landscaping on the Premises at Tenant's expense, including but not limited to cutting grass and shrubs.

Tenant-Owned Improvements. Tenant is entirely responsible for the maintenance and repair any improvement owned by Tenant upon the Premises. City shall have no obligation to repair or maintain any Tenant-owned improvements during the Term of this Lease Agreement.

Giltinan Center. Responsibility for the maintenance and repair of the Giltinan Center (not including any Tenant-owned improvements) is as follows:

City is responsible for repair of structural problems or capital improvements, except that the cost of performing any of such repairs caused by the negligence of

Tenant, Tenant's employees, agents, servants, licensees, contractors or invitees or due to the failure of Tenant to perform Tenant's obligations under this Lease shall be paid by the Tenant except to the extent of insurance proceeds, if any, actually collected by City with regard to the damage necessitating such repairs. As approved by its City Manager, the City will repair electric receptacles, light fixtures, distribution panels, city-owned alarm systems, city-owned heating, ventilation and air conditioning (HVAC) equipment, plumbing fixtures and valves, exterior doors and windows, and surfaces (that is, brick, block and siding), roof, gutters, flashings, parking lots and driveways. Tenant agrees to notify City immediately of any repairs required to be made by City hereunder.

Tenant, at Tenant's expense, shall keep and maintain the Giltinan Center and fixtures in good order and repair, and in a clean, healthful, sanitary condition and repair and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services in the Giltinan Center. Tenant must fix routine plumbing problems including without limitation clogged toilets and drains. Tenant must fix water and wastewater stoppages, misuse and breakage of any and all fixtures and plumbing equipment including traps and faucet replacement. Tenant must replace light bulbs, globes, lighting shields. Tenant must maintain in working order all tenant-owned alarm systems and tenant-owned HVAC equipment and replace all filters. Tenant must maintain interior walls and ceilings, is responsible for painting, floor coverings, stair treads, hand rails, interior doors and windows, and any repairs necessary to comply with city, state and fire marshal codes. Tenant is responsible for all appliances, including refrigerators, freezers, dishwashers, washers and dryers including without limitation removal of dryer lint.

Resolution of Ambiguity. In the event responsibility for resolution of a physical problem relating to the Real Estate or improvements thereon is ambiguous, Tenant shall be responsible.

G. Utilities

Giltinan Center. To the extent necessary, Tenant can and shall pay all utilities including without limitation water, wastewater, sewer, electricity, natural gas, fire service, incinerator, trash collection, cable television, telephone, and subscription security service, as well as any other utility or service used on or supplied to the Premises, including the cost of installation, maintenance or replacement thereof. Tenant shall make all arrangements directly with the companies servicing a building on the Premises for utilities and services in the Premises desired by Tenant. Tenant understands and is aware that all utilities and services shall be furnished to the Premises by third parties and Tenant covenants and agrees that City shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities and services due to strikes, lockouts, boycotts, labor disturbances, accidents, or any other cause beyond City's control, or by virtue of any direction, order or regulation of any Federal, State, County, City, or local authority. City agrees to fully cooperate with Tenant in securing and maintaining all utilities and services.

H. Insurance

Tenant covenants and agrees that (i) from and after the Commencement Date of this Lease, Tenant shall carry and maintain at Tenant's sole cost and expense insurance in the amounts and in the forms as specified in this Section H of Article 3, (ii) Tenant shall provide primary coverage for all such policies, and all such policies shall reflect that Tenant is responsible for all deductibles, and (iii) Tenant shall name the City of Charleston as an additional insured on all its polices for purposes of this Lease Agreement and the Insurance and Indemnity provisions herein.

Public Liability Insurance. Tenant shall keep in full force and effect public liability insurance in respect to the use and occupation of the Premises, naming both City and Tenant as insureds, in the amount of not less than One Million Dollars ($1,000,000.00) per person, One Million Dollars ($1,000,000.00) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Dollars ($500,000.00) on account of damage to property. To accommodate inflation and increases in costs, at the request of City, Tenant shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Tenant's Personal Property. Tenant shall have in full force and effect all risk coverage for the full value of all of Tenant's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Premises. City, its employees and agents, shall not be liable for loss of or damage to Tenant's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Premises from accidents, conditions, or casualty occurring in, on or about the Premises whether or not due to City's negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Tenant shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned hereinabove shall agree, by endorsement on the policy or policies issued to Tenant, or by independent instrument furnished to City, that it will give City thirty (30) days' written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold their approval as to the form of such insurance or the insurance company or companies selected by Tenant. The cost of insurance required to be carried by Tenant hereinabove shall be deemed to be an additional rental hereunder.

City's Right to Pay Premiums on Behalf of Tenant. In the event Tenant fails to either effect such insurance in the amounts herein called for, or to pay the policy premiums, or to deliver such policy or certificate thereof to City, City shall be entitled, but shall have not the obligation, to effect such insurance and pay the premiums therefor, which premiums shall be payable to City upon written demand to Tenant therefor. Each insurer mentioned hereinabove shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to City, that it will give City thirty (30) days written notice before the policy or policies in question shall be altered or cancelled.

I. Taxes

In the event the Premises incur taxes whether for real or personal property, Tenant shall pay all taxes on real property and personal property as the same become due and payable.

J. Assignment; Sublease

Tenant shall not assign this Lease Agreement in whole or in part without first obtaining the express written consent of City. Any such assignment without such express written consent shall be considered a breach of this Lease Agreement, but shall not relieve Tenant in any way of Tenant's obligations hereunder. Pursuant to Article 5, Section H, recordation of this Lease Agreement or Memorandum of Lease in the records of the County Clerk shall serve as notice to any third party that any attempted assignment, sublease or encumbrance by Tenant without express written consent of City is void; this provision is controlling over any other provision in this Lease Agreement. For purposes of this Lease Agreement, Tenant shall not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

K. City's Right to Inspection

Tenant shall allow City or its employees, agents or representatives free access to the Premises and any improvements thereon during reasonable hours for the purpose of examining the same to ascertain if the same are in good repair and condition. Moreover, at City's sole will and discretion, City shall have access to the Premises to make repairs or alterations to the Premises; provided, that the use of the Premises by Tenant is not unreasonably interfered with. Such inspection, however, shall in no way oblige City to make any such repairs not their obligation under this Lease Agreement. City shall have the further right to show the Premises and any improvements thereon to prospective occupants during the period of sixty (60) days before the expiration of the term of this Lease.

L. Waiver of Claims and Indemnity

1. *Assumption of Risk*. Tenant hereby assumes all responsibility and legal liability for bodily injury to, loss of use or destruction of any property of Tenant or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, invitees or customers of Tenant caused by or arising out of any defects in or conditions of the Premises or improvements on the Premises now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Premises. This paragraph is intended to encompass all defects to or conditions of the Premises or improvements on the Premises and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

2. *Waiver and Indemnification*. Tenant will pay and will indemnify, defend and hold the City, including any person at any time serving as a director, officer, employee, agent or consultant of the City, harmless from and against all claims,

liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), suits and judgments of any kind arising out of injury to or death of any person or damage to property in or upon the Premises or any violation of any law, ordinance or regulation affecting the Premises. To the fullest extent permitted by law, Tenant hereby releases and waives all claims against City and its employees and agents, for injury, death or damage to persons, property or business sustained for any reason in and about the Premises by Tenant, its agents, employees, guests, students, clients, licensees, invitees or customers, other than injury, death or damage caused by the gross negligence of City, its employees or agents. Tenant agrees to indemnify and hold harmless City, its employees and agents, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, including reasonable attorney's fees, arising from injury, death or damage of any person, property or business sustained for any reason in or about the Premises, provided, however, Tenant's obligations hereunder shall not apply to death, injury or damage resulting from the gross negligence of City, its employees or agents. If any such proceeding is brought against City, its employees or agents, Tenant covenants, if requested by City, to defend such proceeding at Tenant's sole cost by legal counsel reasonably satisfactory to City. No covenant or agreement contained in this Lease Agreement will be deemed to be the covenant or agreement of any board member, officer, attorney, agent or employee of the City or Tenant in an individual capacity. No recourse will be had for any payment or any claim against any officer, board member, agent, attorney or employee of the City or Tenant past, present, or future, or its successors or assigns, or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all liability of such board members, officers, agents, attorneys or employees being released as a condition of and as a consideration for the execution and delivery of this Lease Agreement. The indemnifications set forth herein shall survive the termination of the Lease Agreement.

M. Nondiscrimination

Tenant shall assure that that the Premises will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City (collectively the "Nondiscrimination Laws"), and that all contractors and subcontractors engaged in the construction of any Tenant-owned improvements shall provide an equal opportunity for employment under the Nondiscrimination Laws.

ARTICLE 4. EVENTS OF DEFAULT AND REMEDIES

A. Events of Default

Each of the following events shall constitute and be referred to herein as an "Event of Default."

1. *Materially Incorrect Representation or Warranty.* If any material representation or warranty made by Tenant herein shall at any time prove to have been incorrect in any respect as of the time made.

2. *Failure to Perform Covenant.* If Tenant shall fail to observe or perform any other covenant, condition, agreement or provision in this Lease Agreement on its part to be observed or performed, or shall breach any warranty by Tenant herein contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Tenant by the City; except that, if such failure or breach cannot be remedied within such thirty-day period and if Tenant has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become an Event of Default for so long as Tenant shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City.

B. Remedies on Event of Default

If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the City may take such action as it deems necessary or appropriate to enforce performance and observance of any obligation or agreement of Tenant hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

1. Terminate this Lease without further notice to or demand upon Tenant, and City may, at its option, reenter and repossess the Premises with or without force, and re-rent the same for the whole or any part of the unexpired portion of the term of the Lease;

2. Exercise any or all rights and remedies given hereby or available hereunder or given by or available under any other instrument of any kind securing Tenant's performance hereunder;

3. Take other acts or steps as may be available at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of Tenant hereunder; and

4. Tenant shall remain personally liable for any amounts owed to third parties and secured by this Leasehold.

C. Discontinuance or Abandonment of Default Proceedings

If any proceeding taken by the City on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and Tenant shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place. The rights and limitations of the Parties to this Lease Agreement would be restored against each other, including any rights and limitations that had been assigned to third parties.

D. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of an Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof.

E. Attorneys' Fees and Other Expenses

If, as a result of the occurrence of an Event of Default, the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of Tenant, Tenant will, on demand, reimburse the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

F. Notice of Default

Tenant agrees that, as soon as is practicable, and in any event within five (5) days, Tenant will furnish the City notice of any event which is an Event of Default pursuant to Section A of this Article which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Tenant proposes to take with respect thereto.

G. Mediation

If, within 30 days after written notice of termination by one party and before or after institution of legal proceedings, both parties have not succeeded in resolving all disputed issues between them, each party has the right to commence mediation at its cost by providing to the other party written notice of a request for mediation. The parties shall choose a mediator within 15 days after such request for mediation, and the mediation process shall be concluded no later than 30 days after the selection of the mediator. The parties agree that there is no right to arbitration under this Lease Agreement.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Real Estate by Tenant to secure payments of all monetary sums which may become payable under this Lease Agreement or incident thereto. If Tenant is in default hereunder, Tenant's personal property shall not be removed until such defaults are corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, or fuel shortages, accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the commercially reasonable control of the City.

C. Damage or Destruction of Premises

If the Premises shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, City may, at its option initiate repairs to restore the same to substantially the condition it was in upon commencement of the Initial Term of this Lease. City shall be entitled to collect and receive all insurance proceeds payable by reason of such damage or destruction to the Premises, excluding any personal or removable fixtures of Tenant. If, however, the Premises should be damaged or destroyed by any cause so that City shall decide to demolish or to completely rebuild the Premises, City may, within sixty (60) days after such damage or destruction, give Tenant written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Tenant shall immediately quit and surrender the Premises to City.

D. Eminent Domain

In the event a taking of the Premises by eminent domain occur that renders the Premises unusable for Tenant, Tenant shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Tenant's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Tenant mutually warrant with one another that no real estate brokers are entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Tenant at the addresses stated below:

CITY:
Director
Mayor's Office of Economic and Community Development
City of Charleston
P.O. Box 2749
Charleston, WV 26330

With a copy to:
City Attorney
City of Charleston
P.O. Box 2749
Charleston, WV 26330

With an optional facsimile copy to (304) 348-0770

TENANT:
Chief Executive Officer
Kanawha Valley Collective, Inc.
1 United Way Square
Charleston, WV 25301

H. Recordation of Lease Agreement; Memorandum of Lease

Either party may record this Lease Agreement or a Memorandum of Lease. The party requesting that the Lease or Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording.

ARTICLE 6. INTERPRETATION

A. Definitions

"Giltinan Center" means all the improvements existing as of June 1, 2007 on the Real Estate, that is, the sixty-bed, more or less, facility for adult men commonly referred to as 505 Leon Sullivan Way, but not including the Veterans Transitional Living Center and Service Center constructed thereafter and commonly referred to as 507 Leon Sullivan Way.

"Premises" means the Real Estate, Giltinan Center improvements and all fixtures of the Giltinan Center, and does not include the Veterans Transitional Living Center and Service Center improvements or the Real Estate on which the Veterans Transitional Living Center and Service Center has been erected.

“Real Estate” means the real estate more particularly described in APPENDIX A – REAL ESTATE DESCRIPTION of this Lease Agreement.

“Veterans Transitional Living Center and Service Center” or “VTLCSC” means the improvements and fixtures that comprise the two-story transitional housing facility within the boundaries of the Real Estate commonly referred to as 507 Leon Sullivan Way, and located adjacent to the Giltinan Center.

B. Governing Law

This Lease Agreement shall be governed by and construed according to the laws of the State of West Virginia applicable to contracts made and performed within such State.

C. Construction

1. General

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

2. Captions

Headings of articles and sections herein and any table of contents are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3. Time of the Essence; Non-Business Days

Time shall be of the essence of this Lease Agreement and the performance of all obligations hereunder. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

4. Severability

If any covenant, agreement or provision, or any portion thereof contained in this Lease Agreement, where the application thereof to any Person or circumstance is held to be unconstitutional, invalid or unenforceable, the remainder of this Lease Agreement and the application of such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Lease Agreement shall remain valid and enforceable.

5. Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

6. Entire Agreement

This Lease Agreement, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

7. Amendments and Supplements

This Lease Agreement may be amended, changed or modified only by the written agreement of the parties.

8. Binding Effect on Successors and Assigns

This instrument shall inure to the benefit of and shall be binding upon the City and Tenant and their respective successors and assigns, subject to the limitations contained herein.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

IN WITNESS WHEREOF, City and Tenant have caused this Lease Agreement to be executed as of the date and year first written above.

CITY OF CHARLESTON

By:____________________________

AMY SHULER GOODWIN
Its Mayor

KANAWHA VALLEY COLLECTIVE, INC.

By: ____________________________________

Print Name: _____________________________

Its: ____________________________________

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of the municipal corporation.

My commission expires: ____.

____
Notary Public

[NOTARIAL SEAL]

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____________, 2023, by _________________________, the _________________ of KANAWHA VALLEY COLLECTIVE, INC., a West Virginia nonprofit corporation, for and on behalf of the corporation.

My commission expires: ____.

____
Notary Public

[NOTARIAL SEAL]

Appendix A. REAL ESTATE DESCRIPTION

By Deed conveyed unto the City of Charleston by the West Virginia Department of Highways dated the 6th day of May 1988 and of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 2205 at Page 92, the City of Charleston has all rights, title and interest in that certain tract of parcel of land situate at 505 Leon Sullivan Way in the City of Charleston (Charleston East Tax District), Kanawha County, West Virginia, more particularly bounded and described as follows:

BEGINNING at a point in the existing southeast right of way line of a 15 foot alley, said point being in the existing southwest right of way line of Smith Street and 105 feet radially right of Ramp E Baseline Station 17+56, Project I-77-3(67)98, Kanawha County, West Virginia;

thence, S. 43° 27’ E. with said existing right of way line 60.00 feet to a point in the revised northwest non-controlled access right of way line of Broad street, said point being 45 feet radially right of Baseline Station 17+56;

thence, S. 49° 53’ 56” W. continuing with said revised noncontrolled access right of way line 190.15 feet to a point in the original northwest noncontrolled access right of way line, said point being 45 feet radially right of Baseline Station 19+57;

thence, N. 43° 27’ W. with said original noncontrolled access right of way line 127.01 feet to a point in the existing southeast right of way line of a 15 foot alley, said point being 147 feet radially right of Baseline Station 21+26;

thence, N. 49° 00’ E., in a reverse centerline direction, with said existing alley right of way line 75.00 feet to a point 176 feet radially right of Baseline Station 18+87;

thence, S. 43° 27’ E. continuing with said right of way line 70.00 feet to a point 102 feet radially right of Baseline Station 18+81;

thence, N. 49° 00’ E. continuing with said existing right of way line 115.00 feet to the place of beginning and containing 16,351.40 square feet, more or less.

The tract of land hereinabove described is a portion of that same real estate conveyed unto the West Virginia Department of Highways by the following:

1) By Faye C. Abrams, widow; Ruth C. Glick and Robert Glick, her husband; Marian C. Glick and Jacob Glick, her husband; Rita Ann Simon, single; and Helen C. Surgarman, single, by deed dated August 1, 1973, of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 1722 at Page 91; and

2) By William Newman and Ida Leslie Cohen Newman, his wife, and Harriet Newman Gold and Baron Gold, her husband, by deed dated December 11, 1972, of record in the aforesaid Clerk’s Office in Deed Book 1683 at Page 174.

City of Charleston
and
Goodwill Industries of Kanawha Valley, Inc.

GROUND LEASE AGREEMENT

507 Leon Sullivan Way

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GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Lease Agreement"), dated as of the ___ day of _____________ 2023, by and between the **CITY OF CHARLESTON**, a West Virginia municipal corporation (the "City") and **GOODWILL INDUSTRIES OF KANAWHA VALLEY, INC.**, a West Virginia nonprofit corporation (the "Lessee");

RECITALS

WHEREAS, the City has power and authority to lease any of its property pursuant to Chapter 8, Article 12, Section 18 of the West Virginia Code of 1931, as amended;

WHEREAS, pursuant to Chapter 8, Article 12, Section 5 of the West Virginia Code of 1931, as amended, the City has power and authority to provide homeless services for veterans and lease its property to an independent entity for the purpose of operating a facility to provide homeless services for veterans in consideration for the provision of services for which the City otherwise would make direct expenditures;

WHEREAS, the City Council by Resolution has authorized this Lease Agreement after notice and a hearing;

WHEREAS, the Lessee has requested that the City lease to it the Land (as defined in Article 6, Section A of this Lease Agreement) duly authorized by proper corporate action, and the Lessee is not prohibited under the terms of any outstanding deed of trust, mortgage, loan agreement or other instrument or evidence of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement and affirmatively so represents to Issuer;

NOW THEREFORE, in consideration of the rents and mutual agreements set forth herein, City and Lessee hereby agree as follows:

ARTICLE 1. THE LEASE

A. Lease

City hereby lets, leases and demises unto Lessee, and Lessee hereby takes and hires from City, the Land, as defined in Article 6, Section A herein.

B. Term

The term of this Lease Agreement shall be for a period of ten (10) years, commencing on the date as stated in the initial paragraph of this Lease Agreement, and expiring at midnight of its tenth anniversary (the "Initial Term"). The Initial Term will automatically renew for up to eight consecutive five (5) year renewal terms, each of which shall be known as a "Renewal Term" and more specifically referred to as the "First Renewal Term", "Second Renewal Term", etc. The terms of this Lease Agreement shall apply to the Initial Term and each Renewal Term. Either the

City or the Lessee may provide notice of non-renewal to the other party at least six (6) months before the end of the Initial Term or any Renewal Term in order to opt out of this Lease Agreement at the conclusion of said Initial Term or Renewal Term. The Initial Term and all Renewal Terms are collectively referred to as the "Term" of this Lease Agreement.

Any holding over by Lessee or retention of the Land following the conclusion of the Eighth Renewal Term, or following the Initial Term or any Renewal Term where an effective non-renewal was provided pursuant to the preceding paragraph, shall not be construed as renewing or extending this Lease Agreement in any manner whatsoever; but it may, at the option of City, be construed as creating a tenancy from month to month and on the same other provisions and conditions herein contained insofar as applicable, terminable by either party on thirty (30) days written notice. Lessee shall be subject to all the conditions of this Lease excepting the term.

If Lessee has met all its obligations under this lease and is not in breach, Lessee may, at Lessee's option, terminate this Lease prior to the expiration hereof if City defaults in the performance of any of City's covenants, conditions or obligations hereunder and such default by City continues unremedied for a period of ninety (90) days from and after the date on which Lessee has mailed to City a written notice of such default; *Notwithstanding,* Lessee agrees and understands Lessee shall remain liable for any amounts owed to third parties and secured by this Leasehold.

C. Consideration

In exchange for the leasehold interest granted by this Lease, Lessee covenants and agrees to provide to the City the following fair and adequate consideration:

City Budget Reduction. Lessee will operate the Veterans Transitional Living Center and Service Center and provide social services to veterans within the City of Charleston without incurring expenses in the City's budget. The Lessee's operations of the Veterans Transitional Living Center and Service Center reduce significantly the City's burden in providing services to veterans in Charleston.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants to City that as of the date of execution of this Lease Agreement:

A. Land As Is

Lessee hereby acknowledges that it or its agents have inspected the Land and the Veterans Transitional Living Center and Service Center constructed thereon, and Lessee hereby agrees to accept the Land "AS IS, WHERE IS" in its present condition.

B. Corporate Authority

Lessee is a non-profit corporation organized and existing under the laws of the State of West Virginia; and Lessee has full legal right, power and authority to enter into this Lease Agreement and to carry out and consummate all transactions contemplated hereby; and by proper corporate action has duly authorized the execution, delivery and performance of this Lease Agreement.

C. Executor's Authority

The officer of the Lessee executing this Lease Agreement is duly and properly in office and fully authorized to execute the same.

D. Delivery

This Lease Agreement has been duly authorized, executed and delivered by the Lessee.

E. Binding

This Lease Agreement will constitute the legal, valid and binding agreement of Lessee enforceable against Lessee in accordance with its terms; except as enforcement of such agreement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

F. No Conflict with Other Agreements

The execution and delivery of this Lease Agreement and the fulfillment of or compliance with its terms and conditions will not conflict with or constitute a violation or breach of or default under Lessee's Articles of Incorporation, its Bylaws or any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which Lessee is a party or by which any of it or its properties are otherwise subject or bound.

G. No Litigation or Default

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental Issuer, pending, or to the knowledge of Lessee, after reasonable investigation, threatened, against or affecting Lessee or the assets, properties or operations of Lessee which, if determined adversely to Lessee or its interests, would have a material adverse effect upon this Lease Agreement. Lessee is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental Issuer, which default might have consequences that would materially and adversely affect the consummation of this Lease Agreement. All tax returns (federal, state and local) required to be filed by or on behalf of Lessee have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by

Lessee, in good faith, have been paid or adequate reserves have been made for the payment thereof.

H. Compliance with Law

Lessee currently complies in all material respects, with all federal, state and local laws, regulations and ordinances relating to its business.

I. Charitable Organization

Lessee, (1) is an organization described in Section 501(c)(3) of the Code; (2) has received a letter or letters from the Internal Revenue Service to that effect; (3) such letter or letters have not been modified, limited or revoked; (4) is in compliance with all terms, conditions and limitations, if any, continued in such letters; (5) the facts and circumstances which form the basis of such letters continue substantially to exist as represented to the Internal Revenue Service; (6) is not aware of any facts or circumstances that could cause a revocation of such letters; and (7) is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a non-profit entity described in Section 501(c)(3) of the Code, Lessee agrees that it will not take any action or omit to take any action, nor allow Lessee to take or omit any action if such action or omission would cause any revocation or adverse modification of such federal income tax status of Lessee.

ARTICLE 3. COVENANTS

A. Charity

Veterans Center Shall Remain Charitable Facility. Lessee shall occupy and use the Land only for the charitable purpose of operating a veterans center for the veteran population of the City of Charleston, and other uses incidental thereto. Lessee's occupancy and use of the Land shall be in compliance with all applicable laws, statutes, ordinances and rules.

Lessee Shall Remain Charity. Lessee will maintain its corporate existence and charitable status with the State of West Virginia and United States Internal Revenue Service. For purposes of this Lease Agreement, Lessee will not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

B. Prohibitions

Lessee shall not use or occupy the Land or permit the same to be used or occupied for any purpose or in any manner that:

1. Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;

2. May be dangerous to persons or properties;

3. May create a nuisance, disturb any the occupants of neighboring properties or injure the reputation of the City;

4. Violates any restrictions, rules or regulations with respect to the Land promulgated by City or imposed by any covenant or servitude of record;

5. May be deemed hazardous by City due to risk of fire or other event or due to the nature of materials used or stored in or upon the Land;

6. May cause damage to any of the improvements upon the Land, ordinary wear and tear excepted;

7. May invalidate any policy or policies of insurance now or hereinafter carried on the Land by City or that may increase the rate of insurance thereon;

C. Liens; Encumbrances

Lessee shall not mortgage, assign offer as collateral or otherwise encumber its rights under this Lease Agreement without express, written consent from City for each and every assignment, sublease or encumbrance to each and every party. Consent by City for an encumbrance does not waive City's right to object to any and all subsequent assignments, subleases or encumbrances. City disclaims any claim by a third party to any right, title or interest not in accordance with this Lease Agreement.

D. Maintenance of the Land

Lessee is entirely responsible for the maintenance of the Land and the Veterans Transitional Living Center and Service Center and any other improvement owned by Lessee upon the Land. City shall have no obligation to pay for utilities at the VTLCSC or other Lessee-owned improvements during the Term of this Lease Agreement.

E. Utilities

Lessee is entirely responsible for the utilities at the Veterans Transitional Living Center and Service Center and any other improvement owned by Lessee upon the Land. City shall have no obligation to pay for utilities at the VTLCSC or other Lessee-owned improvements during the Term of this Lease Agreement.

F. Insurance

Lessee covenants and agrees that (i) from and after the Commencement Date of this Lease, Lessee shall carry and maintain at Lessee's sole cost and expense insurance in the amounts and in the forms as specified in this Section F of Article 3, (ii) Lessee shall provide primary coverage for all such policies, and all such policies shall reflect that Lessee is responsible for all deductibles, and (iii) Lessee shall name the City of Charleston as an additional insured on all its polices for purposes of this Lease Agreement and the Insurance and Indemnity provisions herein.

Casualty Insurance. Lessee shall be required to keep in full force and effect casualty insurance on the Veterans Transitional Living Center and Service Center in an amount sufficient to replace all improvements and fixtures of upon total loss but in any case at least One Million Dollars ($1,000,000.00). Any other Lessee-owned improvements that will be transferred to City upon termination also must be insured for replacement cost cumulative to all other improvements upon the Land. To accommodate inflation and increases in costs, at the request of City, Lessee shall obtain increased amounts of casualty insurance coverage based on increases in replacement cost and incidental expenses.

Public Liability Insurance. Lessee shall keep in full force and effect public liability insurance in respect to the use and occupation of the Land, naming both City and Lessee as insureds, in the amount of not less than One Million Dollars ($1,000,000.00) per person, One Million Dollars ($1,000,000.00) per occurrence on account of personal injury to or death of one or more persons, and Five Hundred Dollars ($500,000.00) on account of damage to property. To accommodate inflation and increases in costs, at the request of City, Lessee shall obtain increased amounts of public liability coverage based on amounts ordinarily obtained by organizations providing similar services.

Lessee's Personal Property. Lessee shall have in full force and effect all risk coverage for the full value of all of Lessee's equipment, trade fixtures, furnishings and all items of personal property which may be in or upon the Land. City, its employees and agents, shall not be liable for loss of or damage to Lessee's equipment, trade fixtures, goods, furnishings and items of personal property placed in or upon the Land from accidents, conditions, or casualty occurring in, on or about the Land whether or not due to City's negligence.

City's Right to Approve Policies of Insurance. All policies of insurance referred to hereinabove shall be written in such form and by such insurance company or companies satisfactory to City. Lessee shall pay all of the premiums therefor and shall deliver such insurance policies or certificates thereof to City. Each insurer mentioned hereinabove shall agree, by endorsement on the policy or policies issued to Lessee, or by independent instrument furnished to City, that it will give City thirty (30) days' written notice before any policy or policies of insurance are altered or canceled. City shall not unreasonably withhold their approval as to the form of such insurance or the insurance company or companies selected by Lessee. The cost of insurance required to be carried by Lessee hereinabove shall be deemed to be an additional rental hereunder.

City's Right to Pay Premiums on Behalf of Lessee. In the event Lessee fails to either effect such insurance in the amounts herein called for, or to pay the policy premiums, or to deliver such policy or certificate thereof to City, City shall be entitled, but shall have not the obligation, to effect such insurance and pay the premiums therefor, which premiums shall be payable to City upon written demand to Lessee therefor. Each insurer mentioned hereinabove shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to City, that it will give City thirty (30) days written notice before the policy or policies in question shall be altered or cancelled.

G. Taxes

In the event the Land incur taxes whether for real or personal property, Lessee shall pay all taxes on real property and personal property as the same become due and payable.

H. Assignment; Sublease

1. Lessee shall not assign this Lease Agreement in whole or in part without first obtaining the express written consent of City. Any such assignment without such express written consent shall be considered a breach of this Lease Agreement, but shall not relieve Lessee in any way of Lessee's obligations hereunder. Pursuant to Article 5, Section H, recordation of this Lease Agreement or Memorandum of Lease in the records of the County Clerk shall serve as notice to any third party that any attempted assignment, sublease or encumbrance by Lessee without express written consent of City is void; this provision is controlling over any other provision in this Lease Agreement. For purposes of this Lease Agreement, Lessee shall not consolidate or merge with or sell or convey all or substantially all of its assets to another entity except as permitted by the City's prior written consent.

2. Permitted Transfers. Notwithstanding the foregoing, City hereby provides consent to Lessee to assign this Lease Agreement or delegate the operations of the veterans center to any Affiliate of Lessee which shall be a nonprofit entity under the Control of Lessee, including Peak Living Services, Inc. As used herein, "Control" shall mean ownership of membership interest.

I. Waiver of Claims and Indemnity

1. *Assumption of Risk*. Lessee hereby assumes all responsibility and legal liability for bodily injury to, loss of use or destruction of any property of Lessee or any third party, including, but not limited to agents, employees, guests, students, clients, licensees, invitees or customers of Lessee caused by or arising out of any defects in or conditions of the Land or improvements on the Land now existing or hereinafter existing, including, without limitation, all sidewalks, walkways or parking areas adjacent or appurtenant to the Land. This paragraph is intended to encompass all defects to or conditions of the Land or improvements on the Land and adjacent ways including, but not limited to, those conditions caused by fire, water, explosion, wind, snow, ice or other casualty.

2. *Waiver and Indemnification*. Lessee will pay and will indemnify, defend and hold the City, including any person at any time serving as a director, officer, employee, agent or consultant of the City, harmless from and against all claims, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), suits and judgments of any kind arising out of injury to or death of any person or damage to property in or upon the Land or any violation of any law, ordinance or regulation affecting the Land. To the full extent permitted by law, Lessee hereby releases and waives all claims against City and its employees and agents, for injury, death

or damage to persons, property or business sustained for any reason in and about the Land by Lessee, its agents, employees, guests, students, clients, licensees, invitees or customers, other than injury, death or damage caused by the gross negligence of City, its employees or agents. Lessee agrees to indemnify and hold harmless City, its employees and agents, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, including reasonable attorney's fees, arising from injury, death or damage of any person, property or business sustained for any reason in or about the Land, provided, however, Lessee's obligations hereunder shall not apply to death, injury or damage resulting from the gross negligence of City, its employees or agents. If any such proceeding is brought against City, its employees or agents, Lessee covenants, if requested by City, to defend such proceeding at Lessee's sole cost by legal counsel reasonably satisfactory to City. No covenant or agreement contained in this Lease Agreement will be deemed to be the covenant or agreement of any board member, officer, attorney, agent or employee of the City or Lessee in an individual capacity. No recourse will be had for any payment or any claim against any officer, board member, agent, attorney or employee of the City or Lessee past, present, or future, or its successors or assigns, or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all liability of such board members, officers, agents, attorneys or employees being released as a condition of and as a consideration for the execution and delivery of this Lease Agreement. The indemnifications set forth herein shall survive the termination of the Lease Agreement.

J. Nondiscrimination

Lessee shall assure that that the Veterans Transitional Living Center and Service Center will be open to all, in accordance with federal laws and regulations, state laws and regulations, and Codes and Ordinances of the City (collectively the "Nondiscrimination Laws"), and that all contractors and subcontractors engaged in any other Lessee-owned improvements shall provide an equal opportunity for employment under the Nondiscrimination Laws.

ARTICLE 4. EVENTS OF DEFAULT AND REMEDIES

A. Events of Default

Each of the following events shall constitute and be referred to herein as an "Event of Default."

1. *Materially Incorrect Representation or Warranty.* If any material representation or warranty made by Lessee herein shall at any time prove to have been incorrect in any respect as of the time made.

2. *Failure to Perform Covenant.* If Lessee shall fail to observe or perform any other covenant, condition, agreement or provision in this Lease Agreement on its part to be observed or performed, or shall breach any warranty by Lessee herein

contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Lessee by the City; except that, if such failure or breach cannot be remedied within such thirty-day period and if Lessee has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become an Event of Default for so long as Lessee shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the City.

B. Remedies on Event of Default; Liquidated Damages

If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the City may take such action as it deems necessary or appropriate to enforce performance and observance of any obligation or agreement of Lessee hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

1. Terminate this Lease without further notice to or demand upon Lessee, and City may, at its option, re-lease the same for the whole or any part of the unexpired portion of the term of the Lease;

2. Exercise any or all rights and remedies given hereby or available hereunder or given by or available under any other instrument of any kind securing Lessee's performance hereunder;

3. Take other acts or steps as may be available at law or in equity to collect the payment required hereunder then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of Lessee hereunder; and

4. Lessee shall remain personally liable for any amounts owed to third parties and secured by this Leasehold.

If the Lessee ceases to occupy and use the Land for the charitable purpose of operating a veterans center for the veteran population of the City of Charleston, the Parties acknowledge and agree that this Event of Default will cause the City substantial hardship, which is impossible to compute and ascertain with certainty as a basis for recovery of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages and in addition to the remedies noted above, the Lessee agrees that liquidated damages may be assessed and recovered by the City in the amount of $2,500 per month remaining on the Lease from the date of the Event of Default.

C. Discontinuance or Abandonment of Default Proceedings

If any proceeding taken by the City on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the City, then and in every case the City and Lessee shall be restored to their former position and rights hereunder, respectively, and all rights, remedies and powers of the City shall continue as though no such proceeding had taken place. The rights and limitations of the Parties to this Lease Agreement would be restored against each other, including any rights and limitations that had been assigned to third parties.

D. Remedies Cumulative; No Ongoing Waiver

No remedy conferred upon or reserved to the City hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the City. In the event of any waiver of an Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof.

E. Attorneys' Fees and Other Expenses

If, as a result of the occurrence of an Event of Default, the City employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligation or agreement on the part of Lessee, Lessee will, on demand, reimburse the City for the reasonable fees of such attorneys and such other reasonable expenses so incurred.

F. Notice of Default

Lessee agrees that, as soon as is practicable, and in any event within five (5) days, Lessee will furnish the City notice of any event which is an Event of Default pursuant to Section A of this Article which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Lessee proposes to take with respect thereto.

G. Mediation

If, within 30 days after written notice of termination by one party and before or after institution of legal proceedings, both parties have not succeeded in resolving all disputed issues between them, each party has the right to commence mediation at its cost by providing to the other party written notice of a request for mediation. The parties shall choose a mediator within 15 days after such request for mediation, and the mediation process shall be concluded no later than 30 days after the selection of the mediator. The parties agree that there is no right to arbitration under this Lease Agreement.

ARTICLE 5. MISCELLANEOUS

A. Personal Property Lien

City hereby reserves to City, a lien against all personal property and improvements brought upon the Real Estate (including without limitation the Veterans Transitional Living Center and Service Center) by Lessee to secure payments of all monetary sums which may become payable under this Lease Agreement or incident thereto. If Lessee is in default hereunder, Lessee's personal property shall not be removed until such defaults are corrected.

B. Force Majeure

City shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease if City fails to timely perform the same due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, or fuel shortages, accidents, casualties, acts of law, acts of God, acts caused directly or indirectly by the other party to this Lease, or their agents, employees or invitees, or any other cause beyond the commercially reasonable control of the City.

C. Damage or Destruction of Building

If the Building shall be damaged or destroyed during the term of this Lease by fire or other insurable casualty, Lessee shall initiate repairs to restore the same to substantially the condition it was in upon commencement of the Initial Term of this Lease. If, however, the Building should be damaged or destroyed by any cause so that City shall decide to demolish the Building, City may, within sixty (60) days after such damage or destruction, give Lessee written notice of such decision and thereupon this Lease shall be deemed to have terminated as of the date of such damage or destruction and Lessee shall immediately quit and surrender the Land to City, unless the City and Lessee otherwise agree in writing on a plan to rebuild with insurance proceeds or other funding.

D. Eminent Domain

In the event a taking of the Land by eminent domain occur that renders the Land unusable for Lessee, Lessee shall have the right within ten (10) days after receiving notice of the taking to terminate this Lease by written notice to City of Lessee's intention to terminate.

E. Successors

The terms, conditions, covenants and agreements herein contained shall extend to, inure to the benefit of and be binding upon the parties hereto and their respective personnel, representatives, successors and assigns.

F. No Brokerage Commission

City and Lessee mutually warrant with one another that no real estate brokers are entitled to a commission as a result of producing this Lease and that neither party employed or engaged a real estate broker or agent to effectuate this Lease.

G. Notice

All notices to be given hereunder by either party shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, to City and to Lessee at the addresses stated below:

CITY:
Director
Mayor's Office of Economic and Community Development
City of Charleston
P.O. Box 2749
Charleston, WV 26330

With a copy to:
City Attorney
City of Charleston
P.O. Box 2749
Charleston, WV 26330

With an optional facsimile copy to (304) 348-0770

LESSEE:
Chief Executive Officer
Goodwill Services of Kanawha Valley, Inc.
215 Virginia Street West
Charleston, WV 25302

H. Recordation of Lease Agreement; Memorandum of Lease

Either party may record this Lease Agreement or a Memorandum of Lease. The party requesting that the Lease or Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording.

ARTICLE 6. INTERPRETATION

A. Definitions

"Affiliate(s)" shall mean any partners, joint venturers, shareholders, parent company, subsidiary, property managers, directors, or officers of a Person or entity, and any entity that directly or indirectly is in Control of, is Controlled by, or is under common Control with such Person or entity.

"Giltinan Center" means all the improvements existing as of June 1, 2007 on the Real Estate, that is, the sixty-bed, more or less, facility for adult men commonly referred to as 505 Leon Sullivan Way, but not including the Veterans Transitional Living Center and Service Center constructed thereafter and commonly referred to as 507 Leon Sullivan Way.

"Land" means the portion of the Real Estate containing the Veterans Transitional Living Center and Service Center, the VTLCSC itself, and all fixtures of the VTLCSC or other subsequent Lessee-owned improvements on the portion of the Real Estate commonly referred to as 507 Leon Sullivan Way.

"Real Estate" means the real estate more particularly described in APPENDIX A – REAL ESTATE DESCRIPTION of this Lease Agreement.

"Veterans Transitional Living Center and Service Center" or "VTLCSC" means the improvements and fixtures that comprise the two-story transitional housing facility within the boundaries of the Real Estate commonly referred to as 507 Leon Sullivan Way, and located adjacent to the Giltinan Center.

B. Governing Law

This Lease Agreement shall be governed by and construed according to the laws of the State of West Virginia applicable to contracts made and performed within such State.

C. Construction

1. General

Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

2. Captions

Headings of articles and sections herein and any table of contents are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3. Time of the Essence; Non-Business Days

Time shall be of the essence of this Lease Agreement and the performance of all obligations hereunder. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

4. Severability

If any covenant, agreement or provision, or any portion thereof contained in this Lease Agreement, where the application thereof to any Person or circumstance is held to be unconstitutional, invalid or unenforceable, the remainder of this Lease Agreement and the application of such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this Lease Agreement shall remain valid and enforceable.

5. Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

6. Entire Agreement

This Lease Agreement, together with all agreements and documents incorporated by reference herein, constitutes the entire agreement of the parties and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

7. Amendments and Supplements

This Lease Agreement may be amended, changed or modified only by the written agreement of the parties.

8. Binding Effect on Successors and Assigns

This instrument shall inure to the benefit of and shall be binding upon the City and Lessee and their respective successors and assigns, subject to the limitations contained herein.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

IN WITNESS WHEREOF, City and Lessee have caused this Lease Agreement to be executed as of the date and year first written above.

CITY OF CHARLESTON	**GOODWILL INDUSTRIES OF KANAWHA VALLEY, INC.**
By:___________________________	By: ___________________________________
AMY SHULER GOODWIN Its Mayor	Print Name: ____________________________
	Its: ___________________________________

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of the municipal corporation.

My commission expires: ____.

____
Notary Public

[NOTARIAL SEAL]

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____________, 2023, by ________________________, the _________________ of GOODWILL INDUSTRIES OF KANAWHA VALLEY, INC., a West Virginia nonprofit corporation, for and on behalf of the corporation.

My commission expires: ____.

____
Notary Public

[NOTARIAL SEAL]

Appendix A. REAL ESTATE DESCRIPTION

By Deed conveyed unto the City of Charleston by the West Virginia Department of Highways dated the 6th day of May 1988 and of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 2205 at Page 92, the City of Charleston has all rights, title and interest in that certain tract of parcel of land situate at 507 Leon Sullivan Way in the City of Charleston (Charleston East Tax District), Kanawha County, West Virginia, more particularly bounded and described as follows:

BEGINNING at a point in the existing southeast right of way line of a 15 foot alley, said point being in the existing southwest right of way line of Smith Street and 105 feet radially right of Ramp E Baseline Station 17+56, Project I-77-3(67)98, Kanawha County, West Virginia;

thence, S. 43° 27’ E. with said existing right of way line 60.00 feet to a point in the revised northwest non-controlled access right of way line of Broad street, said point being 45 feet radially right of Baseline Station 17+56;

thence, S. 49° 53’ 56” W. continuing with said revised noncontrolled access right of way line 190.15 feet to a point in the original northwest noncontrolled access right of way line, said point being 45 feet radially right of Baseline Station 19+57;

thence, N. 43° 27’ W. with said original noncontrolled access right of way line 127.01 feet to a point in the existing southeast right of way line of a 15 foot alley, said point being 147 feet radially right of Baseline Station 21+26;

thence, N. 49° 00’ E., in a reverse centerline direction, with said existing alley right of way line 75.00 feet to a point 176 feet radially right of Baseline Station 18+87;

thence, S. 43° 27’ E. continuing with said right of way line 70.00 feet to a point 102 feet radially right of Baseline Station 18+81;

thence, N. 49° 00’ E. continuing with said existing right of way line 115.00 feet to the place of beginning and containing 16,351.40 square feet, more or less.

The tract of land hereinabove described is a portion of that same real estate conveyed unto the West Virginia Department of Highways by the following:

1) By Faye C. Abrams, widow; Ruth C. Glick and Robert Glick, her husband; Marian C. Glick and Jacob Glick, her husband; Rita Ann Simon, single; and Helen C. Surgarman, single, by deed dated August 1, 1973, of record in the Office of the Clerk of the County Commission, Kanawha County, West Virginia, in Deed Book 1722 at Page 91; and

2) By William Newman and Ida Leslie Cohen Newman, his wife, and Harriet Newman Gold and Baron Gold, her husband, by deed dated December 11, 1972, of record in the aforesaid Clerk’s Office in Deed Book 1683 at Page 174.

Resolution No. 794-23

Introduced in Council: Adopted by Council:

April 17, 2023

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 794-23 - Authorizing the Mayor or City Manager to grant temporary and permanent easements from the City to the Charleston Sanitary Board for the Rolling Hills Sewer Improvements Project as referenced in the attached documents.

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

That the Mayor or City Manager is hereby authorized to grant temporary and permanent easements from the City to the Charleston Sanitary Board for the Rolling Hills Sewer Improvements Project as referenced in the attached documents.

Charleston South Annex Tax Map 10 / Parcel 9

SANITARY SEWER EASEMENT

THIS EASEMENT AGREEMENT, made this ____ day of ____________, 2023, by and between THE CITY OF CHARLESTON, a municipal corporation of the State of West Virginia, party of the first part and THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal utility, hereinafter called the Board, party of the second part;

WITNESSETH:

That for and in consideration of the sum of One Dollar ($1.00), cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the Board, its heirs, successors, or assigns, a perpetual easement and right-of-way ten feet (10') in width, five feet (5') on each side of the centerline of the pipeline to be installed, on, over, across, under and through lands owned by the party of the first part, situate in Kanawha County, West Virginia, running approximately eight hundred twenty-eight (±828) feet in length, for the purpose of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and removing a sewer line and all appurtenances thereto, the location of said easement being more specifically depicted on the drawing attached hereto and made a part hereof titled Easement Exhibit, dated January 6, 2023. The property which is subject to this easement was conveyed to the party of the first part by a deed, which is of record in the Office of the Clerk of the County Commission in Deed Book 1462, at page 141.

Together with the right, but not the duty, to cut, trim, clear or otherwise control and remove from the easement area hereby conveyed all brush, undergrowth, trees, tree roots, shrubs, grass, weeds, structures and/or other obstructions that may endanger the safety of or interfere with the construction, installation, maintenance, repair and use of said sanitary sewer line.

The said party of the first part further grants and conveys unto said Board, its heirs, successors, assigns, and/or contractors (a) the unrestricted right of ingress, egress and regress, to and from said right-of-way and easement for all purposes and at all times to respond to emergencies and, otherwise at all reasonable times, and (b) a temporary construction right-of-way and easement of such width as is reasonable and necessary to carry out the construction, installation, repair, replacement, rehabilitation, lining, or removal of all or part of the above-described sewer lines. The said party of the first part does also grant and convey unto the said Board, its heirs, successors or assigns, the right to use said right-of-way and easement herein granted, along the course of the proposed sewer line, for the further purpose of transporting pipe, fittings, machinery, and equipment to and from neighboring lands, in and about the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, and removal of the sewer pipeline or lines proposed to be laid on said right-of-way and easement.

This easement and right-of-way is made upon and subject to the following terms and conditions:

1. The party of the first part, subject to (a) the capacity of said sewer line, (b) the capacity of the system into which said line flows and (c) restrictions of the Board and regulatory authorities, all at such time of connection in the future, shall be permitted to tap said sewer line and use the same for the benefit of their property described above, upon payment of the connection fee in effect at the time of such connection and, as established by the

Board, upon payment of such sewer user charges as are, or may be fixed by ordinances or by rules of the Board, to use the sewer for service for their property only. The Board shall not be required to bear any portion of expenses incurred by the party of the first part in constructing a sewer line to the sewer tap.

2. The party of the first part retains the right to use and enjoy the lands described above through which the sewer easement extends for purposes not inconsistent with the rights herein granted to the Board. The party of the first part agrees to the following:
   (a) not to construct improvements on the easement or to take any other action which would interfere with the sewer line and the rights of the Board to construct, install, operate, maintain, repair, replace, rehabilitate, line, or remove the sewer line;
   (b) not to plant trees or other vegetation which could damage the sewer line or interfere with the rights herein granted;
   (c) not to alter the ground profile of the land within the easement without the written consent of the Board.

3. The rights herein granted include the right of ingress and egress over the lands of the party of the first part to and from the easement for the purpose of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and removing the sewer line. The rights herein granted further include the right to use reasonable portions of the lands of the party of the first part immediately adjacent to the easement for said purpose.

4. The Board, upon completion of any construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of the sewer line, agrees that it will do the following:
   (a) restore the property of the party of the first part, only to the extent such restoration is compatible with the easement and right-of-way granted herein, to its condition immediately prior to the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of the said sewer, as nearly as reasonably possible;
   (b) repair, replace or compensate the party of the first part for any damage to any building, structure or other improvements which are not encroachments on this easement;
   (c) reseed, re-sod or compensate the party of the first part for damage to any established lawn;
   (d) repair, replace or compensate the party of the first part for damage to sidewalks, driveways or other pavements, and any underground structure or appurtenances thereto which are not encroachments on this easement; and
   (e) replace, restore or compensate the party of the first part for damage to any trees or shrubbery on their land but off the easement area provided for herein, caused by any acts of ingress and egress onto the subject easement.

This agreement shall be binding upon the parties hereto, their personal representatives, heirs, successors or assigns.

DECLARATION OF CONSIDERATION OR VALUE: The party of the first part hereby declares that this conveyance is not subject to excise tax on the privilege of transferring real property for the reason that it is a conveyance to a political subdivision of the State of West Virginia.

CITY OF CHARLESTON

By: ______________________________
Amy Shuler Goodwin
Mayor

ATTEST:

____
Miles C. Cary, II, City Clerk

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before me this _____ day of ________________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of said municipal corporation.

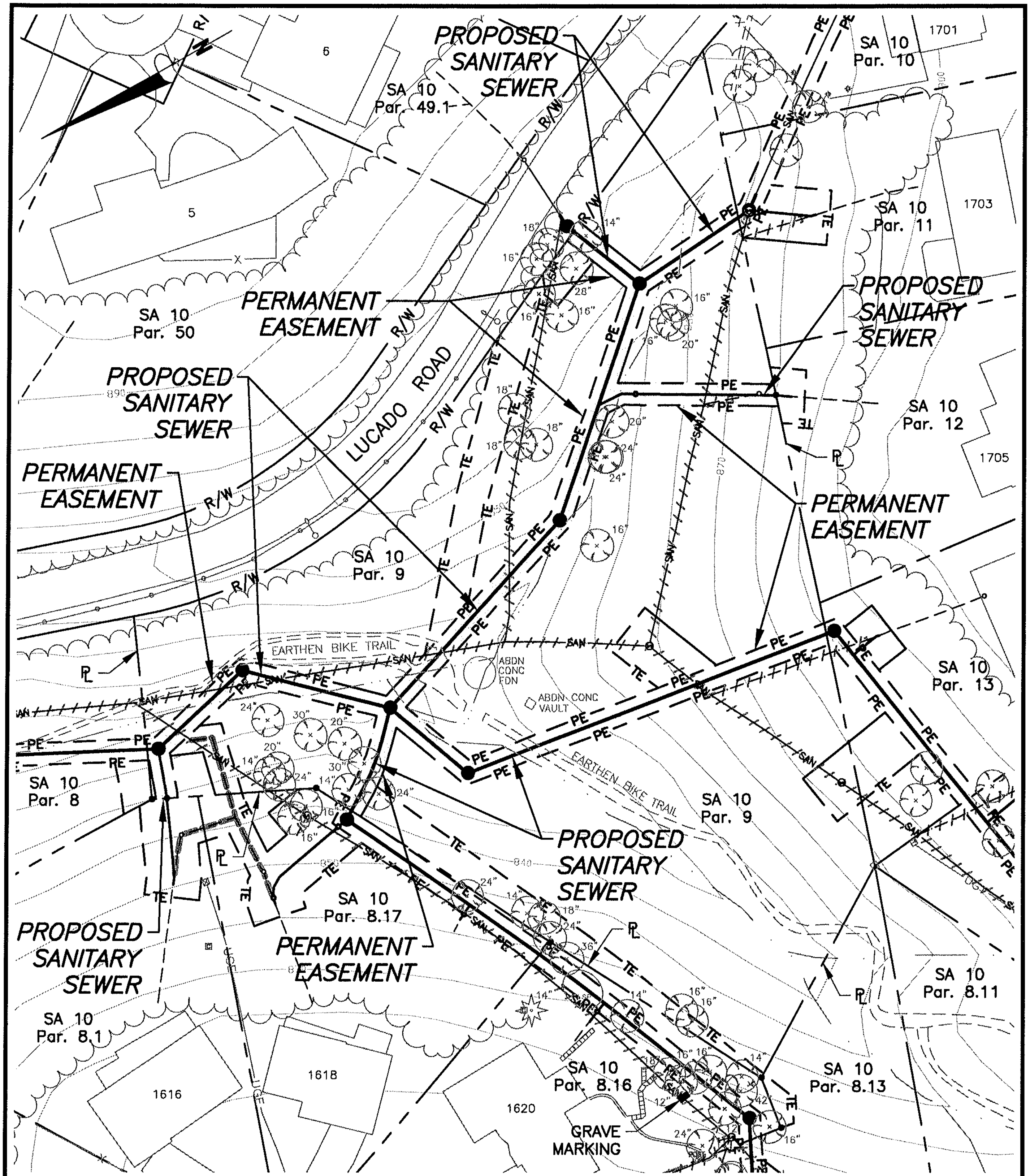
Given under my hand this _____ day of ___________________, 2023.

My commission expires ________________________________

____
Notary Public

[NOTARIAL SEAL]

This instrument was prepared by Susan J. Riggs, Esquire (WV State Bar # 5246), Spilman Thomas & Battle, PLLC, 300 Kanawha Boulevard, East, Charleston, WV 25301



SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, A MUNICIPAL UTILITY	TITLE: EASEMENT EXHIBIT	JOB NO. 60560
THE SANITARY BOARD OF THE CITY OF CHARLESTON WEST VIRGINIA	CHARLESTON SOUTH ANNEX CORPORATION DISTRICT 09	SCALE: NONE
		DATE: 1/06/23
	MAP NO. 10 PARCEL 9	SHEET NO. 1 OF 1

Charleston South Annex Tax Map 10 / Parcel 9

TEMPORARY CONSTRUCTION EASEMENT AND
TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AND TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT, made this ____ day of ___________, 2023, by and between THE CITY OF CHARLESTON, a municipal corporation of the State of West Virginia, party of the first part, and THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal utility, hereinafter called the Board, party of the second part;

WITNESSETH:

That for and in consideration of the sum of One Dollar ($1.00) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the Board, its heirs, successors, assigns, or contractors, (i) a temporary construction easement and right-of-way of such width and length as is reasonable and necessary for the purposes of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and/or removing underground sanitary sewer lines and all appurtenances thereto which are located on property owned by the party of the first part and for the purposes of ingress to and egress from the area of the temporary construction easement and right-of-way; and (ii) a temporary construction access easement and right-of-way of such width and length as is reasonable and necessary for ingress and egress across the subject parcel to and from other parcels of property to facilitate the mobility of equipment and materials necessary for construction, installation, replacement, rehabilitation, lining, and/or removing underground sanitary sewer lines and all appurtenances thereto the location of said easements being more specifically depicted on the drawing attached hereto and made a part hereof titled Easement Exhibit, dated January 6, 2023. The property which is subject to this temporary construction easement and right-of-way and temporary construction access easement was conveyed to the party of the first part by a deed, which is of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Deed Book 1462, at page 141.

Together with the right, but not the duty, to cut, trim, clear and otherwise control and remove from the areas of the temporary construction easement and right-of-way and temporary construction access easement hereby conveyed all brush, undergrowth, trees, tree roots, shrubs, grass, weeds, structures or other obstructions that may endanger the safety of or interfere with the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of said sanitary sewer line.

The temporary construction easement and right-of-way and temporary construction access easement hereby granted and conveyed are made upon and subject to the following terms and conditions:

1. The party of the first part shall not, without advance written consent from the Board: (a) construct any improvements on the area of the temporary construction easement and right-of-way or the area of the temporary construction access easement; (b) take any other action that would interfere with the rights of the Board to use the temporary construction easement and right-of-way to construct, install, operate, maintain, repair, replace, rehabilitate, line, and remove the sanitary sewer lines on property owned by the party of the first part and/or adjacent property, or to use the temporary construction access easement for construction access as herein provided; or (c) alter the profile of the easement and right-of-way area.

2. The Board agrees: (a) to not construct any permanent improvements on the property referenced herein; (b) to not permanently alter the ground profile; and (c) to restore the property referenced herein to its condition immediately prior to construction as nearly as reasonably possible.

3. This agreement shall be binding upon the parties hereto, their personal representatives, heirs, successors or assigns.

4. This temporary construction easement and right-of-way and temporary construction access easement shall expire five (5) years from the date of this Agreement.

DECLARATION OF CONSIDERATION OR VALUE: The party of the first part hereby declares that this temporary construction easement and right-of-way and temporary construction access easement is not subject to excise tax on the privilege of transferring real property for the reason that it is a conveyance to a political subdivision of the State of West Virginia.

IN WITNESS WHEREOF, the City of Charleston, a West Virginia municipal corporation, has caused its name to be signed hereto and its seal to be affixed by its duly qualified officers as of the date first above written.

CITY OF CHARLESTON

By: ______________________________
Amy Shuler Goodwin
Mayor

ATTEST:

____
Miles C. Cary, II, City Clerk

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before me this _____ day of _______________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of said municipal corporation.

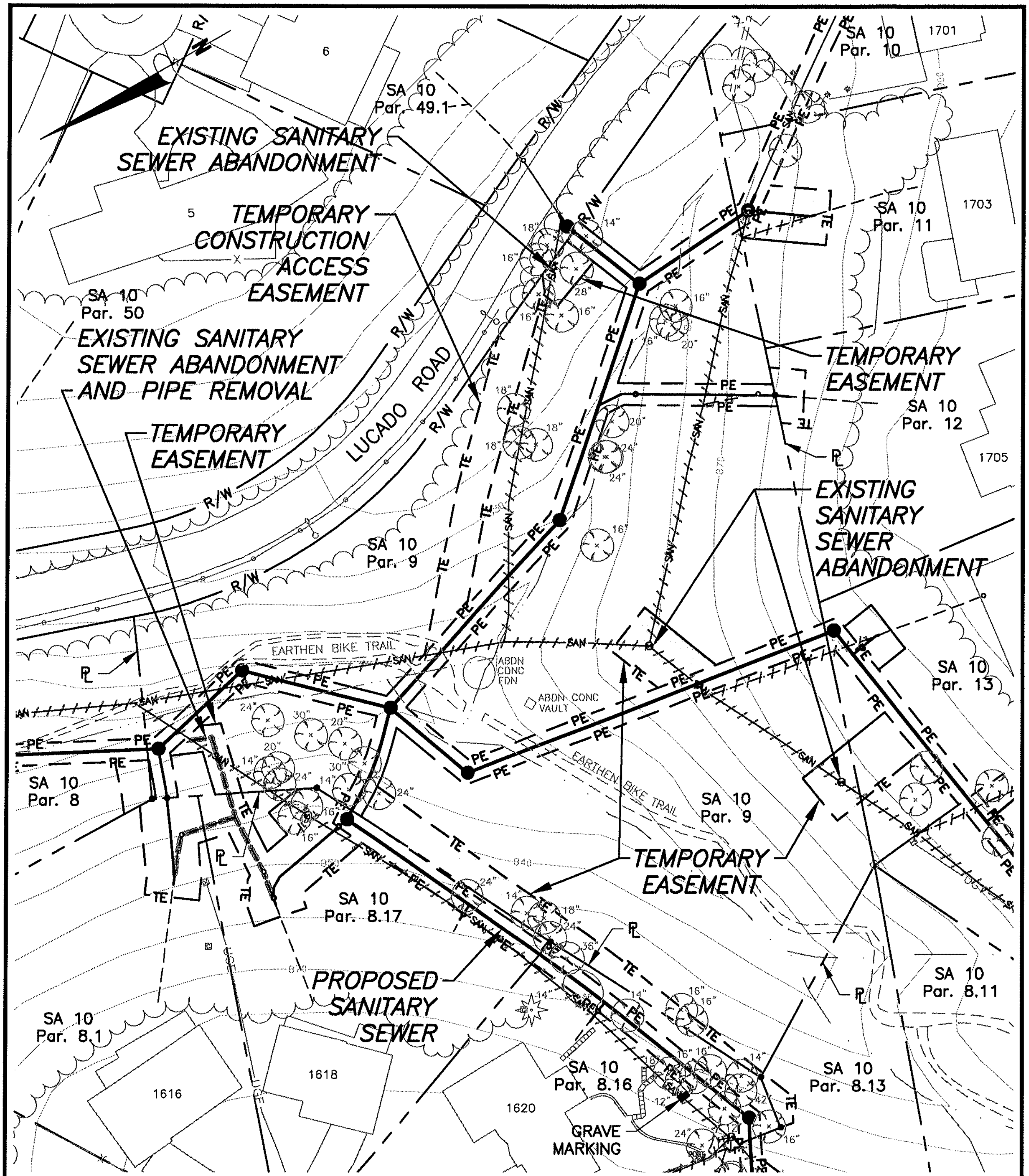
Given under my hand this _____ day of ___________________, 2023.

My commission expires ________________________________

____
Notary Public

[NOTARIAL SEAL]

This instrument was prepared by: Susan J. Riggs, Esquire (WV State Bar # 5246), Spilman Thomas & Battle, PLLC, 300 Kanawha Boulevard, East, Charleston, WV 25301



SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, A MUNICIPAL UTILITY	CSB THE SANITARY BOARD OF THE CITY OF CHARLESTON WEST VIRGINIA	TITLE: EASEMENT EXHIBIT	JOB NO. 60560
		CHARLESTON SOUTH ANNEX CORPORATION DISTRICT 09	SCALE: NONE
			DATE: 1/06/23
		MAP NO. 10 PARCEL 9	SHEET NO. 1 OF 1

Charleston South Annex Tax Map 10 / Parcel 8

SANITARY SEWER EASEMENT

THIS EASEMENT AGREEMENT, made this ____ day of ____________, 2023, by and between THE CITY OF CHARLESTON, a municipal corporation of the State of West Virginia, party of the first part and THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal utility, hereinafter called the Board, party of the second part;

WITNESSETH:

That for and in consideration of the sum of One Dollar ($1.00), cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the Board, its heirs, successors, or assigns, a perpetual easement and right-of-way ten feet (10') in width, five feet (5') on each side of the centerline of the pipeline to be installed, on, over, across, under and through lands owned by the party of the first part, situate in Kanawha County, West Virginia, running approximately three hundred eighty-eight (±388) feet in length, for the purpose of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and removing a sewer line and all appurtenances thereto, the location of said easement being more specifically depicted on the drawing attached hereto and made a part hereof titled Easement Exhibit, dated December 13, 2022. The property which is subject to this easement was conveyed to the party of the first part by a deed, which is of record in the Office of the Clerk of the County Commission in Deed Book 1462, at page 141.

Together with the right, but not the duty, to cut, trim, clear or otherwise control and remove from the easement area hereby conveyed all brush, undergrowth, trees, tree roots, shrubs, grass, weeds, structures and/or other obstructions that may endanger the safety of or interfere with the construction, installation, maintenance, repair and use of said sanitary sewer line.

The said party of the first part further grants and conveys unto said Board, its heirs, successors, assigns, and/or contractors (a) the unrestricted right of ingress, egress and regress, to and from said right-of-way and easement for all purposes and at all times to respond to emergencies and, otherwise at all reasonable times, and (b) a temporary construction right-of-way and easement of such width as is reasonable and necessary to carry out the construction, installation, repair, replacement, rehabilitation, lining, or removal of all or part of the above-described sewer lines. The said party of the first part does also grant and convey unto the said Board, its heirs, successors or assigns, the right to use said right-of-way and easement herein granted, along the course of the proposed sewer line, for the further purpose of transporting pipe, fittings, machinery, and equipment to and from neighboring lands, in and about the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, and removal of the sewer pipeline or lines proposed to be laid on said right-of-way and easement.

This easement and right-of-way is made upon and subject to the following terms and conditions:

1. The party of the first part, subject to (a) the capacity of said sewer line, (b) the capacity of the system into which said line flows and (c) restrictions of the Board and regulatory authorities, all at such time of connection in the future, shall be permitted to tap said sewer line and use the same for the benefit of their property described above, upon payment of the connection fee in effect at the time of such connection and, as established by the

Board, upon payment of such sewer user charges as are, or may be fixed by ordinances or by rules of the Board, to use the sewer for service for their property only. The Board shall not be required to bear any portion of expenses incurred by the party of the first part in constructing a sewer line to the sewer tap.

2. The party of the first part retains the right to use and enjoy the lands described above through which the sewer easement extends for purposes not inconsistent with the rights herein granted to the Board. The party of the first part agrees to the following:
   (a) not to construct improvements on the easement or to take any other action which would interfere with the sewer line and the rights of the Board to construct, install, operate, maintain, repair, replace, rehabilitate, line, or remove the sewer line;
   (b) not to plant trees or other vegetation which could damage the sewer line or interfere with the rights herein granted;
   (c) not to alter the ground profile of the land within the easement without the written consent of the Board.

3. The rights herein granted include the right of ingress and egress over the lands of the party of the first part to and from the easement for the purpose of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and removing the sewer line. The rights herein granted further include the right to use reasonable portions of the lands of the party of the first part immediately adjacent to the easement for said purpose.

4. The Board, upon completion of any construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of the sewer line, agrees that it will do the following:
   (a) restore the property of the party of the first part, only to the extent such restoration is compatible with the easement and right-of-way granted herein, to its condition immediately prior to the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of the said sewer, as nearly as reasonably possible;
   (b) repair, replace or compensate the party of the first part for any damage to any building, structure or other improvements which are not encroachments on this easement;
   (c) reseed, re-sod or compensate the party of the first part for damage to any established lawn;
   (d) repair, replace or compensate the party of the first part for damage to sidewalks, driveways or other pavements, and any underground structure or appurtenances thereto which are not encroachments on this easement; and
   (e) replace, restore or compensate the party of the first part for damage to any trees or shrubbery on their land but off the easement area provided for herein, caused by any acts of ingress and egress onto the subject easement.

This agreement shall be binding upon the parties hereto, their personal representatives, heirs, successors or assigns.

DECLARATION OF CONSIDERATION OR VALUE: The party of the first part hereby declares that this conveyance is not subject to excise tax on the privilege of transferring real property for the reason that it is a conveyance to a political subdivision of the State of West Virginia.

CITY OF CHARLESTON

By: ______________________________
Amy Shuler Goodwin
Mayor

ATTEST:

____
Miles C. Cary, II, City Clerk

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before me this _____ day of ________________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of said municipal corporation.

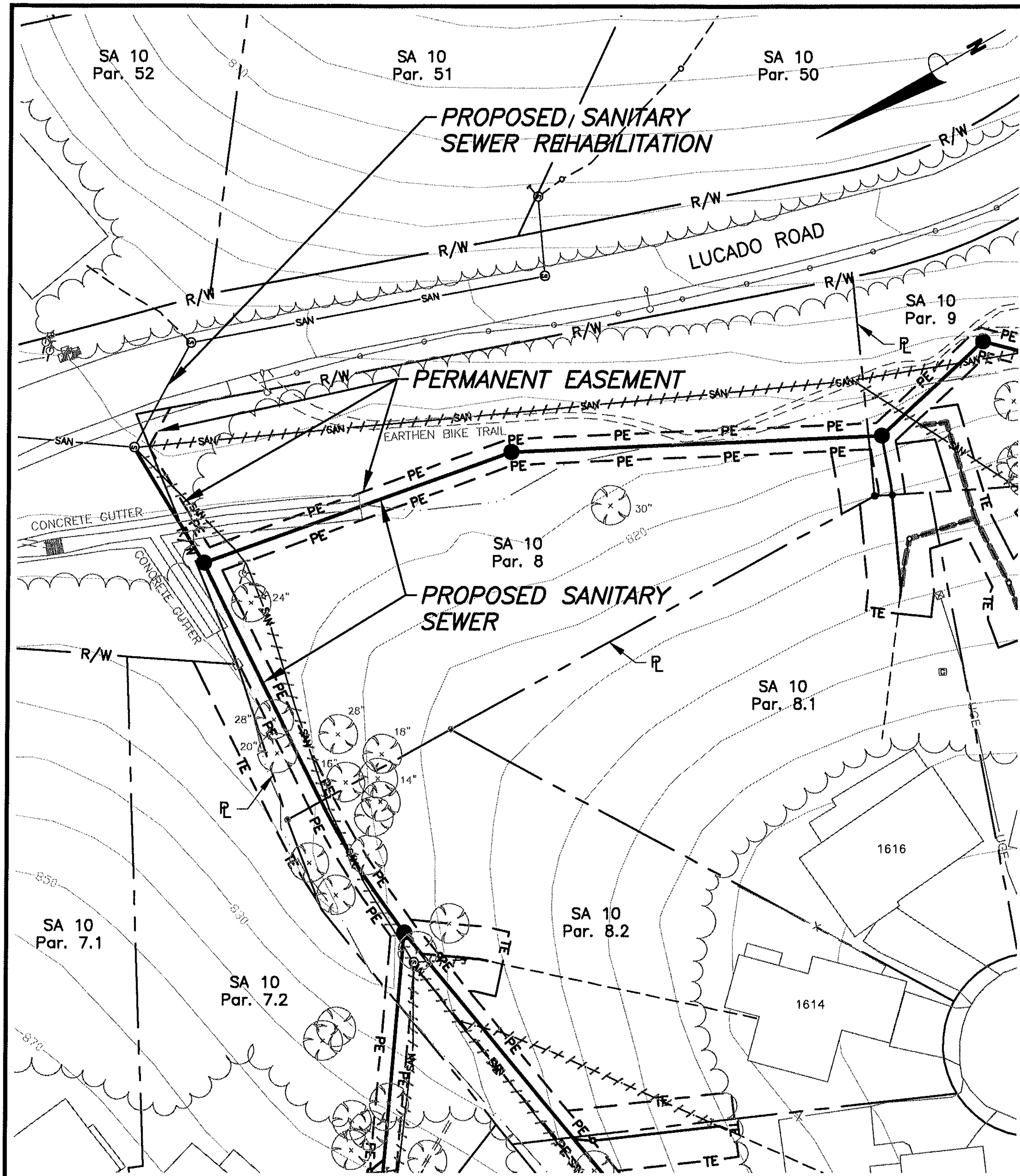
Given under my hand this _____ day of ____________________, 2023.

My commission expires ________________________________

____
Notary Public

[NOTARIAL SEAL]

This instrument was prepared by Susan J. Riggs, Esquire (WV State Bar # 5246), Spilman Thomas & Battle, PLLC, 300 Kanawha Boulevard, East, Charleston, WV 25301



SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, A MUNICIPAL UTILITY	CSB THE SANITARY BOARD OF THE CITY OF CHARLESTON WEST VIRGINIA	TITLE: EASEMENT EXHIBIT	JOB NO. 60560	
		CHARLESTON SOUTH ANNEX CORPORATION DISTRICT 09	SCALE: NONE	
			DATE: 12/13/22	
		MAP NO. 10 PARCEL 8	SHEET NO. 1	OF 1

Charleston South Annex Tax Map 10 / Parcel 8

TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT, made this ____ day of ______________, 2023, by and between THE CITY OF CHARLESTON, a municipal corporation of the State of West Virginia, party of the first part, and THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal utility, hereinafter called the Board, party of the second part;

WITNESSETH:

That for and in consideration of the sum of One Dollar ($1.00) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, the party of the first part does hereby GRANT and CONVEY unto the Board, its heirs, successors, assigns, or contractors, a temporary construction easement and right-of-way of such width and length as is reasonable and necessary for the purposes of constructing, installing, operating, maintaining, repairing, replacing, rehabilitating, lining, and removing underground sanitary sewer lines and all appurtenances thereto which are located on property owned by the party of the first part, and/or adjacent property, and for ingress to and egress from the area of the temporary easement and right-of-way hereby conveyed, including the mobility of equipment, the location of said easement being more specifically depicted on the drawing attached hereto and made a part hereof titled Easement Exhibit, dated December 13, 2022. The property which is subject to this temporary easement and right-of-way was conveyed to the party of the first part by a deed, which is of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia in Deed Book 1462, at page 141.

Together with the right, but not the duty, to cut, trim, clear and otherwise control and remove from the area of the temporary easement and right-of-way hereby conveyed all brush, undergrowth, trees, tree roots, shrubs, grass, weeds, structures or other obstructions that may endanger the safety of or interfere with the construction, installation, operation, maintenance, repair, replacement, rehabilitation, lining, or removal of said sanitary sewer line.

The temporary easement and right-of-way hereby granted and conveyed is made upon and subject to the following terms and conditions:

1. The party of the first part shall not, without advance written consent from the Board: (a) construct any improvements on the area of the temporary easement and right-of-way; (b) take any other action that would interfere with the rights of the Board to use the temporary easement and right-of-way to construct, install, operate, maintain, repair, replace, rehabilitate, line, and remove the sanitary sewer line on property owned by the party of the first part and/or adjacent property; or (c) alter the profile of the easement and right-of-way area.

2. The Board agrees: (a) to not construct any permanent improvements on the property referenced herein; (b) to not permanently alter the ground profile; and (c) to restore the property referenced herein to its condition immediately prior to construction as nearly as reasonably possible.

3. This agreement shall be binding upon the parties hereto, their personal representatives, heirs, successors or assigns.

4. This temporary easement and right-of-way shall expire five (5) years from the date of this Agreement.

DECLARATION OF CONSIDERATION OR VALUE: The party of the first part hereby declares that this temporary easement is not subject to excise tax on the privilege of transferring real property for the reason that it is a conveyance to a political subdivision of the State of West Virginia.

IN WITNESS WHEREOF, the City of Charleston, a West Virginia municipal corporation, has caused its name to be signed hereto and its seal to be affixed by its duly qualified officers as of the date first above written.

CITY OF CHARLESTON

By: ______________________________
Amy Shuler Goodwin
Mayor

ATTEST:

____
Miles C. Cary, II, City Clerk

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-Wit:

The foregoing instrument was acknowledged before me this _____ day of _______________, 2023, by AMY SHULER GOODWIN, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of said municipal corporation.

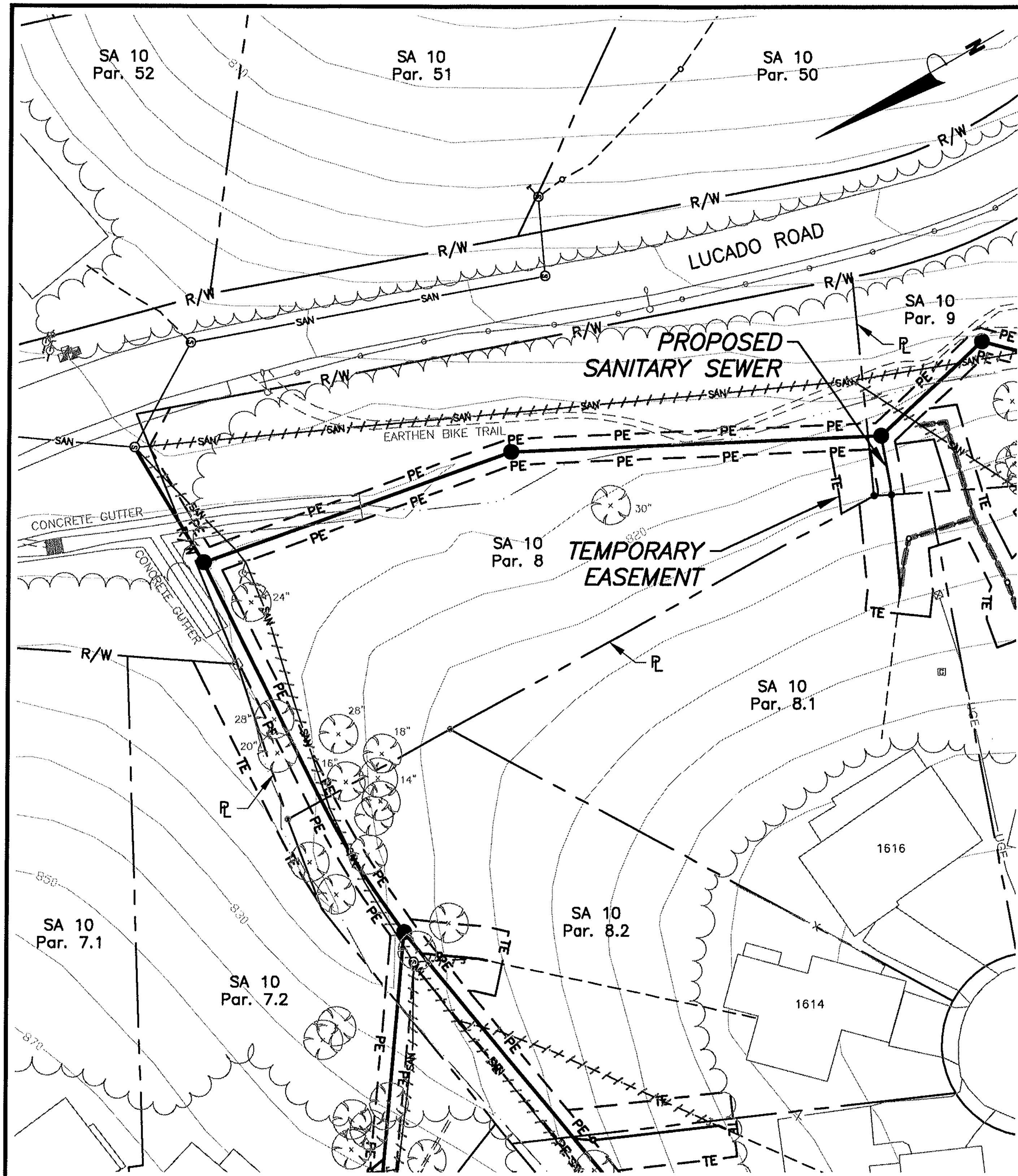
Given under my hand this _____ day of ___________________, 2023.

My commission expires ______________________________

____
Notary Public

[NOTARIAL SEAL]

This instrument was prepared by: Susan J. Riggs, Esquire (WV State Bar # 5246), Spilman Thomas & Battle, PLLC, 300 Kanawha Boulevard, East, Charleston, WV 25301



SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, A MUNICIPAL UTILITY	CSB THE SANITARY BOARD OF THE CITY OF CHARLESTON WEST VIRGINIA	TITLE: EASEMENT EXHIBIT	JOB NO. 60560	
		CHARLESTON SOUTH ANNEX CORPORATION DISTRICT 09	SCALE: NONE	
			DATE: 12/13/22	
		MAP NO. 10 PARCEL 8	SHEET NO. 1	OF 1

Resolution No. 795-23

Introduced in Council: Adopted by Council:

April 17, 2023 ____________________

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 795-23 - Authorizing the Mayor or City Manager to execute the attached Mediation Memorandum and Proposed Resolution between the City of Charleston and Kanawha County, pursuant to the West Virginia First Memorandum of Understanding.

WHEREAS, the City Council for the City of Charleston and the Kanawha County Commission both previously approved the West Virginia First Memorandum of Understanding related to the statewide resolution of the governmental claims in the opioid litigation before the West Virginia Mass Litigation Panel in Kanawha County Case No. 19-C-9000; and

WHEREAS, pursuant to the process set forth in the West Virginia First Memorandum of Understanding, the Kanawha County Commission challenged the default allocations of Kanawha County and the City of Charleston pursuant to the initial formula provided in the West Virginia First Memorandum of Understanding,

WHEREAS, the West Virginia First Memorandum of Understanding provides for an intra-county challenge to the default allocations with any such challenge to be submitted to non-appealable binding arbitration before the Honorable Judge Christopher Wilkes who has served as Special Master for the West Virginia Mass Litigation Panel in the In Re: Opioid Litigation, Kanawha County Civil Action No. 19-C-9000, unless resolution of such challenge is reached and agreed upon by the parties; and

WHEREAS, the County and City ultimately mediated with respect to the County's challenge of the default allocations before the Honorable Judge Christopher Wilkes; and

WHEREAS, the mediation resulted in a proposed resolution agreement, wherein Kanawha County would withdraw its challenge, the City of Charleston and Kanawha County would agree to work together to develop a proposal for a regional project in an initial joint application to the Opioid Foundation Board, the City of Charleston would agree to accept 58.5% of the combined City/County proceeds of the Local Government share, and Kanawha County would agree to accept 41.5% of the combined City/County proceeds of the Local Government share, all of which is stated in more detail in the attached Mediation Memorandum and Proposed Resolution.

<u>Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia</u>:

That the City Council for the City of Charleston finds that it is in the best interest of the City to approve the proposed resolution as more fully described in the Mediation Memorandum and Proposed Resolution, approves the same, and, therefore, authorizes the Mayor or City Manager to execute and agree to the attached Mediation Memorandum and Proposed Resolution between the City of Charleston and Kanawha County, pursuant to the West Virginia First Memorandum of Understanding.

MEDIATION MEMORANDUM AND PROPOSED RESOLUTION

WHEREAS the West Virginia First Memorandum of Understanding ("MOU") was previously approved by both the Charleston City Council and the Kanawha County Commission as part of the statewide resolution of the governmental claims in the opioid litigation before the West Virginia Mass Litigation Panel in Kanawha County Case No. 19-C-9000; and

WHEREAS the MOU provides for an intra-county challenge to the default allocations with any such challenge to be submitted to non-appealable binding arbitration before the Honorable Judge Christopher Wilkes who has served as Special Master for the West Virginia Mass Litigation Panel in the In Re: Opioid Litigation, Kanawha County Civil Action No. 19-C-9000, unless a settlement of such challenge is reached and agreed upon by the parties; and

WHEREAS the Kanawha County Commission previously challenged the City of Charleston's default allocation of the intra-county allocation of opioid funds provided for in the MOU; and

WHEREAS a mediation of the challenge was conducted by the Honorable Judge Christopher Wilkes, who was designated to resolve all intra-county disputes as final arbitrator in the MOU.

WHEREFORE the parties have reached a proposed resolution of the challenge of the Kanawha County Commission to the City of Charleston's default allocation of the Net Opioid Funds as allocated in the LG shares of the MOU, with the following proposed resolution terms and recitals:

1. The MOU was previously approved by both the Charleston City Council and Kanawha County Commission.

2. Pursuant to the terms of the MOU, the Kanawha County Commission initiated an intra-county challenge to the default allocation of the intra-county allocation of opioid funds provided for the City of Charleston in the MOU.
3. Under the MOU's default allocation in matters excluding the City of Huntington and Cabell County, the City of Charleston was allocated 6.7218% of the LG shares (approximately 65% of the Charleston/Kanawha total) and Kanawha County was to receive 3.6016% of the LG shares (approximately 35% of the Charleston/Kanawha total).
4. Similarly, under the MOU's default allocation in matters including the City of Huntington and Cabell County, the City of Charleston was allocated 6.1020% of the LG shares and Kanawha County was to receive 3.2694%.
5. Following Kanawha County's challenge to the default allocation, both the City of Charleston and the Kanawha County Commission took part in mediation before Judge Wilkes prior to a final arbitration being conducted.
6. Both the City of Charleston and Kanawha County, through counsel, submitted their positions to Judge Wilkes with respect to the challenge asserted by the County.
7. As a result of the mediation, the parties have reached a proposed resolution agreement with respect to Kanawha County's challenge.
8. Pursuant to this agreement, Kanawha County will dismiss and forego its previously asserted challenge to the City of Charleston's allocation percentage awarded under the default formula utilized in the West Virginia First Memorandum of Understanding in exchange for the agreed upon resolution detailed herein.
9. The City of Charleston and the Kanawha County Commission agree that once the Opioid Foundation, as described in the MOU, is created and a panel of experts appointed, the

City of Charleston and Kanawha County Commission shall work together to develop a proposal for a regional project, and, subject to approval of both the Charleston City Council and Kanawha County Commission, make an initial joint application to the Foundation Board, in keeping with the reports and recommendations of the Expert Panel, for a joint proposal for allocation and distribution of the Foundation Board funds for the Kanawha/Charleston region.

10. Further, the parties agree to divide the total settlement proceeds of the LG share awarded to the City of Charleston and the Kanawha County Commission as follows: 58.5% of the combined proceeds will be provided for the City of Charleston and 41.5% of the combined proceeds will be provided for Kanawha County.
11. The parties agree that in resolution of Kanawha County's challenge and in keeping with the agreement herein, this proposed formula will result in a modification of the default percentage allocation in the MOU as follows: (1) in matters excluding the City of Huntington and Cabell County, the City of Charleston's default allocation will be modified from 6.7218% to 6.0392% and Kanawha County's default allocation will be modified from 3.6016% to 4.2842%; and (2) in matters including the City of Huntington and Cabell County, the City of Charleston's default allocation will be modified from 6.1020% to 5.4823% and Kanawha County's default allocation will be modified from 3.2694% to 3.8891%..
12. Pursuant to Paragraph B.2.i of the MOU, the City of Charleston and Kanawha County have reached the foregoing agreement to modify the default allocation of the MOU as described above.
13. The parties agree that this agreement must be presented to and approved by both the Charleston City Council and the Kanawha County Commission.

14. The parties agree that subject to such approval they agree to be bound by the terms of this agreement and to modify their default allocations of the LG share of the Opioid settlement funds in the MOU.

Approved by the City of Charleston this ____ day of ______ 2023:

____
For the City of Charleston

Approved by the Kanawha County Commission this ____ day of _______ 2023:

____
For the Kanawha County Commission

Resolution No. 796-23

Introduced in Council:	Adopted by Council:
April 17, 2023	
Introduced by:	Referred to:
Kathy Rubio	Finance

Resolution No. 796-23 - Authorizing the Mayor or City Manager to execute a Right of Way and Easement Agreement between the City and Charmco Lofts Limited Partnership, as contained in the attached document, relating to an underground Water Utility on City property.

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

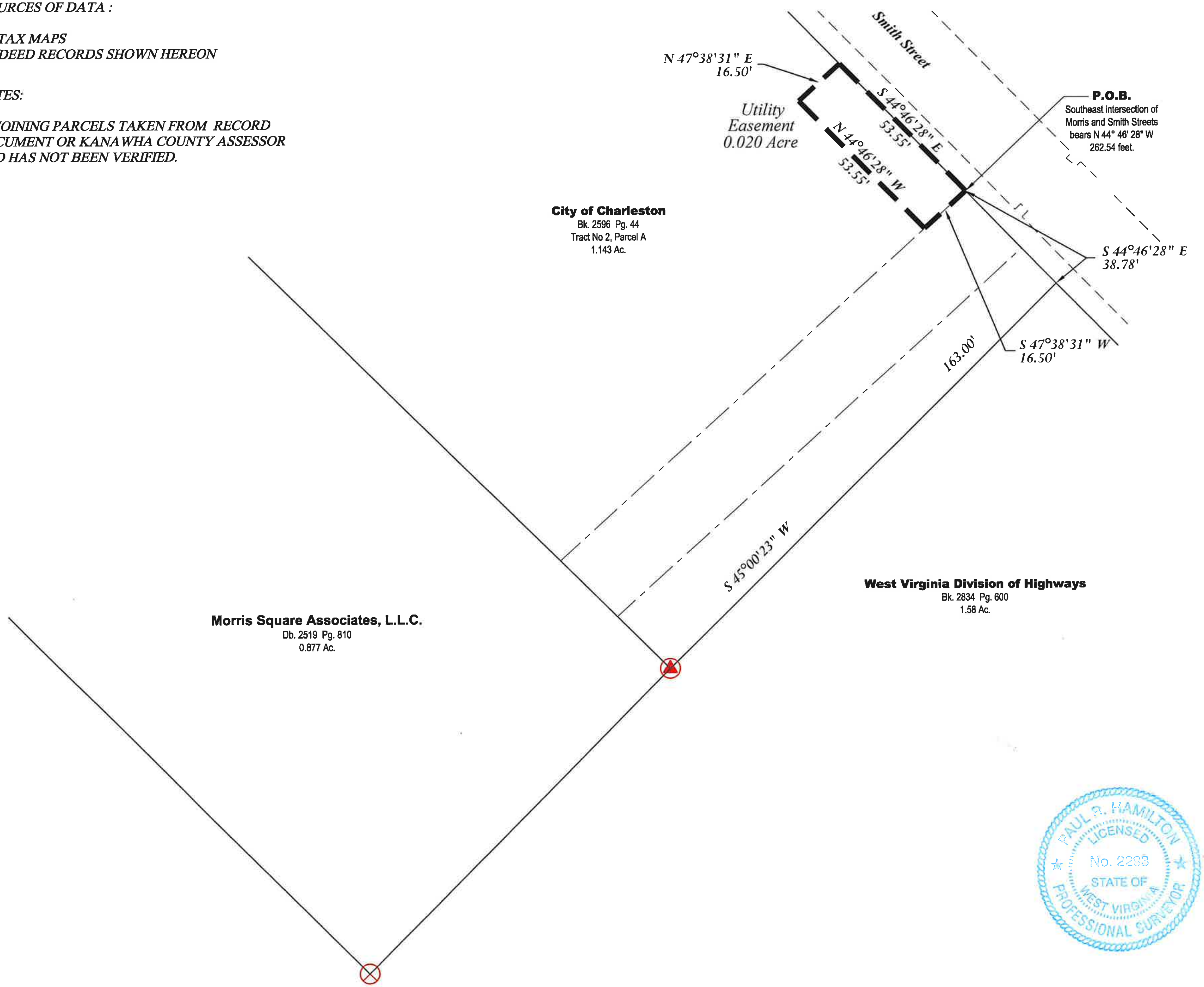
That the Mayor or City Manager is hereby authorized to execute a Right of Way and Easement Agreement between the City and Charmco Lofts Limited Partnership, as contained in the attached document, relating to an underground Water Utility on City property.

SOURCES OF DATA :

1.) TAX MAPS
2.) DEED RECORDS SHOWN HEREON

NOTES:

ADJOINING PARCELS TAKEN FROM RECORD DOCUMENT OR KANAWHA COUNTY ASSESSOR AND HAS NOT BEEN VERIFIED.



BEARINGS ON THIS MAP REFER TO THE GRID MERIDIAN OF THE WEST VIRGINIA COORDINATE SYSTEM NAD 83 (NORTH ZONE) AS DETERMINED BY GPS OBSERVATION.

EXHIBIT B

LEGEND

DENOTES IRON SPIKE (FOUND)

DENOTES TRACK SPIKE (FOUND)

DENOTES NEW UTILITY EASEMENT

DENOTES EXISTING EASEMENT FOR INGRESS/EGRESS AND UTILITY LINES RECORDED IN DEED BOOK 2596 PAGE 81.

Utility Easement Survey
For
Charmco Lofts Limited Partnership

LOCATED AT 700 MORRIS STREET IN THE CITY OF CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA.

0 30 60 90

Scale: 1" = 30'

Paul R. Hamilton 12-14-2022

PAUL R. HAMILTON, P.S. #2293 DATE
SURVEYED DURING: NOVEMBER, 2021

PAUL R. HAMILTON LICENSED No. 2293 STATE OF WEST VIRGINIA PROFESSIONAL SURVEYOR

Jack A. HAMILTON & Associates, Inc.
342 High Street
Flushing, Ohio 43977
Ph: (740) 968-4947
Fax: (740) 968-4225
www.hamiltonandassoc.com
hamilton@hamiltonandassoc.com

DRAWN BY: DJM COMM #13039-71

THIS RIGHT OF WAY AND EASEMENT AGREEMENT is made and entered into this day of ____ day of ______________ 2023, by and between the **CITY OF CHARLESTON**, a West Virginia municipal corporation ("Grantor"), and **CHARMCO LOFTS LIMITED PARTNERSHIP**, a West Virginia limited partnership ("Grantee").

Recitals:

A. Grantor owns that certain tract or parcel of land located in Charleston East District, in the City of Charleston, Kanawha County, West Virginia, containing 1.143 acres of land, more or less, and being more particularly described in that certain deed of record in Deed Book 2596 at Page 44 and known as Tract No. 2, Parcel A, in the Office of the Clerk of the County Commission of Kanawha County, West Virginia (the "Servient Property").

B. Grantee owns that certain tract or parcel of land located in Charleston East District, in the City of Charleston, Kanawha County, West Virginia, containing 0.877 acres of land, more or less, and being more particularly described in the certain deed of record in Deed Book _______ at Page _____ and being Parcel C, in the Office of the Clerk of the County Commission of Kanawha County, West Virginia (the "Benefited Property').

C. Grantor has agreed with Grantee to grant to Grantee a perpetual and non-exclusive right-of-way and easement in favor of and appurtenant to the Benefited Property over and across the Servient Property for water line, water meter, water vault and water routing utility (together, the "Water Utility") purposes and for ingress to and egress to and from the Water Utility by reasonable means and manner to and from that public right-of-way known as Smith Street and/or to and from any existing access and/or utility easement.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the foregoing, Ten Dollars ($10.00), and other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant.

(a) Grantor hereby GRANTS and CONVEYS unto Grantee a perpetual and non-exclusive right-of-way and easement (the "Right-of-Way") in favor of and appurtenant to the Benefited Property for the purposes of (i) the Water Utility purposes and for ingress to and egress to and from that certain public right-of-way known as Smith Street and/or any existing access and/or utility easement; and (ii) laying, installing, maintaining, repairing and replacing the Water Utility from connection points in that certain public right-of-way known as Smith Street and/or any existing access and/or utility easement.

(b) The Right-of-Way and Water Utility are particularly described on Exhibit A, which is attached hereto and made a part hereof, and is labeled as Utility Easement and the survey map as shown and labeled as Exhibit B, which is attached hereto and made a part hereof.

(c) Grantee and Grantee's successors and assigns shall at all times have unencumbered use and enjoyment of the Right-of-Way and Water Utility for itself, its employees, agents, tenants and licensees and their respective employees, agents and representatives.

2. **Maintenance; Repair; Replacement.** Grantee shall pay all costs associated with laying, installing, maintaining, repairing, and replacing Grantee's underground utility lines along the Right-of-Way and the Water Utility, including all costs associated with restoring the surface area disturbed to approximately its original condition upon completion of any such work. Grantor shall regularly maintain, repair and replace the pavement of the Right-of-Way and the Water Utility for the benefit of Grantor and Grantee, all at Grantor's sole cost. Grantor shall maintain the Right-of-Way and the Water Utility and the Servient Property in a clean, orderly, and reasonably attractive manner.

3. **Use**. The use of the Right-of-Way and Water Utility by Grantee and by Grantee's employees, agents, tenants and licensees and their respective employees, agents and representatives shall at all times be consistent with applicable law. Grantee and Grantee's employees, agents, tenants and licensees and their respective employees, agents and representatives shall not block the Right-of-Way and Water Utility at any time other than in the ordinary course of laying, installing, maintaining, repairing, and replacing the Water Utility.

4. **Indemnification**.

(a) Grantee hereby agrees to indemnify, defend and hold harmless Grantor from and against all liabilities, damages, claims, costs and expenses whatsoever (including reasonable attorney's fees and court costs at all trial and appellate levels) arising out of, in connection with or related to the use and enjoyment of the Right-of-Way and Water Utility by Grantee and its employees, agents, tenants and licensees, except when such liabilities, damages, claims, costs or expenses are the result of Grantor's sole negligence.

(b) Grantor hereby agrees to indemnify, defend and hold harmless Grantee from and against all liabilities, damages, claims, costs and expenses whatsoever (including reasonable attorney's fees and court costs at all trial and appellate levels) arising out of, in connection with or related to the use and enjoyment of the portion of the Servient Property subject to the Right-of-Way and the Water Utility by Grantor and its employees, agents, tenants and licensees, when such liabilities, damages, claims, costs or expenses are the result of Grantor's sole negligence.

5. **Reservation of Ownership and Rights**. Grantor reserves all rights of ownership in and to the Servient Property that are consistent with the rights that Grantor hereunder grants to Grantee. Grantor reserves the right to use the portion of the Servient Property that is subject to the Right-of-Way and Water Utility for all uses that are not inconsistent with Grantee's rights.

6. **Running with the Land**. The rights granted hereunder shall be appurtenant to and shall run with the lands of Grantor and Grantee.

7. **<u>Successors and Assigns</u>**. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(see signatures and acknowledgements on following pages)

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be signed by their respective duly authorized representatives as of the date first above written:

GRANTOR:

CITY OF CHARLESTON

By:_________________________________

Name:_______________________________

Title:________________________________

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this ____ date of ______________, 2023, by __________________________________, the ________________, of the City of Charleston, a West Virginia municipal corporation, for and on behalf of the corporation.

____
Notary Public
My commission expires: ________________

(Additional signature and acknowledgement on following page)

GRANTEE:

CHARMCO LOFTS LIMITED PARTNERSHIP
a West Virginia Limited Partnership

By: Charmco Lofts GP, LLC
an Ohio limited liability company
Its General Partner

By: Woda Cooper General Partner, LLC
an Ohio limited liability company
Its Sole Member

By: Woda Cooper Communities, LLC
an Ohio limited liability company
Its Sole Member

By:_________________________________

Name:_______________________________

Title:________________________________

STATE OF OHIO,
COUNTY OF FRANKLIN, to-wit:

The foregoing instrument was acknowledged before me this ____ date of ______________, 2023, by _________________________________, the _______________, of Woda Cooper Communities, LLC, an Ohio limited liability company, the Sole Member of Woda Cooper General Partner, LLC, an Ohio limited liability company, the Sole Member of Charmco Lofts GP, LLC, an Ohio limited liability company, the General Partner of Charmco Lofts Limited Partnership, a West Virginia limited partnership, for and on behalf of the partnership.

____
Notary Public
My commission expires: _______________

Instrument prepared by:
James A. Saad, Esq.
Saad & Saad LLP
500 South Front Street, Suite 250
Columbus, Ohio 43215
Phone: 614-396-3296

342 High St.
Flushing, OH 43977
Ph: (740) 968-4947
Fax: (740) 968-4225
www.hamiltonandassoc.com
hamilton@hamiltonandassoc.com

Jack A.
HAMILTON
& Associates, Inc.

Land Surveying
Mine Permitting
GIS Data Services
Land Development
Global Positioning Systems

EXHIBIT A

December 14, 2022

Description
Utility Easement

Situated in the State of West Virginia, County of Kanawha and the City of Charleston. Being part of a 1.143 acre tract, recorded as Tract No. 2, Parcel A in Book 2596 Page 44 of the Kanawha County Deed Records.

Beginning at a point on the south line of Smith Street where the southeast intersection of Morris and Smith Streets bears North 44 degrees 46 minutes 28 seconds West 262.54 feet and the northeast corner of the abovementioned Parcel A bears South 44 degrees 46 minutes 28 seconds East 38.78 feet.

Thence from said place of beginning, leaving the south line of Smith Street and following the westerly line of an existing easement recorded in Book 2596 Page 81 of said County Deed Records, **South 47 degrees 38 minutes 31 seconds West 16.50 feet,**

thence leaving the westerly line of said existing easement, **North 44 degrees 46 minutes 28 seconds West 53.55 feet**,

thence **North 47 degrees 38 minutes 31 seconds East 16.50 feet**, to a point on the northerly boundary of the abovementioned Parcel A and the south line of Smith Street,

thence following the northerly boundary of Parcel A and the south line of Smith Street, **South 44 degrees 46 minutes 28 seconds East 53.55 feet** to the place of beginning. Containing 0.020 Acre.

Bearings in this description are based on the grid meridian of the West Virginia State Plane Coordinate System NAD 83 (South Zone) as determined by GPS observation.

This description prepared by Paul R. Hamilton, Registered Surveyor #2293, after a field survey during November, 2021.

PAUL R. HAMILTON
LICENSED
No. 2293
STATE OF
WEST VIRGINIA
PROFESSIONAL SURVEYOR

Paul R. Hamilton
12-14-2022

Resolution No. 797-23

Introduced in Council: April 17, 2023

Adopted by Council: ______________

Introduced by: Joseph Jenkins

Referred to: Finance

Resolution No. 797-23 - Authorizing the Mayor or City Manager to enter into a contract with InterDev, LLC to provide cyber security and GIS services that will support the City's Information Systems division.

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

That the Mayor or City Manager is hereby authorized to enter into a contract with InterDev, LLC to provide cyber security and GIS services as referenced in the attached documents.

INTERDEV
IT | Security | GIS

InterDev

Co-Managed Environment Terms of Service

Co-Managed support offers a solution for clients requesting to maintain an active role in the administration of their IT environment. InterDev's Master Services Agreement does not include co-management of environments and requires additional authorization and agreement between the client and InterDev to effectively partner and provide the most efficient and professional quality of support. Communication and full disclosure of changes will allow both parties the most effective support experience. Thank you, we appreciate your partnership!

This agreement and authorization form is in addition to the existing client agreement and Terms of Service with InterDev. The existing agreements and Terms of Service for Managed IT Services remain in place.

<u>InterDev Responsibilities</u>

1. Management and configuration access is only granted to authorized client personnel.

2. InterDev will secure the platform against known security risks. Any observed security breaches or suspicious activity will be reported to the Customer.

3. InterDev will perform all services and communication as described in the managed services agreement for the client.

4. InterDev is not responsible for changes made by the client in the co-managed support environment. Additional fees will apply for requested support, repair, and remediation services as needed due to changes made by client personnel.

<u>Customer Responsibilities</u>

1. Customer agrees that Customer shall utilize the Service to engage only authorized servers and networks. Any attempt to utilize the Service to access unauthorized servers or networks is strictly prohibited.

2. Customer designates the authorized representative to execute the following responsibilities:

    a. The authorized client Technical Contact(s) will communicate all network changes, actions, and requests for access control to the support ticket board support@interdev.com or through the customer portal.

b. The Customer Authorized Contact(s) will serve as the "central point of contact" for administration of the client network.

c. The Customer Authorized Contact(s) will report all service changes and issues to the InterDev support help desk. For emergency service call 678-672-1550. For non-emergency support and service tickets, please email support@interdev.com or submit via customer portal as preferred. It is critical to share configuration changes and any actions to the network to InterDev support so we may provide the most efficient and professional support in a co-managed environment.

d. If customer decides to end co-management and return to InterDev's fully managed environment, new onboarding charges may apply to remove all access and return services to standard configurations.

Client	**InterDev**
Name:	Name:
Title:	Title:
Signature:	Signature:
Date:	Date:
I have authority to bind Client	*I have authority to bind Company*

Professional Services Agreement

1. Services

This Agreement between City of Charleston, WV, herein referred to as the Client, and the Service Provider, InterDev, LLC, herein referred to as InterDev, is effective upon the date signed, and shall remain in force for a period as described in Term of Agreement. Client shall engage InterDev to perform the services described in **Exhibit A** ("Proposal for Cyber Security and GIS Services"), pursuant to the terms set forth in this Agreement, Exhibit A, and **Exhibit B** ("Co-Managed Environment Terms of Service").

Term of Agreement

Start date of Services is __________________for a 36-month contract. Upon expiration of this initial term, Agreement shall automatically renew for the two additional years unless either Client or InterDev notifies the other party in writing of its intention to not renew this Agreement, which notification must be delivered no later than sixty (60) days prior to the expiration of the then current term of the Agreement.

Client hereby engages InterDev for the initial term set forth above, to provide services in support of Client's Cyber Security and Geographical Information Systems ("Security and GIS Services"), main location in Atlanta, GA.

This Agreement may be terminated by either Party upon sixty (60) days' written notice if the other Party:

- Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within sixty (60) days of receipt of such written notice.
- Breaches any material term or condition of this Agreement and fails to remedy such breach within sixty (60) days of receipt of such written notice.
- Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.
- Termination; Mutual Consent. This Agreement may be terminated upon the mutual, written consent of the parties.
- If either party terminates this Agreement, InterDev will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay InterDev the actual costs of rendering such assistance. Any controversy between Client and InterDev involving the contracted services of this Agreement shall be governed by the laws of West Virginia. The parties agree to use good faith negotiations to resolve controversies, but in the event that litigation is required, the parties agree that such litigation shall be filed in a court of competent jurisdiction in Charleston, West Virginia.
- Not withstanding any provision herein to the contrary, The Client may terminate this Agreement at any time for any reason with sixty (60) days advance written notice. In such event, Interdev shall be entitled to compensation for all services actually rendered through the termination date at the rate set forth in Exhibit A.

2. **Payment Schedule**
Monthly payment as set forth in Exhibit A, will be invoiced to Client on the first of each month and will become due and payable 10 days after receipt. Upon each anniversary of the agreement, the base rate and business hours base rate will automatically increase by 5 percent. Services may be suspended if payment is not received within 10 days following date due. If payment is not received within 20 days of receipt of invoice, Client will be assessed a late charge equal to 1½ percent of the unpaid amount per month.

3. **Escalation**

Escalation contacts are:

Nathan Holder – Business Development Manager
nholder@interdev.com
678-672-1508 desk
770-843-3922 cell

Neil Matchan – Chief Information Security Officer
nmatchan@interdev.com
678-672-1520 desk
404-285-4674 cell

4. **Use of software**

Authorization to use any software provided by InterDev to the Client provides a personal, non-exclusive, limited, non-transferable and temporary license. All rights are reserved. The Client may not re-publish, transmit, or distribute the software, or make any unauthorized use of InterDev materials. Modification of such materials or the use of such materials for any purpose not authorized by InterDev is prohibited.

5. **Ownership of Work Product**

Any (a) work of authorship fixed in any tangible medium of expression that is the subject matter of a copyright or potential application for registration therefore (including, but not limited to, object code and source code), (b) unpatented inventions, including but not limited to, physical parts or components, processes, techniques, programs or methods, (c) non-trademarked or non-service-marked distinctive symbols, pictures or words, (d) trade secrets, or I any other copyrightable, patentable and/or trademark-able intellectual property rights, whatsoever, associated with any ideas, symbols, marks, phrases, writings, drawings, inventions, machines, designs, concepts, techniques, methods, know-how, processes or works of authorship developed or created by: (i) Service Provider and/or InterDev Personnel; and/or (ii) through collaborative efforts of InterDev (including InterDev Personnel) and Client and/or any director, officer, shareholder, member, manager, employee, agent, independent contractor or representative of Client (“Client Personnel”) during the term of this Agreement (collectively, “the Work Product”) shall belong to InterDev; provided that Client shall retain a perpetual, non-exclusive, royalty-free license to use the Work Product in its day to day business operations so long as Client does not disclose, sell or assign, in any capacity, its rights in said Work Product, to any third party (including InterDev Personnel and Client Personnel) without the express, written consent of InterDev, which consent may be withheld. Upon request of InterDev, Client shall, if necessary, take such actions, and shall cause Client Personnel to take such actions, including execution and delivery of any and all instruments of conveyance, necessary to grant title in and to the Work Product to and in the name of InterDev.

6. **Non-Solicitation**

During the term of this Agreement and for two (2) years after its termination for any reason, Client shall not solicit, employ, or contract for the services of InterDev's employees, agents, representatives or subcontractors ("InterDev Personnel") to provide services that otherwise would or could be provided under the terms of this Agreement except with the prior written consent of InterDev. Similarly, during the term of this Agreement and for two (2) years after its termination for any reason, InterDev shall not solicit, employ, or contract with any of the Client's employees, agents, representatives or subcontractors ("Client Personnel") The parties acknowledge and understand that this provision serves (1) to protect InterDev's business relationship with Client, including but not limited to the goodwill that may result from InterDev Personnel providing services to Client and Client Personnel working in harmony with InterDev; (2) to provide added protection and security for InterDev and Client from the use and misuse of confidential and/or proprietary information that may be provided by InterDev or Client to its employees; and (3) to protect InterDev's investment in providing employees with specialized skills and training desired by Client and Client's investment in Client Personnel with specialized skills and training. The parties further acknowledge and understand that either party may seek appropriate injunctive relief to enforce this provision without prejudice to any other legal rights it may possess.

7. Disclaimer of Warranties

Services furnished under this Agreement are provided "as is" and, unless otherwise expressly stated in this instrument, without representations or warranties of any kind, either express or implied. Notwithstanding the foregoing, InterDev agrees that all services furnished under this Agreement will be performed in a workmanlike manner up to the general standards of the industry. Except as explicitly stated in the Agreement, and to the fullest extent permitted by law, InterDev disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose. InterDev does not warrant that use of software or products furnished by InterDev will be uninterrupted, error-free, or secure, that defects will be corrected, or that products or the server(s) to which access is provided are free of viruses or other harmful components.

8. Limitation of Liability

In no event shall InterDev be liable to the Client or any other party for any special, exemplary, incidental or consequential damages, including but not limited to lost profits, whether arising out of contract, tort, and strict liability or otherwise.

9. Good Faith

The parties hereto expressly assume an obligation to act in good faith toward one another in the performance of their obligations under this Agreement.

10. Miscellaneous

This instrument, contains the entire agreement of the parties and supersedes any previous agreement on the same subject matter between them. No amendments or variations of the terms and conditions of this agreement shall be valid unless the same are in writing and signed by all parties hereto. InterDev is an independent contractor, and nothing herein shall be construed as inconsistent with that relationship or status. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. If arbitration strikes down one of the provisions the rest of the contract should remain enforceable. InterDev shall not be liable to Client for any failure or delay caused by events beyond InterDev's control, including, without limitation, Client's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures, or accessibility to work site. The headings contained herein are for convenience of reference only and are not to be used in interpreting this agreement. This agreement shall be construed and enforced pursuant to the laws of the State of West Virginia. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one document.

11. Taxes

It is understood, that InterDev is responsible for any Federal, State or Local taxes applicable to the services or materials rendered under this Agreement. The Client, as a West Virginia municipal government, is exempt from such taxation.

Disclaimer

InterDev acknowledges that Client is a public entity and is subject to mandatory disclosure of certain information upon request under W.Va. Code § 29B-1-1 et seq. (the "Freedom of Information Act") and W.Va. Code § 6-9A-1 et seq. (the "Open Governmental Proceedings Act"). Client contracts are public records under the Freedom of Information Act and public procurement laws. This Agreement and other public records may be disclosed without notice to InterDev at the Client's sole discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Proposal to be signed by their duly authorized representatives as of the date set forth below.

Accepted by:

Authorized Signature/Title	**InterDev, LLC**	**Date**

Authorized Signature/Title	**City of Charleston, WV**	**Date**

Exhibit A – Proposal for Cyber Security and GIS Services
Exhibit B – Co-Managed Environment Terms of Service

PROPOSAL

for

Cyber Security and GIS Services

INTERDEV
IT | Security | GIS

Cyber Security Services Summary

Co-Managed Service Model: While InterDev does provide and encourage the use of completely outsourcing security functions as we find this works best long-term, a co-managed service model can be offered, the terms of which can be written into the contract. The essentials of those terms and conditions require strict adherence to change control and communication. Any degradation of services induced by customer actions are wholly the responsibility of the customer and any work to support, repair or remediate systems due to client personnel would result in billable time outside of the agreement

Patch Management / RMM Tool

Questions:

What functions does your staff rely on with your current solution?
With regard to asset management and inventory, can you provide additional details or clarity as to what your existing solution provides?

Service Description:

Ninja provides for visibility into each asset it is installed on - Make, model, serial number, hardware inventory (CPU, Memory, disks, RAID, etc.), Software inventory, as well as BitLocker keys when in use. In addition to the inventory functionality, Ninja provides for scripted software deployment, operating system patching and a library of third-party applications. Ninja provides our IT Teams with the ability to remotely access any system with an agent installed. Ninja does not provide any helpdesk functionality. In this case Ninja is integrated into InterDev's service boards for monitoring, alerting, etc. This deployment of Ninja does not replace your existing service boards. InterDev can provide access to Ninja to city IS staff.

Deliverable:

The deliverable with Ninja from InterDev is operating system patch management and third party patching of any application deployed to city systems that is available within the Ninja library. Patching cadence will be determined at the time of onboarding in a coordinated effort between InterDev's Central Services Team and city IS staff. InterDev will provide best practice recommendations to ensure that city systems are patched in a timely manner, and provide regular reporting on patch status.

Timeline:

InterDev's goal will be to achieve complete agent coverage within three weeks of project kick-off, and a patch cadence defined at the 30 day mark. InterDev's Central Services team will work with city information services staff to ensure that we reach that goal. Our preferred method of deployment is to get an agent installed on a domain controller. This will provide the team initial access into the environment and allow them to perform an audit of systems in preparation for deployment. InterDev will adhere to the city's existing change control methodology and provide template communications to ensure that stakeholders and user-base are adequately informed before initiating any deployment. The team will primarily use Active Directory and Group Policy to affect agent deployment, but will rely on input, guidance and support from the city information services team to get agents installed for non-active directory-based systems. This initial effort should provide coverage for 90% of all city systems, and will work continuously to ensure that we have closed all coverage gaps within the three week time frame.

It will be the city's ongoing responsibility to ensure that the InterDev team is made aware of all moves, adds, changes or removal (decommission) of systems during this initial deployment and throughout the contract so that we maintain continuous coverage of Ninja agents. This is absolutely critical as patching and security agent deployment are dependent on the presence of a Ninja agent.

While deployment is underway, InterDev's Central Services team can begin discussion with city information services staff regarding operating system patch management. InterDev and the city must work together to agree upon patch cadence. InterDev will follow existing change control/change management processes prior to implementing agreed upon patch schedules, but it will be the responsibility of the city to communicate the change to staff.

One week after both the city and InterDev agree that 90% agent coverage has been reached, InterDev's Central Services Team will provide a report on applications installed in the environment. This report will be used to identify any application not currently authorized for use in the city. Those applications will either need to be authorized via a legitimate business need or removed to reduce the city's attack surface. InterDev will review the remaining authorized applications and work with the city's IS team to develop, publish and begin adhering to a third party patch cadence.

MDR and Active Threat Hunting

Service Description:
InterDev utilized two tools to provide depth of coverage. These two tools each require their own agent and are deployed in a manner so as not to compete for system resources. As described in the proposals, InterDev utilizes SentinelOne EDR (Complete Edition) for malware/ransomware protection. SentinelOne is an industry leading, enterprise grade endpoint detection and response tool that will keep city systems free of compromise. InterDev layers on a Huntress agent which provides additional active protection measures beyond what SentinelOne provides. All processes and applications are cataloged in Huntress and anything suspicious is actively investigated by Huntress's threat hunting team 24/7/365. If Huntress's team classifies anything as needing action our security team is immediately alerted. Although Huntress's team operates 24/7/365, InterDev operates during standard business hours, but depending upon the severity of the alert, and at the discretion of the Chief Information Security Officer, InterDev's teams may engage after hours to ensure that the city is not compromised. SentinelOne offers automated responses to include host isolation, so even in the event of a system compromise, that agent is prevented from connecting to any other system and can only communicate over the network with the SentinelOne management platform until a Security Engineer validates that the system is clean and allows it to reconnect to the network.

This service does not include hard drive / device encryption. InterDev recommends that device encryption be managed via Microsoft 365 Intune policy with BitLocker for Windows devices. BitLocker keys are stored in Active Directory and in Ninja for recovery when required. Intune can also manage non-windows devices (Apple, Android, etc.).

As this is a managed security service, InterDev does not grant administrative access to either of these platforms, but is thorough in implementation, is proactive and communicative in ongoing management. View access may be granted at the discretion of the CISO. The team will rely on city staff to properly communicate any changes (new software, line of business application upgrades, etc.) to ensure that security products do not impact operations.

Deliverable:
InterDev's deliverable is to provide the SentinelOne agent and Huntress agent to provide for complete endpoint security and to prevent any execution of malicious software through both passive and active means. This service is monitored and maintained by the InterDev Security Team and they will provide regular reporting on endpoint security to the city. It is the city's responsibility to communicate system moves, adds, changes or removals as well as changes to applications used by the city.

Timeline:
This timeline is broken up into two phases - one for SentinelOne and one for Huntress. Provided good coordination and planning ahead of actual deployment, both of these implementations run extremely fast. For most deployments, getting the end user to restart their computers drags out official completion. With Ninja in place, agent installation for both SentinelOne and Ninja really only takes a few hours - this is largely dependent on the system being online for it to pick up the installation commands from the Ninja Management Console. For both deployments, the InterDev team will follow existing procedures for change management/change control and provided template communications, but it will be the responsibility of the city to communicate to stakeholders and the user-base. The team will also configure alerting along with the deployment so any incident is immediately raised to the security team. As part of deployment reports will also be scheduled

SentinelOne
Some additional coordination will need to take place to ensure that existing EDR solution is exempted in SentinelOne and that SentinelOne is exempted in the existing solution. InterDev's goal is to ensure continuous coverage without impeding operations, and we typically do not uninstall any existing solution until systems are fully registered and reporting into SentinelOne. A system must be restarted to be fully registered - this ensures that all SentinelOne services have loaded properly.

Typically, InterDev will begin deployment to servers first to ensure coverage of core infrastructure and coordinate that installation with the team so that reboots can occur immediately - this often requires after hours time to ensure the least disruption to operations.

Upon completion of Ninja deployment the InterDev team will work with the city Information Services team to review applications and major line of business systems to ensure that any potential exceptions are cataloged and input into SentinelOne to ensure against any operational disruption. Once both parties agree that appropriate exceptions are in place and change controls have been approved, the team will initiate deployment. Actual installation, provided systems are online, will go extremely quickly. The team will communicate current status throughout deployment so that systems can be rebooted quickly and have pre-existing EDR removed.

Huntress
Once SentinelOne coverage reaches 90%, the team will begin coordinating deployment of Huntress. Huntress is extremely light and does not "hook" the operating system or applications in the same way that a typical EDR or antivirus/antimalware solution does. For this reason, it can be deployed with no preconfiguration and we have never seen it have any impact on any environment.

As solutions are deployed, InterDev's Security Team will work with the team to identify and remediate both false and true positive detections. A deployment of EDR is a proactive engagement from the security team - they do not 'set it and forget it', but continuously monitor the deployment and communicate any findings immediately to city staff.

Security Project SOW's

Attached

Preliminary SOW & Project Plan

Client:	City of Charleston, West Virginia
Project Summary:	RMM Deployment
Requested Start Date:	TBD
Requested Completion Date:	Project Kick-Off + 14 days
Justification:	Improve overall security through improved patch cadence and capability while reducing workload to City IT Staff

Goal: (What does success look like for this project?):

Success requires an RMM agent to be installed on all systems to affect timely patching of all systems' operating systems and approved applications reducing the available attack surface. As a managed service, this will reduce the workload to limited City IT Staff freeing them up to work on other projects.

Service Scope and Hours Estimate	Hours or Qty	Rate/Hr.	Ext. Cost
Predeployment site audit - Audit site to ensure that we achieve complete coverage - Report coverage gaps and work with IT to close those gaps - Identify and document any systems that are not in Active Directory	32	$ 175	$ 5,600
Deployment of Ninja Agent - Create Tenant in Ninja Platform - Provide City IT installer for installation on Domain Controllers - InterDev and City create organization structure within Ninja - Create group policy for agent deployment - Deconflict any configurations between Ninja and existing platform - Finalize and review deployment plan with the city - Create Change Control - Enable Group Policy object(s) and deploy agents	16	175	2,800
Configure Operating System Patch Management - Work with City IT staff to determine appropriate patch cadence - Create appropriate patch policies based on approved cadence - Submit Change Control Requests - Enable patch policies	16	175	2,800
Configure Third Party Patch Management - Generate and review Application lists from Ninja with City IT Staff - Determine applications to remove & begin scripting removal - Determine appropriate patch cadence for authorized applications - Create appropriate patch policies based on approved cadence - Submit Change Control Requests - Enable patch policies	16	175	2,800
Project Management	8	175	1,400
Total Hours	**88**		**$ 15,400**
Ninja RMM Agent and Patch management ($2.50 / agent)	456	$ 2.50	$ 1,140
	TOTAL PROJECT COST:		**$ 16,540**
	Recurring Total *(Monthly)*		$ 1,140

Prerequisites
City IT staff will run specified script on domain controllers and provide output to InterDev to begin site audit
City will perform necessary clean-up in active directory prior to deployment
City IT staff will provide a list of all non-active directory systems
City IT staff will install an initial agent onto domain controller(s)
City will communicate changes to staff to include patch cadence and user expectations
City IT staff will ensure that active systems are online & available during the deployment window

Assumptions / Understandings
City and InterDev will work together to complete the pre-deployment audit to ensure complete coverage
City IT Staff may be required to install agents on non-active directory systems
City and InterDev will work together to ensure a complete inventory of applications
City and InterDev staff will work together to remove any unauthorized applications or validate them through a business use case.
City and InterDev staff will work together to establish patching cadence for operating systems and authorized applications that are in the Ninja library

Completed By:	Jesse Cail
Reviewed By:	Nathan Holder
Approved By:	

Preliminary SOW & Project Plan

Client:	City of Charleston, West Virginia
Project Summary:	Managed Endpoint Detection & Response and Threat Hunting Deployment
Requested Start Date:	Project Kick-Off +14 Days
Requested Completion Date:	Start Date + 30 days
Justification:	Improve overall security and align with cyber security insurance requirements

Goal: (What does success look like for this project?):

Install SentinelOne Endpoint Detection and Response (EDR), remove exiting endpoint protection and deploy Huntress with minimal impact to city operations

Service Scope and Hours Estimate	Hours or Qty	Rate/Hr.	Ext. Cost
Predeployment site audit - Audit site to ensure that we achieve complete coverage - Report coverage gaps and work with IT to close those gaps	12	$ 175	$ 2,100
Deployment of SentinelOne and Removal of Existing Endpoint - Create Tenant in SentinelOne - Obtain legacy agents if required - Review applications and create any necessary exemptions - Deconflict SentinelOne and existing endpoint security agent - Create Deployment Scripts - Submit Change Control Requests - Deploy SentinelOne Agents - Restart Servers - Monitor and report on workstation deployment and restarts to IT Staff - Remove existing endpoint agents - Respond to any/all alerts creating exception in coordination with City IT Staff - Create alerting - Create & schedule reporting	12	175	2,100
Deployment of Huntress - Create Tenant in Huntress Platform - Create Deployment Scripts - Submit Change Control Requests - Deploy Huntress to all systems - Respond to any/all alerts in coordination with City IT Staff - Create alerting - Create & schedule monthly reports	12	175	2,100
Project Management	6	175	1,050
Total Hours	**42**		**$ 7,350**
Managed Endpoint Detection & Response (MDR) - SentinelOne Complete Edition ($8 / agent)	456	$ 8	$ 3,648
Active Threat Hunting - Huntress ($4 / agent)	456	4	1,824
TOTAL PROJECT COST:			**$ 12,822**
Recurring Total *(Monthly)*			$ 5,472

Prerequisites
Completion (90% coverage) of Ninja RMM Deployment
City IT staff will complete and return the Deployment Readiness Worksheet
City IT staff will correct any discrepancies noted in the site audit prior to deployment
City IT staff will provide InterDev with access to existing endpoint security platform
City IT staff will coordinate for a maintenance window on Day 1 of installation for server reboots
City IT staff will ensure that active systems are online & available during the deployment window
City leadership will communicate the change to staff and emphasize the reboot requirement

Assumptions / Understandings
City and InterDev will work together to ensure a complete inventory of applications
Legacy, unsupported systems will be removed from the environment as they invalidate the Ransomware Warranty provided by SentinelOne. If unsupported devices cannot be removed, a legacy agent will be provided, but the warranty will still be void.

Completed By:	Jesse Cail
Reviewed By:	Nathan Holder
Approved By:	

InterDev Geographic Information Services

GIS Projects
In the discussion we identified 4 projects…

a. Physical GIS Web Server for ArcGIS Web Adaptor
    i. We need to move from cityofcharleston.org to charlestonwv.gov

b. Assist in the migration of solutions using ArcMap's AA to ArcGIS Pro's AR
    i. Address management and Traffic Control Ordinances

c. Assist with removing residuals in the ArcGIS Enterprise environment

d. Upgrade ArcGIS Enterprise from 10.9.1 to 11.+

InterDev recommends doing a-c first and then doing d, as you have the good fortune of being on 10.9.1 and thus migration of services and workflows and removing residuals is already possible without upgrading and in fact may facilitate the upgrade process, but we can discuss that in more detail later.

Pricing
Here are worst case scenario numbers for the resources and the projects assigned to them. Rates in accordance with the rate chart from the proposal.

As Needed	Rate	Hours	Total
GIS Manager	$175	100	$17,500
GIS Architect	125	400	50,000
GIS Analyst	105	1050	10,500
GIS Technician	85	50	4,250

Notes and Assumptions
The total is $82,250. The intent is to plan for worst case and then reappropriate hours to new projects in the event these projects do not consume those hours. InterDev Has confidence that we won't consume those hours but we are going with our architect's assessment of the absolute worst case scenario

Bill No. 7987

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

April 3, 2023 | ____________

Introduced by: | **Referred to:**

Joseph Jenkins | **Finance Committee**

Bill No. 7987: A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand twenty-three.

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

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

WHEREAS, the levy rate attached hereto is included in the City of Charleston Municipal Budget for July 1, 2023 through June 30, 2024, before City Council for approval at a special meeting of Council held on April 18, 2023, now, therefore

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

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

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
LEVY ORDER AND RATE SHEET
2023 - 2024

The following is a true copy from the record of orders entered by this entity on the 18 day of April, 2023.

SIGNATURE: ______________________________

Municipal Clerk or Recorder

Current Year		Column E Certificate of Valuation Assessed Value for Tax Purposes	Levy Rate/$100		Taxes Levied
Class I					
Personal Property	$	0	12.430	$	0
Public Utility		0			0
Total Class I	$	0		$	0
Class II					
Real Estate	$	1,389,971,060	24.860	$	3,455,468
Personal Property		387,138			962
Total Class II	$	1,390,358,198		$	3,456,430
Class IV					
Real Estate	$	1,068,923,160	49.720	$	5,314,686
Personal Property		590,161,253			2,934,282
Public Utility		326,230,135			1,622,016
Total Class IV	$	1,985,314,548		$	9,870,984
Total Value & Projected Revenue	$	**3,375,672,746**		$	**13,327,414**
Less Delinquencies, Exonerations & Uncollectable Taxes			6.00%		799,645
Less Tax Discounts			1.50%		187,917
Less Allowance for Tax Increment Financing - see worksheet (Subtracted from regular current expense taxes levied only)					0
Total Projected Property Tax Collection					**12,339,852**
Less Assessor Valuation Fund (Subtracted from regular current expense taxes levied only)			**2.00%**		246,797
Net Amount to be Raised by Levy of Property Taxes For Budget Purposes				$	**12,093,055**

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
LEVY ORDER AND RATE SHEET SUPPLEMENT
General Excess Levy
2023 - 2024

The following is a true copy from the record of orders entered by this entity on the 18 day of April, 2023.

SIGNATURI ______________________________

Municipal Clerk or Recorder

	Column E Certificate of Valuation Assessed Value for Tax Purposes	Levy Rate/$100	Taxes Levied
Current Year			
Class I			
Personal Property	$ 0	5.030	$ 0
Public Utility	0		0
Total Class I	$ 0		$ 0
Class II			
Real Estate	$ 1,389,971,060	10.060	$ 1,398,311
Personal Property	387,138		389
Total Class II	$ 1,390,358,198		$ 1,398,700
Class IV			
Real Estate	$ 1,068,923,160	20.120	$ 2,150,673
Personal Property	590,161,253		1,187,404
Public Utility	326,230,135		656,375
Total Class IV	$ 1,985,314,548		$ 3,994,452
Total Value & Projected Rev.	$ 3,375,672,746		$ 5,393,152
Less Delinquencies, Exonerations & Uncollectable Taxes		6.00% . . .	323,589
Less Tax Discounts		1.50% . . .	76,043
Net Amount to be Raised by Levy For Budget Purposes:			$ **4,993,520**