

CHARLESTON CITY COUNCIL

Regular Meeting

December 4, 2023

at 7:00 PM



THIS MEETING WILL TAKE PLACE IN PERSON AND CAN BE VIEWED LIVE VIA

<https://charlestonwv.civicclerk.com/web/home.aspx>

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

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. **INTERESTED PUBLIC SPEAKERS MUST REGISTER AT THE CLERK'S TABLE IN PERSON NO EARLIER THAN 15 MINUTES BEFORE THE MEETING STARTS. FIVE (5) SPEAKERS WILL BE PERMITTED (RULE NO. 22 (B)).**
2. Claims 12-4-2023

PROCLAMATIONS

1. 12-4-2023

COMMUNICATIONS

1. 12-4-2023

REPORTS OF STANDING COMMITTEES

FINANCE

1. Resolution No. 908-23 - Authorizing participation of the City of Charleston with the Department of the Army, Corps of Engineers, for the design and construction of the emergency streambank protection project from Greenbrier Street to the Elk River.
2. Resolution No. 909-23 – Authorizing the Mayor or City Manager to purchase a new 2024

Ford F-150 truck for the Engineering Department and two new 2024 Ford F-150 trucks for the Street Department from National Auto Fleet Group pursuant to a competitively sourced multi-state contract.

3. Resolution No. 910-23 - Authorizing the City Manager to pay Ed's Home and Commercial Improvement an additional amount for decking repair for the roof repair of the Cato Park Recreation Center and Administrative Building.

REPORTS OF OFFICERS

1. 12-4-2023

NEW BILLS

1. 12-4-2023

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

REMARKS BY MEMBERS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE DECEMBER 18, 2023 AT 7:00 PM.

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

Resolution No. 908-23

Introduced in Council:

Adopted by Council:

December 4, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance Committee

Resolution No. 908-23 – Authorizing participation and ratifying prior participation of the City of Charleston with the Department of the Army, Corps of Engineers, for the design and construction of the emergency streambank protection project from Greenbrier Street to the Elk River, and authorizing the City Manager and other City officials execute, accept, or otherwise approve all documents, agreements, instruments, or other necessary papers required by the department of the army to implement said participation in the project, where the estimated non-federal share to be paid by the City of Charleston is \$1,243,550.00.

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

The City Council of the City of Charleston hereby approves the resolution from the U.S. Army Corps of Engineers in the form attached hereto.

RESOLUTION
THE CITY OF CHARLESTON, WEST VIRGINIA
KANAWHA RIVER, GREENBRIER STREET TO ELK RIVER,
SECTION 14 EMERGENCY STREAMBANK PROTECTION PROJECT
DESIGN AND CONSTRUCTION PROJECT
KANAWHA COUNTY, WEST VIRGINIA

A RESOLUTION AUTHORIZING PARTICIPATION AND RATIFYING PRIOR PARTICIPATION OF THE CITY OF CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA, WITH THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, FOR THE DESIGN AND CONSTRUCTION OF THE KANAWHA RIVER, GREENBRIER STREET TO ELK RIVER, SECTION 14 EMERGENCY STREAMBANK PROTECTION PROJECT, AND AUTHORIZING THE CITY MANAGER OF THE CITY OF CHARLESTON AND OTHER CITY OF CHARLESTON OFFICIALS, TO ACT FOR AND ON BEHALF OF THE CITY OF CHARLESTON, IN EXECUTING, ACCEPTING, OR OTHERWISE APPROVING ALL DOCUMENTS, AGREEMENTS, INSTRUMENTS, OR OTHER NECESSARY PAPERS REQUIRED BY THE DEPARTMENT OF THE ARMY TO IMPLEMENT SAID PARTICIPATION IN THE PROJECT.

BE IT RESOLVED by the City of Charleston, Kanawha County, West Virginia, that:

Section 1: The City of Charleston authorizes its City Manager, by and through its authorized officers and officials, to participate with the Department of the Army, Corps of Engineers, in the design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, 33 U.S.C. 2214, as amended, which project is located in Kanawha County, West Virginia.

Section 2: The City Manager of the City of Charleston, and other appropriate City of Charleston officials, including the City of Charleston's Attorney, are authorized to execute on behalf of the City of Charleston, Kanawha County, West Virginia, all documents necessary to implement participation by the City of Charleston in the design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, being the design and construction of emergency streambank protection measures in the City of Charleston, Kanawha County, West Virginia, in conjunction with the Department of the Army, Corps of Engineers, including but not limited to the Project Partnership Agreement between the Department of the Army and the City of Charleston, for the design and construction of the Kanawha River, Greenbrier Street

to Elk River, Section 14 Emergency Streambank Protection Project, that provides, among other things, that the City of Charleston shall:

a. Provide without cost to the United States Government all lands, easements, and rights-of-way, including suitable borrow and dredge material disposal areas, all modifications, relocations, and alterations of structures, including but not limited to buildings, utilities, including relocations of on-site underground utilities, roads, bridges, sewers, and water supply facilities, and repair or replacement of all intakes, drains, and appurtenant facilities necessary for the construction, operation, and maintenance of the Project;

b. Hold and save the United States Government free from damages due to the construction, operation, and maintenance of the Project, exclusive of damages due to the fault or negligence of the United States Government or its contractors;

c. Operate, maintain, replace, and rehabilitate the Project upon completion, and as constructed, in accordance with the regulations or directions by the Secretary of the Army and all without cost to the United States Government;

d. Pay its percentage share of total project costs as required by The Water Resources Development Act of 1986, (Public Law 99-662), as amended, and by the Project Partnership Agreement;

e. Prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation and maintenance thereof; AND

f. Comply with the provisions of the Uniform Relocations Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91-646, approved 2 January 1971; and Section 221, Public Law 91-611, approved 31 December 1970, as amended.

Section 3: The City of Charleston hereby approves and ratifies all prior participation and acts of the City of Charleston, by and through its officials, with the Department of the Army, Corps of Engineers, in relationship to said Project.

Section 4: The City Manager of the City of Charleston and other appropriate City of Charleston officials are hereby authorized to purchase, or otherwise acquire from private property owners,

in the name of the City of Charleston, and in accordance with said Agreement, any and all interests in real property necessary for the construction, operation, and maintenance of the property.

Duly passed in accordance with the laws of the State of West Virginia, this _____ day of _____, 20____.

CITY OF CHARLESTON, WEST VIRGINIA

Passed: _____

ATTEST:

APPROVED AS TO LEGAL FORM:

KEVIN BAKER,
Attorney for the
City of Charleston, West Virginia

ATTESTED AND CERTIFIED AS TRUE AND CORRECT:

Notary Public



**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NY 14202-3278**

28 July 2023

SUBJECT: Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, Court Street to Elk River option.

Ben Mishoe, City Manager
Chris Knox, City Engineer
City of Charleston, West Virginia
501 Virginia Street East, Room 101
Post Office Box 2749
Charleston, WV 25330

Dear Ben and Chris:

I'm writing to provide the current status of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project and the necessary steps to re-initiate the project for the Court Street to Elk River option. I'm providing details for the City to make a determination regarding the City's ability to support resumption of the project. Should the City determine it is ready to resume the project, an amendment to the April 2, 2018 Project Partnership Agreement (PPA) will be required.

Current Status

The project has been on hold since May 2022 pending the City's determination of ability to meet the City's cost share requirements and project prioritization. In June 2023, the Headquarters of the US Army Corps of Engineers (USACE) determined that this project may utilize the new authorized federal participation limit of \$10M. The project delivery team conducted an update to the Total Project Cost based on the increased federal participation limit. These costs constitute an estimate of the cost share requirements and assume the project will be re-initiated by October 2023. Further delay beyond October 2023 will require an update to the current working estimate. The remaining City's cost share requirement for the project in order to restart and complete the Court Street to Elk River option is estimated to be \$1,234,550.

Table 1 Project Cost Breakdown

451408 Kanawha River Greenbrier Street CAP 14 - Project Cost Breakdown - \$10M Project Cap			
	<i>Federal</i>	<i>Non-Federal Sponsor</i>	Total Phase Cost
Prior Project Phase Funds Spent (PPA Only- Excludes Feasibility Cost Share)	\$3,004,281	\$1,617,690	\$4,621,970
Re-Start Phase Cost Share: (65% Fed and 35% Non-Fed. Not to exceed \$10M Fed)	\$2,309,450	\$1,243,550	\$3,553,000
Total Cost by Partner	\$5,313,731	\$2,861,240	
Total Project Cost			\$8,174,970

Steps to Re-initiate the Project

To resume the project, an amendment to the PPA will be required. The following details are needed for the amendment:

1. Confirmation that the City of Charleston owns all property between US 60 and the Kanawha River between Court Street and the Elk River (*previously confirmed by Chris Knox via email on 14 June 2022*).
2. Confirmation that the City of Charleston does not intend to provide any in-kind contributions to the cost share (*expressed as not likely by Chris Knox via email on 07 June 2022*).
3. Identification of the funding source the City of Charleston would use for non-federal cost share for the project, including whether any of the funding includes American Rescue Plan Act / State and Local Fiscal Recovery Funds.
4. Identification of the funding source the City of Charleston would use for future operation and maintenance of the project.
5. Copies of all local resolutions or ordinances passed by the City of Charleston related to the project.
6. Name and title of the City of Charleston signing official for a PPA amendment (2018 PPA was signed by the City Manager) and the name and title of the City of Charleston's principal legal officer (2018 PPA was signed by the City Attorney).

I understand the City is working to determine support to move forward with the project, with this process anticipated to take through September 2023. Should the City determine it is ready to move forward with a PPA amendment, and subsequently provide the additional non-federal funds required, the attached schedule provides an

overview of the design and environmental review tasks that would be required prior to construction. Please let me know how I can support you process or if you have any questions on any of the above.

Thank you for your continued partnership.

Sincerely,

Timothy W. Noon

Timothy W. Noon, PMP
Project Manager,
Kanawha River, Greenbrier Street to Elk River,
Section 14 Emergency Streambank Protection
Project

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF CHARLESTON
FOR
DESIGN AND CONSTRUCTION
OF THE
KANAWHA RIVER, GREENBRIER STREET TO ELK RIVER,
SECTION 14 EMERGENCY STREAMBANK PROTECTION PROJECT

THIS AGREEMENT is entered into this 2ND day of APR, 2018, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Huntington District, and the City of Charleston (hereinafter the "Non-Federal Sponsor"), represented by its City Manager.

WITNESSETH, THAT:

WHEREAS, design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project for emergency streambank and shoreline protection (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at City of Charleston, Kanawha County, West Virginia was approved by R. Mark Toy, Brigadier General, USA, Commanding on July 12, 2017 pursuant to the authority contained in Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r; hereinafter "*Section 14*");

WHEREAS, the Secretary of the Army is authorized by Section 14 to allot from certain appropriations an amount not to exceed \$20,000,000 per year for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damages to highways, bridge approaches, and public works, churches, hospitals, schools, and other nonprofit public services; provided that no more than \$5,000,000 shall be allotted for this purpose at any single locality from the appropriations for any one *fiscal year*;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "*Agreement*") for design and construction of the *Project*;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the non-Federal cost share for flood control pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(m));

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement, and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962-56), provides that this Agreement shall be enforceable in the appropriate district court of the United States; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

T6

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean design and construction of an emergency streambank protection project, including slope clearing, derrick stone relocation, placement of mineral filter and stone slope protection, together with random fill replacement and revegetation adjacent to the lower walkway, along the right descending bank of the Kanawha River for approximately 9,567 linear feet between river miles 57.9 and 59.8 in the City of Charleston, Kanawha County, West Virginia, as generally described in the “Final Detailed Project Report and Integrated Environmental Assessment, City of Charleston, Section 14 Emergency Streambank Protection Project, Kanawha County, West Virginia”, dated April, 2017 and approved by R. Mark Toy, Brigadier General, USA, Commanding, on July 12, 2017.

B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s design costs; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government’s engineering and design costs during construction; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIII.A. of this Agreement; the Government’s costs of

historic preservation activities in accordance with Article II.J. of this Agreement; the Government's actual construction costs; the Government's supervision and administration costs; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VI of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article II.J. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XII or Article XIII.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.1., Article II.B.3., and Article II.C.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term "*functional portion of the Project*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Huntington District (hereinafter the "District Engineer") in writing, although the remainder of the *Project* is not complete.

I. The term “*betterment*” shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

K. The term “*Section 14 Project Limit*” shall mean the \$5,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the *Project* as specified in Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r).

L. The term “*Section 14 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual allotment for planning, design, and construction of all projects implemented pursuant to Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r). As of the effective date of this Agreement, such limitation is \$20,000,000.

M. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project* or commence design of the *Project* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter “NEPA”). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government’s own forces

until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Clean Water Act (33 U.S.C. 1341).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute a minimum of 35 percent, but not to exceed 50 percent, of *total project costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article V.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

3. The Non-Federal Sponsor shall provide additional funds in accordance with Article V.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required minimum share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required minimum share: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article as determined in accordance with Article

IV of this Agreement; and (c) the value of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement.

4. The Government, subject to the availability of funds and as limited by the *Section 14 Project Limit* and the *Section 14 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.3. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article II.J. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XII.B. of this Agreement.

2. In accordance with Section 14 of the Flood Control Act of 1946, Public Law 79-526, as amended (33 U.S.C. 701r), the Government's total financial obligations for planning, design, and construction of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with paragraph H. of this Article) shall not exceed the *Section 14 Project Limit*. Notwithstanding any other provision of this

Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article V.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for all projects implemented pursuant to Section 14 has reached the *Section 14 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 14 Annual Program Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article II.J. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 14 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XII.B. of this Agreement.

4. As of the effective date of this Agreement, \$3,082,950 of Federal funds is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

D. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VII of this Agreement.

F. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting, in accordance with Article V.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article V.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

I. In addition to the ongoing, regular discussions of the parties in the delivery of the *Project*, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government’s costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor’s costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared and shall be borne solely by the Non-Federal Sponsor without reimbursement or credit by the Government; and

J. The Government, as it determines necessary, to ensure compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (hereinafter “Section 106”), shall undertake actions or direct the Non-Federal Sponsor to undertake

actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in Section 106. All costs incurred by the Government or the Non-Federal Sponsor for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during the construction and the effects of construction are determined adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and the Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the

Project, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*. Finally, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, or rights-of-way that are part of the tract of land on which the facility or structure to be protected is located, if such tract of land was owned by either the Non-Federal Sponsor or the owner of such facility or structure on the effective date of this Agreement.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation.

a. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto.

b. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts

expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement also shall include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of West Virginia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and

administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article V.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.H.1. of this Agreement subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

ARTICLE V - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$4,743,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$0; the value of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement is projected to be \$1,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. and Article II.B.3. of

this Agreement is projected to be \$1,659,050; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$0; the *non-Federal proportionate share* is projected to be 34.99 percent; the Non-Federal Sponsor's contribution of funds required by Article II.J. of this Agreement is projected to be \$0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By June 30, 2018 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the value of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article II.J. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.B.1., Article II.B.3., Article II.C.2., and Article II.J. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for design of the *Project* or commencement of design of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.1., Article II.B.3., Article II.C.2., and Article II.J. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, Huntington District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction as financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article II.J. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Huntington District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 14 Project Limit* and the *Section 14 Annual Program*

Limit, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. However, the Non-Federal Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.B.1. of this Agreement. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for additional work and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such financial obligations for additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of such financial obligations for additional work to complete the final accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as

applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the Government's total financial obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Huntington District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the Government's total financial obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal laws and regulations as provided in Article X of this Agreement and specific

directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE VIII – HOLD AND SAVE

Subject to the provisions of Article XVII of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in total project costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the

request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE X – APPLICABLE FEDERAL LAWS AND REGULATIONS

In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; and 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act).

ARTICLE XI - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance

with Article II.J. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIII.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIII.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIII.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIII.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIII.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article V.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article XIII.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article V.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1., Article II.B.3., Article II.C.2., and Article II.J. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIII.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; hereinafter "CERCLA"), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and

investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article II.I. of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

City Manager
City of Charleston
501 Virginia Street, East
Post Office Box 2749
Charleston, West Virginia 25330

If to the Government:

District Engineer
Huntington District
Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XV - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City of Charleston, where creating such an obligation would be inconsistent with Article X, Sections 4, 6, and 8 of the Constitution of the State of West Virginia and Chapter 11-8-26 of the Code of the State of West Virginia.

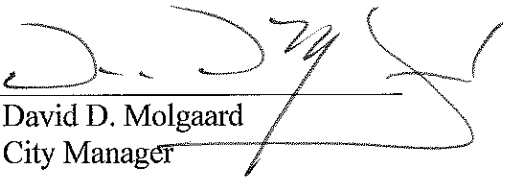
B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year, and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF CHARLESTON

BY: 
Philip M. Secrist, III
Colonel, Corps of Engineers
District Engineer

BY: 
David D. Molgaard
City Manager

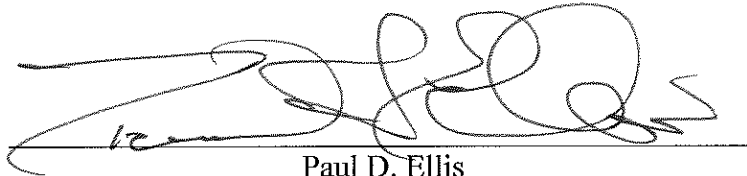
DATE: 2 APR 2018

DATE: 4/2/18

CERTIFICATE OF AUTHORITY

I, PAUL D. ELLIS, do hereby certify that I am the principal legal officer of the City of Charleston, that the City of Charleston is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Charleston in connection with the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Charleston have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
2nd day of April 2018.

A handwritten signature in black ink, appearing to read 'Paul D. Ellis', is written over a horizontal line.

Paul D. Ellis
City Attorney
City of Charleston

CERTIFICATION REGARDING LOBBYING

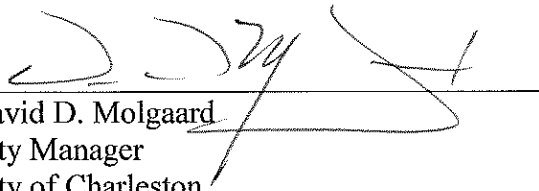
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



David D. Molgaard
City Manager
City of Charleston

DATE: 4/2/18

AMENDMENT NUBER 1
TO THE
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF CHARLESTON, WEST VIRGINIA
FOR THE
KANAWHA RIVER, GREENBRIER STREET TO ELK RIVER,
SECTION 14 EMERGENCY STREAMBANK PROTECTION PROJECT

THIS AMENDMENT NUMBER 1 is entered into this ____ day of _____, 20____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for the Huntington District and the City of Charleston, West Virginia (hereinafter the “Non-Federal Sponsor”), represented by its City Manager.

WITNESSETH, THAT:

WHEREAS, Section 14 of the Flood Control Act of 1946, as amended (33 U.S.C. 701r) (hereinafter “Section 14”), authorizes the Secretary to undertake construction, repair, restoration, and modification of emergency streambank and shoreline protection projects not specifically authorized by Congress to prevent damages to highways, bridge approaches, and public works, churches, hospitals, schools, and other non-profit public services;

WHEREAS, pursuant to the authority provided in Section 14, design and construction of the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project (hereinafter the “Project”, as defined in Article I.A. of this Agreement) was approved by the Division Commander for Great Lakes and Ohio River Division on July 12, 2017;

WHEREAS, the cost-sharing requirements for flood risk management as provided in Section 103 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213), apply to the Project;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 14 may not exceed \$10,000,000; and

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement on April 2, 2018 for design and construction assistance for the Project;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to restart the project, show a change in the project costs, include additional Federal funding, and bring the Agreement in line with the latest model; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

1. Article I of the Agreement is amended to read as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means the design and construction of an emergency streambank protection project, including slope clearing, derrick stone relocation, placement of mineral filter and stone slope protection, together with random fill replacement and revegetation adjacent to the lower walkway, along the right descending bank of the Kanawha River for approximately 9,567 linear feet between river miles 57.9 and 59.8 in the City of Charleston, Kanawha County, West Virginia, as generally described in the “Final Detailed Project Report and Integrated Environmental Assessment, City of Charleston, Section 14 Emergency Streambank Protection Project, Kanawha County, West Virginia”, dated April 2017 and approved by the Division Commander for the Great Lakes and Ohio River Division on July 12, 2017.

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Government’s engineering, design, and construction costs; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any; costs for mitigation, including monitoring and adaptive management, if applicable; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for construction, repair, restoration, relocation, or modification of the facility to be protected; operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

G. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Huntington District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

H. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for Great Lakes and Ohio River Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

I. The term “betterment” means a difference in design or construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

J. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

K. The term “Federal Participation Limit” means the \$10,000,000 limitation on the Government’s financial participation in the planning, design, and construction of the Project.

2. Article II the Agreement is amended to read as follows:

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable

Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Non-Federal Sponsor shall contribute a minimum of 35 percent, up to a maximum of 50 percent, of construction costs, as follows:

1. The Non-Federal Sponsor shall pay 5 percent of construction costs.
2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsor's estimated credits for real property interests, placement area improvements, and relocations will exceed 45 percent of construction costs, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as a part of the Government's cost of construction. Nothing in this provision affects the Non-Federal Sponsor's responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.
3. If providing in-kind contributions as a part of its cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.
4. After determining the amount to meet the 5 percent required by paragraph B.1., above, for the then-current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.2. and B.3., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its minimum 35 percent cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.
5. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and

comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, the District Commander shall so notify the Non-Federal Sponsor in writing within 30 calendar days of such determination, and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. Such activities will generally consist of an annual inspection and monitoring of the stone slope, soil flanks, toe stone, and place fille; maintenance of slope transition, scour features, and outfall stilling; and restriction of unauthorized access and limitation of native species wood vegetation through trimming. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner consistent with the Project's authorized purpose and in accordance with applicable Federal laws and regulations, and the Government's specific directions in the OMRR&R Manual. The Government and the Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor

is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

G. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

H. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the Federal Participation Limit.

I. The Non-Federal Sponsor may request in writing that the Government perform betterments on Non-Federal Sponsor's behalf. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work. In addition, the Non-Federal Sponsor is responsible for providing, at no cost to the Government, any additional real property interests, relocations, and placement area improvements determined by the Government to be required for construction, operation, and maintenance of such work.

J. If, after completing the design portion of the Project, the parties mutually agree in writing not to proceed with construction of the Project, the parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.E.

3. Article III of the Agreement is amended to read as follows:

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS,
AND RELOCATIONS

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests required for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. Prior to initiating acquisition and in accordance with Article IV.A., the Non-Federal Sponsor shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of the Project. Subject to the requirements in Article IV.B., the Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto according to the Government's construction schedule for the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the placement area improvements required for construction, operation, and maintenance of the Project, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements, and provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations required for construction, operation, and maintenance of the Project, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, no later than 30 calendar days after the Government provides the Non-Federal Sponsor with written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the

Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's provision of real property interests, placement area improvements, or performing relocations on the Non-Federal Sponsor's behalf does not alter the Non-Federal Sponsor's responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.

E. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

4. Article IV of the Agreement is amended to read as follows:

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further

Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

5. Article V of the Agreement is amended to read as follows:

**ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA
IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS**

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property

interests, placement area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interests in accordance with paragraph C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. For each real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value. For any real property interests required for in-kind contributions covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor (hereinafter the “In-Kind MOU”), the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the

Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-Federal Sponsor's request, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event that the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, up to a maximum of \$25,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-

Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of placement area improvements required for the Project. Only placement area improvements constructed after the effective date of this Agreement are eligible for credit, unless such placement area improvements were required for in-kind contributions covered by an In-Kind MOU. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any placement area improvements required for the Project. Such costs include actual costs of constructing the improvements; planning, engineering, and design costs; and supervision and administration costs, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind MOU.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of West Virginia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind MOU; or costs that exceed the Government's estimate of the cost for such in-kind contributions.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project or for real property interests that are part of the tract of land on which the facility or structure to be protected is located, if such tract of land was owned by either the Non-Federal Sponsor or the owner of such facility or structure on the effective date of this Agreement.

6. Article VI of the Agreement is amended to read as follows:

ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$8,174,970, with the Government's share of such costs projected to be \$5,313,731 and the Non-Federal Sponsor's share of such costs projected to be \$2,861,240, which includes the 5 percent contribution of funds projected to be \$408,749, creditable real property interests, relocations, and placement area improvements projected to be \$0, creditable in-kind contributions projected to be \$0, and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$2,452,491. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation of the Project are projected to be \$4,810. Costs for betterments

are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, Huntington (H1)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon completion of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, Huntington (H1)" to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.

F. If the Government agrees to acquire or perform, as applicable, real property interests, placement area improvements, relocations, or betterments on the Non-Federal Sponsor's behalf,

the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.E. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

7. Article VII of the Agreement is amended to read as follows:

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to design and construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

8. Article VIII of the Agreement is amended to read as follows:

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

9. Article IX of the Agreement is amended to read as follows:

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

10. Article X of the Agreement is amended to read as follows:

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

11. Article XI of the Agreement is amended to read as follows:

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

12. Article XII of the Agreement is amended to read as follows:

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

City Manager
City of Charleston
501 Virginia Street, East
Post Office Box 2749
Charleston, West Virginia 25330

If to the Government:

District Commander
U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

13. Article XIII of the Agreement is amended to read as follows:

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

14. Article XIV of the Agreement is amended to read as follows:

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

15. Article XV of the Agreement is amended to read as follows:

ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the City of Charleston, where creating such an obligation would be inconsistent with Article X, Sections 4, 6, and 8 of the Constitution of the State of West Virginia and West Virginia Code § 11-8-26. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

16. Articles XVI and XVII of the Agreement are deleted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF CHARLESTON, WEST VIRGINIA

BY: _____

JAYSON H. PUTNAM
Colonel, U.S. Army
District Commander

BY: _____

BENJAMIN MISHOE
City Manager

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Kevin Baker, do hereby certify that I am the principal legal officer for the City of Charleston, that the City of Charleston is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 between the Department of the Army and the City of Charleston in connection with the Kanawha River, Greenbrier Street to Elk River, Section 14 Emergency Streambank Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment on behalf of the City of Charleston acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

KEVIN BAKER
City Attorney
City of Charleston, West Virginia

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

BENJAMIN MISHOE
City Manager

DATE: _____

Resolution No. 909-23

Introduced in Council:

Adopted by Council:

December 4, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 909-23 -

WHEREAS, Resolution Number 868-23 passed by City Council on August 21, 2023, and Resolution Number 853-23 passed by City Council on August 7, 2023, authorized the purchases of three model year 2023 Ford F-150 Pickup Trucks, and

WHEREAS, those orders were not able to be fulfilled with model year 2023 trucks, and the new price for similar 2024 model year trucks has increased, therefore necessitating the need for Council's approval of the increased cost associated with the newer models.

Authorizing the Mayor or City Manager to purchase a new 2024 Ford F-150 truck for the Engineering Department from National Auto Fleet Group, for the amount of \$42,401.28 pursuant to a competitively sourced multi-state contract. This will replace Engineering Department unit 420/503 as part of the fleet rotation schedule.

AND

Authorizing the Mayor or City Manager to purchase two new 2024 Ford F-150 trucks for the Street Department from National Auto Fleet Group, for the amount of \$45,724.68 each, totaling \$91,449.36, pursuant to a competitively sourced multi-state contract. These will replace Street Department units 750/34 and 750/6 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 purchase a new 2024 Ford F-150 truck for the Engineering Department for the amount of \$42,401.28, and is authorized to purchase two new 2024 Ford F-150 trucks for the Street Department for the amount of \$45,724.68 each, all from National Auto Fleet Group pursuant to a competitively sourced multi-state contract. Resolution Numbers 868-23 and 853-23 are hereby rescinded.



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

Replacing City Engineering

420/503

FY 2023-2024

Date: 11/16/2023

To: CITY MANAGER,

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

I request permission to Purchase the same as or equal to 1 New 2024 Ford F-150 (F1L) XL 4wd Reg Cab

Purchase justification: This is a roll-over proposal from the 2023 models. Ford motor Company was
unable to produce the 1 2023 model F-150. The 2024 Models does have an price increase.

If approved, the total purchase price will be: \$42,401.28

(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.

National auto fleet group

Price Quote: \$42,401.28
2.

Price Quote: \$
3.

Price Quote: \$
4.

Price Quote: \$
5.

Price Quote: \$

The apparent low-bid vendor *meeting specifications* is:

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 National Auto Fleet Group because:

These are getting purchased off Sourcewell Contract

091521-NAF

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: Kevin Oxley Department: Equipment Maintenance

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

Funds Approval:  Date: 11/16/2023
Authorized Financial Officer

Account Number: 001-975-00-420-4-459 (Council Change Order of \$4,719.93)

City Manager Approval: _____ Date: _____



National Auto Fleet Group

A Division of Chevrolet of Watsonville
480 Auto Center Drive, Watsonville, CA 95076
(855) 289-6572 • (831) 480-8497 Fax
Fleet@NationalAutoFleetGroup.com

11/14/2023

Quote ID: **26578**

Order Cut Off Date: **TBA**

Mr Kevin Oxley
City of Charleston
PO Box 2749

Charleston, West Virginia, 25330

Dear Kevin Oxley,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

One (1) New/Unused (2024 Ford F-150 (F1L) XL 4WD Reg Cab 6.5' Box 122" WB, Roll-Over Proposal Factory Order) and delivered to your specified location, each for

	One Unit (MSRP)	One Unit	Total % Savings	Total Savings
Contract Price	\$43,580.00	\$42,401.28	2.705 %	\$1,178.72
Roll-Over Proposal Factory Order		\$0.00		
Tax (0.0000 %)		\$0.00		
Tire fee		\$0.00		
Total		\$42,401.28		

- per the attached specifications.

This vehicle(s) is available under the **Sourcewell Contract 091521-NAF** . Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 20 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper
Account Manager
Email: Fleet@NationalAutoFleetGroup.com
Office: (855) 289-6572
Fax: (831) 480-8497

Quoting Department
Account Manager
Fleet@NationalAutoFleetGroup.com
(855) 289-6572



Vehicle Configuration Options

ENGINE	
Code	Description
995	Engine: 5.0L V8, (STD)
TRANSMISSION	
Code	Description
44G	Transmission: Electronic 10-Speed Automatic, (STD)
WHEELS	
Code	Description
64C	Wheels: 17" Silver Steel, (STD)
TIRES	
Code	Description
___	Tires: 265/70R17 BSW A/T, (STD)
PRIMARY PAINT	
Code	Description
YZ	Oxford White
SEAT TYPE	
Code	Description
CS	Black w/Medium Dark Slate, Cloth 40/20/40 Front Seat, -inc: 2-way manual driver/passenger and armrest
ADDITIONAL EQUIPMENT	
Code	Description
153	Front License Plate Bracket, -inc: Standard in states where required by law, optional to all others
OPTION PACKAGE	
Code	Description
101A	Equipment Group 101A Standard

2024 Fleet/Non-Retail Ford F-150 XL 4WD Reg Cab 6.5' Box 122" WB

WINDOW STICKER

2024 Ford F-150 XL 4WD Reg Cab 6.5' Box 122" WB		
CODE	MODEL	MSRP
F1L	2024 Ford F-150 XL 4WD Reg Cab 6.5' Box 122" WB	\$41,585.00
OPTIONS		
995	Engine: 5.0L V8, (STD)	\$0.00
44G	Transmission: Electronic 10-Speed Automatic, (STD)	\$0.00
64C	Wheels: 17" Silver Steel, (STD)	\$0.00
—	Tires: 265/70R17 BSW A/T, (STD)	\$0.00
YZ	Oxford White	\$0.00
CS	Black w/Medium Dark Slate, Cloth 40/20/40 Front Seat, -inc: 2-way manual driver/passenger and armrest	\$0.00
153	Front License Plate Bracket, -inc: Standard in states where required by law, optional to all others	\$0.00
101A	Equipment Group 101A Standard	\$0.00
Please note selected options override standard equipment		
SUBTOTAL		\$41,585.00
Advert/ Adjustments		\$0.00
Manufacturer Destination Charge		\$1,995.00
TOTAL PRICE		\$43,580.00
Est City: 17 (2023) MPG		
Est Highway: 22 (2023) MPG		
Est Highway Cruising Range: 506.00 mi		

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Notes

Standard Equipment

MECHANICAL

Engine: 5.0L V8 -inc: auto start-stop technology (STD)
--

Transmission: Electronic 10-Speed Automatic -inc: SelectShift w/progressive range select and selectable drive modes: normal, ECO, sport, tow/haul, slippery, deep snow/sand and mud/rut (STD)

EXTERIOR

Wheels: 17" Silver Steel (STD)

Tires: 265/70R17 BSW A/T (STD)

AXLE RATIO

Electronic Locking w/3.73 Axle Ratio

ADDITIONAL EQUIPMENT

50 State Emissions System

Electronic Transfer Case

Part-Time Four-Wheel Drive

70-Amp/Hr 610CCA Maintenance-Free Battery w/Run Down Protection

200 Amp Alternator

Class IV Towing Equipment -inc: Hitch and Trailer Sway Control
--

Trailer Wiring Harness

1825# Maximum Payload

GVWR: 6,400 lbs Payload Package

HD Shock Absorbers

Front Anti-Roll Bar

Electric Power-Assist Steering

23 Gal. Fuel Tank

Single Stainless Steel Exhaust

Auto Locking Hubs

Double Wishbone Front Suspension w/Coil Springs

Solid Axle Rear Suspension w/Leaf Springs

4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control and Electric Parking Brake
--

Regular Box Style

Steel Spare Wheel

Full-Size Spare Tire Stored Underbody w/Crankdown

Clearcoat Paint

Black Rear Step Bumper

Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
--

Black Side Windows Trim

Black Door Handles

Black Power Heated Side Mirrors w/Manual Folding
--

Fixed Rear Window

Light Tinted Glass

Variable Intermittent Wipers

Aluminum Panels

Black Grille

Tailgate Rear Cargo Access

Tailgate/Rear Door Lock Included w/Power Door Locks

Integrated Storage
Ford Co-Pilot360 - Autolamp Auto On/Off Aero-Composite Led Low/High Beam Auto High-Beam Daytime Running Lights Preference Setting Headlamps w/Delay-Off
Cargo Lamp w/High Mount Stop Light
Perimeter/Approach Lights
Headlights-Automatic Highbeams
Radio w/Seek-Scan, Clock, Speed Compensated Volume Control and Radio Data System
Radio: AM/FM SiriusXM w/360L -inc: 4 speakers and auxiliary audio input jack
Fixed Antenna
Cloth 40/20/40 Front Seat -inc: 2-way manual driver/passenger and armrest
Driver Seat
Passenger Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Voltmeter, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Trip Odometer and Trip Computer
FordPass Connect 5G Mobile Hotspot Internet Access
Front Cupholder
Compass
Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry and Panic Button
Cruise Control w/Steering Wheel Controls
Manual Air Conditioning
Locking Glove Box
Interior Trim -inc: Cabbage Insulator and Chrome Interior Accents
Full Cloth Headliner
Urethane Gear Shifter Material
Day-Night Rearview Mirror
Passenger Visor Vanity Mirror
Mini Overhead Console w/Storage and 1 12V DC Power Outlet
Front Map Lights
Fade-To-Off Interior Lighting
Full Vinyl/Rubber Floor Covering
Pickup Cargo Box Lights
Smart Device Remote Engine Start
Connected Navigation Integrated Navigation System w/Voice Activation
SYNC 4 w/Enhanced Voice Recognition -inc: 12" LCD capacitive touchscreen w/swipe capability, wireless phone connection, cloud connected, AppLink w/App catalog, 911 Assist, Apple CarPlay and Android Auto compatibility, digital owners manual, conversational voice command recognition and connected navigation, Note: Navigation services require SYNC4 and FordPass Connect (optional on select vehicles), Eligible vehicles receive a complimentary 1-year trial of navigation services that begins on the new vehicle warranty start date, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass App, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply
Instrument Panel Bin, Dashboard Storage, Interior Concealed Storage, Driver And Passenger Door Bins
Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
Power Door Locks w/Autolock Feature
Redundant Digital Speedometer
Trip Computer
Outside Temp Gauge
Digital/Analog Appearance
Seats w/Carpet Back Material
Manual Adjustable Front Head Restraints
Perimeter Alarm

Securilock Anti-Theft Ignition (pats) Immobilizer
1 12V DC Power Outlet
Air Filtration
AdvanceTrac w/Roll Stability Control Electronic Stability Control (ESC) And Roll Stability Control (RSC)
ABS And Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Reverse Sensing System Rear Parking Sensors
BLIS (Blind Spot Information System) Blind Spot
Pre-Collision Assist with Automatic Emergency Braking (AEB)
Lane Keeping Alert Lane Keeping Assist
Lane Keeping Alert Lane Departure Warning
Collision Mitigation-Front
Driver Monitoring-Alert
Collision Mitigation-Rear
Tire Specific Low Tire Pressure Warning
Dual Stage Driver And Passenger Front Airbags
Safety Canopy System Curtain 1st Row Airbags
Airbag Occupancy Sensor
Outboard Front Lap And Shoulder Safety Belts -inc: Height Adjusters and Pretensioners
Ford Co-Pilot360 - Reverse Camera Back-Up Camera



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

Replacing Street Dept.
750/34 and 750/6
FY 2023-2024

Date: 11/16/2023

To: CITY MANAGER,

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

I request permission to Purchase the same as or Equal to 2 New 2024 Ford F-150's (X1L) XL
4wd SuperCab 6.5' bed.

Purchase justification: This is a roll-over proposal from the 2023 Models Ford Motor Company was
unable to produce the two 2023 model F-150's . The 2024 Models does have a price increase.

If approved, the total purchase price will be: \$45,724.68 x 2 = \$91,449.36

(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.	National Auto Fleet Group	Price Quote: \$	45,724.68 x 2= \$91,449.36
2.		Price Quote: \$	
3.		Price Quote: \$	
4.		Price Quote: \$	
5.		Price Quote: \$	

The apparent low-bid vendor *meeting specifications* is: _____

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 National Auto Fleet Group because:

These are getting purchased off Sourcwell Contract

091521-NAF

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: Kevin Oxley Department: Equipment Maintenance
Kevin Oxley

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

Funds Approval: *Gwend* Date: 11/16/2023
Authorized Financial Officer

Account Number: 001-977-00-750-4-459 (Council Change Order of \$3,487.21 each)

City Manager Approval: _____ Date: _____



National Auto Fleet Group

A Division of Chevrolet of Watsonville
490 Auto Center Drive, Watsonville, CA 95076
(855) 289-6572 • (831) 480-8497 Fax
Fleet@NationalAutoFleetGroup.com

11/15/2023

Quote ID: 26647

Order Cut Off Date: TBA

Mr Kevin Oxley
City of Charleston
PO Box 2749

Charleston, West Virginia, 25330

Dear Kevin Oxley,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

Two (2) New/Unused (2024 Ford F-150 (X1L) XL 4WD SuperCab 6.5' Box 145" WB, Roll-Over Proposal Factory Order) and delivered to your specified location, each for

	One Unit (MSRP)	One Unit	Total % Savings	Extended Unit's (2)	Total Savings
Contract Price	\$46,975.00	\$45,724.68	2.662 %	\$91,449.36	\$2,500.64
Roll-Over Proposal Factory Order		\$0.00		\$0.00	
Tax (0.0000 %)		\$0.00		\$0.00	
Tire fee		\$0.00		\$0.00	
Total		\$45,724.68		\$91,449.36	

- per the attached specifications.

This vehicle(s) is available under the **Sourcewell Contract 091521-NAF** . Please reference this Contract number on all purchase orders to National Auto Fleet Group. Payment terms are Net 20 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

Jesse Cooper
Account Manager
Email: Fleet@NationalAutoFleetGroup.com
Office: (855) 289-6572
Fax: (831) 480-8497

Quoting Department
Account Manager
Fleet@NationalAutoFleetGroup.com
(855) 289-6572



Vehicle Configuration Options

ENGINE	
Code	Description
99P	Engine: 2.7L V6 EcoBoost, (STD)
TRANSMISSION	
Code	Description
44G	Transmission: Electronic 10-Speed Automatic, (STD)
WHEELS	
Code	Description
64C	Wheels: 17" Silver Steel, (STD)
TIRES	
Code	Description
	Tires: 265/70R17 BSW A/T, (STD)
PRIMARY PAINT	
Code	Description
YZ	Oxford White
SEAT TYPE	
Code	Description
CS	Black w/Medium Dark Slate, Cloth 40/20/40 Front Seat, -inc: 2-way manual driver/passenger and armrest
AXLE RATIO	
Code	Description
X19	3.55 Axle Ratio, (STD)
ADDITIONAL EQUIPMENT	
Code	Description
153	Front License Plate Bracket, -inc: Standard in states where required by law, optional to all others
OPTION PACKAGE	
Code	Description
101A	Equipment Group 101A Standard

2024 Fleet/Non-Retail Ford F-150 XL 4WD SuperCab 6.5' Box 145" WB

WINDOW STICKER

2024 Ford F-150 XL 4WD SuperCab 6.5' Box 145" WB		
CODE	MODEL	MSRP
X1L	2024 Ford F-150 XL 4WD SuperCab 6.5' Box 145" WB	\$44,980.00
OPTIONS		
99P	Engine: 2.7L V6 EcoBoost, (STD)	\$0.00
44G	Transmission: Electronic 10-Speed Automatic, (STD)	\$0.00
64C	Wheels: 17" Silver Steel, (STD)	\$0.00
---	Tires: 265/70R17 BSW A/T, (STD)	\$0.00
YZ	Oxford White	\$0.00
CS	Black w/Medium Dark Slate, Cloth 40/20/40 Front Seat, -inc: 2-way manual driver/passenger and armrest	\$0.00
X19	3.55 Axle Ratio, (STD)	\$0.00
153	Front License Plate Bracket, -inc: Standard in states where required by law, optional to all others	\$0.00
101A	Equipment Group 101A Standard	\$0.00
Please note selected options override standard equipment		
SUBTOTAL		\$44,980.00
Advert/ Adjustments		\$0.00
Manufacturer Destination Charge		\$1,995.00
TOTAL PRICE		\$46,975.00
Est City: 18 (2023) MPG		
Est Highway: 24 (2023) MPG		
Est Highway Cruising Range: 864.00 mi		

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Notes

Standard Equipment

MECHANICAL

Engine: 2.7L V6 EcoBoost -inc: auto start-stop technology (STD)
Transmission: Electronic 10-Speed Automatic -inc: SelectShift w/progressive range select and selectable drive modes: normal, ECO, sport, tow/haul, slippery, deep snow/sand and mud/rut (STD)
3.55 Axle Ratio (STD)

EXTERIOR

Wheels: 17" Silver Steel (STD)
Tires: 265/70R17 BSW A/T (STD)

ADDITIONAL EQUIPMENT

50 State Emissions System
Electronic Transfer Case
Part-Time Four-Wheel Drive
70-Amp/Hr 610CCA Maintenance-Free Battery w/Run Down Protection
200 Amp Alternator
Class IV Towing Equipment -inc: Hitch and Trailer Sway Control
Trailer Wiring Harness
1725# Maximum Payload
GVWR: 6,480 lbs Payload Package
HD Shock Absorbers
Front Anti-Roll Bar
Electric Power-Assist Steering
Single Stainless Steel Exhaust
36 Gal. Fuel Tank
Auto Locking Hubs
Double Wishbone Front Suspension w/Coil Springs
Solid Axle Rear Suspension w/Leaf Springs
4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control and Electric Parking Brake
Regular Box Style
Steel Spare Wheel
Full-Size Spare Tire Stored Underbody w/Crankdown
Clearcoat Paint
Black Rear Step Bumper
Black Front Bumper w/Black Rub Strip/Fascia Accent and 2 Tow Hooks
Black Side Windows Trim
Black Door Handles
Black Power Heated Side Mirrors w/Manual Folding
Fixed Rear Window
Light Tinted Glass
Variable Intermittent Wipers
Aluminum Panels
Black Grille
Tailgate Rear Cargo Access
Reverse Opening Rear Doors
Tailgate/Rear Door Lock Included w/Power Door Locks
Integrated Storage
Ford Co-Pilot360 - Autolamp Auto On/Off Aero-Composite Led Low/High Beam Auto High-Beam Daytime Running Lights Preference

Setting Headlamps w/Delay-Off
Cargo Lamp w/High Mount Stop Light
Perimeter/Approach Lights
Headlights-Automatic Highbeams
Radio w/Seek-Scan, Clock, Speed Compensated Volume Control and Radio Data System
Radio: AM/FM SiriusXM w/360L -inc: 6 speakers and auxiliary audio input jack
Fixed Antenna
Cloth 40/20/40 Front Seat -inc: 2-way manual driver/passenger and armrest
Driver Seat
Passenger Seat
60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Voltmeter, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp, Trip Odometer and Trip Computer
Power Rear Windows
FordPass Connect 5G Mobile Hotspot Internet Access
Front Cupholder
Rear Cupholder
Compass
Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry and Panic Button
Cruise Control w/Steering Wheel Controls
Manual Air Conditioning
HVAC -inc: Underseat Ducts
Locking Glove Box
Interior Trim -inc: Cabbage Insulator and Chrome Interior Accents
Full Cloth Headliner
Urethane Gear Shifter Material
Day-Night Rearview Mirror
Passenger Visor Vanity Mirror
Mini Overhead Console w/Storage and 1 12V DC Power Outlet
Front Map Lights
Fade-To-Off Interior Lighting
Full Vinyl/Rubber Floor Covering
Pickup Cargo Box Lights
Smart Device Remote Engine Start
Connected Navigation Integrated Navigation System w/Voice Activation
SYNC 4 w/Enhanced Voice Recognition -inc: 12" LCD capacitive touchscreen w/swipe capability, wireless phone connection, cloud connected, AppLink w/App catalog, 911 Assist, Apple CarPlay and Android Auto compatibility, digital owners manual, conversational voice command recognition and connected navigation, Note: Navigation services require SYNC4 and FordPass Connect (optional on select vehicles), Eligible vehicles receive a complimentary 1-year trial of navigation services that begins on the new vehicle warranty start date, Customers must unlock the navigation service trial by activating the eligible vehicle w/a FordPass member account, If not subscribed by the end of the complimentary period, the connected navigation service will terminate, and the system will revert to embedded offline navigation, Connected service and features depend on compatible AT&T network availability, Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features, FordPass App, compatible w/select smartphone platforms, is available via a download, Message and data rates may apply
Instrument Panel Bin, Dashboard Storage, Interior Concealed Storage, Driver / Passenger And Rear Door Bins
Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
Power Door Locks w/Autolock Feature
Redundant Digital Speedometer
Trip Computer
Outside Temp Gauge
Digital/Analog Appearance
Seats w/Cloth Back Material

Manual Adjustable Front Head Restraints and Manual Adjustable Rear Head Restraints
Perimeter Alarm
Securilock Anti-Theft Ignition (pats) Immobilizer
1 12V DC Power Outlet
Air Filtration
AdvanceTrac w/Roll Stability Control Electronic Stability Control (ESC) And Roll Stability Control (RSC)
ABS And Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Reverse Sensing System Rear Parking Sensors
BLIS (Blind Spot Information System) Blind Spot
Pre-Collision Assist with Automatic Emergency Braking (AEB)
Lane Keeping Alert Lane Keeping Assist
Lane Keeping Alert Lane Departure Warning
Collision Mitigation-Front
Driver Monitoring-Alert
Collision Mitigation-Rear
Tire Specific Low Tire Pressure Warning
Dual Stage Driver And Passenger Front Airbags
Airbag Occupancy Sensor
Safety Canopy System Curtain 1st And 2nd Row Airbags
Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point, Height Adjusters and Pretensioners
Ford Co-Pilot360 - Reverse Camera Back-Up Camera

Resolution No. 910-23

Introduced in Council:

Adopted by Council:

December 4, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 910-23 - Authorizing the City Manager to pay Ed's Home and Commercial Improvement an additional amount of \$8,683.50 for decking repair that was needed during the roof repair of the Cato Park Recreation Center and Administrative Building, where the initial authorization in Resolution Number 818-23 was for \$96,782.48, and the new total would be \$105,465.98.

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

That the City Manager is authorized to pay Ed's Home and Commercial Improvement an additional amount of \$8,683.50 for decking repair that was needed during the roof repair of the Cato Park Recreation Center and Administrative Building.

Ed's Home and Commercial Improvement

155 Sawyer Drive, Elkview, WV

(304)965-6636 & (304)421-2942

edshomeandcommercial@yahoo.com

Owner Lawrence Davis

WV License# WV038100

INVOICE#102623

PROJECT: Cato Park Recreation Center

200 Baker Lane

Charleston, WV 25302

Description	Estimated Cost
Decking Repair	
1. Material 21 sheets 20'x3' (1,260 sq. ft.)	1. \$1,123.50
2. Labor (1,260 sq. ft.) @ \$6/sq. ft.	2. \$7,560.00
Total Due	\$8,683.50



Charleston Fire Department

808 Virginia Street, West
Charleston, West Virginia 25302
Telephone: (304) 348-8137



Craig A. Matthews
Fire Chief

Amy Shuler Goodwin
Mayor

20-November-2023

Mrs. Maria Church
Director of Human Resources
City of Charleston
501 Virginia St., East
Charleston, WV 25301

Mrs. Church,

Greetings, as per your instructions, an election was held to select the three (3) uniformed members of the Charleston Fire Department to be appointed to the newly created Sick Pool Committee. The election was conducted on the days of November 15th -17th and monitored by my civilian administrative staff. The following results were tabulated:

Lt. Corey Dean (Employee # 4505)	30 votes
Captain Justin Alford (Employee # 4844)	26 votes
Lt. Eric Abilmona (Employee # 4996)	22 Votes
Lt. Jonathan Mitchell	20 Votes

From these results, Lt. Dean will serve a three-year term (2026), Captain Alford will serve a two-year term (2025) and Lt. Abilmona shall serve a one-year term (2024) on the Sick Pool Committee. The next Sick Pool Committee election will be held November 20th-22nd, 2024.

As Fire Chief, I serve on the Sick Pool Committee or can designate a member to serve in my stead. At this time, I would like to appoint Assistant Chief Joesph Bernard (Employee # 2539) to serve on the Sick Pool Committee as my designee. He shall serve in this position until such time as I appoint a qualified successor.

If you have any questions, please contact me at your convenience.

Respectively Submitted,

A handwritten signature in blue ink, appearing to read "C. A. Matthews".

Craig A. Matthews
Fire Chief