AGENDA
FINANCE COMMITTEE MEETING
Monday, November 5, 2018
6:45 PM

I. RESOLUTIONS:

a. Resolution No. 129-18 – Budget Amendment No. 4 – Fiscal year 2018-2019 (General Fund)

b. Resolution No. 130-18 – Authorizing Potesta & Associates, Inc. to provide a subsurface exploration associated with a slope failure near a City storm sewer located at 654 Gordon Drive

c. Resolution No. 131-18 - Authorizing the Mayor or City Manager to receive and administer $39,100 from the WV Division of Justice and Community Services Victims of Crime Act (VOCA) grant program to reimburse partial salary for the Charleston Police Department's Crime Victims Advocate, travel and training.

d. Resolution No. 132-18- Ratifying an MOU between the Chief of Police and the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

e. Resolution No. 133-18 - Agreement for purchase and delivery of natural gas to City sites

f. Resolution No. 134-18 - A Resolution granting the Foxchase Homeowner's Association Right-of-Way Privileges for installing and maintaining private road signs within the Foxchase subdivision

g. Resolution No. 135-18 - Authorizing the First Amendment to Landfill Gas Lease between the City of Charleston and Tallarico Energy, LLC

h. Resolution No. 136-18 – Authorizing an amendment to extend the Operating Agreement with West Virginia Waste Services for the City of Charleston Solid Waste Facility

i. ~~Resolution No. 137-18 - Authorizing the Chief of Police and the Fire Chief to enter into a Memorandum of Understanding with the Charleston Area Medical Center, Inc. issuance of CAMC security badges to Police and Fire Department personnel for use when responding to emergencies in CAMC owned hospitals~~ REMOVED

j. Resolution No. 138-18 - A Resolution releasing the reversionary interest contained in the 2016 Equipment Transfer/Donation Agreement between the City of Charleston and the City of Clendenin related to a 2006 International Dump Truck

k. Resolution No. 139-18 – Authorizing the Mayor or City Manager to enter into an Agreement with the Kanawha-Charleston Humane Association for housing and sheltering animals that are taken into possession by the City of Charleston

II. BIDS/PURCHASES:

a. A bid submitted by Demaree Inflatable Boats, INC in the amount of $31,250, for purchase of an Inflatable Rescue Boat to be used by the Charleston Fire Department.

b. Authorizing Change Order #1 for purchase of Fiber Switches for the I.S. Department in the amount of $ 19,472.94.

General Fund FY 2018-2019 Budget Amendment No. 4 - November 5, 2018

Account No.	Department	Account Description	Amount
001 436 00 000 2 230	Building Commission	Contract Services	7,088
001 700 01 000 5 568	Police - Civilian	Other Contributions	24,000
001 297 0	Unassigned Fund Balance		**(31,088)**

Unassigned Fund Balance - Allocation of unassigned fund balance.

001 369 08 0000	Revenue	Trf-In from Fund 207	(9,978)
001 369 09 0000	Revenue	Trf-In from Fund 218	(3,081)
001 900 00 000 3 341	Parks & Recreation	Material & Supplies	13,059

To transfer balances in Fund 207 and Fund 218 in accordance with Resolution 117-18 passed by Council on October 1, 2018.

001 700 00 000 3 341	Police - Uniform	Material & Supplies	4,740
001 700 00 000 2 217	" "	Maintenance & Repair - Vehicles	(4,740)

To re-allocate existing budget funds to purchase twelve (12) push bars for installation on police cruisers to reduce or eliminate body damage, resulting in savings on repairs.

Resolution No. 129-18

Introduced in Council

November 5,2018

Passed by Council

Introduced by
Robert Reishman

Referred from
Finance Committee

Resolution No. 129-18: Authorizing approval of the FY 2018- 2019 General Fund Budget as indicated on the attached list of accounts.

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

That the FY 2018- 2019 General Fund Budget as indicated on the attached list of accounts.

Resolution No. 130-18

Introduced in Council

November 5,2018

Passed by Council

Introduced by
Robert Reishman

Referred from
Finance Committee

Resolution No. 501-14: Authorizing the Mayor or City Manager to enter into an agreement with Potesta & Associates in the amount of $ 17,000 for firm the to provide a subsurface exploration associated with a slope failure near a City storm sewer located at 654 Gordon Drive.

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

That the Mayor or City Manager is hereby authorized and directed to enter into an agreement with Potesta & Associates in the amount of $ 17,000 for firm the to provide a subsurface exploration associated with a slope failure near a City storm sewer located at 654 Gordon Drive.

VIA EMAIL ONLY

October 26, 2018

Mr. Aaron Morris, P.E.
Assistant City Engineer
City of Charleston
114 Dickinson Street
Charleston, West Virginia 25301

RE: Proposal for Civil Engineering Services
Turley Residence Landslide
654 Gordon Drive
Charleston, West Virginia
Project No. 0101-18-0375

Dear Mr. Morris:

Potesta & Associates, Inc. (POTESTA) is pleased to submit this proposal to complete a subsurface exploration associated with a section of failed slope situated in the backyard of the Turley's residence located at 654 Gordon Drive in Charleston, West Virginia. The southern edge of the landslide extends across the Turley property and onto an adjacent tract which is referred to as the Hayne's residence located at 652 Gordon Drive in Charleston, West Virginia. POTESTA understands there has been substantial ground movement behind the residences. The following proposal and associated cost estimate has been prepared by POTESTA following an October 2018 site visit which included Messrs. Chris Grose and Peter Potesta of POTESTA and Mr. Aaron Morris of the City of Charleston (COC). POTESTA understands that a contact has been made with the northern adjacent property owner at 656 Gordon Drive which is referred to as the Eden's residence, and they have granted verbal approval to access the slide area from their property.

POTESTA's scope of services for this proposal will include a detailed field reconnaissance of the affected area within and surrounding the current landslide. This visit will be conducted with a local contractor, K&N Construction, Inc. (K&N) of Elkview, West Virginia. During this site visit, POTESTA will document existing site utilities, as well as discuss site access and an approach to repairing the landslide with the contractor. The results from this site visit, including the general approach to repair the failed slope, will be presented to the COC in a written letter including a preliminary cost estimate with the contractor's fees and expenses, as well as POTESTA's consulting fees to provide construction observation and testing services during the work. General site details will be presented as attachments to this letter including toe key/buttress details, underdrains, bond benching details, etc. The following section serves to provide a detailed explanation of each of the tasks involved in the project scope of services.

SCOPE OF SERVICES

The following narrative serves to present POTESTA's understanding of the scope of services for this project.

Task 1 – Initial Site Visit and Meeting with Repair Contractor

POTESTA proposes to conduct a site reconnaissance visit with K&N to review the current extent of the slope failure, observe the current location of service utilities in the area of the required work, and to conduct a location survey of the landslide area. The survey will include general site topographic elevations within the landslide which will be utilized to create a cross section through the slide area to evaluate the long-term stability of the regraded slope and repair. Following this meeting, a summary of the approach and observed field conditions will be prepared and submitted to the COC. This letter will include an estimated construction cost prepared by the contractor to complete the stabilization of the failed slope. POTESTA has assumed that the COC will negotiate and enter into a separate contract for the construction repairs with the contractor. This proposal for civil engineering services does not include cost for preparing bid documentation and/or bid meetings.

Task 2 – Stability Evaluation and Letter Report

Following the survey effort and field reconnaissance visit, POTESTA will evaluate and reduce the data collected to result in the preparation of a cross section through the center of the failed soil mass. This section will be utilized to evaluate the long-term stability of the slope repair considering the installation of a rock toe key near the slope toe, installation of a rock toe buttress, and reconstruction of the slope using bond benches, underdrains, and compacted structural fill.

The results obtained from the stability evaluation will be summarized and presented in a written letter report which will include the generated factors of safety and general details related to the various details of the required stabilization construction effort. Following preparation of the letter report, POTESTA will meet with the contractor to discuss the project and findings allowing the contractor to finalize a construction estimate for the work.

Task 3 – Construction Observation Services and Materials Testing

This task will include the consultant costs and expenses required to conduct regular (not full time) construction observation and material's testing services in support of the contractor's repair work. This work will include site visits to observe the contractor's work, conduct in-place field density testing of the fill material as required, and document the completed work efforts on POTESTA's daily field activity log forms. POTESTA's estimated expenses and fees for this task are based on the assumption that the contractor's work effort will require 4 weeks with POTESTA's construction technician being onsite 20 hours per week.

SCHEDULE AND COST

We anticipate completion of the surveying and stability analysis two weeks after receiving a notice to proceed with the work. POTESTA will keep the COC informed regarding any delays. The following breakdown indicates POTESTA's estimated cost to complete the aforementioned scope of services:

Task Description	**Cost**	
Task 1 – Initial Site Visit and Meeting with Repair Contractor	$	3,660
Task 2 – Stability Evaluation and Letter Report	$	3,860
Task 3 - Construction Observation Services and Materials Testing	$	9,480
Total Cost:	***$***	***17,000***

This estimate represents an estimated not-to-exceed cost to complete the scope of services as described in this proposal. The services associated with this project will be completed on a time-and-materials basis, and you will only be invoiced for the work completed. POTESTA will invoice in accordance with the attached rate schedule.

The estimated costs presented in this proposal for the associated scope of services are based upon the use of POTESTA's standard billing invoice format (example attached). There is no cost for this invoice format. Staff efforts to generate all other invoice formats will be charged to the project budget at the billing rate of the individuals preparing such specialized invoices. The cost of such specialized invoices is in addition to the estimated project costs provided in this proposal and, therefore, constitutes a change in the scope of services presented herein. Please complete the invoice routing information below to include the name and address to whom the invoice should be sent and any individuals that should receive copies.

CLOSING

POTESTA is prepared to commence with this project upon receipt of the authorization to proceed. Services by POTESTA on this project will be completed in accordance with the enclosed standard terms and conditions, which are considered part of this proposal. Please indicate your acceptance by signing in the space provided at the bottom of this proposal and returning one copy to serve as our notice to proceed on this project. This will serve as formal approval and notice to proceed on the project.

Sincerely,

POTESTA & ASSOCIATES, INC.

Chris A. Grose
Senior Engineering Associate I

CAG:RAB/clr

Enclosures

AUTHORIZATION (Signature Required to Proceed)	
Signature	Date

POTESTA Invoice Routing Information (Client to Complete)	
Name:	Title:
Mailing Address:	
Telephone:	Email:
Copies to:	
❑ Check here if invoice addressee/address is same as proposal.	

Project No. 0101-18-0375

POTESTA

INVOICE

POTESTA

POTESTA & ASSOCIATES, INC. - Engineers and Environmental Consultants
7012 MacCorkle Avenue, S. E., Charleston, West Virginia 25304 - (304) 342-1400; FEIN 31-1509066

XYZ
123 MAIN STREET
ANY TOWN, USA 22222-1111

Invoice number 39278
Date 5/15/2012

STANDARD FORMAT - SAMPLE INVOICE

Project: 0102-11-0523
XYZ - SITE TANK

Client ID: AAAA-1

AFE# 2012-0118F

PROJECT DESCRIPTION: Preparation of landslide stabilization design drawings, bid documents, conducting Pre-Bid meeting, etc.

Invoice for services rendered April 8, 2012 thru May 5, 2012

Labor

Employee Type	Hours	Rate	Amount
Principal	3.75	195.00	731.25
Three-Man Survey Crew	32.00	150.00	4,800.00
Senior Engineer	1.00	135.00	135.00
	32.00	130.00	4,160.00
Staff Scientist	2.75	90.00	247.50
Professional Surveyor	18.00	85.00	1,530.00
Senior Cadd Designer	3.00	85.00	255.00
Engineer	164.00	75.00	12,300.00
Clerical Support	2.50	70.00	175.00
Scientist	1.50	45.00	67.50
Labor subtotal	260.50		24,401.25

Reimbursable

Activity	Units	Unit of Measure	Rate	Amount
Lodging	14.00	night	90.00	1,260.00
Per Diem Per Night	14.00	Night	35.00	490.00
Reimbursable subtotal				1,750.00

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Charleston, West Virginia • Morgantown, West Virginia • Winchester, Virginia

Please pay from this invoice. Interest charged at 1.5% per month on past due invoices.

INVOICE

POTESTA

POTESTA & ASSOCIATES, INC. - Engineers and Environmental Consultants

7012 MacCorkle Avenue, S. E., Charleston, West Virginia 25304 - (304) 342-1400; FEIN 31-1509066

STANDARD FORMAT - SAMPLE INVOICE

XYZ
123 MAIN STREET
ANY TOWN, USA 22222-1111

Invoice number 39278
Date 5/15/2012

Project: 0102-11-0523
XYZ - SITE TANK

Client ID: AAAA-1

Subconsultant

Activity / Vendor	Invoice number	Date	Amount
Other Services			
ABC Subcontracting	12-232	4/16/2012	5,545.46
augering, rock coring			
Other Services subtotal			5,545.46
Subconsultant subtotal			5,545.46

Other

Activity	Units	Unit of Measure	Rate	Amount
Vehicles -Truck/Van/SUV w fuel *008436*	20.75	Day	175.00	3,631.25
Other subtotal				3,631.25

Equipment

Activity	Units	Unit of Measure	Rate	Amount
Nuclear Gauge day *008484*	6.00	Day	50.00	300.00
Equipment subtotal				300.00
Invoice total				35,627.96

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Charleston, West Virginia • Morgantown, West Virginia • Winchester, Virginia

Please pay from this invoice. Interest charged at 1.5% per month on past due invoices.

STANDARD TERMS AND CONDITIONS

1. Potesta & Associates, Inc., hereinafter referred to as POTESTA, is an Equal Opportunity Employer and is in compliance with the Drug-Free Workplace Act of 1988 and governmental requirements relating to Right-To-Know regulations. The engineering and consulting services of POTESTA will be performed on an hourly basis for all time rendered to the project, unless the project is quoted for a lump sum, including project scoping by professional, technical, and clerical personnel in accordance with the attached hourly rate schedule. All invoice charges are based on and are payable in U.S. dollars.

2. Services performed by POTESTA under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

3. Unless stated otherwise, any cost estimate presented in the attached proposal is for budgetary purposes only and is not a fixed lump-sum price. The actual cost of POTESTA's engineering and consulting services and all expenses may be less than that estimated; accordingly, only the cost incurred will be invoiced. If at any time during the progress of the work it appears that the estimated cost will be exceeded, Client will be informed immediately. However, unless written notification is received to stop work, POTESTA will continue working on the project to completion and will invoice Client for all engineering and consulting services and expenses incurred.

4. These terms are subject to and incorporate the provisions of POTESTA's attached proposal. In the event of any conflict, the terms of the accompanying proposal shall govern.

5. Invoices will be submitted periodically as required (but not more frequently than every two (2) weeks) unless charges for such periods are minimal, in which event an invoice will be submitted when total charges exceed $500.00, or when the work is completed, whichever occurs first. Invoices are due and payable within 30 days from the date of invoice. All delinquent charges are subject to a service charge of 1½ percent per month or a fraction thereof. Should Client fail to pay any invoice within 45 days of its date, POTESTA may, upon 3 days' written notice to Client, stop work and recover from Client payment for all work executed. ***Clients requiring specific invoice formats or accounting backup (copies of timesheets, copies of receipts or invoice support data, etc.) will be invoiced for those associated costs; these costs are not included in our proposal and will be invoiced in addition to the approved proposal costs.***

6. Client agrees to limit POTESTA's liability to Client and to all construction contractors and subcontractors on the project due to POTESTA's professional negligent acts, errors, or omissions, such that the ***total aggregate liability of POTESTA to all those named shall not exceed $50,000 or POTESTA's total fee*** for all expenses and services rendered on this project, whichever is greater.

7. Time required for POTESTA personnel to travel between POTESTA's office and the site (or other destination applicable to the project) is charged in accordance with the attached hourly rate schedule.

8. POTESTA expenses shall be charged according to the attached Field Supply and Equipment Rate Sheet. External expenses, such as airfare, subcontracted services, etc., shall be charged at direct cost (including taxes) plus a twelve percent (12%) surcharge to the project. A per diem (daily food allowance) of $35.00 per day will be charged for all personnel required by the work to remain away from their normal residence. For those working out of the office area, but not spending the night, an allowance for lunch ($6.50 maximum) and, if arriving back after 7:30 p.m., for dinner ($17.50 maximum) may be charged. Lodging will be charged at $90.00/night, except in limited availability areas where it will be charged at direct cost plus a twelve percent (12%) surcharge.

9. Specialized equipment purchased with Client's approval specifically for the project will become Client's property upon completion of the work. The purchase price and maintenance cost of such equipment shall be charged to Client at cost plus twelve percent (12%).

10. Client acknowledges that POTESTA's reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, permit applications and other similar documents are instruments of professional service, not products. Although ownership of such documents normally is retained by POTESTA, they nonetheless shall, in this instance, become the property of Client upon Client's payment in full of all POTESTA invoices. Client recognizes that no such documents should be subject to unauthorized reuse; that is, reuse without written authorization of POTESTA to do so. Such authorization is essential because it requires POTESTA to evaluate the documents' applicability given new circumstances, not the least of which is passage of time. Accordingly, in return for POTESTA's relinquishment of ownership, Client agrees to waive any claim against POTESTA and defend, indemnify and hold POTESTA harmless from any claim or liability for injury or loss allegedly arising from unauthorized reuse of POTESTA's instruments of service. Client further agrees to compensate POTESTA for any time spent or expenses incurred by POTESTA in defense of any such claim, in accordance with POTESTA's prevailing fee schedule and expense reimbursement policy. Client agrees that POTESTA may retain one set of documents for their files and use.

11. Client recognizes that conclusions regarding the assessed condition(s) of the site do not necessarily represent a warranty that all portions of the site are of the same quality. Specific

conditions may not be observable or readily interpreted from available documents, but may become evident at a later date. POTESTA will be responsible for data it collects, its interpretations and recommendations, but shall not be responsible for the interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by POTESTA are based solely on the information available from such borings, surveys and explorations.

12. Client recognizes that unanticipated or changed conditions may be encountered during construction. Client agrees to retain POTESTA to observe construction, and POTESTA agrees to assign qualified persons to observe and report on the quality of work performed by contractors, et al. Client recognizes that construction observation is a technique employed to minimize the risk of problems arising during construction. Provision of construction observation by POTESTA is not insurance, nor does it constitute a warranty or guarantee of any type. In all cases, contractors, et al. shall retain responsibility for the quality of their work and for adhering to plans and specifications. Should Client for any reason not retain POTESTA to observe construction, or should Client unduly restrict POTESTA's assignment of personnel to observe construction, or should POTESTA for any reason not perform construction observation during the full period of construction, it shall be deemed that POTESTA shall not have had the ability to perform a complete service. Should POTESTA for any reason not have the ability to perform a complete service, Client waives any claim against POTESTA, and agrees to indemnify, defend and hold POTESTA harmless from any claim or liability for injury or loss arising from problems during construction that allegedly result from findings, conclusions, recommendations, plans or specifications developed by POTESTA. Client also agrees to compensate POTESTA for any time spent and expenses incurred by POTESTA in defense of any such claim, with such compensation to be based upon POTESTA's prevailing fee schedule and expense reimbursement policy.

13. The responsibility of POTESTA's field representative(s) is to make observations and conduct field tests. This work does not include supervision or direction of the work of the contractor, his employees, or agents. The contractor should be so advised. The contractor should also be advised that neither the presence of POTESTA's field representative nor the observation and testing by POTESTA shall excuse him in any way for defects discovered in his work. Any review and/or observation of the contractor's performance by POTESTA does not include the contractor's safety measures on or near the construction site. The contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Unless specifically stated in POTESTA's proposal, construction review and/or observation is not included in the scope of services. As indicated in item 12 above, POTESTA should be allowed to perform construction observation services; a separate proposal will be prepared after construction documents are available.

14. Soil, rock, water and/or other samples obtained from the project site are the property of Client. POTESTA will preserve such samples for no longer than ninety (90) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing. Further storage or transfer of samples will be made at Client's expense. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from POTESTA's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which POTESTA is exposed, Client agrees to waive any claim against POTESTA, and to defend, indemnify and hold POTESTA harmless from any claim or liability for injury or loss arising from POTESTA's containing, labeling, transporting, testing, storing or other handling of contaminated samples. Client also agrees to compensate POTESTA for any time spent and expenses incurred by POTESTA in defense of any such claim, with such compensation to be based upon POTESTA's prevailing fee schedule and expense reimbursement policy.

15. Unless otherwise agreed, Client or Owner will furnish right-of-entry on the land and/or facilities for POTESTA to make the planned borings and other explorations and perform necessary sampling. POTESTA will take reasonable precautions to minimize damage to said land or facilities from use of POTESTA's equipment and operations. If Client or Owner desires POTESTA to restore the land or facilities to their former condition, this will be accomplished at the expense of the Client or Owner.

16. In the execution of Client's work, POTESTA will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. The Client and Owner agree to hold POTESTA harmless for any damages to subterranean structures or utilities which are not called to POTESTA's attention, or are not correctly shown on the plans furnished.

17. Client agrees to advise POTESTA about the presence of any known hazardous substances or any known condition(s) existing in, on, or near the site presenting a potential danger to human health or the environment. If during performance of services, any unforeseen hazardous substances or other unforeseen conditions or occurrences, in, on, or near the site presenting a potential danger to human health or the environment are encountered which, in the judgment of POTESTA, significantly affect or may affect the services or the recommended scope of services, POTESTA will promptly notify Client thereof. Subsequent to that notification, Client and POTESTA agree to pursue one of the following options:

    a. If practicable, in the judgment of POTESTA, the original scope of services will be completed in accordance with the procedures originally intended in POTESTA's proposal for services.

b. The scope of services will be modified and the estimate of charges revised to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated therein.

c. The services for the work in POTESTA's proposal will be terminated, effective on the date specified in writing by POTESTA, and POTESTA shall recover any extra charges associated with the previously unforeseen conditions or occurrences, as well as any charges up to such date for the originally proposed services.

18. Neither the Client nor POTESTA may delegate, assign, sublet or transfer their duties or interest, as described in the Standard Terms and Conditions and accompanying proposal, without the written consent of the other party. Unless stated otherwise, POTESTA's proposal is firm for 90 days.

19. In the event that a dispute should arise relating to the performance of the services to be provided under the Standard Terms and Conditions and the proposal, it is agreed that the dispute shall be mediated. Should mediation fail and litigation result, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, including staff time, court costs, attorney's fees, and other claim-related expenses.

20. The law of the State of West Virginia will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement. All legal proceedings shall be filed in Kanawha County, West Virginia.

21. POTESTA may submit to Client an opinion of the probable cost required to construct work. POTESTA is not a construction cost estimator or construction contractor, nor should POTESTA's rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. POTESTA's opinion will be based solely upon their own experience with construction. This requires POTESTA to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which POTESTA has no control. Given the assumptions which must be made, POTESTA cannot guarantee the accuracy of their opinions of cost, and—in recognition of that fact—Client waives any claim against POTESTA relative to the accuracy of POTESTA's opinion of probable cost.

22. Client or POTESTA may terminate this Agreement upon fourteen (14) days' written notice to the other for reasons included in the notice. In the event such termination becomes necessary, the party effecting termination shall so notify the other party in writing, and termination will become effective fourteen (14) calendar days after receipt of the termination

notice. Irrespective of which party shall effect termination or the cause therefore, Client shall within thirty (30) calendar days of termination remunerate POTESTA for services rendered and costs incurred, in accordance with POTESTA's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination, as well as those associated with termination itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, decontaminating and/or disposing of equipment, disposal and replacement of contaminated consumables, and so on.

23. Client shall not be liable to POTESTA and POTESTA shall not be liable to Client for any consequential damages incurred by either due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client or POTESTA, their employees, agents or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

24. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and POTESTA shall survive the completion of the services hereunder and the termination of this Agreement.

25. POTESTA shall indicate to Client the information needed for rendering of services hereunder, and Client shall provide to POTESTA such information as is available to Client. Client recognizes that it is not possible for POTESTA to assure the sufficiency of such information, either because it is not possible to do so, or because of errors or omissions which may have occurred in assembling the information. Accordingly, Client waives any claim against POTESTA, and agrees to defend, indemnify and hold POTESTA harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to POTESTA by Client. Further, Client agrees to compensate POTESTA for any time spent or expenses incurred by POTESTA in defense of any such claim, with such compensation to be based upon POTESTA's prevailing fee schedule and expense reimbursement policy.

26. This Agreement shall not create any rights or benefits to parties other than Client or Consultant. No third-party shall have the right to rely on Consultant's opinions rendered in connection with Consultant's services without Consultant's written consent and the third-party's agreement to be bound to the same terms and conditions as Client.

27. If, for any reason, any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

New

28. For engagements that we accept for other than regular clients, our normal practice is to require a retainer or security deposit in advance of our performing any significant services. On occasion, such a deposit is required at a later time due to payment irregularities. The engagement letter will state whether an advance has been required before undertaking a particular representation.

29. POTESTA will not have any obligation to issue a report or other document, or communicate our research, analyses, or conclusions, and will not have any obligation to appear for or provide written or oral testimony or evidence at trial, deposition or elsewhere, until Client's account is paid in full. POTESTA will have no liability to the Client, or any other person, by reason of not issuing a report, appearing for, and/or providing testimony or other evidence because of the Client's failure to pay all amounts due POTESTA, and the Client agrees to indemnify POTESTA against any such liability.

POTESTA & ASSOCIATES, INC.

2018 RATE SCHEDULE

Principal	$245/hour
Chief Engineer/Scientist	$120 - $225/hour
Senior Engineer/Scientist	$75 - $180/hour
Staff Engineer/Scientist	$50 - $115/hour
Engineer/Scientist	$45 - $90/hour
Professional Surveyor	$70 - $125/hour
Senior Technician	$45 - $90/hour
Technician	$30 - $55/hour
Two-Man Survey Crew	$110/hour
Three-Man Survey Crew	$150/hour
Senior CADD Designer	$60 - $100/hour
CADD Designer	$40 - $80/hour
Clerical Support	$40 - $90/hour

(Any changes in hourly rates will be made on January 1 of each year.)

NOTE: Engineer/Scientist includes engineer, scientist, technical designers, engineering associates, planners, health and safety specialists, and information technologists.

Rev. 12/22/17

POTESTA & ASSOCIATES, INC.
FIELD EQUIPMENT RENTAL RATE SHEET

Description	Rate		
	Per Unit	Day	Week[1]
1-Point Proctor Kit	N/A	$20.00	$75.00
12' Motorized Boat (includes fuel)	N/A	$300.00	$700.00
16' Motorized Boat (includes fuel)	N/A	$500.00	$2,000.00
2" Soak Ease Absorbent Tubes	$11.00	N/A	N/A
22"x34" Internal Plots	$0.75	N/A	N/A
24"x36" Ammonia Mylar	$2.50	N/A	N/A
24"x36" Internal Plots	$0.75	N/A	N/A
30"x42" Internal Plots	$1.15	N/A	N/A
36"x48" Internal Plots	$2.10	N/A	N/A
4" Soak Ease Absorbent Tubes	$12.50	N/A	N/A
4-Gas Meter	N/A	$75.00	$250.00
Air Meter (Concrete)	N/A	$10.00	N/A
Air Purifying Respirator with Cartridges	N/A	$25.00	N/A
Air Velocity Meter	N/A	$50.00	$150.00
Asbestos Sampling Equipment	N/A	$20.00	$60.00
Bomb Water Sampler	N/A	$25.00	$75.00
Camcorder	N/A	$50.00	$200.00
Chlorine Meter	N/A	$25.00	$75.00
Company Vehicles - Car (includes fuel)	N/A	$155.00	$620.00
Company Vehicles - Truck/Van/SUV (includes fuel)	N/A	$175.00	$765.00
Company Vehicles - Truck/Van/SUV (includes fuel) with Trailer	N/A	$205.00	$1,025.00
Concrete Testing Equipment (slump, cone, temp., wheelbarrow-excludes air meter)	N/A	$25.00	N/A
Cone Penetrometer	N/A	$75.00	N/A
CORMIX/CorHyd Software Utilization (per run)	$100.00	N/A	N/A
Data Loggers (DO Study)	$150.00	N/A	N/A
Depth and Velocity Flow Meter	N/A	$80.00	N/A
Digital Camera	N/A	$10.00	N/A
Disposable Camera with Double Prints	$30.00	N/A	N/A
Dissolved Oxygen Loggers (Reader)	N/A	$50.00	N/A
DO Meter	N/A	$25.00	$75.00
DO Meter with Stirrer	N/A	$50.00	$100.00
Dredge Sampler	N/A	$25.00	$75.00
Electro Fishing Equipment	N/A	$100.00	$350.00
Field Data Interface Unit	N/A	$20.00	N/A
Fish Rearing (per Tank)	N/A	$5.00	N/A
Flow Cell for YSI	N/A	$20.00	$50.00
Flow Meter	N/A	$50.00	$150.00
Generator	N/A	$30.00	$120.00
Global Positioning System (GeoExplorer 3)	N/A	$50.00	$150.00
Hach Hydrometer	N/A	$85.00	N/A
Hand Auger	N/A	$10.00	$30.00
Handheld GPS	N/A	$30.00	N/A

Description	Rate		
	Per Unit	Day	Week[1]
Hydrolab Multi-Meter	N/A	$100.00	N/A
Inclinometer	N/A	$500.00	N/A
Interface Probe	N/A	$55.00	$120.00
Internal Color Copies	$1.00	N/A	N/A
Kemmerer Water Sampler	N/A	$25.00	$75.00
Laser Range Finder	N/A	$20.00	N/A
Level Loggers	N/A	$50.00	$200.00
Level Loggers (Reader)	N/A	$50.00	N/A
Lodging	N/A	$90.00	N/A
Microscopic Evaluation Laboratory Supplies	$5.00	N/A	N/A
Nets/Seins Sampler/Miscellaneous Equipment	N/A	$15.00	$45.00
Nuclear Gauge	N/A	$50.00	$150.00
Opacity Kit	N/A	$10.00	N/A
Other	Cost + 12%	Cost + 12%	N/A
Other Boat Rental	Cost + 12%	Cost + 12%	Cost + 12%
Oversize Bluelines	$2.40	N/A	N/A
Petroleum Soil Field Test Kit	$35.00	N/A	N/A
PH/Temperature/Conductivity Meter	N/A	$45.00	$100.00
PID/FID	N/A	$100.00	$400.00
Pressure Gauges	N/A	N/A	$50.00
PVC Bailer (2")	N/A	$5.00	N/A
PVC Bailer (3")	N/A	$10.00	N/A
Sample Storage (Monthly)	$30.00	N/A	N/A
Small Row Boat	N/A	$125.00	$300.00
Soil Probe	N/A	$10.00	$30.00
Soil Resistivity Meter	N/A	$50.00	$150.00
Speedy Moisture Gauge	N/A	$25.00	N/A
State Change Logger	N/A	N/A	$100.00
State Change Reader	N/A	$50.00	N/A
Sub-Centimeter GPS Equipment	N/A	$400.00	N/A
Sub-Foot GPS Unit	N/A	$120.00	$400.00
Surface Velocity Meter (SVR)	N/A	$90.00	N/A
Survey Equipment (excludes GPS)	N/A	$65.00	N/A
Temperature Loggers	N/A	$5.00	$20.00
Temperature Loggers (Reader)	N/A	$50.00	N/A
Treatability Study Equipment	N/A	$200.00	$800.00
Turbidity Meter	N/A	$25.00	$75.00
Two-Way Radios (1 pair)	N/A	$5.00	N/A
Vehicle Mileage (if daily rates are not used)	IRS Rate + 12%	N/A	N/A
Water Level Indicator	N/A	$35.00	$75.00
Whale Pump System	N/A	$35.00	$100.00
YSI Multi-Meter	N/A	$100.00	N/A

(Any changes in rates will be made January 1 of each year.)

1 **Weekly rental rate implies calendar week.**

POTESTA & ASSOCIATES, INC.
FIELD SUPPLY RATE SHEET

Description	Rate	
	Per Unit	Day
Benthic Survey Supplies Forms, Containers, Ethyl Alcohol, Nitrile Gloves, Flagging, Hester Dendy Samplers, Dredge Sampler, Distilled Water, Decon Supplies, Marking Utensils, Plastic Bags	$25.00	N/A
Discharge Sampling Supplies Forms, Containers, Preservatives, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Marking Utensils, Plastic Bags	$15.00	N/A
Fish Survey Supplies Buckets, Waders, Bottles, Formalin, Ethyl Alcohol, Forms, Marking Utensils, Plastic Bags	$30.00	N/A
Groundwater Sampling Supplies Forms, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Marking Utensils, Buckets, Plastic Bags (Does not include bailers and filters.)	$20.00	N/A
HGM Stream Assessment Supplies Tape, Clinometer, Densiometer, Diameter Tape, Flagging, Quadrat, Etc.	N/A	$25.00
Soil Sampling Supplies Forms, Nitrile Gloves, Ice, Distilled Water, Decon Supplies, Marking Utensils, Buckets, Plastic Bags	$15.00	N/A
Stream Sampling Supplies Forms, Syringes, Nitrile Gloves, Flagging, Ice, Distilled Water, Decon Supplies, Marking Utensils, Plastic Bags	$15.00	N/A
Stream/Wetland Delineation Supplies Hip Chain, Clinometer, Flagging, Forms, Etc.	N/A	$20.00
Survey Supplies Hubs, Stakes, Flagging, Iron Pins, Monuments, Marking Paint, Traffic Control	N/A	$25.00
Wetland Delineation Supplies Flagging, Forms, Reference Materials, Range Finder, Storage Bags, Etc.	N/A	$20.00
Asbestos Sampling Supplies	N/A	$20.00
Disposable Bailers 3' (2" diameter)	$8.00	N/A
Disposable Bailers 7' (2" diameter)	$12.50	N/A
GW Filters	$17.50	N/A
Other	Cost + 12%	N/A

(Any changes in rates will be made January 1 of each year.)

Resolution No. 131-18

Introduced in Council

November 5, 2018

Passed by Council

Introduced by
Robert Reishman

Referred from
Finance Committee

Resolution No. 131-18: Authorizing the Mayor or City Manager to Receive and administer $39,100.00 from the WV Division of Justice and Community Service to reimburse partial salary for the Charleston Police Department's Crime Victims Advocate and provide travel/training funds.

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

That the Mayor or his designee is hereby authorized and directed to receive and administer $39,100.00 from the WV Division of Justice and Community Service to reimburse partial salary for the Charleston Police Department's Crime Victims Advocate and provide travel/training funds.

Resolution No.132-18 :

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

November 5, 2018 ______________________

Introduced by: **Referred to:**

Robert Reishman ______________________

Resolution No. 132-18 : Ratifying a Memorandum of Understanding (MOU) between the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Charleston Police Department (CPD) to formalize relationships between ATF and CPD with regard to procedures and utilization of resources in order to maximize interagency cooperation and coordination in violent crime investigations and other incidents within the jurisdiction of the CPD and ATF.”

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

That the City Council ratifies a Memorandum of Understanding (MOU) between the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Charleston Police Department (CPD) to formalize relationships between ATF and CPD with regard to procedures and utilization of resources in order to maximize interagency cooperation and coordination in violent crime investigations and other incidents within the jurisdiction of the CPD and ATF

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

AND THE

CHARLESTON POLICE DEPARTMENT

This Memorandum of Understanding (MOU) is entered into by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Charleston Police Department, Charleston, West Virginia, as it relates to the Violent Crimes Task Force (herein referred to as the "Task Force").

AUTHORITIES

Offenses investigated and enforced pursuant to this MOU are those falling within ATF's jurisdiction, including 28 U.S.C. § 599A; 27 CFR Part 0, Subpart W; 18 U.S.C. §§ 921 et. seq.; 26 U.S.C. §§ 5861 et. seq.; and 18 U.S.C. § 3051;

PURPOSE

The Task Force will perform the activities and duties described below:

a. Investigate firearms trafficking
b. Investigate firearms related violent crime
c. Gather and report intelligence data relating to trafficking in firearms
d. Conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of West Virginia

MEASUREMENT OF SUCCESS

The success of this initiative will be measured by the participating agencies' willingness to share certain information, (i.e. crime statistics) for the purpose of measuring the success of the task force as well as its performance.

PHYSICAL LOCATION

Officers/troopers/agents assigned to this Task Force by their employer shall be referred to as Task Force Officers (TFOs). TFOs will be assigned to the ATF Charleston Field Office and will be located at the Charleston Police Department.

SUPERVISION AND CONTROL

The day-to-day supervision and administrative control of TFOs will be the mutual responsibility of the participants, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to this Task Force.

Each TFO shall remain subject to their respective agencies' policies, and shall report to their respective agencies regarding matters unrelated to this agreement/task force. With regard to matters related to the Task Force, TFOs will be subject to Federal law and Department of Justice (DOJ) and ATF orders, regulations and policy, including those related to standards of conduct, sexual harassment, equal opportunity issues and Federal disclosure laws.

Failure to comply with this paragraph could result in a TFO's dismissal from the Task Force.

PERSONNEL, RESOURCES AND SUPERVISION

To accomplish the objectives of the Task Force, ATF will assign one (1) Special Agent to the Task Force. ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the Task Force. This support may include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

Each participating agency agrees to make available to their assigned task force members any equipment ordinarily assigned for use by that agency. In the event ATF supplies equipment (which may include vehicles, weapons or radios), TFOs must abide by any applicable ATF property orders or policy, and may be required to enter into a separate agreement for their use.

To accomplish the objectives of the Task Force, the Charleston Police Chief agrees to detail one (1) full-time TFO and/or one (1) part-time TFO to the Task Force for a period of not less than two (2) years.

All TFOs shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy.

SECURITY CLEARANCES

All TFOs will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or punishment, disciplinary, punitive or otherwise, may disqualify one from eligibility to join the Task Force. ATF has final authority as to the suitability of TFOs for inclusion on the Task Force.

DEPUTATIONS

ATF, as the sponsoring Federal law enforcement agency, may request at its sole discretion that the participating agency's TFOs be deputized by the U.S. Marshal Service to extend their jurisdiction, to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal grand jury subpoenas for records and evidence involving violations of Federal laws. Such requests will be on an individual basis as determined by ATF.

The participating agencies agree that any Federal authority that may be conferred by a deputation is limited to activities supervised by ATF and will terminate when this MOU is terminated or when the deputized TFOs leave the Task Force, or at the discretion of ATF.

ASSIGNMENTS, REPORTS AND INFORMATION SHARING

An ATF supervisor or designee will be empowered with designated oversight for investigative and personnel matters related to the Task Force and will be responsible for opening, monitoring, directing and closing Task Force investigations in accordance with ATF policy and the applicable United States Attorney General's Guidelines.

Assignments will be based on, but not limited to, experience, training and performance, in addition to the discretion of the ATF supervisor.

All investigative reports will be prepared utilizing ATF's investigative case management system, (N-Force) utilizing ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual, which can be duplicated as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation (ROI), unless otherwise agreed to by ATF and the participating agency(ies). This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.

Information will be freely shared among the TFOs and ATF personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the Task Force, to include informal communications between TFOs and ATF personnel, may be disseminated to any third party, non-task force member by any task force member without the express permission of the ATF Special Agent in Charge or his/her designee.

Any public requests for access to the records or any disclosures of information obtained by task force members during Task Force investigations will be handled in accordance with applicable statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act and other applicable Federal and/or state statutes and regulations.

INVESTIGATIVE METHODS

The parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by state and local law enforcement agencies shall conform to those requirements, pending a decision as to a venue for prosecution.

The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF. All Task Force operations will be conducted and reviewed in accordance with applicable ATF and Department of Justice policy and guidelines.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause a conflict with any ongoing investigation of an agency not party to this MOU. It is incumbent upon each participating agency to notify its personnel regarding the Task Force's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively carried out by all parties to this MOU.

INFORMANTS

ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency with regard to handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

DECONFLICTION

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the Task Force, which, if disclosed to unauthorized persons, could endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein:

a. Each participating agency will assign primary and secondary points of contact.
b. Each participating agency agrees to keep its points of contact list updated.

The points of contact for this Task Force are:

ATF: Resident Agent in Charge Adam W. Black

Charleston Police Department: Corporal John Weaver

EVIDENCE

Evidence will be maintained by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by a TFO or ATF special agent intended for Federal prosecution will be placed in the ATF designated vault, using the procedures found in ATF orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistics Information Network (NIBIN) examination. Once all analyses are completed, all firearms seized under Federal law shall be placed into the ATF designated vault for proper storage. All firearms information/descriptions taken into ATF custody must be submitted to ATF's National Tracing Center.

JURISDICTION/PROSECUTIONS

Cases will be reviewed by the ATF Special Agent in Charge or his/her designee in consultation with the participating agency and the United States Attorney's Office and appropriate State's attorney offices, to determine whether cases will be referred for prosecution to the U.S. Attorney's Office or to the relevant State's attorney's office. This determination will be based upon which level of prosecution will best serve the interests of justice and the greatest overall benefit to the public. Any question that arises pertaining to prosecution will be resolved through discussion among the investigative agencies and prosecuting entities having an interest in the matter.

In the event that a state or local matter is developed that is outside the jurisdiction of ATF or it is decided that a case will be prosecuted on the state or local level, ATF will provide all relevant information to state and local authorities, subject to Federal law. Whether to continue investigation of state and local crimes is at the sole discretion of the state or local participating agency.

USE OF FORCE

All full-time TFOs will comply with ATF and the Department of Justice's (DOJ's) use of force policies, unless a TFO's agency's Use of Force policy is more restrictive, in which case the TFO may use their respective agency's use of force policy. TFOs must be briefed on ATF's and DOJ's use of force policy by an ATF official, and will be provided with a copy of such policy.

MEDIA

Media relations will be handled by ATF's and the U.S. Attorney's Office's public information officers in coordination with each participating agency. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, who will take part in press conferences. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation or prosecution under this MOU without the concurrence of the other participants and, when appropriate, the relevant prosecutor's office.

All personnel from the participating agencies shall strictly adhere to the requirements of Title 26, United States Code, § 6103. Disclosure of tax return information and tax information acquired during the course of investigations involving National Firearms Act (NFA) firearms as defined in 26 U.S.C., Chapter 53 shall not be made except as provided by law.

SALARY/OVERTIME COMPENSATION

During the period of the MOU, participating agencies will provide for the salary and employment benefits of their respective employees. All participating agencies will retain control over their employees' work hours, including the approval of overtime.

ATF may have funds available to reimburse overtime to the State and Local TFO's agency, subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of a memorandum of agreement (MOA) established pursuant to the provisions of 28 U.S.C. section 524. The participating agency agrees to abide by the applicable Federal law and policy with regard to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The participating agency must be recognized under State law as a law enforcement agency and their officers/troopers/investigators as sworn law enforcement officers. If required or requested, the participating agency shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for the purpose of overtime payment from the Department of Justice Asset Forfeiture Fund. **This MOU is not a funding document.**

In accordance with these provisions and any MOA on asset forfeiture, the ATF Special Agent in Charge or designee shall be responsible for certifying reimbursement requests for overtime expenses incurred as a result of this agreement.

AUDIT INFORMATION

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. Participating agencies agree to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for expenses either incurred during the course of this Task Force or for a period of not less than three (3) years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

FORFEITURES/SEIZURES

All assets seized for administrative forfeiture will be seized and forfeited in compliance with the rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies

DISPUTE RESOLUTION

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the Task Force's goals and objectives. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, case assignments and workload at the lowest level possible.

LIABILITY

ATF acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees, including TFOs, while on duty and acting within the scope of their Federal employment, to the extent permitted by the Federal Tort Claims Act.

Claims against the United States for injury or loss of property, personal injury, or death arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of his or her office or employment are governed by the Federal Tort Claims Act, 28 U.S.C. sections 1346(b), 2672-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other for such acts or omissions. Legal representation by the United States is determined by the United States Department of Justice on a case-by-case basis. ATF cannot guarantee the United States will provide legal representation to any State or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be the sole responsibility of the respective agent or officer and agency involved.

DURATION

This MOU shall remain in effect until it is terminated in writing (to include electronic mail and facsimile). All participating agencies agree that no agency shall withdraw from the Task Force without providing ninety (90) days written notice to other participating agencies. If any participating agency withdraws from the Task Force prior to its termination, the remaining participating agencies shall determine the distributive share of assets for the withdrawing agency, in accordance with Department of Justice guidelines and directives.

The MOU shall be deemed terminated at the time all participating agencies withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days written notice to all the remaining participating agencies.

MODIFICATIONS

This agreement may be modified at any time by written consent of all participating agencies. Modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

SIGNATURES

Steve Cooper / 10-1-18

Steve Cooper — Date
Chief
Charleston Police Department

Stuart L. Lowrey 04-02-18

Stuart Lowrey — Date
Special Agent in Charge
ATF, Louisville Field Division

Resolution No. 133-18

Introduced in Council

November 5, 2018

Passed by Council

Introduced by
Robert Reishman

Referred from
Finance Committee

Resolution No. 133-18: Authorizing the Mayor or City Manager to enter into a renewal agreement with Compass Energy Services for purchase and delivery of natural gas to City sites at the rate of NYMEX + $.27 per dth for a two-year period starting November 1, 2018 and ending October 31, 2020.

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

That the Mayor or City Manager is hereby authorized and directed to enter into a renewal agreement with Compass Energy Services for purchase and delivery of natural gas to City sites at the rate of NYMEX + $.27 per dth for a two-year period starting November 1, 2018 and ending October 31, 2020.

Resolution No. 134-18

Introduced in Council: November 5, 2018

Passed by Council: ______

Introduced by: Robert Reishman

Referred to: Finance Committee

Resolution No. 134-18 – A Resolution granting the Foxchase Homeowner's Association Right-of-Way Privileges for the purpose of installing and maintaining private road signs within the Foxchase subdivision. Further, the Mayor is hereby authorized to execute the Private Sign on Public Right-of-Way Authorization and Agreement attached as Exhibit A hereto.

THEREFORE, Be it Resolved By The Council Of The City Of Charleston, West Virginia that:

The Foxchase Homeowner's Association is hereby granted Right-of-Way Privileges for the purpose of installing and maintaining private road signs within the Foxchase subdivision. Further, the Mayor is hereby authorized to execute the Private Sign on Public Right-of-Way Authorization and Agreement attached as Exhibit A hereto.

PRIVATE SIGN ON PUBLIC RIGHT-OF-WAY AUTHORIZATION AND AGREEMENT

This Agreement, is made this _____ day of ___________2018, by and between the CITY OF CHARLESTON, WEST VIRGINIA, party of the first part ("Grantor") and, the Foxchase Homeowner's Association, its agents and contractors, party of the second part, ("Grantee").

WITNESSETH: Acknowledging that the Private Road Signs within the Foxchase Subdivision, as an established community with a homeowner's association that has approved and supported the request of maintaining and installing Private Road Signs, which benefits the public, and for other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby grant and convey unto Grantee certain Right-of-Way Privileges on certain lands of Grantor situated in the City of Charleston, Kanawha County, West Virginia, on the Foxchase Subdivision, being more particularly described in the map showing the installation and maintenance agreement areas, which is attached hereto as Exhibit A and made a part of this agreement (the "Subdivision").

The said Right-of-Way Privileges hereby granted, which are subject to review and approval by Traffic, Parking and Transportation Department prior to installation, are for the sole purpose of maintaining and installing Private Road Signs located on the Property. The "Right-of-Way Privileges" are defined as permission to enter the Property to install the road signs, including, but not limited to, paying for the installation and routine maintenance of the signs, removal of any public signs or other obstructions that may interfere with the installation of Private Road Signs, provided that Grantee shall return to the City any public signs removed with City approval, and shall restore any and all areas disturbed to satisfaction of Grantor upon completion of maintenance work.

It shall be Grantee's obligation to repair and/or replace while also routinely maintaining the Private Road Signs, with such duties being performed in a good and workmanlike manner and conform to all applicable Federal, State, City laws, including, but not limited to, those located in Chapter 114 Article IV of the Code of the City of Charleston, West Virginia. Grantee shall ensure that the Private Road Signs do not result in problems related to safety, confusion, undue burden, or inconvenience to the City, or its residents. Grantee, and its successors and assigns, on behalf of itself, its agents and contractors, shall hold harmless, indemnify, and defend Grantor from and against any and all claims, actions, damages or other liabilities arising from or related in any way to the location, construction, operation, use, maintenance, repair or replacement of the Private Road Signs, and in the event of damage to any property of the City, shall promptly reimburse the City for all reasonable costs and expenses of any character upon Grantee's receipt of a demand for reimbursement. In the event that any or all Private Road Signs cease to comply with all applicable Federal, State, City laws and regulations, or become unsafe, and Grantee or any successor fails after notice to make all necessary repairs or other necessary actions, the agreement shall cease, terminate and be of no further effect, and Grantee shall, upon receiving written notice from Grantor, immediately and at Grantee's solo expense, remove the Private Road Signs from Grantor's property. Furthermore, in the event that Grantor should have a public need for the Property affected by the agreement provided herein, including any or all areas on which the Private Road Signs are located, Grantor may in its sole discretion terminate the agreement by providing written notice to Grantee and may, at Grantor's expense, remove any or all Private Road Signs from the Property.

Grantor and Grantee intend for this agreement and the obligations contracted herein to run with the Property perpetually unless and until extinguished in accordance with the terms of this instrument or expressly extinguished by Grantee or Grantor by another recorded writing. The Grantor and Grantee otherwise acknowledge the Grantor agrees to encumber the Property expressly with the aforementioned rights granted to the Grantee.

[signatures follow]
[remainder of page intentionally blank]

WITNESS the following signature(s) executing this PRIVATE SIGN ON PUBLIC RIGHT-OF-WAY AUTHORIZATION AND AGREEMENT:

Date: 8/1/18 ____________________________________

Authorized agent of Grantor

Terri L. Moore

Authorized agent of Grantee

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit

The foregoing instrument was acknowledged before me this _____ day of _________, 2018, by

______________________________, authorized agent of Grantor. My commission expires on

_________________.

(Notary Seal)

____

Notary Public Signature

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit

The foregoing instrument was acknowledged before me this 1st day of August, 2018, by

Terri L Moore, authorized agent of Grantee. My commission expires on

March 11, 2022.

(Notary Seal)

Sabrina Clark

Notary Public Signature

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Sabrina Clark
City National Bank
3601 MacCorkle Ave. SE
Charleston, WV 25304
My Commission Expires March 11, 2022

Resolution No. 135-18 :

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

November 5, 2018

Introduced by: **Referred to:**

Bobby Reishman **Finance Committee**

Resolution No. 135-18 : A RESOLUTION authorizing the Mayor or his designee to execute the First Amendment to Landfill Gas Lease between the City of Charleston and Tallarico Energy, LLC, attached hereto as Exhibit A, (1) extending the term of the lease for an additional five years, (2) clarifying the method by which royalties from the Landfill Gas produced are calculated and paid to the City, and (3) clarifying the obligations of Tallarico Energy, LLC upon expiration of the lease.

NOW, THEREFORE, BE IT RESOLVED that the Mayor or his designee is hereby authorized to execute the First Amendment to Landfill Gas Lease between the City of Charleston and Tallarico Energy, LLC, (1) extending the term of the lease for an additional five years, (2) clarifying the method by which royalties from the Landfill Gas produced are calculated and paid to the City, and (3) clarifying the obligations of Tallarico Energy, LLC upon expiration of the lease.

FIRST AMENDMENT TO LANDFILL GAS LEASE

THIS FIRST AMENDMENT TO LANDFILL GAS LEASE ("First Amendment") made as of this _____ day of October, 2018, by and between the CITY OF CHARLESTON, a West Virginia municipal corporation, hereinafter called "Lessor" and TALLARICO ENERGY LLC, a West Virginia limited liability company, hereinafter called "Lessee."

WHEREAS, Lessor and Lessee entered into that certain Landfill Gas Lease, dated March 14, 2017 ("Lease"); and

WHEREAS, Lessee has requested certain modifications to the Lease and Lessor is agreeable to modifying the Lease as specifically set forth herein; and

WHEREAS, all capitalized terms used but not defined herein shall have the meanings given them in the Lease; and

NOW, THEREFORE, that for and in consideration of the sum of Ten Dollars ($10.00), cash in hand paid by Lessee to Lessor, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual covenants and promises hereinafter set forth, the parties agree as follows:

1. **Paragraph 3**. Paragraph 3 of the Lease, entitled "LEASE TERM", is deleted in its entirety and replaced with the following language:

> "This Lease shall take effect as of the execution date hereof and shall remain in full force for an initial term of ten (10) years, expiring at 11:59:59 PM on March 13, 2027 unless sooner terminated pursuant to the terms of this Lease. Unless Lessee has received written notice of default under Paragraph 13 herein and Lessee has failed or refused to cure as required by Paragraph 13, or the Lessor has given written notice of its unwillingness to extend the term of this lease at least six (6) months prior to the expiration of the initial term, this Lease may be extended, at the option of the Lessee, for an additional term of five (5) years upon mutually agreeable terms. Should Lessee desire to extend this Lease beyond the initial term by exercising its option to renew as set forth in this Section, Lessee shall give six (6) months' notice in writing prior to the expiration of the initial term. The terms of such extension shall be negotiated in good faith. Should the parties fail to negotiate a mutually agreeable extension of this Lease within 90 days prior to the expiration of the initial or extended term of this Lease, upon the conclusion of the initial term, or any extension thereof, Lessee shall cooperate in good faith with Lessor to prepare for Lessee's exit of the Leasehold and Lessee shall perform any and all obligations required by this Lease, including, but not limited to, the obligations set forth in Paragraph 10 herein.

2. **Paragraph 6**. Paragraph 6 of the Lease, entitled "ROYALTY PAYMENTS TO LESSOR" is amended by deleting the first sentence thereof and replacing it with the following sentence:

Lessee covenants to pay monthly to Lessor, as a royalty (herein, the "Royalty") on the total volume of Landfill Gas produced from the Leasehold during the month, measured as the aggregate for the month of all "MCF per Day utilized", a sum equal to seventeen and one-half percent (17.5%) of the Appalachian TCO Index Price for the month of production.

Paragraph 6 of the Lease is further amended by adding the following sentence at the end of the first paragraph:

For demonstrative purposes, a chart illustrating the calculation of the Royalty is attached and referred to herein as Exhibit B of this Lease.

3. **Exhibit B**. Exhibit B of the Lease is amended by adding the chart, attached to this First Amendment as Annex A, to the existing page of Exhibit B.

4. **Paragraph 10**. Paragraph 10 of the Lease, entitled "REQUIREMENTS UPON TERMINATION. EXPIRATION. OR SURRENDER" is amended by replacing the last sentence thereof, beginning with "It is further understood that…" with the following sentences, which shall be a new paragraph at the end of Section 10:

"It is further understood that upon expiration, termination, or surrender of this Lease, if requested by Lessor, Lessee shall transfer ownership of; (i) the gas production and collection system, including the flare(s) and associated facilities required to effectively operate the flare(s); (ii) all assets related to the interconnection to the electric grid; (iii) all buildings now owned by Lessee at the commencement of the Lease; (iv) all tangible or intangible assets transferred to Lessee by Lessor pursuant to Paragraph 5(a) of this Lease; and (v) all agreements related to the conversion of landfill gases to either gas or electrical energy acquired after the commencement of the Lease, including, but not limited to, agreements related to the marketing of such landfill gases and their environmental attributes as referenced in Paragraph 5(a) of this Lease. Lessee agrees to cooperate with Lessor to document the reversion of assets as referred to in Paragraph 3 of this Lease, and the transfer or assignment of any of these assets listed or referred to in this Paragraph, to the extent reasonable or necessary, and shall further cooperate with Lessor with regard to any documentation necessary to obtain transfer of any registration, certificate or authorization from regulatory agencies related to the reversion of assets as referred to in Paragraph (3) and to the assets transferred or assigned pursuant to this paragraph."

5. Except as otherwise specifically provided herein, the Lease, as amended, shall remain in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused this First Amendment to be entered into by their duly authorized representatives.

CITY OF CHARLESTON, a West Virginia municipal corporation

____

Danny Jones, Mayor

TALLARICO ENERGY, LLC, a West Virginia limited liability company

____

By: Tony Tallarico
Its: Authorized Member

[Acknowledgement Page to Follow]

ACKNOWLEDGMENTS

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit;

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by DANNY JONES, the Mayor of the CITY OF CHARLESTON, a West Virginia municipal corporation, for and on behalf of the municipal corporation.

My commission expires: ________________________

____
Notary Public

[Notary Seal Required]

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit;

The foregoing instrument was acknowledged before me this _____ day of October, 2018, by TONY TALLARICO, the authorized member of TALLARICO ENERGY LLC, a West Virginia limited liability company, for and on behalf of the limited liability company.

My commission expires: ________________________

____
Notary Public

[Notary Seal Required]

Annex A to Exhibit B of the
Landfill Gas Lease

Charleston Landfill Gas Generation and Payments						
Month	MonthlyAggregate MCF per Day utilized LFG (1)	Appalachian TCO Index Price Index (2)	Royalty (3)	Landfill Gas Payment (4)=(1)*(2)*(3)	50% Credit[1]	Amount Paid
Month	9,138	$2.52	17.5%	$4,030	$2,015	$2,015

[1] Reflects credit toward Lessee Reimbursement Amount set forth in, and subject to the terms and limitations of, Paragraph (8) of the Landfill Gas Lease.

Resolution No: 136-18

Introduced in Council	**Adopted by Council**
November 5, 2018	
Introduced by:	**Referred to by:**
Bobby Reishman	

RESOLUTION NO. 136-18 "Authorizing the Mayor to execute an amendment to extend the term of the February 15, 2004, Operating Agreement, as amended, for a period of five years pursuant to section 5.01 of the Operating Agreement."

WHEREAS, on February 15, 1994, the City of Charleston, West Virginia, and West Virginia Waste Services, Inc., entered into an Operating Agreement for the City of Charleston Solid Waste Facility (the "Agreement"); and

WHEREAS, Landfill Services of Charleston, Inc. ("Contractor"), is the successor to West Virginia Waste Services, Inc.; and

WHEREAS, Section 5.01 of the Operating Agreement allows for the extension of the Agreement for additional five year periods if the Contractor is not in default of any of the terms, conditions, provisions, and/or covenants it is obligated to keep, perform and/or observe under the terms of the Agreement; and

WHEREAS, in 2006, the estimated site life of the landfill (originally 25 years through 2019) was extended until 2024 and the Operating Agreement was extended for an additional five years, expiring in 2024; and

WHEREAS, due to efforts to maximize the compaction of waste, the projected site life has been extended through the year 2029,; and

WHEREAS, the estimated site life now exceeds the term of the original agreement and the 2006 amendment; and

WHEREAS, upon representations by the Contractor and upon information and belief, the Contractor is not currently in default of any of the terms, conditions, provisions, and/or covenants it is obligated to keep, perform and/or observe under the terms of the Agreements; and

WHEREAS, it is consistent with the original intent of the City and Contractor to amend the Agreement to extend the term for five (5) years to maintain continuity of landfill operations through the life of the site; and

WHEREAS, the aforementioned amendment to extend the term of the Agreement shall not in any way modify or amend any other terms or conditions of the Agreement, and the City expressly preserves all other terms and conditions of the Agreement as set forth therein, including, but not limited to, the terms and conditions related to termination of the Agreement;

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

That the Mayor is hereby authorized and directed to sign, on behalf of the City of Charleston, an amendment to extend the term of the Agreement for five (5) years (through February 15, 2029); provided, that said amendment shall be consistent with the terms stated herein and with state and local laws, and shall be subject review and approval of legal counsel for the City prior to execution of the amendment.

Resolution No. 137-18 :

Introduced in Council: November 5, 2018

Adopted by Council: ______________________

Introduced by: Bobby Reishman

Referred to: Finance

Resolution No. 137-18 : A RESOLUTION authorizing the Chief of Police and the Fire Chief to enter into a Memorandum of Understanding ("MOU") with the Charleston Area Medical Center, Inc. ("CAMC"), a copy of which is attached hereto, for issuance of CAMC security badges to Police and Fire Department personnel for use when responding to emergencies in CAMC owned hospitals.

NOW, THEREFORE, BE IT RESOLVED that the Chief of Police and the Fire Chief are hereby authorized to enter into a Memorandum of Understanding ("MOU") with the Charleston Area Medical Center, Inc. for issuance of CAMC security badges to Police and Fire Department personnel for use when responding to emergencies in CAMC owned hospitals.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is effective as of the ________ day of October, 2018 (the "Effective Date") by and among Charleston Area Medical Center, Inc., a West Virginia non-profit corporation ("CAMC"), and the City of Charleston, by and through its Charleston Police Department (the "Police Department") and its Charleston Fire Department (the "Fire Department"), (also collectively referred to as the "Parties", and each a "Party").

WHEREAS, the Parties collaborate on improving safety and security within the City of Charleston and the hospitals operated by CAMC (the "Hospitals");

WHEREAS, the Police Department and Fire Department may be called upon from time to time, as first responders, to respond to emergencies at the Hospitals;

WHEREAS, security badges are required to access certain secure areas within the Hospitals; and

WHEREAS, the Police Department and Fire Department may need to access these secure areas in their capacity as first responders in the event of an emergency;

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

1. **Issuance of Badges.** CAMC agrees to issue a set of badges to the Police Department and the Fire Department for use by the Police Department and Fire Department in responding to emergencies at the Hospitals.

2. **Limitations on Use of Badges.** The Police Department and Fire Department agree to use the badges only in their capacity as first responders in emergency situations, and not in any other circumstances.

3. **Right to Revoke Badges.** CAMC reserves the right to recall the badges, revoke the privileges thereunder, and terminate this MOU at any time and for any reason, without prior notice.

4. **Term.** The initial term of this MOU shall commence on the Effective Date and shall continue thereafter for a period of one (1) year (the "Initial Term"), unless and until sooner terminated as provided in Section 3 of this MOU. Upon expiration of the Initia1 Term, this MOU shall automatically be renewed and extended for additional successive one (1) year terms (each a "Renewal Term") at the end of the Initial Term and all Renewal Terms, unless either Party notifies the other Party in writing .of its desire to terminate this MOU at the end of the Initial Term or any Renewal Term, with such notice to be given at least thirty (30) days prior to the end of the Initial Term or any Renewal Term (The Initial Term, together with all Renewal Terms, are referred to collectively hereinafter as the "Term.")

5. **HIPAA; Compliance with Law.** In exercising their rights and responsibilities under this MOU, the Parties shall make every reasonable effort to ensure that they fully comply with all applicable federal, state and local laws, rules and regulations. Specifically, but not by way of limitation, the Parties agree that they will make every reasonable effort to ensure that they fully comply with the Health Insurance Portability and Accountability Act of 1996, and all regulations promulgated pursuant thereto (collectively, "HIPAA"), and the federal Health Information Technology for Economic and Clinical Health Act, and all regulations promulgated pursuant thereto (collectively, "HITECH"), including any amendments thereto, and with all applicable requirements regarding the maintenance, use and disclosure of protected health information. If requested by CAMC, Police Department and Fire Department will sign and deliver a Business Associate Agreement, in the form requested by CAMC.

6. **Regulatory Compliance.** In the event that a court or administrative agency of competent jurisdiction determines, or in the event that counsel for either Party has a reasonable and reasoned belief, that this MOU or any provision thereof violates any applicable federal, state or local laws, rules or regulations, the Parties shall negotiate in good faith to amend this MOU to comply with the applicable laws, rules and regulations as counsel for the Parties shall determine is necessary; and if the Parties and their counsel cannot agree in good faith on appropriate amendments to cause this MOU to comply with the applicable laws, rules and regulations, this MOU may be terminated by either Party upon thirty (30) days prior written notice.

7. **Modification.** Except as otherwise provided herein, this MOU shall not be modified, amended, or in any way varied or changed except by a writing duly executed by the Parties hereto.

8. **Waiver.** The waiver by either Party of compliance by the other Party with, or of breach by the other Party of, any term or provision of this MOU shall not be effective unless it is in writing .executed by the Party waiving such .compliance or breach .and delivered to the Party whose compliance or breach is waived. The waiver by either Party of compliance with or the breach of any term or provision of this MOU shall not be considered as a waiver of any continuing or subsequent breach or of compliance with any other provision.

9. **Notice.** All notices to be given hereunder by either Party shall be in writing and shall be sent by certified mail, return receipt requested, to the Party to be noticed at the addresses stated below and shall be deemed given and received upon the date so mailed:

If to CAMC, then to:

Charleston Area Medical Center, Inc.
P.O . Box 1547
Charleston, WV 25336
ATTENTION: General Counsel

If to Police Department, then to:

Charleston Police Department
P.O. Box 2749
Charleston, WV 25330
ATTENTION: Chief of Police

If to Fire Department, then to:

Charleston Fire Department
P.O. Box 2749
Charleston, WV 25330
ATTENTION: Chief of the CFD

10. **Assignment.** Except as expressly provided herein, no Party may assign any rights or delegate any duties under this MOU, in whole or in part, without the prior written consent of the other Parties. This MOU shall be binding on the Parties and their respective successors and assigns.

11. **No Third-Party Beneficiaries.** None of the provisions of this MOU are intended by the Parties, nor shall they be deemed or interpreted, to confer any benefit on any person not a Party to this MOU, nor shall any Party at any time be liable or responsible for any liability or obligation of the any other Party except as otherwise set forth in this MOU or as otherwise agreed to by the Parties in writing.

12. **Applicable Law.** This MOU shall be governed by, construed, and enforced in accordance with the laws of the State of West Virginia without giving effect to any choice or conflict of law provision or rule (whether of the State of West Virginia or any other jurisdiction), and it shall be construed in a manner to conform to all federal, state and local laws and regulations.

13. **Severability.** The validity or unenforceability of any provision of this MOU or any portion thereof shall not render the other provisions of the MOU or portions thereof invalid or unenforceable.

14. **Captions.** The captions appearing in this MOU are for the purposes of identification only and shall not be considered or construed as affecting, in any way, the meaning of the provisions of this MOU.

15. **Entire Agreement.** This MOU and all schedules and exhibits attached hereto contain the entire agreement between the Parties concerning the subject matter hereof and supersede any and all prior oral or written agreements relating to the same.

16. **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this MOU delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MOU.

WITNESS WHEREOF, the Parties hereto have executed and delivered this Memorandum of Understanding on the date first above written.

CHARLESTON AREA MEDICAL CENTER, INC.

By:_________________________________

Name: ______________________________

Title: _______________________________

CHARLESTON POLICE DEPARTMENT

By: _________________________________

Name: ______________________________

Title: ______________________________

CHARLESTON FIRE DEPARTMENT

By: _________________________________

Name: ______________________________

Title: _______________________________

Resolution No. 138-18 :

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

November 5, 2018 ______________________

Introduced by: **Referred to:**

Robert Reishman **Finance Committee**

Resolution No. 138-18 A Resolution releasing the reversionary interest contained in the 2016 Equipment Transfer/Donation Agreement between the City of Charleston and the City of Clendenin related to a 2006 International Dump Truck (the “Truck”).

WHEREAS, in 2016, the City of Charleston was in possession of a 2006 International Dump Truck for which it no longer had need, and which was being removed from active service with the City of Charleston and replaced with newer equipment; and

WHEREAS, in 2016, the City of Clendenin experienced devastating flooding and needed heavy equipment to remove the substantial amount of debris that resulted from the flooding; and

WHEREAS, in 2016, the Charleston City Council determined that transferring the Truck to the City of Clendenin to be utilized for a public purpose would result in an overall benefit to the public; and

WHEREAS, the 2016 Equipment Transfer/Donation Agreement between the City of Charleston and City of Clendenin (attached hereto as Exhibit A) included a reverter clause prohibiting the City of Clendenin from reselling or transferring ownership of the Truck without notice to the City of Charleston and offering an opportunity for the City of Charleston to reclaim the Truck; and

WHEREAS, the City of Clendenin has determined that the majority of the flood recovery that required heavy equipment has been completed and the need of the City of Clendenin is now for smaller equipment to continue the restoration of the flood damaged areas; and

WHEREAS, the City has determined that it has no public use for the 12 year old Truck, and that proceeds of the sale of the Truck by the City of Clendenin would aid the City of Clendenin in the purchase of equipment necessary to continue to recover and rebuild ;

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

That the City of Charleston hereby waives its reversionary interest and right under the 2016 Equipment Transfer/Donation Agreement between the City of Charleston and the City of Clendenin for the return of a 2006 International Dump Truck from the City of Clendenin, and hereby releases all interest in, or right or title to, the 2006 International Dump Truck.

ANIMAL SHELTER SERVICES AGREEMENT

THIS ANIMAL SHELTER SERVICES AGREEMENT (this "Agreement") is dated November 6, 2018 and is between the Kanawha-Charleston Humane Association (the "KCHA") and the City of Charleston, West Virginia (the "City") (hereinafter referred to collectively as the "Parties").

RECITALS

WHEREAS, the KCHA operates an Animal shelter facility located at 1248 Greenbrier Street, Charleston, West Virginia;

WHEREAS, the KCHA provides Animal shelter, adoption, foster care, spay and neuter programs, cruelty prevention, community outreach and other Animal programs in Charleston, Kanawha County, West Virginia;

WHEREAS, the City has historically relied on KCHA to house Animals it takes possession of throughout the City pursuant to City Ordinance after such Animals have been abandoned, abused, seized, or are considered strays and City has historically contributed $24,000 to KCHA for its services benefiting City; and

WHEREAS, the City wants to continue to take Animals to KCHA and the KCHA has agreed to continue to accept such Animals, and the City , recognizing that the number of animals and the cost of their board and treatment has been increasing over the years, has further agreed to increase its contribution to the KCHA for the purpose of the KCHA providing such services as hereinafter set forth and the Parties want to further memorialize the relationship between the parties on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein expressed, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

The Parties agree that the following definitions shall apply to this Agreement:

1.1 Animals. The term "Animals" shall include, but it not limited to, domestic animals such as dogs, cats, rabbits, guinea pigs, and chinchillas, but shall exclude birds, fowl, and livestock from time to time.

1.2 Annual Payment. The term "Annual Payment" shall mean the annual amount City pays the KCHA for the KCHA's services pursuant to the terms of this Agreement.

1.3 City Ordinance. The term "City Ordinance" shall refer to Chapter 10 of the City of Charleston's Code of Ordinances as the same may, from time to time be amended.

1.4 Contract Rate. The term "Contract Rate" shall mean the annual compensation due hereunder.

1.5 Facility. The term "Facility" shall mean the facility used by the KCHA in providing shelter and other services for the City pursuant to this Agreement, currently located at 1248 Greenbrier Street, Charleston, West Virginia 25311, as the same may be replaced or located.

1.6 Humanely Destroyed. The term "Humanely Destroyed" shall mean: (i) humane euthanasia of an Animal by hypodermic injection by a licensed veterinarian, or by a certified Animal euthanasia technician in accordance with the provisions of West Virginia Code Sections 19-20-8 and 30-10-1 *et seq.*, or (ii) any other humane euthanasia procedure approved by the

American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.

ARTICLE 2
IMPOUNDMENT; VETERINARY TREATMENT

2.1 Facility. The KCHA represents that its Facility is authorized to house and process Animals for the City in such a manner to allow the KCHA to meet its obligations herein as well as meet applicable legal requirements for Animal shelters, including all rules and regulations outlined in West Virginia Code Section 19-9-1 *et seq*. and 19-20-1 *et seq*.

2.2 Impoundment. The KCHA agrees that it will accept all Animals brought to its Facility by the City. Such Animals shall be impounded under the exclusive control and custody of the KCHA for periods of time as required by state law and City Ordinance except as hereinafter set forth. Prior to delivery to the KCHA, the City shall scan for microchips or search for a City license and use all reasonable diligence to notify the licensed owner, if any.

2.3 Impoundment Fees. The KCHA shall require the owner of every impounded Animal to pay all applicable fees including licensing and vaccination fees. To the extent reasonable and permitted by law, the City agrees to cooperate with the KCHA in seeking the collection of such fees from the owner.

2.4 Veterinary Treatment. During KCHA business hours, the City will take all sick and/or injured Animals to KCHA to be treated by their veterinarian. During KCHA non-business hours, City will take all sick and/or injured animals to a veterinarian or Animal clinic for all necessary and appropriate treatment. The owner of such Animal or Animals(s) shall be assessed the fees associated with the treatment of such sick and/or injured Animals; provided that, as between City and KCHA, if fees are not paid by an owner for any reason, then the KCHA shall be responsible for resolving such outstanding veterinarian fees and expenses.

2.5 Cruelty Cases. So long as the KCHA continues to employ a veterinarian, the KCHA agrees to offer the assistance of such veterinarian to serve at no cost to City as an Animal medical examiner for the City in cases of Animal cruelty, and the City agrees to prosecute or assist in the prosecution of cruelty matters in magistrate court whenever possible to do so until or unless state law is amended to provide municipal courts with the same bonding authority and related procedures available to magistrate courts by law.

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ARTICLE 3
ANIMAL DISPOSITION

3.1 Disposition Policy. The KCHA shall have the right, consistent with the City Ordinance, West Virginia Code Sections 19-9-1 *et seq*. and 19-20-1 *et seq*., and this Agreement, to dispose of every Animal given into its custody.

3.2 Placement. The KCHA shall have the sole and exclusive right to determine the responsibility of persons offering to become the owners of unclaimed Animals and the suitability of the home offered, and shall have the sole and exclusive right to accept or reject such applicants for unclaimed Animals. Pursuant to the terms of this Agreement, the KCHA shall have the sole and exclusive right to determine if and when Animals are to be placed in a new home or destroyed but agrees to make a good faith attempt to place Animals prior to destroying them. Notwithstanding the foregoing, the KCHA shall have the right to Humanely Destroy any Animal impounded that is found to be physically or mentally suffering, injured, to have a communicable disease, or to be unsafe for any reason, including behaviorally unsound, or otherwise incapable of rehabilitation.

3.3 Adoption Fees. The KCHA shall set, in its sole discretion, all fees, if any, it charges to the public for an Animal adoption.

ARTICLE 4
COST OF SERVICES AND FEES

4.1 Cost. For the term of this Agreement, the City agrees to pay and the KCHA agrees to accept in consideration of the services it renders, an Annual Payment of $48,000.

4.2 Council Approval of Funds. Any and all payments under this Agreement are subject to the annual appropriation and/or approval by Charleston City Council.

ARTICLE 5
REPRESENTATIONS AND OBLIGATIONS

5.1 City's Representations and Obligations. The City represents to the KCHA that the City Ordinance provides for the vaccination and licensing of Animals under appropriate circumstances, impounding of Animals running at large, and the regulation of the sale of Animals, and that while this Agreement is in effect, such City Ordinance will be continued in force, provided, however, that such City Ordinance may be modified from time to time as the City deems appropriate.

5.2 KCHA's Representations and Obligations. The KCHA shall operate in accordance with any zoning and health standards set by state or local law, and shall comply with all federal, state and local laws governing equal employment opportunity, wage and hour requirements, worker's compensation, worker's safety, and all other legal requirements governing employee relations and working conditions.

ARTICLE 6
INDEPENDENT CONTRACTOR RELATIONSHIP

The Parties intend that an independent contractor relationship between the KCHA and the City will be created by this Agreement. No agent, employee or representative of the KCHA shall be deemed to be an employee, agent, servant or representative of the City for any purpose, and the employees of the KCHA are not entitled to any of the benefits the City provides for City employees. The KCHA will be solely and entirely responsible for its acts and for the acts of its agent, employees, servants, subcontractors or otherwise during the performance of this Agreement.

ARTICLE 7
DEFAULT

7.1 KCHA Default. If the KCHA fails in any material term or condition of this Agreement, including failing to obtain or comply with applicable state law requirements for performing services hereunder, the KCHA shall be in default of this Agreement. If City determines it's feasible, City will give the KCHA a reasonable amount of time to correct the default upon written notice as to the nature of the default and the reasonable time period within which to cure same. If the KCHA is unable to timely cure a default, then City shall be excused from performing any further obligations under this Agreement. If the KCHA is in default, the KCHA may only terminate this Agreement with the consent of the City.

7.2 City Default. If City fails in any material term or condition of this Agreement and the KCHA is not in default, the KCHA, at its option, may terminate this Agreement, and the KCHA may thereafter pursue its remedies available at law. In no event, shall City be liable to the KCHA for any consequential damages as a result of its breach. In the event the City fails to remit to the KCHA the Contract Rate the City shall be in default. The KCHA may, in its sole discretion, terminate this agreement for non-payment if the City has not cured its default after sixty (60) days written notice.

ARTICLE 8
INDEMNIFICATION

The KCHA agrees to indemnify and hold harmless the City against all claims, damages or causes of action which might arise as a result of acts, omissions or negligence of the KCHA, its employees or its agents arising out of the KCHA's obligations under this Agreement.

ARTICLE 9
AGREEMENT TERM

This Agreement shall be for a term of one (1) year commencing as of the date of approval by the City Council of Charleston, West Virginia and, subject to the availability and annual appropriation of funds by the City Council of Charleston, and will be renewed each year for additional one (1) year terms unless one party gives the other at least sixty (60) days advance written notice. Either party may cancel this Agreement at any time upon sixty (60) days written notice to the non-cancelling party. In the event of termination, the City shall pay those fees that accrue to the termination date and be refunded any credits that may accrue to the termination date. The termination of this Agreement due to the non-appropriation of funds by Charleston City Council shall not be considered a breach of this Agreement.

ARTICLE 10
NOTICE

Any notice sent under this Agreement except as may be otherwise expressly required in this Agreement shall be written and mailed by certified mail, return receipt requested, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following:
To the KCHA:

The Kanawha Charleston Humane Association
Attn: Executive Director
1248 Greenbrier Street
Charleston, West Virginia 25311

To CITY:

City of Charleston, West Virginia
Attn: Chief of Police and City Manager
501 Virginia Street, East
Charleston, WV 25301

Each party may change its address by written notice to the other party in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged or confirmed, and any communication so delivered in person shall be deemed effective upon receipt of, or actually received by, the other party.

ARTICLE 11
MISCELLANEOUS

11.1 Assignment. This Agreement is not assignable by either party without the written consent of the other.

11.2 Prior Matters. All prior agreements, negotiations, representations, understandings, and partial agreements concerning this Agreement's subject matter are superseded by and merged with this Agreement.

11.3 Amendment. Except as may be expressly set forth elsewhere in this Agreement, no amendment, modification, waiver, or release of the obligations under this Agreement shall be binding unless a writing exists that (a) identifies the amended, modified, waived, or released obligation, (b) describes the nature of the amendment, modification, waiver, or release, and (c) is duly approved by each party and executed by each party's authorized representative.

11.4 Severability. In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

11.5 Governing Law; Dispute Resolution; Jurisdiction and Venue. This Agreement shall be deemed to be executed in The City of Charleston, State of West Virginia, and shall be governed by and construed in accordance with the laws of the State of West Virginia. The Parties will attempt to settle any claim or controversy arising out of this Agreement or the Services through consultation and negotiation in good faith and a spirit of mutual cooperation. Any dispute which cannot be resolved between the parties through consultation, negotiation or mediation within a reasonable time may then be submitted to a court of competent jurisdiction in the County of Kanawha, West Virginia. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful; or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or to others. Virginia.

11.6 Exhibits. All exhibits referenced in this Agreement must be attached and initialed by the signatories. All such exhibits/attachments are hereby incorporated by reference as if fully set forth herein.

11.7 Entire Agreement. This Agreement constitutes the entire Agreement between the KCHA and the City and supersedes all prior or contemporaneous communications, whether electronic, oral or written between the parties.

11.8 Headings. The headings and captions herein are inserted for convenience of reference only and are not intended to govern, limit or aid in the construction of any term or provision hereof.

11.9 Counterparts Permitted. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed an original of this Agreement for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

COMMITTEE REPORT

TO: **Clerk of the Council of the City of Charleston, West Virginia**

FROM: **The Committee on Finance**

Your Committee on Finance has had under consideration:

A bid submitted by Demaree Inflatable Boats, INC in the amount of $31,250, for purchase of an Inflatable Rescue Boat to be used by the Charleston Fire Department. The vendor is a sole source provider for this particular rescue boat and it is built to military specification and approved by the Federal Government for response teams.

To be charged to Account No. 001-97600-706-4-459, Capital Outlay

and reports the same to Council with the recommendation that the committee report be adopted

____
CHAIRMAN

Fiber Switches

Bid Opening: March 23, 2018 @ 11:00 a.m.

		Alpha Technologies Inc. 4003 Outlook Drive Hurricane, WV 25526 P: (304) 721-8987 dchambers@alpha-tech.us		
	Quantity	**Make/Model**	**Unit Cost**	**Total Cost**
Item 1.01	9	Meraki MS220-8P-HW	$666.40	$5,997.60
Item 1.02	3	Meraki MS225-24P-HW	$2,583.32	$7,749.96
Item 1.03	8	Meraki MA-SFP-1GB-LX10	$469.64	$3,757.12
Item 1.04	16	Meraki MA-SFP-10GB-LR	$1,885.64	$30,170.24
Item 1.05	9	Meraki LIC-MS220-8P-5YR	$84.25	$758.25
Item 1.06	3	Meraki LIC-MS225-24P-5YR	$330.99	$992.97
Shipping				$0.00
Delivery		14 days		

Total Bid	**$49,426.14**