



CITY OF CHARLESTON West Virginia



Council Member – 12th WARD

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

AGENDA
FINANCE COMMITTEE MEETING
Tuesday, January 17, 2023
6:30 PM

AV ROOM #308, CITY HALL, CHARLESTON, WV

AVAILABLE TO VIEW VIA LIVESTREAM AT <https://charlestonwv.civicclerk.com/web/home.aspx>

I. DISCUSSION:

- a. Approval of Previous Minutes 1-3-2023

II. RESOLUTIONS:

- a. Resolution No. 756-23 – Authorizing the Mayor to enter into a Mutual Aid Agreement with the Secretary of the Air Force related requests for assistance between the Charleston Fire Department and the 130th Airlift Wing's Fire and Emergency Services.
- b. Resolution No. 757-23 - Authorizing the Mayor or City Manager to execute Change Order No. 1 with RK Construction, Inc., in an amount not to exceed \$10,000, to remove excess soil mass below Woodbine Ave. discovered during the course of construction of a retaining wall.
- c. Resolution No. 758-23 - Authorizing the City of Charleston to communicate willingness to participate in "Non-State-Owned Bridge Program" administered by the West Virginia Department of Transportation through the Federal Highway Administration.

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

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

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:30 p.m., January 3, 2023.

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

Joseph Jenkins, Chair
Brent Burton, Vice Chair
Becky Ceperley
Mary Beth Hoover
Larry Moore
Chad Robinson
Shawn Taylor

Absent:

Other Councilmembers present:

Emmett Pepper
Bruce King
Beth Kerns
Joe Solomon
Chelsea Steelhammer

I. DISCUSSION:

a. Approval of Previous Minutes - Councilmember Burton asked for unanimous consent to dispense with the reading of the minutes for the December 19, 2022 meeting and that they be approved as distributed. There were no objections, and the minutes were approved.

II. RESOLUTIONS:

- a. Resolution No. 755-23 – Authorizing the Mayor or City Manager to enter into a contract with Tri-State Company, Inc., in the amount of \$453,282.96 for the construction of a recreational trail system within the Herbert & Gloria Jones Woodlands, a 65.14-acre property donated to the City of Charleston pursuant to Resolution No. 271-19.

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

That the Mayor or City Manager is authorized to enter into a contract with Tri-State Company, Inc., in the amount of \$453,282.96 for the construction of a recreational trail system within the Herbert & Gloria Jones Woodlands, a 65.14-acre property donated to the City of Charleston pursuant to Resolution No. 271-19, where the purchase price was determined through a competitive bidding process. The Mayor or City Manager is further authorized to increase the overall contract amount by up to 10% of the initial contract amount pursuant to one or more documented change order requests recommended by the City Engineer.

Finance Director and Acting City Manager, Andy Wood, added that the resolution authorizes the construction of a recreational trail system within the Herbert & Gloria Jones Woodlands that was donated to the City in 2019. A comprehensive plan was bid with the help of GIA Consultants.

Jack Hoblitzell, along with Ted Armbrecht, from the Kanawha Valley Trail Alliance added that their mission is to foster healthy lifestyles through improved access to development and expansion of trails. In 2022, they performed over 750 hours of volunteer work at local recreational areas. Their vision is that the trail is a stacked-loop system of approximately 3.3 miles that will be progressively more difficult at the beginner/intermediate level.

Mayor Goodwin thanked the family for their monumental gift.

From the audience, Councilmember Solomon asked from where the project was being funded. Councilmember Jenkins replied that it was being paid with ARPA funds from the dedicated Infrastructure fund previously established by Council.

Councilmember Robinson confirmed that this was a different pot than what was set aside for sidewalks, etc. The current amount of ARPA funds in the Infrastructure Fund is approximately \$7.4 million.

Councilmember Burton moved to approve the Resolution. With members present recorded thereon as voting in the majority in the affirmative, with a Nay from Robinson, Chairperson Jenkins declared Resolution No. 755-23 approved.

Councilmember Burton motioned to adjourn the meeting.
Meeting adjourned.

Resolution No. 756-23

Introduced in Council:

Adopted by Council:

January 17, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 756-23 - Authorizing the Mayor to enter into a Mutual Aid Agreement with the Secretary of the Air Force by and through the Commander of the 130th Airlift Wing related requests for assistance between the Charleston Fire Department and the 130th Airlift Wing's Fire and Emergency Services, whereas the terms of the agreement at attached at Exhibit A.

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

That the Mayor is authorized to enter into a Mutual Aid Agreement with the Secretary of the Air Force by and through the Commander of the 130th Airlift Wing related requests for assistance between the Charleston Fire Department and the 130th Airlift Wing's Fire and Emergency Services, whereas the terms of the agreement at attached at Exhibit A.

AGREEMENT FOR MUTUAL AID IN FIRE PROTECTION AND HAZARDOUS MATERIALS INCIDENT RESPONSE (US)

This Mutual Aid Agreement (the “Agreement”), is made and entered into this ____ day of _____ 20__, between the Secretary of the Air Force acting by and through the Commander of the 130th Airlift Wing (“130 AW”) pursuant to the authority of 42 U.S.C. § 1856a and the City of Charleston, West Virginia Fire Department (“Charleston Fire Department”). Together the Air Force and the Charleston Fire Department are hereinafter referred to as the “Parties”. The Parties agree that:

WITNESSETH:

WHEREAS, each of the Parties hereto maintains equipment and personnel for the suppression of fires and the management of other emergency incidents occurring within areas under their respective jurisdictions; and

WHEREAS, as set forth in 42 U.S.C. § 1856 the term ‘fire protection’ includes personal services and equipment required for fire prevention, the protection of life and property from fire, firefighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue incidents involving vehicular and water mishaps, and trench, building, and confined space extractions; and

WHEREAS, the Parties hereto desire to augment the fire protection capabilities available in their respective jurisdictions by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements herein established, the Parties hereby agree as follows:

- a. The authority to enter into this Agreement is set forth in 42 U.S.C. § 1856a, and Title 15 United States Codes Section 2210, the regulations implementing same at Title 44 Code of Federal Regulations Part 151 *Emergency Management and Assistance* and the Air Force Instruction (AFI) 32-2001, *Fire and Emergency Services Program*.
- b. This Agreement will serve as the agreement between the Parties for securing to each mutual aid in fire protection services as defined above.
- c. On request to a representative of the 130 AW Fire and Emergency Services by a representative of the Charleston Fire Department, firefighting equipment and personnel of the 130 AW Fire and Emergency Services will be dispatched to any point within the area for which the Charleston Fire Department normally provides fire protection or hazardous materials incident response as designated by the representatives of the Charleston Fire Department.

- d. On request to a representative of the Charleston Fire Department, by a representative of the 130 AW Fire and Emergency Services, firefighting equipment or hazardous materials incident response and personnel of Charleston Fire Department, will be dispatched to any point within the firefighting or hazardous materials incident response jurisdiction of the 130 AW Fire and Emergency Services as designated by the 130 AW Fire and Emergency Services.
- e. Any dispatch of equipment and personnel pursuant to this agreement is subject to the requirements and limitations of 130 FES Standard Operating Guidelines, 32-J-05 Mutual Aid Response, and subject to the following conditions:
 - (1) Any request for aid hereunder will include a statement of the amount and type of equipment and personnel requested and will specify the location to which the equipment and personnel are to be dispatched, but the amount and type of equipment and the number of personnel to be furnished will be determined by the responding organization. The requesting organization will ensure access to site for the responding organization.
 - (2) The responding organization will report to the officer in charge of the requesting organization at the location to which the equipment is dispatched, and will be subject to the orders of that official. The primary Incident Commander for the Civilian Authority (e.g., the Charleston Fire Department) will be the Incident Commander and upon arrival, the 130 AW Fire and Emergency Services entity will defer to the Incident Commander's Civilian Authority command. The primary Incident Commander for the 130 AW is the Incident Commander of the 130 AW Fire and Emergency Services and upon arrival, the Charleston Fire Department will defer to the Incident Commander of the 130 AW Fire and Emergency Services.
 - (3) The responding organization will be released by the requesting organization when the services of the responding organization are no longer required or when the responding organization is needed within the area for which it normally provides fire protection.
 - (4) Sharing of non-encrypted Radio Frequencies/INTEROPERABILITY capability between agencies specifically during Mutual Aids for accountability of personnel and assets, including sharing of valuable information between Incident Command and firefighters.
 - (5) HAZMAT incident response will include the response to, and control and containment of any release or suspected release of any material suspected to be or known to be hazardous. Where the properties of a released material are not known, it will be considered hazardous until proven otherwise by the requesting organization using all technical resources available. Cleanup and removal of contained HAZMAT will be the responsibility of the requesting organization.
 - (6) In the event of a crash of an aircraft owned or operated by the United States or military aircraft of any foreign nation within the area for which the 130 AW normally provides fire protection services, the chief of the 130 AW fire department or his or her representative may assume full command on arrival at the scene of the crash.

- (7) Regardless of local agencies assigning an incident safety officer, an Air Force representative will be assigned to act as the incident safety officer for the 130 AW to observe Air Force support and operations at an incident. Local agencies are encouraged to assign a safety officer to observe the agencies support and operations at an incident on the installation..
- f. Each Party hereby agrees that its intent with respect to the rendering of assistance to the other Party under this Agreement is not to seek reimbursement from the Party requesting such assistance.
- (1) Notwithstanding the above, the Parties hereby recognize that pursuant to Section 11 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. § 2210) and Federal regulations issued there under 44 Code of Federal Regulations Part 151, the Charleston Fire Department is permitted to seek reimbursement for all or any part of its direct expenses and losses (defined as additional firefighting costs over normal operational costs) incurred in fighting fires on property under the jurisdiction of the United States. Furthermore, under the authority of 42 U.S.C. § 1856a, and pursuant to any applicable state or local law IAW each Party hereby reserves the right to seek reimbursement from the other for all or any part of the costs (defined as additional firefighting costs over normal operational costs) incurred by it in providing fire protection services to the other Party in response to a request for assistance.
- (2) Furthermore, the Charleston Fire Department agrees to indemnify and hold harmless the United States up to the City of Charleston's insurance policy limits from any liability that may arise from the use of fire-fighting foams, chemicals, or other materials by the Air Force in providing fire protection services to the Charleston Fire Department, which agreement to indemnify and hold harmless is limited to hazardous substance exposure or pollution of or contamination to air, land, water, person or property or such uses that may result in response actions under CERCLA, RCRA, or any other federal, state, or local laws from the reasonable use of the fire-fighting foams, chemicals, or other materials in response to the specific request for use from the Charleston Fire Department. For the avoidance of doubt, the obligation under this paragraph to indemnify and hold harmless the United States does not extend to any use of the fire-fighting foams, chemicals or other materials by the Air Force if (1) such materials are used solely for training purposes, (2) use of such materials is not specifically requested by the Charleston Fire Department, or (3) such materials are used in a grossly negligent, or otherwise unreasonable manner. Notwithstanding any other provision of this Agreement, termination of this Agreement shall in no way affect the Charleston Fire Department's obligation under this paragraph to indemnify and hold harmless the United States from any liability that may arise from the use of fire-fighting foams, chemicals, or other materials by the Air Force in providing fire protection services to the Charleston City Fire Department, which obligation shall survive such termination.
- g. Both parties acknowledge that the United States and 130 AW is not responsible for the cleanup of any debris, refuse, garbage or other materials at any site where the 130 AW's equipment and/or personnel are dispatched. Furthermore, the Charleston Fire Department agrees to

indemnify and hold harmless the United States, the 130 AW and its agents from any and all claims associated with such cleanup up to the City of Charleston's insurance policy limits.

- h. Both Parties agree to implement the National Incident Management System during all emergency responses on and off installations in accordance with *National Fire Protection Association Standard 1561*.
- i. Each Party waives all claims against the other Party for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement. This provision does not waive any right of reimbursement pursuant to paragraph f. above.
- j. All equipment used by the Charleston Fire Department in carrying out this agreement will, at the time of action hereunder, be owned by it; and all personnel acting for the Charleston Fire Department under this agreement will, at the time of such action, be an employee or volunteer member of the respective organization.
- k. The rendering of assistance under the terms of this Agreement shall not be mandatory but should be used only where the Charleston Fire Department is unable to respond in a timely manner; however, either Party receiving a request for assistance shall endeavor to immediately inform the requesting Party if the requested assistance cannot be provided and, if assistance can be provided, the quantity of such resources as may be dispatched in response to such request. The primary mission of the 130 AW fire protection personnel and equipment "is to provide fire and emergency services to prevent and minimize losses to Air Force lives, property and the environment occurring in periods of peace, war, military operations other-than-war, and humanitarian support operations", military resources cannot be exhausted at the request of the Charleston Fire Department in that sufficient personnel and equipment must be present on the 130 AW at all times to respond to primary mission duties. Department of the Air Force Instruction 32-2001, *Fire and Emergency Services (F&ES) Program*, 28 July 2022.
- l. Neither Party shall hold the other Party liable or at fault for failing to respond to any request for assistance or for failing to respond to such a request in a timely manner or with less than optimum equipment and/or personnel, or if either Party must leave the location of the incident to respond to an incident within their respective jurisdiction, it being the understanding of the Parties that each is primarily and ultimately responsible for the provision of fire protection services needed within their own jurisdictions.
- m. Disputes.
 - (1) Should a dispute arise between the Parties under or related to this Agreement, the Parties agree that they will attempt to resolve the dispute using unassisted negotiation techniques (i.e., without the assistance of a neutral third party). Either Party may request in writing that unassisted negotiations commence. As part of the unassisted negotiation, the Parties shall consider employing joint fact-finding, if material factual disputes are involved, and shall use other early resolution techniques appropriate to the circumstances. If the dispute involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

n. Alternative Dispute Resolution.

- (1) If the dispute is not resolved within sixty (60) days after the request for unassisted negotiations and the Parties do not mutually agree to continue the unassisted negotiations, the Parties shall employ alternative dispute resolution procedures involving nonbinding mediation of the dispute by a neutral third party. The alternative dispute resolution procedures employed shall include a confidential evaluation of both the facts and the law and the issuance of confidential recommendations by the neutral third party.
 - (2) By entering into this Agreement, the Parties have voluntarily adopted alternative dispute resolution procedures in accordance with 5 U.S.C. § 572(c). These procedures shall not be employed if determined by either Party to be inappropriate after taking into consideration the factors enumerated at 5 U.S.C. § 572(b). A Party rejecting alternative dispute resolution as inappropriate shall document its reasons in writing and deliver them to the other Party. If one Party rejects alternative dispute resolution as inappropriate, the Parties agree that the dispute will be governed by West Virginia law and agree to work together in good faith to consent to the jurisdiction of the Circuit Court of Kanawha County or the United States District Court for the Southern District of West Virginia in order to resolve the dispute through litigation or further negotiation. The Parties shall enter into a master written alternative dispute resolution Agreement governing alternative dispute resolution proceedings that may be amended as needed to fit individual proceedings. (A template of an acceptable alternative dispute resolution agreement may be found at www.adr.af.mil).
 - (3) The Government's obligation to make any payment arising out of an agreement resolving a dispute under this Agreement is contingent upon the availability of funds proper for such payment. The obligation of the Charleston Fire Department to make payment arising out of an agreement resolving a dispute under this Agreement is contingent upon the availability of funds proper under such payment.
- o. All notices, requests, demands, and other communications which may or are required to be delivered hereunder shall be in writing and shall be delivered by messenger, by a nationally-recognized overnight mail delivery service or by certified mail, return receipt requested, at the following addresses:

130th Airlift Wing
c/o Commander
1679 Coonskin Drive.
Charleston, WV 25311

And:

Department of the Air Force
Air Force Civil Engineer Center/CXF
139 Barnes Dr, Suite 1
Tyndall AFB FL 32403-5319

And:

130th Airlift Wing Fire and Emergency Services
Attn: Fire Chief
1679 Coonskin Drive
Charleston, WV 25311

And:

The Charleston Fire Department
Attn: Fire Chief
808 Virginia Street West
Charleston, WV 25302

And:

The City of Charleston
Attn: City Manager
501 Virginia Street East
Charleston, WV 25301

- p. TERMS OF THE AGREEMENT. This Agreement will become effective on the date of the last signature to the Agreement and will remain in effect for five years from that date (the "Term"). The Parties to this agreement shall conduct an annual review for currency to respective regulatory and policy guidance and shall acknowledge review by cover letter signature from both Parties' senior fire officers. Either Party may unilaterally terminate this Agreement during the Term by sending notification of its intent to terminate to the other Party at least 180 days in advance of the proposed date of termination. Such notification will be in the form of a written submission to the other Party.
- q. Upon becoming effective, this Agreement shall supersede and cancel all previous agreements between the Parties concerning the rendering of assistance from one to the other for the purposes stated in this Agreement.
- r. The modification or amendment of this Agreement, or any of the provisions of this Agreement, shall not become effective unless executed in writing and accepted by both Parties.
- s. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, The Parties have caused this Agreement to be executed by their duly authorized representatives on the dates shown below:

The Adjutant General

Date: _____

Mayor, City of Charleston, WV

Date: _____

USP&FO, West Virginia

Date: _____

130th Wing Commander

Date: _____

130th Base Civil Engineer

Date: _____

The Civil Engineer, National Guard Bureau

Date: _____

Resolution No. 757-23

Introduced in Council:

Adopted by Council:

January 17, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

1 Resolution No. 757-23 - Authorizing the Mayor or City Manager to execute Change Order No. 1
2 with RK Construction, Inc., in an amount not to exceed \$10,000, to remove excess soil mass
3 below Woodbine Ave. discovered during the course of construction of a retaining wall.

4

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

6

7 That the Mayor or City Manager is authorized to execute Change Order No. 1 with RK
8 Construction, Inc., in an amount not to exceed \$10,000, to remove excess soil mass below
9 Woodbine Ave. discovered during the course of construction of a retaining wall.

Retaining Wall Project #E1-11/22-147



CHANGE ORDER NO.1

Council Approval:

December 5, 2022

Contractor:

**RK Construction, Inc
47 Omers Drive
Frametown, WV 26623**

Description:

This change order will allow RK Construction, Inc. to remove an excess soil mass below the Woodbine Ave. retaining wall. This will be done on an hourly basis with a NTE (not to exceed) amount of \$10,000. Hourly rates will include an excavator @ \$120/hr. and a dump truck @ \$110/hr.

Original Contract Price:	\$375,133.41
Total of this Change Order:	\$ 10,000.00
Total of previously approved Change Orders	\$ 0.00
Contract Price with all Approved Change Orders	\$385,133.41

Approved by:

Accepted by:

City of Charleston

RK Construction, Inc.

Date

Date

Resolution No. 758-23

Introduced in Council:

Adopted by Council:

January 17, 2023

Introduced by:

Referred to:

Joseph Jenkins

Finance

Resolution No. 758-23 - Authorizing the City of Charleston to communicate the State of West Virginia and the West Virginia Department of Transportation of the city's willingness to participate in "Non-State-Owned Bridge Program" administered by the West Virginia Department of Transportation through the Federal Highway Administration.

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

That the City of Charleston is willing to participate in the "Non-State-Owned Bridge Program" administrated through the State of West Virginia and the West Virginia Department of Transportation. Funding for this effort was part of the federal Infrastructure Investment and Jobs Act (IIJA). This resolution does not commit the City of Charleston to any financial contribution currently. The IIJA bridge program provides up to 100% federal funding for certain off-system bridges, which typically require a 20% local match. For projects that may still require a local match, the IIJA allows WVDOT flexibility in structuring the matching money. Any future IIJA projects that require local matching funds will be brought before City Council at that time.