# CITY OF CHARLES TOWN
## BUILDING COMMISSION
## AGENDA • DECEMBER 14, 2023

**Commission/Board Meeting** **CITY HALL** **3:00 PM**

**101 E Washington Street, Charles Town, WV 25414**

**1. CALL TO ORDER**

**2. APPROVAL OF MINUTES**

: **2023-1167:** Building Commission Meeting Minutes - March 10, 2023
Building Commission 3-10-23.docx

**3. UNFINISHED BUSINESS**

**4. NEW BUSINESS**

: **2023-1166:** Account Balances - September 30, 2023
Account Balances - September 30 2023.xlsx

: **2023-1161:** Charles Washington Hall - Water Heater Replacement
Charles Town Plumbing Invoice - Water Heater Replacement.pdf

: **2023-1162:** Charles Washington Hall Electric Repairs
Electrical Estimate.pdf

: **2023-1163:** Charles Washington Hall - Historic Tax Credit Investor Eligible for Exit
* Investor exercised Put Option at a cost of $25,000.00
* Investor requested Annual Return payments in the amount of $40,575.00
Executed Option Agreement.PDF

: **2023-1164:** 1999 Series Revenue Bond Interest and Sinking Fund (B.C)-Truist - Combine with repaving fund
BuildingCommissionltr_Paving ResidualFundf_7Feb2022.pdf

: 2024 Building Commission Meeting Schedule

**5. ADJOURNMENT**

**6. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at:**

**https://www.charlestownwv.us/government/agendas-and-minutes/**

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

**SCHEDULED**

Meeting: 12/14/23
Department: Building Commission
Category: Report
Initiator:

**AGENDA ITEM (ID # )**

## 2023-1167: Building Commission Meeting Minutes - March 10, 2023

**ATTACHMENTS:**

- Building Commission 3-10-23.docx

# CITY OF CHARLES TOWN

**CITY COUNCIL**

**MINUTES • March 10, 2023**

**Regular Meeting** **Council Chambers** **7:00 PM**

**101 East Washington Street, Charles Town, WV 25414**

## I. CALL TO ORDER

## II. ROLL CALL

| | |
|---|---|
| **Present:** | Mary Ellen Mahoney<br>Keith Veler<br>Liz McDonald<br>Sarah Edgar |
| | |
| **Absent:** | John Rish |
| | |

Mr. Todd Wilt, Operations Manager, Mr. John Barkley, City Manager, and Mayor Bob Trainor were also in attendance.

Mayor Bob Trainor administered the Oath of Office to Ms. Sarah Edgar.

## III. MINUTES

Building Commission - Regular Meeting - April 18, 2022

Ms. Mahoney moved to approve the April 18, 2022, meeting minutes. Ms. McDonald seconded the motion, and it passed unanimously.

| | |
|---|---|
| **RESULT:** | **APPROVED** |
| **MOVER:** | Mary Ellen Mahoney |
| **SECONDER:** | Liz McDonald |
| **AYES:** | Mary Ellen Mahoney, Keith Veler, Liz McDonald, Sarah Edgar |

## IV. STAFF REPORT

Mr. Wilt introduced City Manager John Barkley to the Commission. Mr. Wilt reported that the bank signature cards will be updated with Mr. Barkley's name and title. Mr. Wilt also suggested scheduling quarterly meetings. There were no objections.

## V. OLD BUSINESS

There was no old business to discuss.

## VI. NEW BUSINESS

1. Election of Officers 2023

   Ms. McDonald moved to elect Mr. Veler as Chairman and Ms. Mahoney as Secretary/Treasurer. The vote passed unanimously.

| | |
|---|---|
| **RESULT:** | **APPROVED** |
| **MOVER:** | Liz McDonald |
| **AYES:** | Mary Ellen Mahoney, Keith Veler, Liz McDonald, Sarah Edgar |

2. Account Closure Request from City of Charles Town - February 2022

   Ms. McDonald moved to transfer to the City's designated repaving investment account at Summit Bank approximately $350,000.00 held by the Commission to service the Arvest Bank repaving loan that was paid off on December 31, 2018. Ms. Mahoney seconded the motion, and it passed unanimously.

| | |
|---|---|
| **RESULT:** | **APPROVED** |
| **MOVER:** | Liz McDonald |
| **SECONDER:** | Mary Ellen Mahoney |
| **AYES:** | Mary Ellen Mahoney, Keith Veler, Liz McDonald, Sarah Edgar |

## VII. ADJOURNMENT

Ms. McDonald moved to adjourn the meeting. Ms. Mahoney seconded the motion, and it passed unanimously.

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

Meeting: 12/14/23
Department: Building Commission
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1166: Account Balances - September 30, 2023

**ATTACHMENTS:**

- Account Balances - September 30 2023.xlsx

City of Charles Town
Bank and Investment Accounts
As of September 30, 2023

Revised: November 7, 2023

| Account | Fund | June 30, 2023 Account Balance | Sep 30, 2023 Account Balance | Near-Term Expenditures | UNRESTRICTED FUNDS Unencumbered Balance | RESTRICTED FUNDS Unencumbered Balance | Comments |
|---|---|---|---|---|---|---|---|
| General Fund-BCT | General | $ 4,712,111 | $ 5,524,661 | $ 4,024,661 | $ - | $ 1,500,000 | General fund for operations; assumes complete draw down in near-term. $1.5 million ARPA funding held in General Fund for grant matching. |
| Coal Severance Tax Revenue Fund-BCT | Coal Severance | 126,373 | 134,183 | | - | 134,183 | Special revenue fund used for select projects; saving for longer-term park project. |
| Charles Town Building Commission-Truist | Bldg Commission | 229,830 | 221,634 | | - | 221,634 | Near-term expenditures (i.e. debt service) are paid from the BC fund and directly reimbursed through monthly lease payments from General Fund. Other funds restricted to BC purposes. |
| Residual Fund-Summit | Residual | 677,514 | 684,181 | | 684,181 | - | Savings account/emergency fund for the city. No planned expenditures. |
| Sales Tax-BCT | Sales Tax | 3,138,925 | 2,826,735 | 1,600,000 | 1,226,735 | - | $1 million committed to debt service (CWH and Annex reimb) and general operating costs for fiscal year 2023 - $700k already transferred. |
| Federal Equitable Fund-BCT | Investigative | 99,629 | 84,953 | | - | 84,953 | Funds restricted for limited police activities per DOJ guidelines. |
| CWH Landlord, LLC-BCT | CWH Landlord | 632,645 | 632,082 | 25,000 | 607,082 | - | Unrestricted revenues from the sale of federal historic tax credits; near-term expenditures are to begin design of city hall renovations. $25K allocated for possible option buy out. |
| American Rescue Plan Account-BCT | ARPA Fund | 8,895 | 8,907 | | - | 8,907 | 2nd tranche transferred on 1/6/2023 - $1.332 million to General Fund. |
| Housing Rehab Program-United | CDBG | 63,548 | 63,755 | | - | 63,755 | Funds restricted to housing rehab services. |
| Investigation Account - CTPD-BCT | Investigative | 31,096 | 35,248 | | - | 35,248 | Funds for police use-Federal Equitable recorded under separate bank account. |
| Employees Fund CTPD-BCT | Employees Fund | 964 | 965 | | - | 965 | Funds for police use |
| Capital Reserve Fund-BCT | Capital Reserve | 2,726,939 | 2,478,938 | | 2,478,938 | - | Near term funding for capital projects approved in FY24 CIP budget (minus capital expenses already paid, and repaving expenses paid from other account). |
| Summit Broker Buster - Repaving | Capital Reserve | 954,034 | 967,855 | | - | 967,855 | Savings account for future road resurfacing projects; near term expenses includes street improvements budgeted for FY2024. |
| EPA/RLF Fund-BCT | Capital Reserve | 182,084 | 190,581 | | 190,581 | - | EPA project completed but account remains open because it is a depository for federal overtime funds for drug task force (those funds later transferred to GRF) and is used to manage cash flow for reimbursable grants. |
| Board of Park & Recreation-BCT | Parks & Rec | 81,803 | 28,484 | 28,484 | 0 | - | Operating account for the city's parks programs |
| Board of Park & Recreation - CIP-BCT | Parks & Rec | 5,145 | 5,549 | | - | 5,549 | Account dedicated to Parks & Rec Donations/Contributions for future Parks CIP (tennis courts, pool, etc.) |
| Debt Service Reserve (B.C.)-Truist | Bldg Commission | 47,730 | 47,736 | | 47,736 | - | Established in 2010 at the same time the Building Commission established the Sinking Fund for a 1999 bond issuance. Bond has been repaid, funds to be consolidated with Repaving fund. |
| 1999 Series Revenue Bond Interest & Sinking Fund (B.C)-Truist | Bldg Commission | 304,928 | 304,966 | | 304,966 | - | Account includes original deposit of $52k to establish fund and additional deposits from street fees and interest earnings. Now that bond is paid, funds are "unrestricted" and can be combined with the Repaving fund. |
| Board of Trustees Police Pension Relief Fund-United | Police Pension | 50,905 | 42,568 | 42,568 | - | 0 | Funds used to support pension beneficiaries (includes regular contributions from the general fund to this account). |
| Bond Escrow Fund-BCT | Bond Escrow | 183,063 | 183,409 | | - | 183,409 | Account is used to deposit funds from developers and held until projects are completed. Current funds are for the Samuel Street Station and Tate Manor projects. |
| Total Bank Accounts | | *$ 14,258,161* | *$ 14,467,390* | $ 5,720,713 | $ 5,540,219 | $ 3,206,458 | |
| | | | | | - | | |
| Fidelity Police Pension Fund #6846 | Police Pension | *479,414* | *473,562* | - | - | 473,562 | Investment fund for restricted use; future pension payments |
| Fidelity City Residual Fund #9959 | Residual | *687,509* | *673,102* | - | 673,102 | - | Investment fund for budget stabilization. |
| | | | | | - | | |
| Total Bank Accounts plus two Investment Accounts | | *$ 15,425,084* | *$ 15,614,054* | $ 5,720,713 | $ 6,213,322 | $ 3,680,020 | |

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

**SCHEDULED**

Meeting: 12/14/23
Department: Building Commission
Category: Report
Initiator:

**AGENDA ITEM (ID # )**

## 2023-1161: Charles Washington Hall - Water Heater Replacement

**ATTACHMENTS:**

- Charles Town Plumbing Invoice - Water Heater Replacement.pdf

# INVOICE

**Charles Town plumbing LLC**
49 Hite Rd
Kearneysville, WV 25430

ctownplumb@gmail.com
+1 (304) 725-9751

## City of Charles town

**Bill to**
100 west washington st
charles town, wv 25414

**Ship to**
City of Charles town
100 west washington st
charles town, wv 25414

**Invoice details**
Invoice no.: 1199
Terms: Due on receipt
Invoice date: 10/29/2023
Due date: 10/29/2023

| # | Date | Product or service | SKU | Qty | Rate | Amount |
|---|---|---|---|---|---|---|
| 1. | | **Services**<br>Remove, dispose of existing, and Install New 50 gallon, 100k btu heater, with new shut off valve, expansion tank. adding drip leg to gas line before entering gas valve, and correcting flu pipe issues if needed. | | | | $9,170.00 |

**Total** **$9,170.00**

**Overdue** 10/29/2023

### Note to customer

Thank you for your business and continued support! My team and I really appreciate the opportunity to work with you.

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

Meeting: 12/14/23
Department: Building Commission
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1162: Charles Washington Hall Electric Repairs

**ATTACHMENTS:**

- Electrical Estimate.pdf

Dead Rock Electrical Services

**Dead Rock Electrical Services**
**465 Shipley School Road, Harpers Ferry, West Virginia 25425 United States**
**(540) 931-0079**

**Estimate** 20430388
**Estimate Date** 12/1/2023

**Billing Address**
City of Charles Town
101 E. Washington st
Charles Town, WV 25414 USA

**Job Address**
Ortega Taco
100 West Washington Street
Charles Town, WV 25414 USA

**Description of work**

From 200 amp panel in basement pull one additional circuit through the existing 3/4 PVC and install one additional outlet on the counter area near the soup heaters to supply power for an additional Burrito press.

From 200 amp panel in basement, install 3/4" EMT through stairwell into the attic and bring four new circuits into a junction box. From junction box supply two circuits to feed a 12" power pole to be mounted at the end of the food prep line and install two 120v 20 amp dedicated receptacles.

In basement replace 120v 20 amp GFI receptacle that is supplying the freezer.

From attic circuits install one 20 amp 120v outlet at the soda bar area to power new Pepsi machine.

From attic circuits, droop one junction box with a 20 amp 120v dedicated circuit for power to the tankless water heater system.

| Task # | Description | Quantity | Your Price | Total |
|---|---|---|---|---|
| 120422-1 | PROVIDE LABOR AND MATERIALS FOR ABOVE SCOPE OF WORK.<br><br>WE USE THIS TASK WHEN THE PROJECT REQUIRES A CUSTOM ESTIMATE AND IS NOT A SERVICE RELATED REPAIR | 1.00 | $3,800.00 | $3,800.00 |
| T700297 | CITY OF CHARLES TOWN PERMIT<br><br>There are permit fees associated with our work that must be obtained and our work inspected by your local municipality. We pass these fees and our expense in obtaining these permits through to you as we have no control over these fees.<br><br>MPT:60.000000 | 1.00 | $175.00 | $175.00 |

| | |
|---|---|
| **Sub-Total** | $3,975.00 |
| **Tax** | $0.00 |
| **Total Due** | $3,975.00 |
| **Deposit/Downpayment** | $0.00 |

Thank you for choosing Dead Rock Electrical Services

AUTHORIZATION AND CONTRACT AGGREEMENT
The Customer represents that he/she is the "owner of the property" or an "authorized agent" on behalf of owner of the property described. Customer will identify boundary lines and be responsible for obtaining all necessary zoning variations before commencement of work. I (we) understand that we are jointly and severally liable for payment of any amounts owed pursuant to this Agreement and for payment of said amounts to Contractor. I (we) shall make payment to Dead Rock Electrical Services within 10 days. In the case of insurance work or Home Warranty work, Dead Rock Electrical Services is working for the Customer and not the insurance company or the adjuster. For Agreements executed by multiple Customers only: Each of the Customers hereby agree that each of the other Customers is his or her agent and may act on his or her behalf for purposes of making specification changes, work order changes, and modifications to this Agreement.
COSTS: A Deposit of 1/3 of the total price is required upon signing of this contract. The estimate is subject to change due to unforeseen issues not discovered during the initial inspection, etc. Final costs shall be determined based on the actual work performed, equipment and materials used, etc. Customer will be given additional notice in the event costs exceed the estimated amount. Balance of above estimated amount not paid via deposit to be paid as follows: At the time of service, payable to the technician onsite in person.
THE SPECIFIC WORK TO BE PERFORMED: Electrical Services as per attached estimate (a copy of which has been provided to the customer and is incorporated herein). No verbal estimate or "not to exceed" shall be given by any representative of Dead Rock Electrical Services, LLC. Any representation, promise, condition, inducement, or warranty, expressed or implied, NOT set forth in writing, will not be binding on Contractor. No waiver or modification of any terms of this agreement will be effective as to either party

unless it is in writing and signed by the party against whom enforcement is sought. No work will be done or material furnished except as specified herein or agreed to in writing. Any modifications to this Agreement which change the cost, materials, or work to be performed or the estimated completion date must be made in writing and signed by all parties. This Agreement does not include, unless expressly specified, any Drywall Repair. All surplus material remains Contractor's property. Customer acknowledges that Contractor has title to the materials used in performing the work described herein. Customer agrees that title to the materials does not pass to Customer under this Agreement until the Agreement price is paid in full. Customer further agrees and acknowledges that in the event of default, Contractor has a greater right to possession of the materials than does the Customer and further agrees to grant Contractor access to recover the materials within ten (10) days after being notified by Contractor of the default. Delivered materials may be placed in the driveway or carport of the property at the convenience of the delivery personnel. During work Contractor may use Customers utilities, and all charges shall be Customer's responsibility. Customer also agrees to execute all other documents which Contractor may require in order to carry out the terms of this Agreement or comply with all applicable laws.

MODIFICATION OF THIS CONTRACT: Every effort will be made to include all necessary items in estimate. Occasionally there are hidden or overlooked items that need to be added to the scope of work. In the event a supplemental estimate/scope of work needs to be written, the supplemental estimate will be presented to customer for written approval as quickly as possible after the need for additional items is discovered. Any approved supplement and associated cost becomes part of the original job description as stated above and part of this contract.

*Please be aware that there can be issues or items that arise later due to overlooked items or hidden damages. If this occurs, the estimated completion date/time could be extended considerably, depending on the quantity of the additional work to be done.

*Any modifications to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

*The approximate commencement and completion dates of the Agreement are only estimates and Contractor shall not be responsible for delays resulting from changes in the work by the Customer, changes to the product specifications, delays in issuance of the building, electrical and plumbing permits, inclement weather, labor disputes, fire, unusual delays in transportation, existing site conditions, weather conditions, other conditions not anticipated, or conditions beyond the control of the Contractor. In the event of such delays, the project shall not be deemed abandoned and such events beyond the control of the Contractor shall not be included in calculating time frames for payment or performance. Customer represents and warrants that the commencement and completion dates set forth in this Agreement were not relied upon by the Customer and did not, in any way, form the basis of the bargain between the parties hereto.

*If Contractor discovers mold, asbestos, lead, bacteria, or any other contaminants, it may be necessary to stop all work until Customer hires the proper and/or appropriate indoor environmental specialist to conduct testing and to advise Contractor and Customer with regard to contaminants. Work stoppage by Contractor does NOT constitute abandonment of the job, contract, or rights listed within this agreement.

The Contractor shall comply with all local and State requirements for building permits, inspections, and zoning.

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED: All work shall be completed in a workmanlike manner per standard practices. All agreements are contingent upon strikes, accidents or delays beyond Contractor control. Customer shall carry fire, tornado, and other necessary insurance. Contractor employees are fully covered by Workmen's Compensation Insurance. The Manufacturer(s) of the material(s) used to complete the work described herein may offer a limited warranty on the materials provided by Contractor to Customer. Any and all claims by Customer for breach of
warranty of any type must be brought directly against the manufacturer of the materials. Customer hereby waives any and all claims for breach of warranty of any type against Contractor.

ACCEPTANCE OF PROPOSAL: The above specifications and conditions are satisfactory and are hereby accepted. Contractor is authorized to do the work as specified. Payment will be made as outlined in the Costs section of this contract.

CUSTOMER'S RIGHT TO CANCEL: Regardless of whether this Agreement was solicited at a residence, if you do not want the materials or services, you the Customer, may cancel this transaction at any time prior to midnight of the third business day after the initial date of this transaction. Any such cancellation must be in writing and sent to the address and fax number listed above. Irrespective of this right, Contractor can begin work without delay only if you waive your right to cancel the sale because of an emergency.

*Virginia consumers: information regarding the Virginia Contractor Recovery Fund may be obtained from DPOR:www.dpor.virginia.gov

If you want Contractor to begin work without delay, please sign and accept.

I agree and authorize the work as summarized on these estimated terms, and I agree to pay the full amount for all work performed.

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

Meeting: 12/14/23
Department: Building Commission
Category: Report
Initiator:

**SCHEDULED**

**AGENDA ITEM (ID # )**

## 2023-1163: Charles Washington Hall - Historic Tax Credit Investor Eligible for Exit
## * Investor exercised Put Option at a cost of $25,000.00
## * Investor requested Annual Return payments in the amount of $40,575.00

**ATTACHMENTS:**

- Executed Option Agreement.PDF

**PURCHASE OPTION AGREEMENT**

THIS PURCHASE OPTION AGREEMENT is made effective as of December 21, 2016 by and between CHARLES WASHINGTON HALL MANAGER, LLC, a West Virginia limited liability company (the "Managing Member"), and SINCLAIR GILLESPIE, an individual residing in the State of North Carolina (the "Investor").

**R E C I T A L S :**

A. In accordance with the provisions of the Operating Agreement of CHARLES WASHINGTON HALL LANDLORD, LLC, a West Virginia Limited Liability Company (the "Landlord"), dated as of the date hereof (the "Operating Agreement"), the Investor is the 99.00% member of the Landlord (such 99.00% interest, the "Interest").

B. Landlord is rehabilitating that certain real property located in Charleston, West Virginia (the "Project") in a manner that will qualify for the federal historic rehabilitation tax credit (the "Federal Historic Tax Credit") described in Section 47 of the Internal Revenue Code of 1986, as amended (the "Code").

C. The Investor desires to give, grant, bargain, sell and convey to the Managing Member (or its designee) certain rights to purchase the Interest on the terms and subject to the conditions set forth herein.

D. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Operating Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Put Option. The Investor shall have the right and option but not the obligation ("Put Option") to require the Managing Member or its designee to purchase the entire, and only the entire Interest of the Investor by written notice to the Managing Member (a "Put Option Notice") upon the following terms:

(a) If the Project fails to obtain Part 2 Approval (as that term is defined in the Operating Agreement) by June 30, 2017, Investor may exercise its Put Option by delivering a Put Option Notice and upon receipt of the Put Option Notice, the Managing Member shall purchase the Interest from Investor at a price equal to the amount of Investor's Capital Contributions to Landlord.

(b) For a six (6) month period commencing on the Interest Shift Date (as defined in the Operating Agreement), the Investor may exercise its Put Option by delivering the Put Option Notice and upon receipt of the Put Option Notice, the Managing Member shall purchase the Interest from Investor for a purchase price equal to the lesser of (i) Twenty-five Thousand Dollars ($25,000.00) or (ii) the Fair Market Value of the Interest of the Investor determined as provided in Section 2 below.

(c) The Managing Member shall purchase the Interest from Investor without recourse, representation or warranty, free and clear of any liens, charges, encumbrances or interests of any third party.

(d) The price required to be paid by the Managing Member for the purchase of the Interest set forth in subparagraphs (a) and (b) above are referred to hereafter as the "Put Option Price".

2. Determination of the Fair Market Value.

(a) The Fair Market Value of the Interest of the Investor shall, unless otherwise agreed between the Investor and the Managing Member, be determined by an Independent Appraiser (as defined below), to be selected as follows. As soon as practicable and in any event within thirty (30) days following the delivery of a Put Option Notice, the Managing Member and the Investor shall jointly select an Independent Appraiser. The appraisal shall take into account any legal provisions affecting the Interest (such as transfer restrictions) and such discounts as the Independent Appraiser deems appropriate (such as marketability and illiquidity discounts). The Managing Member and Investor shall share the cost of this appraisal.

If the Investor and Managing Member cannot agree on an Independent Appraiser, then the Investor and Managing Member shall each select an Independent Appraiser. Each such Appraiser shall, within thirty (30) days after being selected, deliver a report stating the appraised value of the Interest and reasons for arriving at such value, the cost of each appraisal to be borne by the selecting party. If such appraised values are within twenty percent (20%) of each other, the price to be paid for the Interest shall be the average of such two appraised values. If such appraised values are not within twenty percent (20%) of each other, and the parties hereto do not otherwise agree as to a price to be paid for the Interest within five (5) days of receipt of the two reports, the two aforementioned Appraisers shall jointly select a third Independent Appraiser who shall review the two appraisal reports, perform any additional work necessary and determine the fair market value of the Interest. The determination of the fair market value of the Interest shall be binding and conclusive on the parties and the costs of such final appraisal shall be borne equally by the Investor and the Managing Member.

(b) For purposes of this Agreement, the term "Independent Appraiser" means a person or firm that is generally qualified to render opinions as to the Fair Market Value of assets such as Interests in the Landlord, which satisfies the following criteria:

(i) Such firm is not a Member or an Affiliate of the Landlord or any Member;

(ii) Such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;

(iii) Such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm;

(iv) One or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and

(v) Such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

3. Payment of Purchase Price. The entire Put Option Price shall be paid to the Investor at the closing in cash or immediately available funds, unless otherwise mutually agreed. The Investor shall be responsible for the costs of its own attorneys' fees incurred in connection with the closing. All other costs of the purchase of the Interest shall be paid by the Managing Member. Upon receipt of the Put Option Price, the Investor shall transfer the Interest without recourse, representation or warranty, free and clear of any liens, charges, encumbrances or interests of any third party, and shall execute or cause to be executed any documents required to fully transfer such Interest. As of the effective date of such closing, the Investor shall withdraw as a member from the Landlord and shall have no further interest in or obligation to the Landlord, and, if required by applicable law, the Managing Member shall cause the Landlord to promptly file an amendment to the Operating Agreement with the Secretary of State of West Virginia reflecting the withdrawal of the Investor. If the Put Option is exercised within the indicated time period, this Agreement shall terminate unless otherwise mutually agreed.

4. Impact of Other Agreements and Documents. The rights and obligations of the Managing Member hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (a) any amendment or modification of or addition or supplement to the Operating Agreement or any of the Development Documents, (b) any extension, indulgence or other action or inaction in respect of the Operating Agreement or the Development Documents, or any exercise or non-exercise of any right, remedy, power or privilege in respect of such documents or this Agreement, (c) any default by the Managing Member or the Landlord under, or any illegality or unenforceability of, or any irregularity or defect in, the Operating Agreement, the Development Documents or any provision of this Agreement, (d) any Bankruptcy, insolvency, reorganization or similar proceeding involving or affecting the Landlord or the Managing Member, or (e) any other circumstances whether or not the Managing Member or Investor shall have actual or constructive notice or knowledge thereof. If the Managing Member purchases the Interest of the Investor in accordance with the applicable provisions of this Agreement, the Managing Member shall have no further liabilities or obligations hereunder.

5. Representations and Warranties. Investor and Managing Member represent and warrant to each other as of the date of this Agreement as follows, all of which are material to the other party and the truth and accuracy of which have been relied upon by each such other party in executing and performing their obligations under this Agreement:

(a) Investor and Managing Member, respectively, each has authority to enter into this Agreement and carry out the transactions contemplated hereunder;

(b) the execution, delivery, and performance by Investor and Managing Member, respectively, of this Agreement has been duly authorized by all necessary corporate action, and are valid and binding upon, and enforceable against Investor and Managing Member, respectively, in accordance with the applicable terms hereof; and

(c) There is no agreement, present plan or intention by Investor to exercise its Put Option under this Agreement.

6. Notices and Demands. All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given when the same are (a) sent by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or (b) sent by a nationally recognized courier service for next day delivery, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to the other parties:

| | |
|---|---|
| If to Managing Member: | Charles Washington Hall Manager, LLC<br>P.O. Box 14<br>Charles Town, West Virginia 25414<br>Attn.: David Mills<br>e-mail: dmills@charlestownwv.us |
| With a copies to: | Brian Wishneff & Associates<br>30 W. Franklin Road, Suite 503<br>Roanoke, VA 24011<br>Attn: Erik Wishneff<br>e-mail: erik@wishneff.com<br><br>Spencer Fane, LLP<br>1 N. Brentwood Blvd., Suite 1000<br>St. Louis, MO 63105<br>Attn: Carl Desenberg, Esq.<br>e-mail: cdesenberg.spencerfane.com |
| If to Investor: | Sinclair Gillespie<br>4312 Foxcroft Road<br>Charlotte, NC 28211 |
| With copies to: | Frank T. Ellett<br>3752 Brandon Avenue<br>Roanoke, Virginia 24018<br><br>Woods Rogers PLC<br>10 South Jefferson Street<br>Roanoke, Virginia 24011<br>Attn: Neil V. Birkhoff<br>E-mail: Birkhoff@woodsrogers.com |

Notices delivered personally or by electronic mail will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by United States mail in accordance with the above paragraph will be effective three (3) Business Days after mailing; notices sent by a nationally recognized courier service for next day delivery will be effective on the next Business Day after delivered to such courier service.

7. General Provisions.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. No party to this Agreement may assign the rights under this Agreement without the consent of each other party hereto, which consent shall not be unreasonably withheld. Any amendment(s) to this Agreement shall be effective only if set forth in writing and signed by each party hereto.

(b) Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

(c) No party hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia.

(e) All headings and captions in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision. Capitalized terms not defined herein shall have the meaning ascribed to them in the Operating Agreement.

(f) This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. Signatures on this Agreement may be transmitted electronically in portable document format (".pdf") and each copy of this Agreement bearing the electronically transmitted signature of any party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the electronically transmitted originals, it is intended that this Agreement be manually executed and then be delivered to the Investor. The Investor will then have the appropriate signature manually affixed to the Agreement and return fully executed copies to the appropriate parties.

(g) As the context may require, all personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa.

(h) Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

(i) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

(j) Investor shall be entitled to assign its rights under this Agreement without the consent of the Managing Member. The Managing Member's rights under this Agreement may be assigned by it without Investor's consent.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be made effective as of the date and year first written above.

**INVESTOR:**

By: _____

SINCLAIR GILLESPIE, an individual residing in the State of North Carolina, by and through her attorney-in-fact, Frank T. Ellett

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

**SCHEDULED**

Meeting: 12/14/23
Department: Building Commission
Category: Report
Initiator:

## AGENDA ITEM (ID # )

## 2023-1164: 1999 Series Revenue Bond Interest and Sinking Fund (B.C)-Truist - Combine with repaving fund

**ATTACHMENTS:**

- BuildingCommissionltr_Paving ResidualFundf_7Feb2022.pdf

# City of Charles Town

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Web: www.charlestownwv.us


February 7, 2022

Charles Town Building Commission
PO Box 14
Charles Town, WV 25414

Dear Commissioners:

On behalf of the Charles Town City Council (Council), I would like to thank the members of the Charles Town Building Commission (Commission) for your support in helping the City achieve its real property and facilities goals. This is done primarily by securing debt financing for new purchases and public building renovations. The Commission also serves an important role in executing lease agreements and managing these facilities during periods of debt financing, with the City as the primary Lessee and responsible party for covering the ongoing maintenance, operation, and improvement costs that are not financed.

As you may know, a 1999 Arvest Bank repaving loan held by the Commission was paid off on December 31, 2018. For 20 years, the City had transferred repaving funds collected by the Charles Town Utility Board to the Commission's repaving debt service account in order to cover the bi-annual payments for the aforementioned loan. Since January 1, 2019, the monthly repaving funds collected by the Charles Town Utility Board have been transferred to the City's repaving investment account at MVB Bank (now Summit Bank) and held for future road maintenance.

The Council has directed to me to request that the repaving debt service and repaving revenue accounts held by the Commission to service the Arvest Bank loan, totaling approximately $350,000, be closed and transferred to the City's designated repaving investment account at Summit Bank. This action will consolidate all current and future paving-related assets into a single account. Breanna Andrews, the City's Accounting Manager, will facilitate the transfer of funds after receiving concurrence from the Commission. If you have any questions regarding this request, she can be reached by email at bandrews@charlestownwv.us or by phone at 304-724-3257.

Thank you for your assistance with this request.

Respectfully,

Robert M. Trainor
Mayor

cc: Charles Town City Council
Daryl Hennessy, City Manager
Breanna Andrews, Accounting Manager
Todd Wilt, Operations Director and Building Commission Liaison

**Building Commission**
101 East Washington Street
Charles Town, WV 25414

**SCHEDULED**

**AGENDA ITEM (ID # )**

Meeting: 12/14/23
Department: Building Commission
Category: Report
Initiator:

## 2024 Building Commission Meeting Schedule

**ATTACHMENTS:**