

**88th Regular Session
Mayor and City Council
April 19, 2016
Agenda**

7:00 PM - April 19, 2016 - REGULAR SESSION -*Council Chambers*

I. CALL TO ORDER

Mayor David S. Gysberts

II. INVOCATION

Councilmember Donald F. Munson

III. PLEDGE TO THE FLAG

IV. ANNOUNCEMENTS

- A. A. Rules of Procedure - *Adopted September 24, 2013*
- B. Use of cell phones during meeting is restricted
- C. All correspondence for distribution to Elected Officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.
- D. Meeting Schedule
 - 1. Tuesday, May 3, 2016 - Work Session at 4:00 p.m.
 - 2. Tuesday, May 10, 2016 - Work Session at 4:00 p.m., Tax Rate and Budget Public Hearing at 7:00 p.m.
 - 3. Tuesday, May 17, 2016 - Work Session at 4:00 p.m.
 - 4. Tuesday, May 24, 2016 - Regular Session at 7:00 p.m.
 - 5. Tuesday, May 31, 2016 - No Meeting Scheduled

V. APPOINTMENTS

- A. W. Kyd Dieterich - Board of Code Appeals, Term to Expire May 1, 2020

VI. CITIZEN COMMENTS

VII. CITY ADMINISTRATOR'S COMMENTS

VIII. MAYOR AND COUNCIL COMMENTS

IX. MINUTES

March 1, 2016, March 8, 2016, March 15, 2016, and March 22, 2016

X. CONSENT

A. Community and Economic Development

- 1. Approval of Street Closures for Hagerstown Rescue Mission 5k - April 23, 2016, Summer Slide Festival - September 10, 2016, and MSO Classics and Crabs - September 17, 2016

XI. UNFINISHED BUSINESS

XII. NEW BUSINESS

- A. Introduction of a Resolution: Annexation of Stormwater Parcel, LLC, 250 Eastern Boulevard North
- B. Approval of Annexation Plan - Stormwater Parcel, LLC, 250 Eastern Boulevard North
- C. Approval of an Agreement with Brookgreen Gardens, Inc for Use of "Diana of the Chase" Image
- D. Approval of License Agreement with Raymond Higgins for Use of Third Street Right-of-Way
- E. Acceptance of a Grant with Chesapeake Bay Trust/Maryland Department of the Environment
- F. Approval of Contract Purchase Order Amendment 2 for Allan A. Myers, LP \$154,306.00
- G. Approval of an Exemption from City Code Chapter 155, Noise - Fireworks Exemption for North Hagerstown High School - May 23,2016
- H. Approval of Rain Insurance Policy for 2016 Western Maryland Blues Fest - \$9,991.00
- I. Approval of Tourist Area and Corridor Signage Program

XIII. ADJOURN

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Mayor David S. Gysberts

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Councilmember Donald F. Munson

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

- A. Rules of Procedure - *Adopted September 24, 2013*
- B. Use of cell phones during meeting is restricted
- C. All correspondence for distribution to Elected Officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.
- D. Meeting Schedule
 - 1. Tuesday, May 3, 2016 - Work Session at 4:00 p.m.
 - 2. Tuesday, May 10, 2016 - Work Session at 4:00 p.m., Tax Rate and Budget Public Hearing at 7:00 p.m.
 - 3. Tuesday, May 17, 2016 - Work Session at 4:00 p.m.
 - 4. Tuesday, May 24, 2016 - Regular Session at 7:00 p.m.
 - 5. Tuesday, May 31, 2016 - No Meeting Scheduled

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

W. Kyd Dieterich - Board of Code Appeals, Term to Expire May 1, 2020

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

March 1, 2016, March 8, 2016, March 15, 2016, and March 22, 2016

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Street Closures for Hagerstown Rescue Mission 5k - April 23, 2016, Summer Slide Festival - September 10, 2016, and MSO Classics and Crabs - September 17, 2016

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Consent_Agenda.pdf

Description

Motion

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: April 19, 2016

TOPIC: Consent Agenda

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move that all the Consent Agenda be approved as presented.

Note: If you want to discuss any one item listed on the Consent Agenda, you must first make a request to remove that item from the Consent Agenda. The item automatically is moved to the last item under New Business and may then be discussed at that time. The appropriate motion for approval then is:

“I hereby move that the Consent Agenda, with the exception of (list item and topic) be approved.”



CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development
Gaela S. M. Shoop – Community Event Coordinator

March 29, 2016

TO: Valerie Means, City Administrator
FROM: Gaela S. M. Shoop, Community Events Coordinator
RE: STREET CLOSURE REQUEST

City staff has received an additional street closure request for an event since the February memo that went to Mayor and City Council. Working with a limited scope of time, staff would seek to have this item tentatively accepted at this week's council meeting, while recognizing that it would not be officially approved until the April 19th Mayor & City Council session.

Some events do require a State Highway permit; in that instance it is the responsibility of organization coordinating the event to obtain one. Since this is not a City operated event, the operating organization would be required to give the City a certificate of insurance and add them as an added insured. We also request that neighborhoods/businesses affected by the street closures be notified by the coordinating organization.

In all instances, all departments including the Fire, Police, Public Works, Engineering, Community and Economic Development, and Utilities have been involved in reviewing the closures to make it the most efficient and safe way to have the event operated.

If there are costs for the street closures, the entity is paying the costs. The City Staff is working to keep these costs as minimal as possible for the agencies.

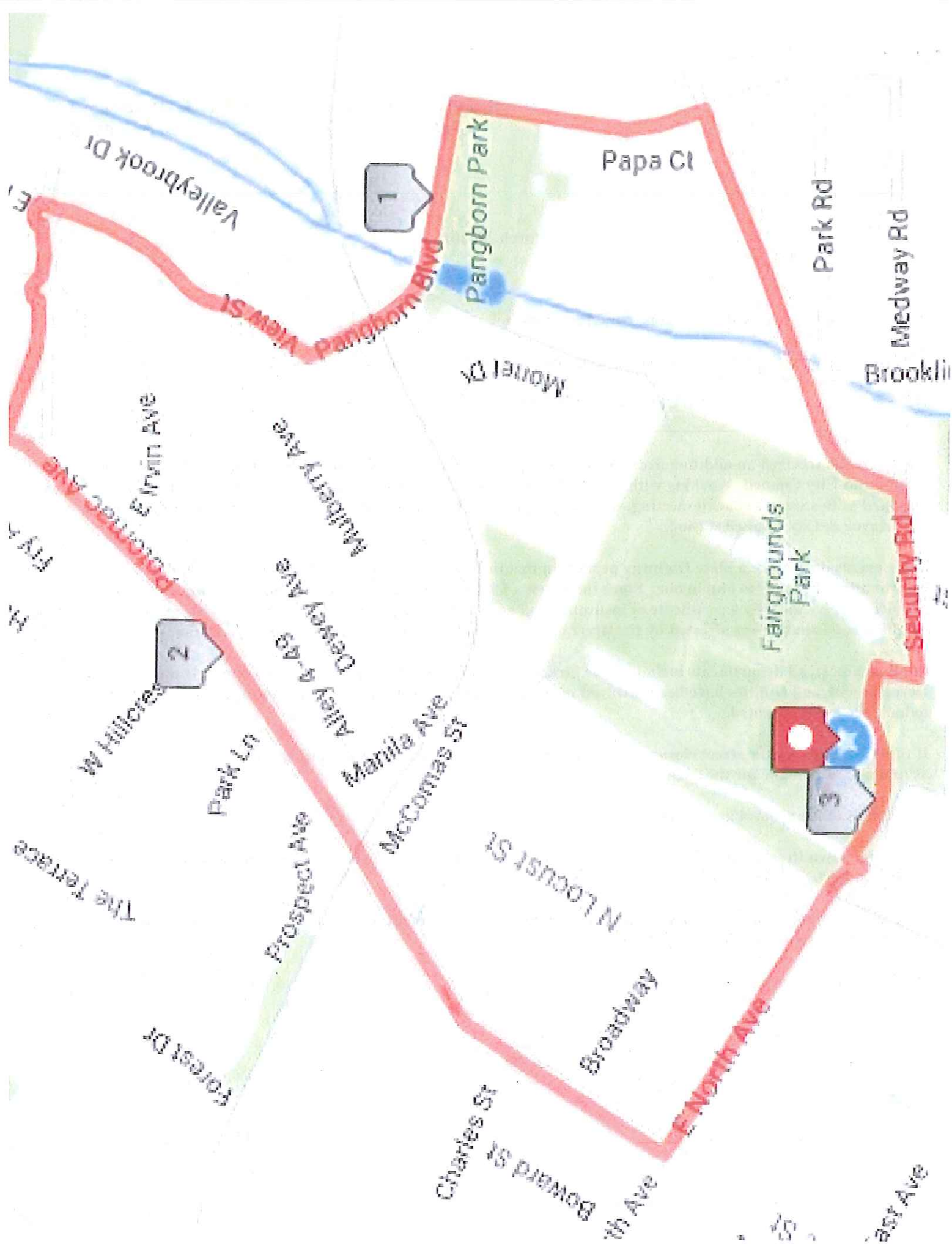
The details of the request are as follows:

Hagerstown Rescue Mission 5k - Saturday, April 23 at 9:00 a.m. – Map is attached. Full road closures are Randolph and Locust Street and only as participants pass the area.

Please note that some of the race route and event plans may be modified to address safety or traffic issues. Also, event times are subject to change.

Thank you in advance for your assistance.







CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development
Gaela S. M. Shoop-Community Event Coordinator

April 6, 2016

TO: Valerie Means, City Administrator
FROM: Gaela S. M. Shoop, Community Event Coordinator
RE: Event Requests/ Street Closures/ Open Containers Law Exemption

City Staff has had additional event requests/updates and street closure requests for 2016 events.

These events may require a State Highway permit. Since some of these events are not City operated, the operating organization would be required to give the City a certificate of insurance and add them as an added insured. Also, we have requested that the agencies notify the neighborhoods affected by the street closures.

In all instances, all departments including the Fire, Police, Public Works, Engineering, Community and Economic Development, and Utilities have been involved in reviewing the closures to make it the most efficient and safe way to have the event operated.

If there are costs for the street closures, the entity is paying the costs. The City Staff is working to keep these costs as minimal as possible for the agencies.

Here is a list of the events and needed street closures to date:

Modified Event: Summer Slide Festival – Saturday, September 10, 11 a.m. to 3 p.m., event hours, an all day street closure request to allow for setup, event time and clean-up is being requested. New site for event would take place on the streets of Prospect St., Baltimore St. and Walnut St. The event itself is hosted by What's NXT and this year the organizer is partnering with the Historic Heights Neighborhood's 1st Group in conjunction with the annual Porchfest event. The two groups are going to overlap in timing and are looking to combine the crowds that would attend both events.

New Event: MSO Classics & Crabs – Saturday, September 17, 4 p.m. to 9 p.m., event hours, an all day request for streets closures is requested for South Potomac St. The organizer is also requesting an open containers law exemption. An application permit will be brought forth in the coming weeks for approval.

Please note that some of the closures and event plans may be modified to address safety or traffic issues. Also, event times are subject to change.

Thank you in advance for your assistance.

□ □ □ □

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Introduction of a Resolution: Annexation of Stormwater Parcel, LLC, 250 Eastern Boulevard North

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and Council introduce an Annexation Resolution for property located at 250 Eastern Boulevard North. The property to be annexed is approximately 1.03 acres in size and is intended to be added to and made part of the adjacent municipal lands.

Action Dates:

DATE OF INTRODUCTION:04/19/2016

HEARING DATE:05/24/2016

ATTACHMENTS:

File Name

AnnexationResolutionA-2016-01.pdf

Description

Motion Sheet & Resolution

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: Introduction of Annexation Resolution
Stormwater Parcel LLC, 250 Eastern Boulevard North
Case No. A-2016-01

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	<u> X </u>
Other	_____

MOTION: I hereby move that the Mayor and Council introduce an Annexation Resolution for property located at 250 Eastern Boulevard North. The property to be annexed is approximately 1.03 acres in size and is intended to be added to and made part of the adjacent municipal lands.

DATE OF INTRODUCTION:	04/19/2016
HEARING DATE:	05/24/2016
DATE OF PASSAGE:	-
EFFECTIVE DATE:	-

RESOLUTION NO.

RESOLUTION OF THE COUNCIL OF THE CITY OF HAGERSTOWN TO ENLARGE THE CORPORATE BOUNDARIES AND THEREBY AMEND THE CORPORATE BOUNDARIES AS CONTAINED IN SECTION 104 OF ARTICLE 1 OF THE CHARTER OF THE CITY OF HAGERSTOWN, MARYLAND AND AT THE SAME TIME ESTABLISH THE ZONING CLASSIFICATION OF THE AREA TO BE ANNEXED.

WHEREAS, a proposal to enlarge the corporate boundaries of the City of Hagerstown, Maryland by adding or annexing thereto the within described areas which are immediately adjacent to and adjoining the present corporate boundaries thereof, as contained in a Petition signed by the requisite number of persons as prescribed, and to be popularly known as the “Stormwater Parcel LLC, Case No. A-2016-01” for identification; as set forth in Article 23A, Section 19 (c) of the Annotated Code of the Public General Laws of Maryland, as residents, registered voters, and owners of the realty contained within the areas to be annexed; and same is incorporated herein by reference as if set forth into and made a part hereof. **See Exhibit A.**

WHEREAS, the Mayor, who is the presiding officer of the legislative body, has caused to be made a verification of the signatures on said Petition, and has ascertained that the requirements of Article 23A, Section 19, of the Annotated Code of the Public General Laws of Maryland entitled “Annexation”, as more fully appears from the certificates of verification subscribed by Donna K. Spickler, City Clerk, which certificates were presented at this meeting and made part hereof, have been met. **See Exhibit B.**

WHEREAS, the Petition for Annexation meets all the requirements of the law, and pursuant to Article 23A, Section 19 (o), of the Annotated Code of Maryland, the Annexation was referred to the appropriate State, Regional, and County planning authorities.

WHEREAS, the proposed zoning of the area to be annexed to the corporate limits, was referred to the Planning Commission for the City of Hagerstown, Maryland which said Commission for the City of Hagerstown has studied the proposed zoning of the tracts described herein in relation to the Comprehensive Plan, the Zoning Ordinance, and all other applicable ordinances, the needs of the City and County, and the needs of the particular neighborhoods and vicinities of the areas, and have approved the same and that the rezoning for said tract of land is proper and desirable under all of the circumstances and should be accomplished at this time.

Section 1. Now, Therefore, be it resolved by the Mayor and City Council of the City of Hagerstown, Maryland that the boundaries of the City, pursuant to the provisions of Article 23A, Section 19(b) and (c), be and are hereby amended so as to annex and include within said City all that certain area of land together with the persons residing therein (there being none) and their property, contiguous to the corporate limits of the City and being more

particularly described by metes and bounds in **Exhibit C** attached hereto and made a part thereof.

Section 2. And be it further resolved by the Mayor and City Council, that the subject property to be annexed shall have a zoning classification of CG (Commercial General) upon annexation.

Section 3. And be it further resolved that the conditions and circumstances applicable to the change in said corporate boundaries and to the future residents and property within the area so annexed shall be subject to the provisions of the Charter of the City of Hagerstown, the Code of the City of Hagerstown, and all acts, ordinances, resolutions and policies.

Section 4. And be it further resolved by the Mayor and City Council, that this resolution shall take effect upon the expiration of forty-five (45) days following its final passage, subject, however to the right of referendum as contained in Article 23A of the Maryland Code, as amended.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

BY ORDER OF THE MAYOR AND
THE CITY OF HAGERSTOWN,
MARYLAND

Donna K. Spickler
City Clerk

By: _____
David S. Gysberts
Mayor

Dated Introduced: 04/19/2016
Public Hearing: 05/24/2016
Final Enactment:
Effective Date:

Exhibit A

Petition



**FREDERICK,
SEIBERT &
ASSOCIATES, INC.**

■ Civil Engineering ■ Land Surveying ■ Land Planning ■ Landscape Architecture ■ Environmental Engineering and Design

December 22, 2015

City of Hagerstown Planning & Zoning
1 E. Franklin Street
Hagerstown, MD 21740

Attn: Kathy Maher, Planning Director

Re: Annexation and Grading Plan for the "Old" Foodlion SWM Pond

Ms. Maher-

Currently the "Old" Foodlion SWM Pond parcel is bounded on three sides by the City of Hagerstown Corporate Limits; Light Business Park to the East, Stone Soup LLC to the South and Eastern Boulevard to the West. In order to develop this property in the future, Annexation is required.

By this letter, on behalf of our client David Lyles Developers, we hereby request the City consider Annexation of this property into the City of Hagerstown Corporate Limits. We also request during the Annexation process, which may take a few months, the City review a Grading/Drainage plan to fill the existing SWM Pond and Drainage Swale. It is my understanding that since this property is currently within the County, the City will need to make a formal request to the County Planning Department to review the proposed Grading/Drainage Plan. The basis of this request is that the property will be within the City's Corporate Boundary once the Annexation process is complete.

Please feel free to contact me with any questions or comments.

Sincerely,
Frederick, Seibert and Associates, Inc.

David S. Trostle
Project Manager

Exhibit B

Verification

VERIFICATION

I, David S. Gysberts, Mayor of the City of Hagerstown, Maryland, hereby CERTIFY that in accordance with Article 23A, Section 19 (b) I have caused to be verified the signatures contained on the Petition for Annexation and Consent thereto dated the 22nd day of December, 2015 (Attached) for the property described and shown in said Petition for Annexation, and I do hereby certify that they are true and correct signatures of said persons and/or firms or corporations; and I further certify, pursuant to Article 23A, Section 19 (c) of the Annotated Code of Maryland, that the Petition, in fact, is signed by not less than twenty-five (25%) percent of the persons who reside in the area requested to be annexed and who are registered voters in the Election District requested to be annexed in Washington County, Maryland, and that said Petition has been signed by the owners of not less than twenty-five (25%) percent of the assessed valuation of the real property located in the area to be annexed.

There are no registered voters residing within the area to be annexed.

The assessed valuation of the real property referred to herein, as of this date is

Zero Dollars (\$ 0).

WITNESS my hand and Seal of the City of Hagerstown, Maryland, this ____ day of _____, 2016.

David S. Gysberts, Mayor

(SEAL)

Donna K. Spickler, City Clerk

Alex Rohrbaugh

From: Robucci, Kaye <KRobucci@washco-md.net>
Sent: Friday, April 01, 2016 4:59 PM
To: Alex Rohrbaugh
Cc: Robucci, Kaye
Subject: RE: Annexation Voter Verification - 250 Eastern Boulevard North

Hi Alex:

There are no registered voters at 250 Eastern Blvd, N.

Thank you
Kaye

From: Alex Rohrbaugh [mailto:ARohrbaugh@hagerstownmd.org]
Sent: Friday, April 01, 2016 1:52 PM
To: Robucci, Kaye
Subject: Annexation Voter Verification - 250 Eastern Boulevard North

Hi Kaye:

The City will be receiving an annexation request for an undeveloped parcel of land at 250 Eastern Blvd N (vacant commercial lot between a medical office building and Ewing Oil). For the purposes of the annexation review process, could you verify that there are no registered voters at this property?

Thanks in advance,
Alex

Alex W. Rohrbaugh, AICP
Planner

City of Hagerstown
Planning & Code Administration Department
1 East Franklin Street, Suite 300
Hagerstown, MD 21740
Ph: 301-739-8577 x137
arohrbaugh@hagerstownmd.org

Stay Connected!



Alex Rohrbaugh

From: Melissa Adelsberger -SDAT- <melissa.adelsberger@maryland.gov>
Sent: Friday, April 01, 2016 2:33 PM
To: Alex Rohrbaugh
Subject: Re: Tax Assessment Verification for Proposed Eastern Blvd

Good Afternoon Alex,

Currently we have that parcel as a storm water management area with zero value on it.

Melissa



Melissa Adelsberger

Supervisor - Real Property -
Washington County

Maryland Department of Assessments
& Taxation

3 Public Square

Hagerstown, MD 21740

[301-791-3050](tel:301-791-3050)

melissa.adelsberger@maryland.gov

website: www.dat.maryland.gov

On Fri, Apr 1, 2016 at 2:06 PM, Alex Rohrbaugh <ARohrbaugh@hagerstownmd.org> wrote:

Hello Melissa:

The City will be receiving an annexation request for an undeveloped parcel of land at 250 Eastern Blvd N (vacant commercial lot between a medical office building and Ewing Oil). The account ID number for the parcel to be annexed is 18-005530. Would you be able to provide me a verification of the tax assessment for this property?

Thanks in advance,

Alex

Exhibit C

Metes & Bounds Description



FSA

**FREDERICK,
SEIBERT &
ASSOCIATES, INC.**

■ Civil Engineering ■ Land Surveying ■ Land Planning ■ Landscape Architecture ■ Environmental Engineering and Design

April 7, 2016

Suggested description for the lands of Stormwater Parcel, LLC to be annexed into the City of Hagerstown's Corporate Boundary

Beginning for the outline hereof at a point in the east margin of Eastern Boulevard, and the existing corporate boundary, thence leaving said right-of-way and the Corporate Boundary and running with lands of Mctaws Limited Partnership (Liber 1672, folio 707) S 66°13'01" E 395.79 feet to a point in the existing Corporate Boundary, running thence with said boundary and the western line of Lot 4A as shown on Plat folio 3832, S 10°33'02" W 113.00 feet to a point, thence with the corrected corporate boundary line as shown on the Annexation Plat for Eddie's Tire Service, Inc. and Stone Soup, LLC and recorded at Plat folio 10041, N 66°13'01" W 421.65 feet to a point in the eastern right-of-way of Eastern Boulevard and the Corporate Boundary, thence with said lines, N 23°46'59" E 110.00 feet to the place of beginning;

Containing 1.032 acres of land more or less;

Said lands being all of Lot 4 as shown on the subdivision plats recorded at Plat folio's 3832-3834. Said lands being part of the lands conveyed by Caleb C. Ewing Jr. to Stormwater Parcel LLC by deed dated May 1, 2008 and recorded at Liber 3507, Folio 79 among the Land Records of Washington County, Maryland.

RAS/vab.5400.21 desc

www.fsa-md.com

Hagerstown, MD Office
128 South Potomac Street
Hagerstown, MD 21740
Hagerstown: 301.791.3650
Fax: 301.739.4956

Carlisle, PA Office
101 North Hanover Street
Carlisle, PA 17013
Carlisle: 717.701.8111
Fax: 717.701.8254

Greencastle, PA Office
20 West Baltimore Street
Greencastle, PA 17225
Greencastle: 717.597.1007
Fax: 717.597.1028

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Annexation Plan - Stormwater Parcel, LLC, 250 Eastern Boulevard North

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and Council Approve an Annexation Plan for 250 Eastern Boulevard North, case number A-2016-01.

Action Dates:

DATE OF ADOPTION: 04/19/2016

EFFECTIVE DATE: 04/19/2016

ATTACHMENTS:

File Name

Motion_-_Annexation_Plan.pdf

Description

Motion

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: Approval of Annexation Plan
Stormwater Parcel LLC, 250 Eastern Boulevard North
Case No. A-2016-01

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move that the Mayor and Council Approve an Annexation Plan for 250 Eastern Boulevard North, case number A-2016-01.

DATE OF ADOPTION: 04/19/2016

EFFECTIVE DATE: 04/19/2016

City of Hagerstown, Maryland
Annexation Case No. A-2016-01

Property Owner/Applicant: Stormwater Parcel LLC (David Lyles Builders) - Applicant/Owner

Location of Property: 250 Eastern Boulevard North

Annexation Plan

Pursuant to Article 23A, Section 19 (o) of the Annotated Code of Maryland, herewith is a proposed outline for extension of services and public facilities into the areas proposed to be annexed.

It is also noted that any future amendments to the Annexation Plan may not be construed in any way as an amendment to the resolution, nor may they serve in any manner to cause a reinitiation of the annexation procedure then in process.

I. Land Use Patterns of Areas Proposed to be Annexed -

- A. The area of annexation is approximately 1.03 acres.
- B. The proposed zoning is CG (Commercial General). The purpose of the CG zoning district is to provide locations for business of a general nature to serve the community. The existing Washington County zoning classification is BG (Business General). The property is designated as Business Employment on the City's Future Land Use Map.

The CG zoning classification is generally consistent with the County's current zoning of BG; thus, no "express approval" of a zoning change by the County is needed.

- C. It is within the City's Medium Range Growth Area, an area intended for new or expanded water and wastewater service, as defined in the 2008 Comprehensive Plan.
- D. It is within the County's Urban Growth Boundary (UGA) and the State's designated Priority Funding Area (PFA).

II. Availability of Land Needed for Public Facilities -

- A. The uses of the annexation are non-residential in nature and will have no impact on Washington County Board of Education facilities with respect to school capacity.

- B. There will be no impacts to the Washington County Free Library as a result of the annexation.

III. Schedule and Method of Financing the Extension of Each Municipal Service Currently Performed Within the City of Hagerstown into the Area Proposed to be Annexed.

- A. If developed, the property will be served by City Wastewater. Sufficient capacity exists to serve the property.
- B. If developed, the property will be served by City Water. Sufficient capacity exists to serve the property.
- C. The Electric Distribution System is external to the Hagerstown Light Division operating territory. Electrical service is currently provided by Potomac Edison.

The City of Hagerstown Light Division normally supplies street light services to public streets and supplies the manpower and equipment to serve a new area once the developer builds the infrastructure. The HLD, or its designee, designs and approves the street light system. The developer is responsible for the purchase and installation, to approved HLD specifications, of the street light system. The HLD then assumes ownership of the street light system twelve (12) months after the City of Hagerstown assumes ownership of the street(s). Until that ownership transpires, the developer is responsible for all aspects of the street light system. Upon receiving ownership, HLD would have the manpower and equipment resources to serve this area.

- D. No significant impact on emergency service delivery is expected.
- E. The property proposed for annexation fronts on existing city streets. Any public roads constructed in the future will be completed at the direction of the City Engineer at the developer's expense and constructed per the City's Public Ways Construction Standards by the developer.
- F. Parks and recreation facility expansion are not proposed for this annexation.
- G. Police protection will be provided by the Hagerstown Police Department.

- H. Maintenance (i.e. snow removal, mowing of right-of-ways, litter removal) of City streets and right-of-ways are normally performed by the Public Works Department. Since both Eastern Boulevard North and Cameo Drive are existing City streets, no major impacts to maintenance are anticipated as a result of the annexation.
- I. All future persons within the area proposed to be annexed shall obtain or be entitled to existing benefits of the City of Hagerstown. They shall also be required to pay for all applicable utility services, charges, assessments, taxes, and other costs and expenses which are required of the residents of the City of Hagerstown, unless alternative arrangements are provided for the Annexation Resolution.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Agreement with Brookgreen Gardens, Inc for Use of "Diana of the Chase" Image

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

motion.brookgreen.2016.pdf

Description

Approval of an Agreement
with Brookgreen Gardens

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: Approval of an Agreement with Brookgreen Gardens

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move to authorize the City to enter into an Agreement with Brookgreen Gardens, Inc. in Murrills Inlet, SC that allows the City of Hagerstown to use the image of "Diana of the Chase" which was originally created by Diana Hyatt Huntington in 1922, as the logo for the new Cultural Trail. I further authorize the City Attorney to negotiate any final minor changes requested by Brookgreen so that this matter can be concluded as quickly as possible.

DATE OF PASSAGE: 4/19/16

**AGREEMENT
BETWEEN THE CITY OF HAGERSTOWN
AND
BROOKGREEN GARDENS, INC. AND
THE WASHINGTON COUNTY MUSEUM OF FINE ARTS**

This Agreement ("Agreement") by and among the City of Hagerstown, Maryland, a Maryland Municipal Corporation (hereinafter "the City") and **Brookgreen Gardens, Inc., a South Carolina not-for-profit organization which owns and operates a museum** located in Murrells Inlet, South Carolina (hereinafter "Brookgreen") and the **Washington County Museum of Fine Arts, Inc., a Maryland not-for-profit organization** which owns and operates a museum located in Hagerstown, Maryland (hereinafter the "WCMFA") defines the terms and conditions under which the parties shall agree for the purpose of the City's use of the copyrighted sculpture *Diana of the Chase*.

RECITALS

WHEREAS, Brookgreen owns and operates at a museum located at 1931 Brookgreen Drive, Murrells Inlet, South Carolina; and

WHEREAS, Brookgreen warrants and represents that it is the sole owner of all of the rights in the sculpture *Diana of the Chase*, created by Anna Hyatt Huntington on or about 1922, including but not limited copyright protection extending to _____, the right to prevent the making and dissemination of copies, and the exclusive right to manufacture and sell copies for a full statutory term and renewal thereof; and

WHEREAS, the WCMFA is the owner of one cast of *Diana of the Chase*, which was a gift from Anna Hyatt Huntington on the occasion of the Museum's tenth anniversary in 1941; and

WHEREAS, the City has, as one of the initiatives of its City Center Plan, the construction of townhomes, loft apartments and a multi-use trail linking City Park and the WCMFA with the Arts & Entertainment District ("the Cultural Trail"), with artwork along the Cultural Trail consistent with the Public Art Master Plan approved by the City; and

WHEREAS, the City desires a license to use the image of *Diana of the Chase* as the icon of the Cultural Trail, as provided below.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is, on the date indicated below, agreed by the parties hereto as follows:

1. The Recitals above are hereby incorporated into this Agreement as substantive provisions.

2

ATTEST:

WASHINGTON COUNTY MUSEUM OF FINE
ARTS

BY: _____

Rebecca Massie Lane

Date

Executive Director

401 Museum Drive, City Park

PO Box 423

Hagerstown, Maryland 21741

HAGERSTOWN



CULTURAL TRAIL

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of License Agreement with Raymond Higgins for Use of Third Street Right-of-Way

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

motion.third_street.2016.pdf

Description

License Agreement with
Raymond Higgins for Use of
Third Street Right-of-Way

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: License Agreement with Raymond Higgins for Use of Third Street Right-of-Way

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move for approval of a License Agreement with Raymond Higgins to construct a driveway in the unimproved right-of-way of Third Street. The purpose of this license is to allow Mr. Higgins to construct a driveway to access the parcel on the north side of the right-of-way.

DATE OF PASSAGE: 4/19/16

RIGHT-OF-WAY/EASEMENT LICENSE AGREEMENT

This Agreement entered into this ____ day of _____, 2016, by and between the City of Hagerstown, a Maryland municipal corporation, hereinafter called City and **Raymond Higgins**, hereinafter called Licensee.

WHEREAS, the City is the owner of certain real estate located within the corporate boundaries of the City of Hagerstown and more particularly described on the attached Exhibit "B" as the "Existing Third Street right-of-way" and

WHEREAS, Licensee desires to occupy or utilize a portion of the City's right-of-way for purposes set forth on the attached Exhibit A, and

WHEREAS, the City is willing to grant a license to the Licensee to accomplish the purposes of the Licensee as set forth on Exhibit A subject to the following terms and conditions.

WITNESSETH, that for and in consideration of the mutual promises herein contained the City and the Licensee agree as follows:

1. The City of Hagerstown does hereby grant a non-exclusive license to the Licensee covering the property described in Exhibit B for the purposes set forth on the attached Exhibit A but subject to the terms of this Agreement.
2. The Licensee shall be responsible for all costs of construction, permits, and any other cost associated with the intended use of the Licensee and said use shall be in conformance with all of the requirements of the City and State Building Codes or any other applicable laws.
3. The Licensee shall be responsible for the repair and maintenance of any construction which it undertakes on the property of the City as described in Exhibit A.
4. The Licensee will indemnify and hold harmless the City from any actions, causes of actions, claims, damages, taxes, permit fees, or any other claims including but not limited to, attorney's fees and costs of suit arising from any action brought against the City as a result of the Licensee's use of City property as described herein not resulting from the affirmative negligence of the City or its employees or agents.
5. The Licensee shall construct a driveway in the unimproved right-of-way of Third Street from Kuhn Avenue to the Licensee's commercially-zoned property identified as Parcel "A" on Exhibit B. The following conditions are placed upon approval of this driveway construction:

- a. The driveway shall be paved, and the pavement section shall be approved in advance by the City Fire Marshall as being capable of supporting firefighting equipment and vehicles.
 - b. The minimum width of the driveway shall be sufficient to permit access by firefighting equipment and vehicles; this minimum width shall be specified by the City Fire Marshall prior to construction.
 - c. The driveway shall only serve Parcel "A". The Licensee's residentially-zoned parcels (identified as Parcel "B" on Exhibit B), or any other residential properties in this area, may only be developed if they have frontage on constructed public street.
6. In the event that electrical service is requested to any parcel along the portion of the Third Street right-of-way covered by this license, the Licensee shall grant the Hagerstown Light Department any rights-of-way required for the installation of electrical facilities by the most direct and practical route.
7. In the event that the portion of Third Street between Kuhn Avenue and the Oak Street right-of-way to the east is ever constructed to City standards and accepted into the City's public street system, this License shall be voided and the Licensee will be required to construct a standard driveway entrance onto Third Street.
8. In the event of termination of this Agreement, and at the request of the City, the Licensee shall remove the driveway and shall restore the area to existing conditions. Any damage to pavement, curb sidewalk, etc. in the public right-of-way shall be replaced by the Licensee. If the Licensee fails to remove the driveway after termination of this Agreement and the City's request for its removal, the City may have the driveway removed at the Licensee's expense.
9. This license shall terminate upon the earlier of any of the following:
 - (a) Ninety (90) days after notice to the Licensee from the City that it desires to terminate this license; or
 - (b) A transfer of ownership of the property described as Parcel "A" on Exhibit B from the specific Licensee identified herein (this license shall not run with the land); or

- (c) The portion of Third Street between Kuhn Avenue and the Oak Street right-of-way is constructed to City standards and accepted into the City's public street system; or
- (d) Destruction or removal of the improvements described on the attached Exhibit A

Witness our hands and seals the day and year first above written.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

David S. Gysberts
Mayor

WITNESS:

Licensee

Licensee

Attachments: Exhibits A, B

EXHIBIT A

LICENSE AGREEMENT FOR RAYMOND HIGGINS THIRD STREET RIGHT-OF-WAY

The Licensee shall construct a driveway in the unimproved right-of-way of Third Street from Kuhn Avenue to the Licensee's commercially-zoned property identified as Parcel "A" on Exhibit B.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Acceptance of a Grant with Chesapeake Bay Trust/Maryland Department of the Environment

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

motion.chesapeake_bay_grant.2016.pdf

Chesapeake_Bay_Grant.pdf

Description

Acceptance of a Grant with
Chesapeake Bay
Trust/Maryland Department
of the Environment

Memo

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: Acceptance of a Grant with Chesapeake Bay Trust/Maryland Department of the Environment

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move to approve to accept the award of a \$90,000 grant from Chesapeake Bay Trust/Maryland Department of the Environment for a watershed assessment of Hamilton Run that will identify additional stormwater projects that will advance the City toward our runoff improvement goals. The City's match is \$15,000 as provided for in the FY 15/16 budget.

DATE OF PASSAGE: 4/19/16

**MEMORANDUM OF AGREEMENT
BETWEEN THE
MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND THE
CITY OF HAGERSTOWN, MARYLAND
Federal ID # 52-6000794 / DUNS # 017839283**

- RE:** Hamilton Run Watershed Assessment, Action Plan, and Design for Greens at Hamilton Run
- PARTIES:** This Memorandum of Understanding ("Agreement") is by and between the Department of the Environment of the State of Maryland (the "Department"), and the City of Hagerstown, Maryland (hereinafter "Grantee").
- WHEREAS:** In 2009, Executive Order ("EO") 13508 was issued "to protect and restore the health, heritage, natural resources, and social and economic value of the nation's largest estuarine ecosystem and natural sustainability of its watershed." EO 13508 provided that the Environmental Protection Agency ("EPA") Chesapeake Bay Program Office ("CBPO") received additional funding in federal fiscal year 2010, under a grant called Chesapeake Bay Regulatory and Accountability Program ("CBRAP"), under Section 117 of the Clean Water Act ("CWA"), listed in the "Catalog of Domestic Federal Assistance" as Number 66.466; and
- WHEREAS:** Pursuant to § 1-404 of the Environment Article of the Annotated Code of Maryland, the Department may apply for, receive, and spend grants-in-aid by the federal government or any of its agencies or any other federal funds made available to the Department for use in carrying out the powers and duties of the Secretary of the Environment or the Department; and
- WHEREAS:** In September 2010, the Department, on behalf of the State of Maryland, was awarded the CBRAP grant for the State in the amount of \$2.75M ("State grant funds"), in order to develop new regulations, implement Total Maximum Daily Load (TMDL) watershed implementation plans (WIP), reissue and enforce permits, and provide technical and compliance assistance to local governments; and,
- WHEREAS:** On September 21, 2015, the Department, on behalf of the State of Maryland, was awarded an additional CBRAP federal grant funding in federal fiscal year 2015 ("State Year 6 grant funds") in an amendment to the initial grant in order to support further work consistent with the grant purposes, including a portion of the funds in the amount of \$615,635 to support local, county level WIP actions.
- WHEREAS:** The Department, in administering this grant, has chosen to enter into this Agreement with the Grantee to further the purposes of the CBRAP grant.

The funds are intended to aid the State to implement and expand regulatory, accountability and enforcement capabilities to reduce nitrogen, phosphorus and sediment loads delivered to the Bay to meet the water quality requirements of the Chesapeake Bay TMDL established on December 31, 2010.

WHEREAS: The purpose of this Agreement is to make available, and to specify the terms and conditions for the payment of, moneys from the State Year 6 grant funds to the Grantee for work consistent with CBRAP grant requirements.

NOW

THEREFORE: In consideration of the foregoing and the mutual promises and the covenants contained herein, the Department and Grantee agree as follows:

TERMS:

The parties agree to the following terms:

I. DURATION

This Agreement takes effect as of or upon execution by all parties and shall continue until the work described in *ATTACHMENT A* is completed, which shall not be later than June 20, 2017.

II. SOURCE AND LEVEL OF FUNDING

The Department shall provide the Grantee with funds not to exceed \$90,000 for tasks to be performed in accordance with this Agreement.

Such funds shall be used solely and exclusively for tasks performed and materials required in accordance with this Agreement. Such funds shall be expended substantially in accordance with the budget as shown in *ATTACHMENT A*.

III. SCOPE OF WORK

The Grantee shall perform its responsibilities as set forth in this Agreement and shall perform and/or ensure the performance of the activities outlined in the Scope of Work attached hereto as *ATTACHMENT A*, which is expressly incorporated into and made a part of this Agreement.

IV. METHOD OF PAYMENT

Costs will be paid for the project under this Agreement on a fixed price basis as follows:

- a) The maximum amount of payment to the Grantee under this Agreement will be up to *Ninety Thousand Dollars (\$90,000.00)*, according to the Work Plan

provided in *ATTACHMENT A*, which shall be construed to comprise the entire project budget under this Agreement.

- b) The funding provided under this Agreement will be on a fixed price basis according to the following schedule:
 - a. A payment of Thirteen Thousand Five Hundred Dollars (\$13,500) for each of six (6) work completion phases:
 - i. Task 1 deliverables and semi-annual report for 2016 January-June
 - ii. Task 2 deliverables
 - iii. Task 3 deliverables
 - iv. Task 4 deliverables
 - v. Task 5 deliverables and semi-annual report for 2016 July-December
 - vi. Task 6 deliverables
 - b. One (1) final payment of Nine Thousand Dollars (\$9,000) for the final phase of work completion:
 - i. Task 7 deliverables and final semi-annual report 2017 January-June
- c) The final payment will be contingent upon receipt and approval by the Department of all deliverables due at the time the payment is to be made. The final payment will be withheld until the Department's project officer determines that the project has been completed, that all deliverables under this Agreement are received and approved.
- d) The Grantee's Federal Tax Identification Number, which is 52-6000794, DUNS# 017839283, and MDE purchase order number must appear on all invoices submitted for payment.

All invoices are to be emailed to the following email address with a copy emailed to the Department's Agreement Representative:

MDE.AP@maryland.gov
kenneth.shanks@maryland.gov

V. PRODUCTS AND SCHEDULE

The Grantee will provide work products and deliverables to the Department according to the schedule and requirements described in *ATTACHMENTS A and B*, which are expressly incorporated into and made part of this Agreement. Work products and deliverables submitted by the Grantee will be reviewed for approval by the Department to determine that they are sufficient to meet both the terms of this Agreement and Departmental reporting needs for the EPA.

VI. ASSURANCES

Non-Discrimination In Employment

The Grantee agrees (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status,

national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

Dispute Resolution

In the event of a dispute under this Agreement, the parties agree to each appoint an authorized representative to resolve the dispute in good faith.

Compliance With Laws

Grantee and the Department shall comply with all applicable federal laws and regulations related to the receipt of funds under the Clean Water Act: Section 117 of the Clean Water Act (CWA): the Chesapeake Bay Program.

Federal Requirements

The Grantee agrees to comply with all the requirements of the Conditions of Financial Assistance Award, which is attached as *ATTACHMENT B* to this Agreement and incorporated by reference herein.

To Comply with Federal Funded Accounting and Transparency Act (FFATA) the Grantee confirms that they are registered with Central Contract Registration (CCR) and provides the following information:

The Data Universal Numbering System (DUNS) number: 017839283

VII. AGREEMENT REPRESENTATIVES

The following individuals shall have authority to act under this Agreement for their respective parties:

Department: Kenneth Shanks
MDE Science Services Administration
1800 Washington Boulevard
Baltimore MD 21230-1718
410-537-4216
kenneth.shanks@maryland.gov

Grantee: Rodney Tissue, City Engineer
City of Hagerstown
1 East Franklin Street, Room 301
Hagerstown MD 21740
1-301-739-8577 x124
rtissue@hagerstownmd.org

These representatives shall have authority to render any decision or take any action under

this Agreement. Service of any notice required by the Agreement shall be complete upon mailing of such notice, postage prepaid, to the appropriate representative at the address indicated above.

VIII. ON-SITE INSPECTIONS

The Department shall have the right to conduct on-site visits throughout the project period.

IX. CONTRACTOR STATUS AND SUBCONTRACTING

The Grantee shall be responsible for providing all supplies and materials necessary for performance of all work under this Agreement. The Grantee is not an agent of the Department, and cannot commit the Department to any expenditure of funds, nor enter into any contractual obligation on behalf of the Department.

The Grantee may subcontract any portion of the grant with notice thereof to the Department. Any subcontractor(s) shall, and the Grantee shall require that any subcontractor(s) shall, provide to the Department upon request copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for the Department to comply with State or federal reporting and audit requirements. Consent to subcontract, assign, or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Grantee of any responsibility for fulfilling all the requirements of this Agreement.

Any and all subcontractors retained by the Grantee in the course of performance of this Agreement shall indemnify and save harmless and defend the State of Maryland, the Department, the Grantee, and all of their respective representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this Agreement, either by the Grantee or the Department, or any subcontractor, or their respective employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity, which may exist in any action against the Department or the Grantee.

X. AMENDMENTS

This Agreement may only be amended in writing by mutual consent of both parties.

XI. WARRANTY

The Grantee agrees to perform all work under this Agreement continuously and diligently, and to meet all milestones and provide all deliverables referenced above. The Grantee shall be responsible for the supervision, inspection, technical accuracy, and coordination of all data and work pursuant to this Agreement, and shall produce in a timely manner to the Department's satisfaction a product meeting professional standards of quality and methodology. The Grantee shall not be responsible for any delay in performance caused by events beyond its control including labor strikes, fires, or natural

disasters.

XII. RETENTION OF RECORDS - AUDIT

The Department shall have the right, at any time during usual business hours, to examine and audit records of the Grantee, which the Department deems necessary or advisable in order to verify invoices submitted pursuant to this Agreement. This audit may be conducted in person or through a request that the records be forwarded to the Department for verification. The Grantee and its contractor(s) or subcontractor(s) shall retain and maintain all records and documents relating to the services performed under this Agreement, for a minimum period of three years after the Department conducts close out of the grant.

XIII. LIABILITY FOR THIRD PARTY CLAIMS

(a) The Grantee is and will be acting as an independent contractor in the performance of its work and other obligations under this Agreement. The Department has no obligation for the payment of any judgments or the settlement of any claims made against the Grantee, its employees, agents, or sub-contractors, if any, as a result of or relating to the Grantee's work and other obligations under this Agreement.

(b) The Department has no obligation to provide legal counsel or legal defense to the Grantee, its employees, agents, or sub-contractors, if any, in the event that a suit, claim, or action of any character is brought by any persons not party to this Agreement as a result of or relating to the Grantee's work and other obligations under this Agreement.

(c) The Grantee shall immediately give notice to the Department of any claim or suit made or filed against the Grantee, its employees, agents, or sub-contractors, if any, regarding any matter resulting from or relating to the Grantee's work and other obligations under this Agreement.

(d) The Grantee shall cooperate, assist, and consult with the Department in the defense or investigation of any claim, suit, or action made or filed against the Department as a result of or relating to the Grantee's work or other obligations under this Agreement.

XIV. TERMINATION

(a) This Agreement may be terminated at any time by mutual agreement or by either party giving ninety (90) days-notice in writing to the other party. Termination of this Agreement by the Grantee prior to the completion of the project shall result in the immediate remittance of funds to the Department for the uncompleted portion of the project.

(b) Notwithstanding the provisions of XIV(a) the Department reserves the right to terminate this agreement at any time if funding is unavailable. If the General Assembly fails to appropriate funds or if funds are not otherwise available for performance by the Department, this Agreement shall be canceled automatically upon notice by the Department to the Grantee.

that funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Grantee's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Grantee and the State of Maryland from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The Grantee shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Agreement. The State shall notify the Grantee as soon as it has knowledge that funds may not be available for the continuation of this Agreement.

XV. EFFECTIVE DATE

It is understood and agreed by the parties that this Agreement and any modification thereof shall not become effective or enforceable until the date it is executed by the Department.

XVI. COMPLIANCE WITH LAWS

The Grantee shall observe and comply with all federal, State, and local laws, regulations and ordinances that affect the work to be performed under this Agreement, the persons employed or engaged in connection therewith, or any material or equipment used. The Grantee shall procure and bear the expense of all necessary licenses, permits, and insurance.

XVII. SEVERABILITY

It is understood and agreed by the parties hereto that, if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county, or jurisdiction where used, such contravention or invalidity shall not invalidate the Agreement, but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid in the particular state, county, or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

XVIII. ENFORCEMENT

The failure of the Department to enforce at any time the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance by the Grantee of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or the right of Department to enforce each and every such provision.

XIX. MERGER

The Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

XX. MARYLAND LAW

Maryland Law governs this Agreement.

XXI. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement shall be construed to: a) provide a benefit to any third party; (b) operate in any way as a promise, covenant, warranty or other assurance to any third party; or (c) create any obligation to any third party.

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed as of the day and year first set forth above.

**STATE OF MARYLAND
Department of the Environment**

By _____
Thomas J. French, Acting Director Date
Operational Services Administration (or designee)

Approved for Legal Form and Sufficiency*
this _____ day of _____, 2016.

Anand N. Parikh, Esquire
Office of the Attorney General

CITY of HAGERSTOWN, MARYLAND

By _____
David Gysberts, Mayor Date

Approved for Legal Form and Sufficiency*
this _____ day of _____, 2016.

Mark Boyer, Esquire
City Attorney

*Approval of legal form and sufficiency does not convey approval or disapproval of the substantive nature of the transaction. Approval is based on typeset document - all modifications require re-approval.

**ATTACHMENT A
WORK PLAN AND PROJECT BUDGET**

Name of Organization: Hagerstown, City of

Grant Title: FFY2015 Chesapeake Bay Regulatory and Accountability Program grant (CBRAP, funded under Clean Water Act Section 117 the Chesapeake Bay Program), in Objective #25 *Watershed Assistance Grant Program 2-Year Milestone Support Grant (WAGP)*

Point of Contact: Mr. James Bender, Assistant City Engineer
1 East Franklin Street, Room 301
Hagerstown MD 21740
E-mail: jbender@hagerstownmd.org
Telephone: 301-739-8577 x124

EPA Funding period: March 1, 2016* – June 30, 2017**
* Execution of the Agreement may be this date or later.
** CBRAP grant end date. No time extension is possible.

Work Plan Project Description:

Project	Project Title: <i>Hamilton Run Watershed Assessment, Action Plan, and Design for Greens at Hamilton Run</i>	Budget for this Project :	Award: \$90,000
Narrative Summary of Outputs for this Project:	The City of Hagerstown will hire a consultant to assist the City in assessing the Hamilton Run watershed and in producing a Hamilton Run watershed action plan. Hamilton Run, which is a tributary to Antietam Creek, has been significantly impacted by development activities along its entire length and suffers from streambank erosion, excessive nutrient and pollutant loadings, and the loss of native plant and wildlife habitat. The purpose of the assessment is to analyze the entire stream corridor. The purpose of the action plan is to identify priorities guide stabilization, restoration and enhancement efforts for improving water quality in the Hamilton Run watershed. The consultant will also analyze and assess the segment of Hamilton Run that passes through the City's municipal golf course (the "Greens at Hamilton Run". In particular, the consultant will develop designs to provide riparian buffers along the stream to reduce nutrient loadings, and will develop a design to return the stream from its current, manmade channel to its original course that meandered through the property.		

Description of Project:	<p>Answer these questions.</p> <ol style="list-style-type: none"> 1) What is the ultimate goal of the project? <i>To identify priorities for stream restoration and stormwater retrofits within the stream corridor in single watershed action plan based on the findings in the watershed assessment, and to design proposed restoration practices along the stream at the Greens at Hamilton Run golf course..</i> 2) What will be accomplished during the current grant cycle? <i>Production of a final watershed assessment and a final watershed action plan; preliminary design plans for improvements at the golf course.</i> 3) If a multi-year project, what has been completed in previous years? <i>Is the project on track? not applicable</i>
Tasks to be Accomplished Under this Project:	<p><u>All tasks will be completed by June 30, 2017:</u></p> <p><i>Task 1. Select a contractor using a RFP/bid opportunity that is open no less than 30 days. (due 4/29/2016)</i></p> <p><i>Task 2. Watershed Assessment: Consultant compiles and reviews available data on the watershed. Consultant conducts field surveys within the stream corridor/watershed area determined by the City. (due 8/31/16)</i></p> <p><i>Task 3. Greens at Hamilton Run: Consultant analyzes stream corridor through the golf course, and characterizes degree of degradation due to erosion, nutrient loading. Consultant prepares conceptual and preliminary design plans to relocate stream to its original channel, and to incorporate riparian buffers along both the relocated stream and other segments currently impacted by golf course operations. (due 10/31/16)</i></p> <p><i>Task 4. Consultant drafts Watershed Action Plan with City oversight and review. (due 10/31/16)</i></p> <p><i>Task 5. City conducts at least one public/stakeholder meeting regarding the draft Watershed Action Plan. (due 11/30/16)</i></p> <p><i>Task 6. Finalize Watershed Action Plan including priorities for stream restoration and stormwater retrofits within the stream corridor/watershed area identified in the Watershed Assessment. (due 3/31/17)</i></p> <p><i>Task 7. Consultant completes final design plans for proposed improvements at the Greens at Hamilton Run, and obtains necessary permits for construction from regulatory agencies. (due 6/30/17)</i></p>

<p>Deliverables</p>	<p><u>Programmatic Deliverables*</u></p> <p><i>Task 1.</i> Documentation of the contractor selection process including at least copy of advertisement(s), list of contractors that responded, list of key criteria used for contractor selection, name of selected contractor and the contractor's status as a MBE/WBE/DBE including certification number if applicable.</p> <p><i>Task 2.</i> Electronic copy of Watershed Assessment document.</p> <p><i>Task 3.</i> Electronic copy of conceptual and preliminary design plans for improvements at the Greens at Hamilton Run.</p> <p><i>Task 4.</i> Electronic copy of draft Watershed Action Plan.</p> <p><i>Task 5.</i> Electronic copies of: 1) meeting advertisement, 2) meeting materials and handouts.</p> <p><i>Task 6.</i> Electronic copy of final Watershed Action Plan.</p> <p><i>Task 7.</i> Electronic copy of final design plans and permit applications.</p> <p><u>Administrative Deliverables*</u></p> <p>Semi-Annual Report, including applicable documentation, due to MDE June 30, 2016 and December 31, 2016.</p> <p>Final Report, including applicable documentation, due to MDE June 30, 2017.</p> <p>*NOTE: To avoid duplicative submittals to MDE, the semi-annual report and final report may refer to previously submitted programmatic deliverables or include the programmatic deliverables as appropriate.</p>
<p>Link to Jurisdiction's WIP and Two-Year Milestones Commitment(s)</p>	<p><i>This project will address the City of Hagerstown's programmatic milestones to study Hamilton Run areas for potential restoration stream restoration projects and to conduct Hamilton Run stream restoration.</i></p>
<p>Progress Reporting</p>	<p>This section is left blank in the work plan but will be completed for Semi-Annual progress reports and for the Final Report.</p>

Budget CBRAP Year 6 FFY2015 Objective #25 WAGP Grant

Project: *Hamilton Run Watershed Assessment and Action Plan*

Organization: *City of Hagerstown*

Category		Federal CBRAP Grant (\$)	Non-Federal Match (\$)	Total (\$)
Contractual	Consultant Services	90,000		90,000
Match (1, 2)			90,000	90,000
TOTAL		90,000	90,000	180,000

- (1) The State of Maryland is providing match for the overall CBRAP grant separately including this subgrant project. No match contribution is required by the subgrantee, the City of Hagerstown.
- (2) The City of Hagerstown anticipates expending at least \$15,000 in order to complete this project. These local expenditures are considered "leveraging" for purposes of project reporting.

Administrative Conditions

1. Payment

In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

2. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." The recipient must send its proposal to its cognizant Federal agency within six (6) months after the close of the governmental unit's fiscal year.

If EPA is the cognizant Federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

Regular Mail

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3802R
Washington, DC 20460

Mail Courier (e.g. FedEx, UPS, etc.)

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th Floor
Bid and Proposal Room Number 61107
Washington, DC 20004

Recipients are entitled to reimbursement of indirect costs, if they have a current rate agreement, or have submitted an indirect cost rate proposal to their cognizant Federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without EPA approval.

3. Hotel-Motel Fire Safety

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. Procurement - Recycling

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery

Attachment B - Grant Conditions

Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

5. Suspension & Debarment

The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

6. Lobbying

The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

7. Lobbying & Litigation

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

8. Recycling

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

9. Single Audit

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. **For fiscal periods ending in 2002 to 2007 recipients are to submit in hardcopy to the following address:**

Attachment B - Grant Conditions

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

For fiscal periods ending in 2008 and beyond the recipient **MUST** submit the SF-SAC and Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the 2008 and beyond single audit submissions, you will need to visit the Federal Audit Clearinghouse website: <http://harvester.census.gov/fac/>

10. Drug-Free Workplace Certification

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

11. Subawards

The recipient agrees to:

- a. Establish all subaward agreements in writing;
- b. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- c. Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- d. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- e. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- f. Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- g. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- h. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in with 40 CFR Parts 30.25 and 31.30, as applicable.

Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipients' EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>.

Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with

Attachment B - Grant Conditions

Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

12. Management Fees

The recipient agrees that management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

13. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

14. Trafficking Victim Protection Act

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

15. Federal Financial Report

Pursuant to 40 CFR 31.41(b) and 31.50(b), the recipient agrees to submit to EPA a Federal Financial Report (FFR) (SF-425) as follows:

a. **Annual interim FFRs** are required when the budget period is longer than one year and are due no later

Attachment B - Grant Conditions

than 90 days following the end of the quarter of the anniversary of the budget period start date. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31.

b. Final FFRs are due no later than 90 days after the end of the grant budget period.

The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to U.S. EPA - Las Vegas Finance Center (LVFC), P.O. Box 98515, Las Vegas, NV 89193-8515 or faxed to 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final FFR. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43, if the recipient does not comply with this term and condition.

16. Disadvantaged Business Enterprise

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreement.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The Maryland Department of the Environment has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE%: CONSTRUCTION 11.0; EQUIPMENT 11.0; SERVICES 12.0; SUPPLIES 11.0

WBE%: CONSTRUCTION 11.0; EQUIPMENT 11.0; SERVICES 10.0; SUPPLIES 11.0

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, equipment, services and supplies.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

Attachment B - Grant Conditions

(a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and Local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to Kinshasa Brown-Perry, Acting Small Business Program Manager (3PM00), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the

Attachment B - Grant Conditions

recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

17. Federal Employee Costs

The recipient understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to the recipient as allowed under the provisions of the Intergovernmental Cooperation Act.

18. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

19. Funding Prohibition

Congress has prohibited EPA from using its Fiscal Year 2010 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

20. Equipment Disposition

In accordance with 40 CFR 31.32(c), the recipient may continue to use any equipment purchased under the assistance agreement on this project or on other Federally funded projects whether or not supported by Federal funds.

Programmatic Conditions

1. Quality Assurance Management Plan

In accordance with 40 CFR 31.45, the recipient shall continue to implement and adhere to the Quality Management Plan (QMP) submitted to EPA. The QMP should be updated annually or as necessary based on the EPA QA/R-2: EPA Requirements for Quality Management Plans. This quality assurance requirement applies to all grants, cooperative agreements, contracts and interagency agreements that involve the use of environmental data.

2. Quality Assurance Project Plan

In accordance with 40 CFR 31.45, the recipient must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The QAPP should

Attachment B - Grant Conditions

be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to the EPA Project Officer at least 30 days prior to the initiation of data collection or data compilation.

Prior to environmental data collection or data compilation, the QAPP must be approved by the EPA Project Officer. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP.

Recipient agrees to provide a QAPP for objectives 3, 6, and 8 to the EPA Project Officer no later than September 30, 2010. In addition, recipient agrees to submit an updated QAPP for objective 11 to the EPA Project Officer by April 30, 2010. Failure to submit these QAPPs by the due dates will constitute noncompliance with this grant agreement and enforcement actions may be initiated.

3. Pre-Award Costs

Pre-Award Costs have been approved in accordance with the recipient's application dated June 14, 2010.

4. Performance Reports - Part 31

In accordance with 40 C.F.R. § 31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas; 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period (Where the output of the project can be quantified, a computation of the cost per unit of the output); 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

5. Performance Reports - Submission Frequency

The recipient agrees to submit semi-annual performance reports to the EPA Project Officer. The reports are due 30 days after the reporting period. Final performance reports are due 90 days after the end of the budget period.

6. Program Guidance

The recipient agrees to comply with the provisions of the annual U.S. EPA Chesapeake Bay Program Grant and Cooperative Agreement Guidance of 2010 and its revisions.

7. Program Income - Further Project Objectives

The recipient agrees to use any program income generated during the project period to further eligible project or program objectives. The recipient shall have no obligation to EPA regarding program income earned after the end of the project period.

Administrative Conditions

The following Administrative Condition is amended:

18. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

All other terms and conditions remain the same.

Administrative Conditions

The following Administrative Condition is amended:

19. Funding Prohibition

Congress has prohibited EPA from using its FY 2012 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

The following Administrative Condition is added:

21. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

Attachment B - Grant Conditions

- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Administrative Conditions

The following Administrative Condition is amended:

18. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

The following Administrative Condition is added:

22. Civil Rights Obligations

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits

Attachment B - Grant Conditions

discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pd
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Administrative Conditions

The following Administrative Condition is amended:

16. Utilization of Small, Minority, and Women's Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The **Maryland Department of the Environment** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: CONSTRUCTION 17.0; SUPPLIES 13.0; SERVICES 12.0; EQUIPMENT 13.0

WBE: CONSTRUCTION 16.0; SUPPLIES 13.0; SERVICES 14.0; EQUIPMENT 13.0

Negotiating Fair Share Objectives/Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

Attachment B - Grant Conditions

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subwards or loans in the "Other" category that exceed the threshold amount of \$150,000., including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the EPA Grant Specialist with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be **signed and emailed to R3_MBE-WBE_Reports@epa.gov as a pdf file, or if that is not possible, mailed to Cynthia Burrows, Diversity/EEO Manager (3DA10), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 with a courtesy copy to the EPA Grant Specialist.** The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm ;

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40

Attachment B - Grant Conditions

CFR, Section 33.501 (b) and (c) for specific requirements and exemption.

The following Administrative Condition is added:

23. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

Programmatic Conditions

The following Programmatic Condition is amended:

6. Program Guidance

The recipient agrees to comply with the provisions of the US EPA CBP Grant Guidance (2014). Any future versions of the Guidance will be applicable while the assistance agreement is still active.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Administrative Conditions

The following Administrative Conditions are applicable to funding awarded by this amendment, any future amendments and any unobligated balances (defined at 2 CFR 200.98) on the award as of this amendment unless otherwise noted:

1. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_2014.pdf. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

2. State Grant Cybersecurity Condition

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

3. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan and in accordance with 2 CFR 200.416 "Cost allocation plans and indirect cost proposals."

If EPA is the cognizant federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

Regular Mail

Financial Analysis and Rate Negotiation Service Center

Attachment B - Grant Conditions

Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3802R
Washington, DC 20460

Mail Courier (e.g. FedEx, UPS, etc.)

Financial Analysis and Rate Negotiation Service Center
Office of Acquisition Management
US Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 6th floor
Bid and Proposal Room Number 61107
Washington, DC 20004

Electronic Submission (e.g. PDF)

OGD IndirectCost@EPA.GOV

Recipients are entitled to reimbursement of indirect costs, if they have a current rate agreement, or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without EPA approval.

Recipients must comply with the audit requirements prescribed in 2 CFR 200.501(a).

4. Annual Federal Financial Report

Pursuant to 2 CFR 200.327 and 200.343, the recipient agrees to submit to EPA an annual Federal Financial Report (FFR) (SF-425) when the budget period is longer than one year. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. Interim reports shall be submitted no later than 90 days after the end of each reporting period.

The form is available on the internet at <http://www.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov or fax at 702-798-2423.

5. Utilization of Small, Minority, and Women's Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the EPA Grant Specialist with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis. All

Attachment B - Grant Conditions

procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be signed and emailed to **R3 MBE-WBE Reports@epa.gov** as a pdf file, or if that is not possible, mailed to Cynthia Burrows, Diversity/EEO Manager (3DA10), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 with a courtesy copy to the EPA Grant Specialist. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm ;

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The **Maryland Department of the Environment** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: CONSTRUCTION 17.0; SUPPLIES 13.0; SERVICES 12.0; EQUIPMENT 13.0

WBE: CONSTRUCTION 16.0; SUPPLIES 13.0; SERVICES 14.0; EQUIPMENT 13.0

Negotiating Fair Share Objectives/Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

Attachment B - Grant Conditions

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

6. Federal Employee Costs

The recipient understands that the funds for this project (including funds contributed by the recipient as their cost share) may not be used to pay for the travel of Federal employees, or for other costs associated with Federal participation in this project unless the Federal agency is performing special technical assistance to the recipient as allowed under the provisions of the Intergovernmental Cooperation Act.

Programmatic Conditions

The following Programmatic Conditions are applicable to funding awarded by this amendment, any future amendments and any unobligated balances (defined at 2 CFR 200.98) on the award as of this amendment unless otherwise noted:

1. Quality Assurance Management Plan

In accordance with 2 CFR 1500.11, the recipient shall continue to implement and adhere to the Quality Management Plan (QMP) submitted to EPA. The QMP should be updated annually or as necessary based on the EPA QA/R-2: EPA Requirements for Quality Management Plans. This quality assurance requirement applies to all grants, cooperative agreements, contracts and interagency agreements that involve the use of environmental data.

2. Quality Assurance Project Plan

In accordance with 2 CFR 1500.11, the recipient must develop and implement quality assurance and

Attachment B - Grant Conditions

quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The QAPP must be submitted to the EPA Project Officer at least 30 days prior to the initiation of data collection or data compilation.

Prior to environmental data collection or data compilation, the QAPP must be approved by the EPA Project Officer. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP.

3. Pre-Award Costs

Pre-Award Costs have been approved in accordance with the recipient's application dated June 14, 2010.

4. Performance Reports

In accordance with 2 CFR 200.328, the recipient agrees to submit performance reports that include brief information on each of the following areas; a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; b) the reasons for slippage if established outputs/outcomes were not met; and c) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs. In accordance with 2 CFR 200.328, the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

5. Performance Reports - Submission Frequency

The recipient agrees to submit **semi-annual** performance reports to the EPA Project Officer. The reports are due 30 days after the reporting period. Final performance reports are due 90 days after the end of the budget period.

6. Program Guidance

The recipient agrees to comply with the provisions of the US EPA CBP Grant Guidance (2015). Any future versions of the Guidance will be applicable while the assistance agreement is still active.

7. Competency Policy

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA project officer for this award.

8. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Contract Purchase Order Amendment 2 for Allan A. Myers, LP \$154,306.00

Mayor and City Council Action Required:

Requested approval of the Water Division Motion Allan Myers Change order for the Willson WTP in the amount of \$154,306

Discussion:

On December 13, 2013, the Mayor and City Council approved the bid from Allan A. Myers, Inc. (AAM) as the General Contractor for the Phase IV Disinfection By-Product Rule 2 (DBPR2) Improvements at the R.C. Willson Plant. The first phase of the project resulted in chemical additions to maximize the current treatment process, removal of the filter backwash from the raw water treatment train, modifications to the residual lagoon, and removal of storm water from the raw water treatment train. The second phase of the project resulted in the addition of ammonia to convert secondary disinfectant from Chlorine to Chloramines.

In February 2016, the Mayor and Council approved Maryland Department of the Environment (MDE) Change Order #1. This Change Order covered all work that was included in the MDE funding package. This project was similar to most projects of this magnitude - there were many challenges and latent conditions encountered. The wash-water lagoon was being upgraded to meet Clean Water Act NPDES permit requirements. The lagoon capacity is 6 million gallons and all stored material (clear water, liquid and semi-solid residuals) had to be removed to facilitate this work. This work was identified in the contract as work that would be completed either by the successful bidder for the Phase IV work or by utilizing the City's existing residuals contractor.

Water Division staff worked closely with the Contractor, Project Engineers, and the Regulatory Agencies to ensure a successful project. The price to remove the liquid residuals using the services of the current residual contractor based on an estimated quantity was \$180,000 – this cost did not include the removal of the semi-solid residuals. The cost for the Allan A. Myers to remove all solids was \$154,306.

The initial contract with AAM totaled \$11,095,000 for Phase IV-A with an additional \$15,000 approved for Phase IV-B (Project Total \$11,110,000). The MDE Funding Package for construction included \$11,600,054 (of which \$1,500,000 were grant funds). Total construction costs totaled \$11,476,440 which requires a second amendment of the Allan A. Myers, Inc. Purchase Order in the amount of \$154,306 (funding is from the project contingency previously approved by Mayor and City Council). The construction portion of the project came in \$124,614 under-budget.

With Mayor and Council approval staff will move forward with the amendment to the Purchase Order and preparation of the final project documentation as required by MDE and our auditors. Should you have questions or require additional information, please let us know.

Financial Impact:

The MDE Funding Package for construction included \$11,600,054 (of which \$1,500,000 were grant funds). Total construction costs totaled \$11,476,440 which requires a second amendment of the Allan A. Myers, Inc. Purchase Order in the amount of \$154,306 (funding is from the project contingency previously approved by Mayor and City Council). The construction portion of the project came in \$124,614 under-budget.

Recommendation:

Staff recommended approval

Motion:**HAGERSTOWN, MARYLAND**

DATE: April 19, 2016

**TOPIC: Approval of Water Division Motion for the Allan A. Myers, LP
Construction Contract Purchase Order Amendment 2 for
Construction Improvements at the R. C. Willson Water Plant**

Charter Amendment	?
Code Amendment	?
Ordinance	?
Resolution	?
Other	!

MOTION: I hereby move that the Mayor and City Council approve the final project close-out Change Order #2, per the Maryland Department of the Environment and City Purchasing requirements, in the amount of \$154,306 (one hundred fifty four thousand three hundred six dollars). The funding source will be the contingent MDE loan funds and/or Water Fund Capital Improvement funds previously approved by Mayor and City Council.

DATE OF INTRODUCTION: 4/19/16

DATE OF PASSAGE: 4/19/16

EFFECTIVE DATE: 4/19/16

Action Dates:

April 19, 2016 Regular Session

ATTACHMENTS:**File Name****Description**

Water_Division_Motion_Allan_Myers_Changeorder_Willson_WTP_041916.doc

Water Division
Motion Allan
Myers
Changeorder
Willson WTP
041916

Water_Division_Memo_Allan_Myers_Project_Close-
Out_PO_Amendment_2_041916_.doc

Water Division
Memo Allan
Myers Project
Close-Out PO
Amendment 2
041916

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

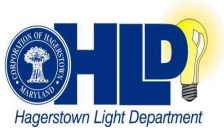
TOPIC: **Approval of Water Division Motion for the Allan A. Myers, LP Construction Contract Purchase Order Amendment 2 for Construction Improvements at the R. C. Willson Water Plant**

Charter Amendment	<input type="checkbox"/>
Code Amendment	<input type="checkbox"/>
Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

MOTION: I hereby move that the Mayor and City Council approve the final project close-out Change Order #2, per the Maryland Department of the Environment and City Purchasing requirements, in the amount of \$154,306 (one hundred fifty four thousand three hundred six dollars). The funding source will be the contingent MDE loan funds and/or Water Fund Capital Improvement funds previously approved by Mayor and City Council.

DATE OF INTRODUCTION: 4/19/16
DATE OF PASSAGE: 4/19/16
EFFECTIVE DATE: 4/19/16

CITY OF HAGERSTOWN



DEPARTMENT OF UTILITIES

425 East Baltimore Street
Hagerstown, MD 21740-6105

51 West Memorial Blvd
Hagerstown, MD 21740-6848

April 19, 2016

To: Valerie Means, City Administrator

From: Michael Spiker, Director of Utilities
Nancy Hausrath, Water Operations Manager

RE: Allan A. Myers, LP – Construction Contract – Purchase Order Amendment 2
Construction Improvements - R. C. Willson Water Plant
Phase IV Disinfection By-Product Rule 2 (DBPR2) Improvements

Action: Requested Approval of Change Order

On December 13, 2013, the Mayor and City Council approved the bid from Allan A. Myers, Inc. (AAM) as the General Contractor for the Phase IV Disinfection By-Product Rule 2 (DBPR2) Improvements at the R.C. Willson Plant. The first phase of the project resulted in chemical additions to maximize the current treatment process, removal of the filter backwash from the raw water treatment train, modifications to the residual lagoon, and removal of storm water from the raw water treatment train. The second phase of the project resulted in the addition of ammonia to convert secondary disinfectant from Chlorine to Chloramines.

In February 2016, the Mayor and Council approved Maryland Department of the Environment (MDE) Change Order #1. This Change Order covered all work that was included in the MDE funding package. This project was similar to most projects of this magnitude - there were many challenges and latent conditions encountered. The wash-water lagoon was being upgraded to meet Clean Water Act NPDES permit requirements. The lagoon capacity is 6 million gallons and all stored material (clear water, liquid and semi-solid residuals) had to be removed to facilitate this work. This work was identified in the contract as work that would be completed either by the successful bidder for the Phase IV work or by utilizing the City's existing residuals contractor.

Water Division staff worked closely with the Contractor, Project Engineers, and the Regulatory Agencies to ensure a successful project. The price to remove the liquid residuals using the services of the current residual contractor based on an estimated quantity was \$180,000 – this cost did not include the removal of the semi-solid residuals. The cost for the Allan A. Myers to remove all solids was \$154,306.

The initial contract with AAM totaled \$11,095,000 for Phase IV-A with an additional \$15,000 approved for Phase IV-B (Project Total \$11,110,000). The MDE Funding Package for construction included \$11,600,054 (of which \$1,500,000 were grant funds). Total construction costs totaled \$11,476,440 which requires a second amendment of the Allan A. Myers, Inc. Purchase Order in the amount of \$154,306 (funding is from the project contingency previously approved by Mayor and City Council). The construction portion of the project came in \$124,614 under-budget.

With Mayor and Council approval staff will move forward with the amendment to the Purchase Order and preparation of the final project documentation as required by MDE and our auditors. Should you have questions or require additional information, please let us know.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Exemption from City Code Chapter 155, Noise - Fireworks Exemption for North Hagerstown High School - May 23,2016

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Noise_Exemption.pdf

Description

Motion

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: April 19, 2016

TOPIC: Approval of an Exemption from City Code Chapter 155, Noise

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move for the approval of an exemption from the City Code, Chapter 155, Noise. This exemption is being granted in accordance with Section 155-5, M. to the North Hagerstown High School Athletic Boosters for a fireworks display on Monday, May 23, 2016.

DATE OF PASSAGE: April 19, 2016

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Rain Insurance Policy for 2016 Western Maryland Blues Fest - \$9,991.00

Mayor and City Council Action Required:

As in previous years, the Executive Committee of the Western Maryland Blues Fest would like authorization from the Mayor and City Council to purchase rain insurance for Friday, June 3 and Saturday, June 4 (the revenue days).

Discussion:

After reviewing many options, the Western Maryland Blues Fest Executive Committee would like to recommend the purchase of the rain insurance described below.

The rain insurance policy for Friday, June 3 is for \$20,000. The policy will cover the hours of 4 p.m. to 9 p.m. (5 hours), and it must rain 1/4" or more in order to collect on the policy. Please note 5% of the \$20,000 will go to The Maryland Theatre for their risk of the beer and wine sales. The rain insurance policy for Saturday, June 4 is for \$60,000 and would cover the hours of 10 a.m. to 6 p.m. (8 hours). It must rain 1/4" or more in order to collect on the policy. Please note 5% of the rain insurance proceeds would go to The Maryland Theatre for their risk of the beer and wine sales. These policies must be purchased by **May 6, 2016**.

Please note the rain insurance policy will not cover the entire festival liability; however, buying the rain insurance policy is a balance between the price of the insurance versus the risk of loss.

The Committee appreciates your continued support of the event.

Financial Impact:

The total cost of the insurance would be \$9991.00 and would come from Blues Fest Public Functions Budget.

Recommendation:

Motion:

I hereby move for the approval to purchase rain insurance policies for the 2016 Western Maryland Blues Fest at the following maximum amounts: a \$ 20,000 policy for Friday, June 3 from 4 p.m. to 9 p.m. and a \$ 60,000 policy for Saturday, June 4 from 10 a.m. to 6 p.m. The total cost for the insurance will be \$9,991.00. Funding would be from the Blues Fest Budget in the Public Functions Account. Five percent of the rain insurance proceeds would go to The Maryland

Theatre for their risk of the beer and wine sales.

Action Dates:

Date of Passage: 4/19/2016

ATTACHMENTS:

File Name

Motion_-_Rain_Insurance.pdf

Description

Motion

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: April 19, 2016

TOPIC: Approval of Rain Insurance Policy for 2016 Western Maryland Blues Fest

Charter Amendment

Code Amendment

Ordinance

Resolution

Other

 X

MOTION: I hereby move for the approval to purchase rain insurance policies for the 2016 Western Maryland Blues Fest at the following maximum amounts: a \$ 20,000 policy for Friday, June 3 from 4 p.m. to 9 p.m. and a \$ 60,000 policy for Saturday, June 4 from 10 a.m. to 6 p.m. The total cost for the insurance will be \$9,991.00. Funding would be from the Blues Fest Budget in the Public Functions Account. Five percent of the rain insurance proceeds would go to The Maryland Theatre for their risk of the beer and wine sales.

DATE OF PASSAGE: April 19, 2016



CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development
Gaela S. M. Shoop –Community Event Coordinator

April 12, 2016

TO: Valerie Means, City Administrator
FROM: Gaela S. M. Shoop, Community Event Coordinator
RE: Rain Insurance ~ 2016 Western Maryland Blues Fest

As in previous years, the Executive Committee of the Western Maryland Blues Fest would like authorization from the Mayor and City Council to purchase rain insurance for Friday, June 3 and Saturday, June 4 (the revenue days).

After reviewing many options, the Western Maryland Blues Fest Executive Committee would like to recommend the purchase of the rain insurance described below.

The rain insurance policy for Friday, June 3 is for \$20,000. The policy will cover the hours of 4 p.m. to 9 p.m. (5 hours), and it must rain 1/4" or more in order to collect on the policy. Please note 5% of the \$20,000 will go to The Maryland Theatre for their risk of the beer and wine sales. The rain insurance policy for Saturday, June 4 is for \$60,000 and would cover the hours of 10 a.m. to 6 p.m. (8 hours). It must rain 1/4" or more in order to collect on the policy. Please note 5% of the rain insurance proceeds would go to The Maryland Theatre for their risk of the beer and wine sales. These policies must be purchased by May 6, 2016.

The total cost of the insurance would be \$9991.00 and would come from Blues Fest Public Functions Budget.

Please note the rain insurance policy will not cover the entire festival liability; however, buying the rain insurance policy is a balance between the price of the insurance versus the risk of loss.

The Committee appreciates your continued support of the event.

□ □ □ □

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Tourist Area and Corridor Signage Program

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

motion.tourist_signage.2016.pdf

Description

Approval of Tourist Area and
Corridor Signage Program

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: April 19, 2016

TOPIC: Approval of Tourist Area and Corridor Signage Program

Charter Amendment	<u> </u>
Code Amendment	<u> </u>
Ordinance	<u> </u>
Resolution	<u> </u>
Other	<u> X </u>

MOTION: I hereby move to authorize participation in the State Highway Administration (SHA) program to expand their "tourist attraction" signage into the City of Hagerstown and authorize the Mayor to issue a letter to SHA requesting the implementation of the plan.

DATE OF PASSAGE: 4/19/16