

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 22, 2022

TOPIC: **Approval of Resolution:** Authorizing a Financial Incentive Agreement between the City of Hagerstown, Maryland and MCB Hagerstown, LLC.

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

MOTION: I hereby move for Mayor & Council approval of a resolution authorizing the City to enter into a financial incentive agreement with MCB Hagerstown, LLC in connection with its development of property and capital investment. The City's financial incentive provides grant back after permit fees paid. The approval provides that the City Administrator and/or the City Attorney may make administrative edits to the attached Agreement if necessary prior to execution.

DATE OF INTRODUCTION: 11/22/2022

DATE OF PASSAGE: 11/22/2022

EFFECTIVE DATE: 11/22/2022

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF
FINANCIAL INCENTIVE AGREEMENT FOR THE IMPROVEMENT OF THE
PROPERTY KNOWN AS 1527 HOWELL ROAD, HAGERSTOWN, MARYLAND
BETWEEN THE CITY OF HAGERSTOWN (“THE CITY”) AND
MCB HAGERSTOWN, LLC (“MCB”)**

RECITALS

WHEREAS, MCB intends to construct 1.9 million square feet of speculative industrial development, consisting of an approximately 1,200,000 to 1,600,000 square foot building (known as “Building 1”) to be constructed in Phase I and an approximately 300,000 square foot building (known as “Building 2”) to be constructed in Phase II (both Phases collectively referred to as the “Project”); both to be constructed on its real property at 1527 Howell Road, which is located within the corporate limits of the City of Hagerstown, Maryland, in accordance with site plans approved by the Hagerstown Planning Commission on or about April 27, 2022 (Case nos. ZS-2022-02 and ZS-2022-03);

WHEREAS, MCB’s total construction budget anticipates \$140 million of investment;

WHEREAS, the Project has the potential to create more than 2,000 jobs;

WHEREAS, the site is not currently located in an Enterprise Zone, but is under consideration for future inclusion in an Enterprise Zone;

WHEREAS, the Project is expected to create new jobs and spur economic development on the City’s eastern boundary; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the City and citizenry to enter into this Financial Incentive Agreement.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Hagerstown, Maryland as its duly constituted legislative body as follows:

1. That the foregoing recitals are incorporated herein as if fully set forth.
2. That the award of a monetary incentive in exchange for the development of the property known as 1527 Howell Road, Hagerstown, Maryland is approved.
3. That the City of Hagerstown be and is hereby authorized to execute the Financial Incentive Agreement, for the development of the property known as 1527 Howell Road, Hagerstown, Maryland, a copy of which Agreement is attached hereto, and to execute such other and further documents as are necessary to effectuate the same.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

Donna K. Spickler, City Clerk

By: _____
Emily N. Keller, Mayor

Date of Introduction: November 22, 2022
Date of Passage: November 22, 2022
Effective Date: November 22, 2022

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

FINANCIAL INCENTIVE AGREEMENT

by and between the City of Hagerstown, Maryland, and MCB Hagerstown LLC

THIS FINANCIAL INCENTIVE AGREEMENT ("Agreement") is made and entered this _____ day of _____, 2022 by and between the **City of Hagerstown, Maryland ("the City")**, and **MCB Hagerstown LLC, ("MCB")**.

RECITALS

WHEREAS, MCB intends to construct up to 1.9 million square feet of speculative industrial development, consisting of an approximately 1,200,000 to 1,600,000 square foot building (known as "Building 1") to be constructed in Phase I and an approximately 300,000 square foot building (known as "Building 2") to be constructed in Phase II (both Phases collectively referred to as the "Project"); both to be constructed on its real property at 1527 Howell Road, which is located within the corporate limits of the City of Hagerstown, Maryland, in accordance with site plans approved by the Hagerstown Planning Commission on or about April 27, 2022 (Case nos. ZS-2022-02 and ZS-2022-03);

WHEREAS, MCB's total construction budget anticipates \$140 million of investment;

WHEREAS, the Project has the potential to create more than 2,000 jobs;

WHEREAS, the site is not currently located in an Enterprise Zone, but is under consideration for future inclusion in an Enterprise Zone;

WHEREAS, the Project is expected to create new jobs and spur economic development on the City's eastern boundary; and

WHEREAS, the City has agreed to provide a monetary incentive to MCB to assist with the Project.

Therefore, for and in consideration of the incentives hereinafter provided and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the City and MCB do contract and agree as follows:

1. **Incentive Package.** The City and MCB agree that the incentive contemplated herein shall be governed by the following provisions:

- A. Subject to the requirements of this Agreement, the City shall grant back to MCB \$425,000.00 of permit fees paid within sixty (60) days of the Certificate of Occupancy for Building 1 or January 1, 2023, whichever comes later.

- B. Subject to the requirements of this Agreement, the City shall grant back to MCB \$200,000.00 of permit fees paid within sixty (60) days of the Certificate of Occupancy for Building 2 or January 1, 2023, whichever comes later.
- C. In no event shall the total incentive for this Project exceed \$625,000.00 in grants back to MCB by the City for actual permit fees paid.
- D. MCB shall invest or cause to be invested at least \$10,000,000 in capital investment for each building.
- E. MCB shall create at least one hundred (100) New Permanent Full-Time Positions for each building. MCB must provide a jobs certification report by December 31, 2025. If there are fewer than 100 New Permanent Full-Time Positions in one or both buildings, the incentive related to that building shall be prorated by percentage for the actual number of New Permanent Full-Time Positions created in that building (for example, if there are 50 New Permanent Full-Time Positions in Building 2, MCB shall be entitled to an incentive of \$100,000.00) and reimbursement for any overpayment must be made by MCB to the City within ninety (90) days of the submission of the jobs certification report.
- F. Phase I must be completed with a use and occupancy permit no later than December 31, 2024.
- G. Phase II must be completed with a use and occupancy permit no later than December 31, 2024.
- H. Phase I must be tenant occupied by June 30, 2025.
- I. Phase II must be tenant occupied by June 30, 2025.
- J. If this site becomes included in the Enterprise Zone, MCB shall refund any and all incentive monies received from the City to the City within ninety (90) days of Enterprise Zone certification and MCB shall not be entitled to any incentives under this Agreement.
- K. If MCB is granted an appeal of the property assessment prior to its submission of the jobs certification report pursuant to subsection E, MCB shall refund any and all incentive monies received from the City to the City within ninety (90) days of said appeal and MCB shall not be entitled to any incentives under this Agreement.
- L. MCB may apply for benefits or assistance under the Washington County Job Creation program separately and receipt of any such benefit or assistance shall not reduce any incentive hereunder.
- M. MCB shall maintain good standing on all developer debts, taxes, and any other obligations to the City. The City shall notify MCB in writing if it violates this

provision and MCB shall have thirty (30) days from receipt of that written notice to cure.

- N. If MCB files for bankruptcy or receivership, whether voluntary or involuntary, before complying with all provisions of this Agreement, MCB shall be deemed in default of this Agreement and shall immediately reimburse the City for any and all monies received hereunder.

3. **Default.** In the event of a default by MCB of any term, provision or condition of this Agreement, the City shall not be required to make any additional payments under this Agreement. Further, the City shall be permitted to charge interest at the rate of Three per cent (3%) fixed per annum on all incentive monies made to MCB until all such monies and interest are repaid in full in addition to pursuing any and all rights at law or in equity, including but not limited to the right to recover consequential damages resulting from MCB's default.

In any action brought by or against the City in the interpretation or enforcement of this Agreement, MCB, in addition to all other damages, shall pay the reasonable value of attorney's services incurred by the City in such action, together with the City's litigation expenses and court costs. This provision shall apply regardless of whether the City is represented in such proceedings by an attorney already employed by (or on retainer with) the City or by other counsel or both.

4. **Notice.** All notices and correspondence under or regarding this Agreement or any provisions hereof shall be in writing and shall be hand-delivered or sent postage prepaid by either (i) United States mail, certified, return receipt requested, or (ii) for delivery the next business day with a nationally recognized express courier:

To MCB:

MCB Hagerstown LLC
2002 Clipper Park Road, Suite 105
Baltimore, MD 21211
Attention: P. David Bramble

with a copy to Ryan Bailey, Esq.
2002 Clipper Park Road, Suite 105
Baltimore, MD 21211

To the City at:

City of Hagerstown
1 East Franklin Street
Hagerstown, Maryland 21740
Attention: Scott A. Nicewarner
City Administrator

with a copy to: Jason Morton
City Attorney
82 West Washington Street
Suite 100
Hagerstown, Maryland 21740

5. **Laws of Maryland.** This Agreement was made and entered into in the State of Maryland and is to be governed by and construed under the laws of the State of Maryland, without regard to conflicts of law principles. The parties hereby consent to the exclusive jurisdiction and venue of the Maryland State Courts located in Washington County, Maryland for the litigation of any issue arising hereunder.

6. **Recitals.** The Recitals are hereby incorporated into this Agreement as substantive provisions.

7. **Entire Agreement: Modification.** This Agreement (including Exhibits 1-4 attached hereto) constitutes the entire agreement and understanding of the parties. There are no other promises or other agreements, oral or written, express or implied between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by authorized representatives of the parties.

8. **Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

9. **Waiver.** Neither party's waiver of the other's breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Agreement.

10. **Survival.** This Agreement shall terminate on July 29, 2028; however, the covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

11. **Counterparts/Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or photocopy of a signature of a party shall constitute an original signature, fully binding the party for all purposes.

12. **Assignment.** MCB may assign this Agreement to any subsequent bona fide purchaser for value. Otherwise, this Agreement may not be assigned by either party without the express written consent of the other party.

13. **Successors Bound.** This Agreement shall be binding on and shall inure to the benefit of the successors, permitted assigns, and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement under their respective seals as of the day and year first above written.

WITNESS:

MCB Hagerstown LLC

BY: _____(SEAL)
P. David Bramble, Authorized Signatory

ATTEST:

CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler, City Clerk

BY: _____(SEAL)
Emily Keller, Mayor



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator

FROM: Doug Reaser, Business Development Specialist

DATE: November 2, 2022

RE: **MCB Hagerstown (Currwood Development) Financial Incentive Agreement**

At the November 8, 2022 Work Session, staff will review the financial incentive document for MCB Hagerstown. Staff seek guidance on proceeding with the financial incentive agreement.

Background:

- MCB Hagerstown intends to construct 1.9 million square feet of speculative industrial development.
- Capital investment is expected in the \$140 million range.
- The development is expected to create between 1,500-2000 jobs.
- The site is currently not in the Enterprise Zone but is under consideration for future inclusion.
- The financial incentive agreement follows terms not dissimilar from the County's Job Creation and Capital Investment Real Property Tax Credit program. The County would be providing roughly \$12 million in tax incentives through utilization of this program.

Business Points of Incentive Offer:

- The total collective incentive shall not exceed \$625,000 in grant back equal to City permit fees paid.
 - Building 1 would have \$425,000 of grant back equal to City permit fees paid.
 - Building 2 would have \$200,000 of grant back equal to City permit fees paid.
- The grant funds will be paid within 60 days of the Certificate of Occupancy for the shell building but not be paid before January 1, 2023 for either building/phase.
- The offer cannot be combined with the Enterprise Zone should the designation become available. The developer will have the option to proceed with this Financial Incentive or Enterprise Zone at the Developer's option.
- Any monetary distribution and/or budget consideration of incentive funds will be refundable to the City within 90 days of enterprise zone certification.
- The development must cause a minimum capital investment and job creation that follows the Washington County Job Creation and Capital Investment Real Property Tax Credit Program as defined in Section 4 (c).
 - Minimum of \$10,000,000 capital investment for each building.
 - Creation of 100 New Permanent Full-Time Positions for each building.
- This incentive will be negated if MCB Hagerstown LLC seeks and achieves an appeal of property assessment before submission of the jobs certification report.
- Phase I construction must be completed with a use and occupancy permit by 12/31/24.

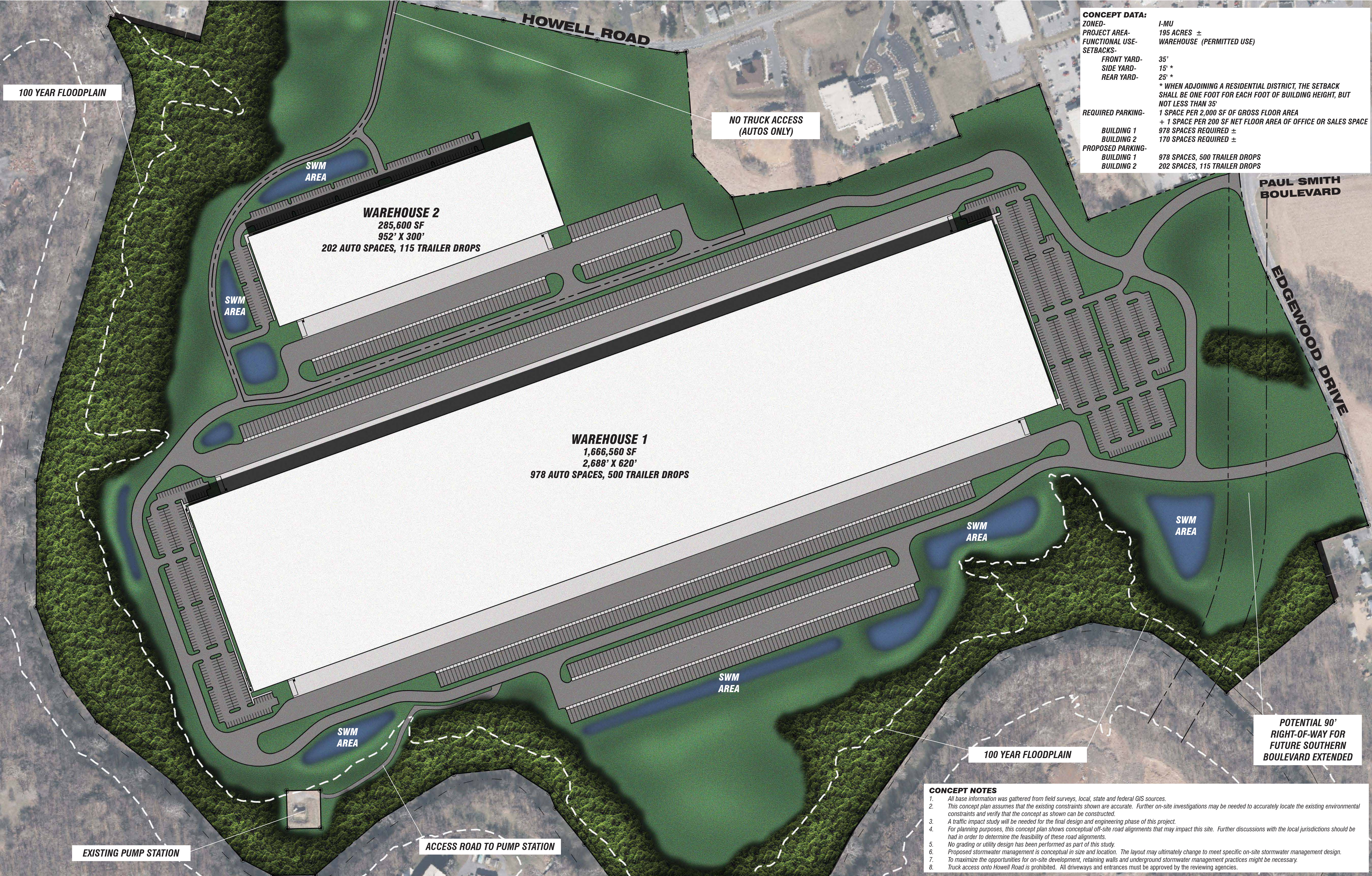
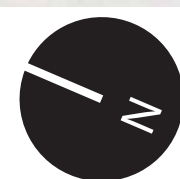
- Phase II of construction must be completed with a use and occupancy permit by 12/31/24.
- Phase I must be tenant occupied by 6/30/25.
- Phase II must be tenant occupied by 6/30/25.
- MCB Hagerstown LLC must provide a jobs certification report by 12/31/25. If either building is unable to obtain 100 New Permanent Full-Time Positions, the incentive will be prorated to positions filled out of 100 and reimbursement for the incentive will be required within 90 days (Example: Tenant occupies Building 2 with 50 jobs - \$100,000 would be reimbursed).
- If these conditions are not met, any granted funds must be repaid to the City of Hagerstown.

Staff will be present at the Work Session to discuss this project in detail.

Attached: Financial Incentive Agreement, Concept Plan

c:

Jill Thompson
Kathy Maher
Michelle Hepburn
Nancy Hausrath
Rodney Tissue
Ann Rotz
Jason Morton



CONCEPT DATA:	
ZONED-	I-MU
PROJECT AREA-	195 ACRES ±
FUNCTIONAL USE-	WAREHOUSE (PERMITTED USE)
SETBACKS-	
FRONT YARD-	35'
SIDE YARD-	15' *
REAR YARD-	25' *
* WHEN ADJOINING A RESIDENTIAL DISTRICT, THE SETBACK SHALL BE ONE FOOT FOR EACH FOOT OF BUILDING HEIGHT, BUT NOT LESS THAN 35'	
REQUIRED PARKING-	1 SPACE PER 2,000 SF OF GROSS FLOOR AREA + 1 SPACE PER 200 SF NET FLOOR AREA OF OFFICE OR SALES SPACE
BUILDING 1	978 SPACES REQUIRED ±
BUILDING 2	170 SPACES REQUIRED ±
PROPOSED PARKING-	
BUILDING 1	978 SPACES, 500 TRAILER DROPS
BUILDING 2	202 SPACES, 115 TRAILER DROPS

- CONCEPT NOTES**
1. All base information was gathered from field surveys, local, state and federal GIS sources.
 2. This concept plan assumes that the existing constraints shown are accurate. Further on-site investigations may be needed to accurately locate the existing environmental constraints and verify that the concept as shown can be constructed.
 3. A traffic impact study will be needed for the final design and engineering phase of this project.
 4. For planning purposes, this concept plan shows conceptual off-site road alignments that may impact this site. Further discussions with the local jurisdictions should be had in order to determine the feasibility of these road alignments.
 5. No grading or utility design has been performed as part of this study.
 6. Proposed stormwater management is conceptual in size and location. The layout may ultimately change to meet specific on-site stormwater management design.
 7. To maximize the opportunities for on-site development, retaining walls and underground stormwater management practices might be necessary.
 8. Truck access onto Howell Road is prohibited. All driveways and entrances must be approved by the reviewing agencies.