

Mayor and Council

Special Session (25th Voting Session) and Work Session

November 9, 2021

Agenda

"The City of Hagerstown will promote a diverse, business-friendly, and sustainable community with clean, safe, and strong neighborhoods."

"The City of Hagerstown shall be the model provider of the most efficient and highest quality customer services to be known as the municipal location of choice for all"

1:30 PM MEETING WITH WASHINGTON COUNTY DELEGATION

Meeting Location: Hagerstown Community College, 11400 Robinwood Drive, Hagerstown, Maryland

4:00 PM SPECIAL SESSION

1. Approval of a Resolution: Water Line Relocation Agreement with Hopewell, LLC

4:00 PM WORK SESSION

- 4:10 PM** 1. Grant and Program Opportunities for Community Growth ~ *Soren Dorius, Pen Mar Realtors*
- 4:25 PM** 2. Helicopter at Vietnam Memorial Discussion ~ *Mayor and City Council*
- 4:45 PM** 3. Antietam Fire Company – Loan Forgiveness Discussion ~ *James Sprecher, Jr., Captain of Antietam Fire Company*
- 5:00 PM** 4. Review of Process - CDBG Capital Project Funding Requests for Non-Profit Organizations ~ *Jonathan Kerns, Community Development Manager*
- 5:10 PM** 5. Arts & Entertainment District Redesignation ~ *Kitty Clark, Community Events Coordinator*
- 5:25 PM** 6. Temporary Lease Agreement with The Foundry Pop-Ups – 6 N Potomac Street - *Doug Reaser, Business Development Specialist*
- 5:30 PM** 7. Updates to Farmer's Market Guidelines ~ *Christopher Siemerling, Economic Development Specialist*
- 5:40 PM** 8. Incentive Review – Market Vendors ~ *Doug Reaser, Business Development Specialist & Chris Siemerling, Economic Development Specialist*
- 5:50 PM** 9. Request to Purchase Competitive Negotiated Sale (CNS) Property: 25 West Church Street ~ *Christopher Siemerling, Economic Development Specialist & Doug Reaser, Business Development Specialist*

CITY ADMINISTRATOR'S COMMENTS

MAYOR AND COUNCIL COMMENTS

ADJOURN

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

Topic:

MEETING WITH WASHINGTON COUNTY DELEGATION

Meeting Location: Hagerstown Community College, 11400 Robinwood Drive, Hagerstown, Maryland

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

Approval of a Resolution: Water Line Relocation Agreement with Hopewell, LLC

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_and_Resolution_-_
_Water_Line_Relocation_Agreement_with_Hopewell_LLC.pdf

Description

Motion and Resolution -
Water Line Relocation
Agreement

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 9, 2021

TOPIC: **Approval of a Resolution to Enter Into a Water Line Relocation Agreement with Hopewell LLC**

Charter Amendment	☐
Code Amendment	☐
Ordinance	☐
Resolution	☒
Other	☐

MOTION: I hereby move for the approval of a Resolution with Hopewell Road LLC authorizing the execution of the attached Water Line Relocation Agreement to:

- Relocate the existing eight inch (8") water line
- Eventually grant and Convey a Perpetual and Permanent easement via a separate Water Line Easement Agreement, which will reflect the new location of said Easement and
- Vacate the Existing Easement

The Parties understand and agree that the Existing Waterline currently exists as a conduit through the Property, serving only adjacent properties, and it does not currently provide public water service to the Property. The provisions of this Agreement and the performance of the design, review, and installation contemplated hereunder shall not, in and of itself, provide the Developer with any right to public water service for the Property.

DATE OF INTRODUCTION: 11/09/2021
DATE OF PASSAGE: 11/09/2021
EFFECTIVE DATE: 11/09/2021

CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER LINE AGREEMENT BETWEEN THE CITY OF HAGERSTOWN AND HOPEWELL ROAD, LLC (“DEVELOPER”) FOR THE PURPOSE OF RELOCATING A WATER LINE ON LAND SITUATED ON THE SOUTH SIDE OF HOPEWELL ROAD, HAGERSTOWN, MARYLAND

RECITALS

WHEREAS, the City of Hagerstown, Maryland is a Municipal Corporation existing under and by virtue of the laws of the State of Maryland; and

WHEREAS, Developer is the contract purchaser of that certain parcel of property consisting of +/- 54.8262 acres located in Washington County, Maryland (the “**Property**”), as more particularly shown and identified as “LANDS OF HOPEWELL CUSHWA FARMS COMPANY LLC” on the “Waterline Easement Plat” prepared by Frederick Seibert & Associates, Inc. and dated October 18, 2021 (the “**Plat**”), a copy of which is attached hereto and incorporated herein as **Exhibit A**;

WHEREAS, the Property is improved with an existing eight inch (8”) water line and the requisite appurtenances (the “**Existing Waterline**”) that is located within twenty-foot (20’) wide permanent easements on Property and more particularly shown and indicated on **Exhibit A** as the “**Existing Private Waterline Easement Area #1**” “**Existing Private Waterline Easement Area #2,**” and the “**New Waterline Easement Area**”;

WHEREAS, the Existing Waterline has been maintained by the City and, although not yet fully dedicated to the City, is intended to be so dedicated;

WHEREAS, the Developer intends to develop the Property with an industrial building, and the proposed layout of the building requires the relocation of the Existing Waterline to a different location on the Property, which area is shown and indicated as “20’ RELOCATED WATER LINE EASEMENT” on **Exhibit A** (the “**Relocation Area**”). Both parties acknowledge that the Relocated Water Line may ultimately not be in the area depicted on Exhibit A;

WHEREAS, the Parties agree that the relocation of the Existing Waterline on the Property to the Relocation Area, or some other mutually agreed-upon portion of the Property, is appropriate and further agree to work together to facilitate the relocation;

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City to enter into the attached Water Line Agreement and anticipate entering into a more formal *Water Line Easement Agreement*, once the new location of the Water Line has been determined; and

WHEREAS neither the Water Line Agreement nor the contemplated Water Line Easement Agreement shall obligate the City to serve the Property with water, except in accordance with the all steps, laws, policies and procedures of the City, Washington County and the State of Maryland.

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

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth *verbatim*.
2. That the Mayor and City Staff be and are hereby authorized to execute and deliver the Water Line Agreement between the City and Hopewell Road, LLC, a copy of which is attached hereto and incorporated herein by reference and to act as signatory on behalf of the City on any other documentation necessary to effectuate the purpose of this ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT this Resolution shall become effective upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

By:_____
Emily N. Keller, Mayor

Date of Introduction: November 9, 2021
Date of Passage: November 9, 2021
Effective Date: November 9, 2021

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEY

WATER LINE AGREEMENT

THIS WATER LINE AGREEMENT (this "**Agreement**") is made this ____ day of _____ 2021 by and between **Hopewell Road LLC** ("**Developer**"), and **The City of Hagerstown**, a Maryland municipal corporation ("**City**") (the Developer and City are each, individually, a "**Party**" and, collectively, the "**Parties**").

WITNESSETH

WHEREAS, Developer is the contract purchaser of that certain parcel of property consisting of +/- 54.8262 acres located in Washington County, Maryland (the "**Property**"), as more particularly shown and identified as "LANDS OF HOPEWELL CUSHWA FARMS COMPANY LLC" on the "Waterline Easement Plat" prepared by Frederick Seibert & Associates, Inc. and dated October 18, 2021 (the "**Plat**"), a copy of which is attached hereto and incorporated herein as **Exhibit A**;

WHEREAS, the Property is improved with an existing eight inch (8") water line and the requisite appurtenances (the "**Existing Waterline**") that is located within twenty-foot (20') wide permanent easements on Property and more particularly shown and indicated on **Exhibit A** as the "**Existing Private Waterline Easement Area #1**" "**Existing Private Waterline Easement Area #2**," and the "**New Waterline Easement Area**";

WHEREAS, the Existing Waterline has been maintained by the City and, although not yet fully dedicated to the City, is intended to be so dedicated;

WHEREAS, the Developer intends to develop the Property with an industrial building, and the proposed layout of the building requires the relocation of the Existing Waterline to a different location on the Property, which area is shown and indicated s "20' RELOCATED WATER LINE EASEMENT" on **Exhibit A** (the "**Relocation Area**") Both parties acknowledge that the Relocated Water Line may ultimately not be in the area depicted on Exhibit A; and

WHEREAS, the Parties agree that the relocation of the Existing Waterline on the Property to the Relocation Area, or some other mutually agreed-upon portion of the Property, is appropriate and further agree to work together to facilitate the relocation.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and the City hereby agree as follows:

1. **Incorporation of Recitals and Defined Terms**. The Parties agree that the foregoing recitals are true, correct, complete and are hereby incorporated by reference. Further, except as specifically provided herein, each capitalized term used herein, if any, shall have the meaning ascribed to it in the Agreement.

2. **Relocation of Existing Waterline**. The Parties agree to work together to relocate the Existing Waterline from its existing location on the Property to the Relocation Area (such relocated

line being the “**Replacement Waterline**”). The relocation, design and construction/installation of the Replacement Waterline shall be reviewed and approved by the City and shall be consistent with the City’s engineering requirements and best management practices. The design and installation of the Replacement Waterline shall be performed at the sole cost and expense of the Developer.

3. **No Guarantee of Public Water Service.** The Parties understand and agree that the Existing Waterline currently exists as a conduit through the Property, serving only adjacent properties, and it does not currently provide public water service to the Property. The provisions of this Agreement and the performance of the design, review, and installation contemplated hereunder shall not, in and of itself, provide the Developer with any right to public water service for the Property. If the Developer desires to obtain public water service for the Property in the future, the Developer shall follow all steps and processes required under the applicable policies, procedures and laws of the City, Washington County, and the State of Maryland.

4. **Counterparts.** This Agreement may be executed in one or more counterparts which, when taken together, shall constitute a single instrument and may be executed by an electronic signature in the form of a fax or PDF e-mail.

5. **Applicable Law.** This Agreement shall be governed by the laws of the State of Maryland, without regard to its conflicts of laws provisions.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first above written.

Hopewell Road LLC

By: _____
Name: _____
Title: _____

The City of Hagerstown, a Maryland municipal corporation

By: _____
Name: Emily N. Keller
Title: Mayor

EXHIBIT A

WATERLINE EASEMENT to be granted to THE CITY OF HAGERSTOWN

LANDS OF
HOPWELL CUSHWA FARMS
COMPANY LLC
TM: 0048-0022-0245
PARCEL 3
L.5708 F.388

MD STATE PLANE
MAD 83 NAVD 88

LINE	BEARING	DISTANCE
L1	N 14°22'46" E	201.79'
L2	N 24°44'59" W	1026.01'
L3	N 54°30'14" E	20.36'
L4	S 24°44'59" E	1041.50'
L5	S 75°37'14" E	7.10'
L6	S 14°22'46" W	20.00'
L7	N 75°37'14" W	10.00'
L8	S 14°22'46" W	174.39'
L9	S 75°40'24" W	22.80'
L10	S 24°44'59" E	8.91'
L11	S 56°26'44" W	20.24'
L12	N 24°44'59" W	0.22'
L13	N 34°43'59" E	23.22'

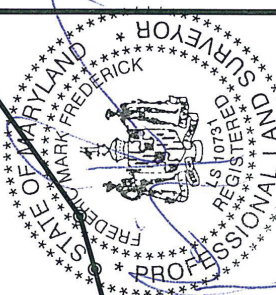
LINE	BEARING	DISTANCE
NL1	N 20°15'01" E	456.11'
NL2	N 24°44'59" W	56.57'
NL3	N 54°30'14" E	20.36'
NL4	S 24°44'59" E	68.65'
NL5	S 20°15'01" W	458.17'
NL6	S 14°19'36" E	667.89'
NL7	S 59°19'36" E	78.88'
NL8	N 75°40'24" E	298.02'
NL9	S 14°22'46" W	28.50'
NL10	S 75°40'24" W	22.80'
NL11	N 14°22'46" E	5.70'
NL12	S 75°40'24" W	272.55'
NL13	N 59°19'36" W	95.45'
NL14	N 14°19'36" W	682.40'

EXISTING PRIVATE
WATERLINE EASEMENT
AREA #1
(24,831.81 SF)

EXISTING PRIVATE
WATERLINE EASEMENT
AREA #2
(91.35 SF)

NEW WATERLINE
EASEMENT
(4,132.99 SF)

LANDS OF
HOPWELL CUSHWA
FARMS COMPANY LLC
TM: 0048-0022-0245
PARCEL 1
L.5708 F.388



Professional Certification
I hereby certify that these documents were prepared by me or
under my responsible charge, and that I am a duly licensed
Professional Land Surveyor under the Laws of the State of
Maryland, License No. 10730, Expiration Date 1/16/2022.

Date
Frederick M. Frederick
Professional Land Surveyor

RELOCATED WATERLINE EASEMENT TO BE
GRANTED TO THE CITY OF HAGERSTOWN ONCE
THE NEW WATER LINE IS CONSTRUCTED IN
THIS LOCATION (31,688.99 SF)

TAX MAP GRID-PARCEL
0048-0022-0245

DWN BY
TMF
PROJECT MANAGER
EMAIL

SCALE
1" = 200'
SHEET 01 OF 01



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CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
fsa-inc.com

128 SOUTH POTOMAC STREET
HAGERSTOWN, MD 21740
301.791.3850
20 WEST BALTIMORE STREET
GREENCASTLE, PA 17225
717.997.1007
505 SOUTH HANOVER STREET
CHARLISSE, PA 17013
717.701.8111
15 EAST MAIN STREET
NEW BLOOMFIELD, PA 17068
717.275.7331

PROJECT NO.
4912.1

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

Topic:

Grant and Program Opportunities for Community Growth ~ *Soren Dorius, Pen Mar Realtors*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

Helicopter at Vietnam Memorial Discussion ~ *Mayor and City Council*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Helicopter_at_Vietnam_Memorial_Discussion.pdf

Description

Helicopter at Vietnam
Memorial



CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler

City Clerk

One East Franklin Street • Hagerstown, MD 21740

E-mail: dspickler@hagerstownmd.org

Telephone: 301.766.4183 • TDD: 301.797.6617

TO: Mayor and City Council Members
Scott Nicewarner, City Administrator

FROM: Donna K. Spickler, City Clerk

SUBJECT: Helicopter at Vietnam Memorial Discussion

DATE: November 9, 2021

At the October 5, 2021 Work Session, a proposal from the Joint Veterans Council to place a helicopter at the Vietnam Monument on S. Walnut Street was considered.

A follow up discussion of the proposal is scheduled for the November 9, 2021 Work Session. To assist with your discussion, copies of the correspondence that has been submitted are attached. These are the same letters you received by email as they were submitted.

Please let me know if you have any questions or would like additional information.

Thank you.





August 10, 2021

To: Hagerstown Mayor Emily Keller and the City Council

We are writing this letter to express serious concern about plans to display a 50-foot-plus Vietnam War-era helicopter in City Park.

A large, aging chopper is not appropriate for the location, is not compatible with existing city designations in the area and, while symbolic, has only minor direct connection to the 17 Washington County residents who died in the war.

Please do not mistake this opposition as disrespect for the memorial or those who died in Vietnam. But the memorial already has significantly changed the northern end of the Hagerstown City Park, which once was untouched by manmade structures.

Now there are large, bright lights that illuminate the area every night. The helicopter appears to be another step on an undefined pathway for a memorial that could be taking on a life of its own. First, the memorial and its bright lights, then a request for designated parking places which will inconvenience long-time residents and now a plan to display a helicopter at the site.

Our opposition is to the proposed LOCATION of a helicopter to memorialize those killed in the war, not to efforts to keep alive the memory of those killed.

There is no dismissing the fact that the Vietnam conflict was the "Helicopter War." Retired helicopters are being displayed around the country, but most are in war memorial parks, air museums, airfields and military bases – not in a city park just across the street from a Victorian-era historic district and just blocks from the city's historic area.

Wouldn't it be more appropriate to situate such a large war relic at a veterans' organization post or at the airport? Is this a somber memorial or a destination museum attraction?

While helicopters were the workhorses of the war, transporting troops in and out of combat zones, our research shows that only two of the 17 fallen servicemen from Washington County died in helicopter-related incidents.

Fifteen of the 17 were riflemen, infantrymen, infantry operations and intelligence specialists or armor reconnaissance specialists – servicemen who drove military vehicles to gather information, provide cover for troops and help with targeting. Nearly all were killed in action on the ground by grenades, mortars or small arms fire. One died of illness.

Only two of the deaths directly involved a helicopter. A helicopter repairman was killed in action during a helicopter crash. Another soldier from the area, who also was a helicopter repairman, died in an accidental, non-hostile crash that killed the crew.

Lastly, a Vietnam-era helicopter is not compatible with the Downtown and South Prospect historic districts designated by the city. The mayor and city council adopted a preservation ordinance in 1987 to "safeguard the historical and cultural heritage of Hagerstown."

Historic districts give homebuyers assurances that the character of their neighborhood will not substantially change. Why would someone want to buy a house on the west side of South Prospect Street when the morning view of city park is a 60-foot war helicopter suspended on a pedestal and their evening view is disrupted by even more extremely bright lights to illuminate an aircraft?

Moreover, Vietnam-era helicopters displayed in many communities have been damaged by vandals who have caused thousands of dollars in damage. When repair money or parts for these aging helicopters aren't readily available, people end up visiting desecrated memorials – the exact opposite experience the memorial currently offers.

Helicopters, including those mounted on 10-foot pylons, have been vandalized in cities, including Newark, Ohio; Neosho, Missouri; Las Cruces, New Mexico; Deltona, Florida; Cuero, Texas; Lake Charles, Louisiana; and Emporia, Kansas.

Parks are defined as areas of natural, semi-natural or planted space set aside for human enjoyment or the protection of wildlife and natural habitats. Urban parks are green spaces set aside for recreation inside towns and cities. The plans to expand the memorial site to include a large military aircraft would further change the character of the site and is incompatible with the definition of a park.

Currently, there are neighboring houses and residences directly across the street from the memorial location. We hope that the organizers of the memorial will be good neighbors and take the above into consideration. In addition, as the area is residential, we ask that the existing lighting be reduced in intensity at night after 10 p.m. and that no lights beam directly at neighboring houses or at motorists traveling along Walnut Street. Currently, one light briefly blinds drivers traveling north on Walnut.

Instead of having a helicopter on display 365 days a year, perhaps it would have more impact if Vietnam War-era relics were made available for parades, community events and special programs at area schools. This would be a better way to educate many more of our youth about America's involvement and sacrifice in Vietnam. Putting it in the park will only invite young people to climb on it and possibly deface or damage it.

We urge city leaders to reconsider moving ahead with this plan. There are many uniting and appropriate ways to honor veterans; this is not one of them.

Thanks for taking time to hear our concerns.

Sincerely,

Historic Heights Neighborhoods 1st members: Deb Kepler, Winslow and Judy Wheeler, Kim Winders, Shelia Gladhill, Piotr and Delia Zielinski, Betty Schlotterbeck, Kay Papeskov, Kathleen Jordan.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Cc: Vietnam War Veterans Monument Committee, Jim Kline, Hagerstown Historic District Commission, Rodney Tissue, Scott Nicewarmer, Lauren Metz, Cathy Maher



15913 Shinham Road
Hagerstown MD 21740



October 8, 2021

Mayor Keller & City Council
City Hall
Hagerstown MD 21740

Dear Mayor Keller & Council,

I am responding to the article in the Herald Mail this week about the proposal by the Joint Veterans Council of Washington County to add a Huey helicopter to the Vietnam Memorial site. I would just like to say that I believe it would be a welcome finishing touch to the site, adding some authenticity to that time served by so many. There is plenty of space at the site which is not going to take anything away from our beautiful City Park. I believe with the walking trails in the area it will be a place to be visited by locals as well as visitors to Hagerstown to reflect on the sacrifices made by so many during that era. Actually, it will be good for tourism enticing people to see an authentic helicopter from the Vietnam era. Please give their request your approval. Thanking you in advance.

Sincerely,

A handwritten signature in blue ink that reads 'JoAnn Forsyth'. The signature is written in a cursive, flowing style.

JoAnn Forsyth

TO: Mayor and Council
City Hall
1 East Franklin Street
Hagerstown, MD 21740



To Whom It My Concern

I would like the Mayor and Council to consider the addition of a helicopter (Huey) to the Vietnam War Veterans Monument site at 181 South Walnut Street, Hagerstown, Maryland.

The Huey Helicopter is one of the most familiar images associated with the war and would be a great piece of history to accompany the monument.

The Huey helicopter is a historical account of the war and recognize the veterans and military branches that served in the war.

For me personally I served in the Infantry with the 1ST CAV Division (AIR Mobile) and it helped us get from one location to another faster when needed. Secondly, it was there when I was wounded on 5 January 1970. This helped many wounded to get to the rear medical facilities faster and saved many lives.

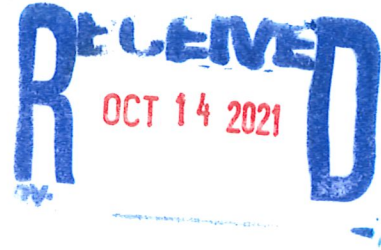
Please consider this project again for all Vietnam Veterans and keep alive the memory of those who served.

Thank you

Dennis J. (Jack) Wenthe
Combat Wounded Vietnam Veteran
Sergeant Major USA Retired
301-331-8517
djwenthe@hotmail.com
Smithsburg, MD



Dennis J. Wenthe
75 Amanda Dr
Smithsburg, MD 21783



October 11, 2021

Mayor and Council
City Hall
Hagerstown, MD 21740

To Whom It May Concern:

We are writing this letter in support of the addition of a Bell UH-1C helicopter (also known as a Huey) at the Hagerstown Vietnam War site. This addition would be an exceptional piece of history to accompany the monument. This memorial site is to honor the very personal sacrifices of the Veterans who died in combat, the Veterans who survived for a time, and the Veterans who are still living and serving their families, communities, or the Nation. We are free, because of all of them.

Thank you for your time and consideration.

Very truly yours,

Rusty and Pam Ambrose

Rusty and Pam Ambrose
1070 Marshall Street
Hagerstown, Maryland, 21740



October 14, 2021

Mayor and Council
City Hall
1 East Franklin Street
Hagerstown, MD 21740

Re: Vietnam Monument - Helicopter

Dear Mayor and Council:

As a concerned citizen of Washington County, and a supporter of our Veterans, I would like to request that you permit a Huey helicopter to be installed as part of the Vietnam Monument on South Walnut Street.

This helicopter was a symbol of hope to our Veterans who served in Vietnam as it delivered supplies, protected in combat, and transported Veterans alive, injured, and unfortunately those who sacrificed their lives there.

Historically, both our young and old need to never forget our Veterans and how they fought so we all have the freedom we have today.

Our Vietnam Veterans were forgotten and treated horribly when they returned home. Let us not continue to forget and treat them wrong today.

Stand up, salute, and support our Veterans and make the Vietnam Monument even more meaningful to those who served in Vietnam.

In support of our Veterans,

Linda Scovitch

Linda Scovitch
10804 Lincoln Avenue
Hagerstown, MD 21740

Oct 11, 2021

To: Mayor & Council of Hagerstown, MD.
RE: Helicopter on monument site at City Park

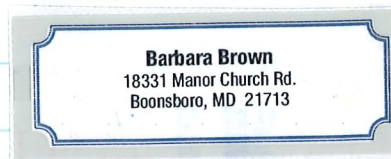
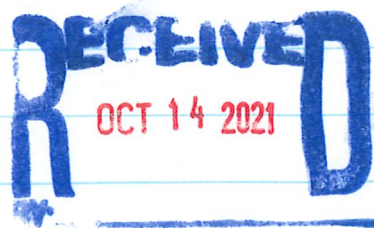
I am writing this letter to show my support of the proposal to place a helicopter at the site of the Vietnam Memorial Monument at City Park.

The helicopter will help draw attention to the monument and is a significant symbol to veterans of the Vietnam War.

The addition of the helicopter is a great idea! I see no down side, it will be beautiful!

Thank You,

Barbara A Brown



October 18, 2021



Mayor and Council
City Hall
1, East Franklin Street
Hagerstown, MD 21740

Re: Vietnam Monument - Helicopter

Dear Mayor and Council:

I want to take this opportunity to ask the City Council of Hagerstown to approve the completion of the Vietnam Monument at City Park on South Walnut Street by the addition of a Huey helicopter at the monument site. The helicopter served a vital part of the American fight for freedom in Vietnam - it was used to transport the injured civilian and military personnel and saved many lives by transporting them out of harm's way.

I served in the Army during the Vietnam era and lost several of my close friends who died in the fields, towns, and jungles of Vietnam fighting for freedom.

Thank you for the consideration of this request regarding those who gave the ultimate sacrifice for us and freedom.

Sincerely,

Robert Scovitch
Army Veteran
10804 Lincoln Avenue
Hagerstown, MD 21740

Dear Mr Mayor & Council Members,

As a retired Navy Veteran, resident of Hagustown, I would like to appeal to you to add a full size UH-1c helicopter to the Vietnam War Veterans Monument @ 181 S. Walnut St. Hagustown.



The UH-1 is such a representation of the Vietnam war not to mention the military in general. I've been to the park and monument; the helo would not only enhance the monument and park, but would enhance conversations and education about the military role in the conflict as well as the military role in today's world.

As a tax payer, this is also no cost to the city. Please reconsider your position on this matter - history is being forgotten. Lets not add to that.

Thank you, Chris Scott 1110 W. Washington St

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

Topic:

Antietam Fire Company – Loan Forgiveness Discussion ~ *James Sprecher, Jr., Captain of Antietam Fire Company*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Topic:

Review of Process - CDBG Capital Project Funding Requests for Non-Profit Organizations
~ *Jonathan Kerns, Community Development Manager*

Mayor and City Council Action Required:

Staff request Mayor & City Council review and confirmation of the City's process for awarding Community Development Block Grant (CDBG) capital project loan funding to local non-profit organizations. This topic was briefly discussed as part of the FY22 CDBG Action Plan review during the June 15th 2021 work session and a more detailed discussion on the non-profit capital loan process was to be held during a future work session meeting.

Discussion:

Background

Once a year each December, the City accepts CDBG funding requests from area non-profit service providers via a formal application process. During this application period, non-profit organizations may submit CDBG funding requests for both *public service* activities and *capital project* activities:

- Public Service activities involving cost associated with program operations or delivery of a service typically fall under the CDBG eligible activity category of "Public Services." Hagerstown's CDBG Public Service funds are traditionally awarded annually to multiple non-profit organizations in the form of a grant. Annual Public Service funds are limited each year as they are subject to a regulatory cap.
- Non-profit capital project activities involving building construction and/or building rehabilitation typically fall under the CDBG eligible activity category of "Public Facilities and Improvements" when the building is open to the general public. Hagerstown's CDBG Public Facility Capital Project funds for non-profit organizations are traditionally awarded in the form of a loan. CDBG funded loans for non-profit capital projects are infrequent and are awarded based on demand and/or funding availability. There is no regulatory cap for Public Facilities and Improvements activities.

Process for Awarding CDBG Funded Non-Profit Capital Project Loans

The process that is typically utilized for awarding a CDBG Public Facility Loan includes the following steps:

1. CDBG application period opens for non-profit organizations each December.
2. *IF* capital project loan request(s) is/are received during annual application cycle in December, proceed to next step.
3. CDBG eligibility review and budget capacity for CDBG capital project loans verified by DCED staff.

4. CDBG Budget is approved by Mayor & City Council and Action Plan is approved by HUD by beginning of Fiscal Year. If sufficient funding is available for CDBG capital project loans, loan approval/declination decisions are completed by the Hagerstown Loan Review Authority (HLRA) for loan amounts up to \$200,000. For CDBG capital project loan requests over \$200,000, HLRA loan review is followed by a final loan approval confirmation made by the Mayor & City Council.

Girls, Inc., The W House Foundation, Deafnet, and Senior Living Alternatives are some of the organizations that have received CDBG capital project loan funding in previous fiscal years. A CDBG capital project loan for a Horizon Goodwill building improvement project is in progress during the current fiscal year. Interest rates and loan terms have been determined by the HLRA on a case by case basis and have varied for many of these capital project loans over the years.

Confirmation of CDBG Capital Project Loan Process

Discussions with Hagerstown Loan Review Authority members regarding the City's CDBG loan process for non-profit organizations have alluded to the challenges that some non-profit organizations could face when attempting to repay CDBG loan funding. Although this CDBG loan process can certainly continue as is in future years, Staff would like an opportunity to revisit this overall process with the Mayor & City Council. Additional CDBG funding options for non-profit capital projects can be explored. Updated procedures could also be established in order to create more consistency with loan terms and conditions for future CDBG capital project loan cases.

CDBG capital project funding options and process updates that could be considered include:

- Creating a new CDBG funding opportunity for non-profit capital improvement grants with across the board minimum and/or maximum thresholds (example – across the board \$25,000 capital project grants for eligible projects)
- Updating current CDBG capital improvement loan process with minimum loan amount requirements (example – minimum loan request of \$75,000 or \$100,000)
- Updating current CDBG capital improvement loan process with consistent, across the board interest rate and repayment terms

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Description

110921_Review_of_process_CDBG_funding_requests_for_non-
profits.pdf

110921_Review
process_CDBG funding
requests



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager

Date: October 27, 2021

RE: **Review of Process- CDBG Capital Project Funding Requests for Non-Profit Organizations**

Mayor and Council Action Requested:

Staff request Mayor & City Council review and confirmation of the City's process for awarding Community Development Block Grant (CDBG) capital project loan funding to local non-profit organizations. This topic was briefly discussed as part of the FY22 CDBG Action Plan review during the June 15th 2021 work session and a more detailed discussion on the non-profit capital loan process was to be held during a future work session meeting.

Background

Once a year each December, the City accepts CDBG funding requests from area non-profit service providers via a formal application process. During this application period, non-profit organizations may submit CDBG funding requests for both *public service* activities and *capital project* activities:

- Public Service activities involving cost associated with program operations or delivery of a service typically fall under the CDBG eligible activity category of "Public Services." Hagerstown's CDBG Public Service funds are traditionally awarded annually to multiple non-profit organizations in the form of a grant. Annual Public Service funds are limited each year as they are subject to a regulatory cap.
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- Updating current CDBG capital improvement loan process with consistent, across the board interest rate and repayment terms

Staff will attend the November 9th Work Session to discuss the above in greater detail.

- c. Jill Thompson, Director of Community and Economic Development
Michelle Hepburn, Director of Finance

REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Topic:

Arts & Entertainment District Redesignation ~ *Kitty Clark, Community Events Coordinator*

Mayor and City Council Action Required:

Discussion:

Staff will attend the November 9, 2021 Work Session to review two components related to the redesignation of the Arts & Entertainment District: proposed revised property tax incentive and proposed change to A&E boundaries.

Background:

Arts & Entertainment Districts must apply for redesignation from the Maryland State Arts Council (Department of Commerce) every 10 years. During the process, districts can revise their boundaries and modify the property tax credit incentive offered. Staff have been meeting over the last several months to review current incentives and boundaries and to propose options for the 2022 redesignation application, due April 1, 2022.

Property Tax Incentive:

The owner of a manufacturing, commercial or industrial property is eligible for a local property tax credit based on the difference between the pre- and post-renovation assessments of the property when it has been wholly or partially renovated for use by qualified residing artists* or arts and entertainment enterprises.**

*individuals who own or rent residential real property in the State; conduct a business in any A&E district; and derive income from the sale or performance within any A&E district of an artistic work that the individual wrote, composed, executed, either alone or with others, in any arts and entertainment district.

**a for-profit or not-for-profit entity dedicated to visual or performing arts.

The table on the following page shows Hagerstown's current A&E property tax credit incentive at the top, with other districts' property tax credit incentives following:

Staff have devised three options for M&C consideration, with a recommendation to offer a more robust incentive to increase the likelihood of our receiving redesignation approval and more importantly, to garner investment. To note: the A&E property tax incentive has never been utilized in the 20 years it has existed in Hagerstown's district. Giving it more teeth and actively promoting it may attract arts investors.

Option 1: same incentive as the Enterprise Zone (however, with A&E, the State does not reimburse the City and County any percentage of the credit given. EZ reimbursement is 50%)

Years 1-5: 80% (of change in assessed value) Year 6: 70% Year 7: 60% Year 8: 50% Year 9: 40% Year 10: 30%

Option 2:

Years 1-6: 100% (of change in assessed value)

Years 7-10: 0%

Option 3: no change

Years 1-10: 50% (of change in assessed value)

See attachment for an example of a property showing the different tax credit percentages.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Memo-AE_tax_incentives__boundaries-11.3.21.pdf

Description

Arts & Entertainment District
Redesignation



CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development

TO: Scott Nicewarner, City Administrator
FROM: Kitty Clark, Community Events Coordinator
DATE: November 3, 2021
SUBJECT: Arts & Entertainment District Redesignation

Staff will attend the November 9, 2021 Work Session to review two components related to the redesignation of the Arts & Entertainment District: proposed revised property tax incentive and proposed change to A&E boundaries.

Background:

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The table on the following page shows Hagerstown's current A&E property tax credit incentive at the top, with other districts' property tax credit incentives following:

District	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Hagerstown	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Annapolis	100%	100%	100%	75%	75%	50%	50%	25%	25%	10%
Baltimore City-within Enterprise Zone	20%	20%	20%	20%	20%	30%	40%	50%	60%	70%
Baltimore City - not in Enterprise Zone	80%	80%	80%	80%	80%	70%	60%	50%	40%	30%
Bel Air	100%	100%	100%	100%	80%	70%	60%	50%	40%	30%
Denton	100%	100%	100%	80%	80%	60%	60%	40%	40%	30%
Catonsville (for improvement costs above \$10 million)	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Catonsville (for increases to assessed value of at least \$100,000)	100%	100%	100%	100%	100%	0%	0%	0%	0%	0%
Chestertown	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Crisfield	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Downtown Frederick	100%	100%	100%	100%	75%	50%	25%	0%	0%	0%
Elkton	80%	80%	80%	80%	80%	70%	60%	50%	40%	30%
Gateway (PG County)	100%	80%	60%	40%	20%	20%	20%	20%	20%	20%
Havre de Grace	100%	100%	80%	80%	60%	60%	40%	40%	20%	20%
Leonardtwn	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Salisbury	100%	100%	100%	100%	100%	100%	0%	0%	0%	0%

Staff have devised three options for M&C consideration, with a recommendation to offer a more robust incentive to increase the likelihood of our receiving redesignation approval and more importantly, to garner investment. To note: the A&E property tax incentive has never been utilized in the 20 years it has existed in Hagerstown's district. Giving it more teeth and actively promoting it may attract arts investors.

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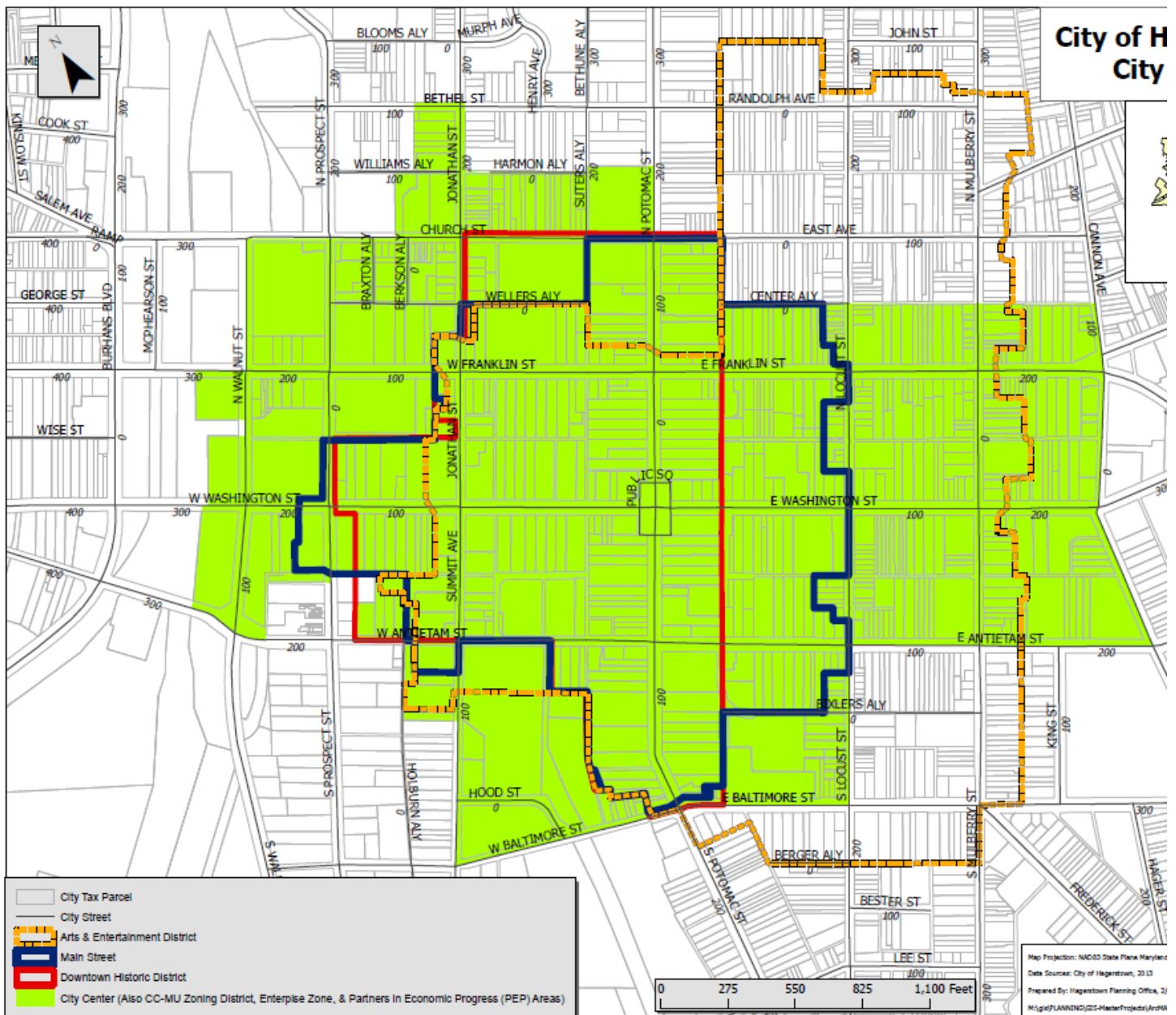
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See attachment for an example of a property showing the different tax credit percentages.

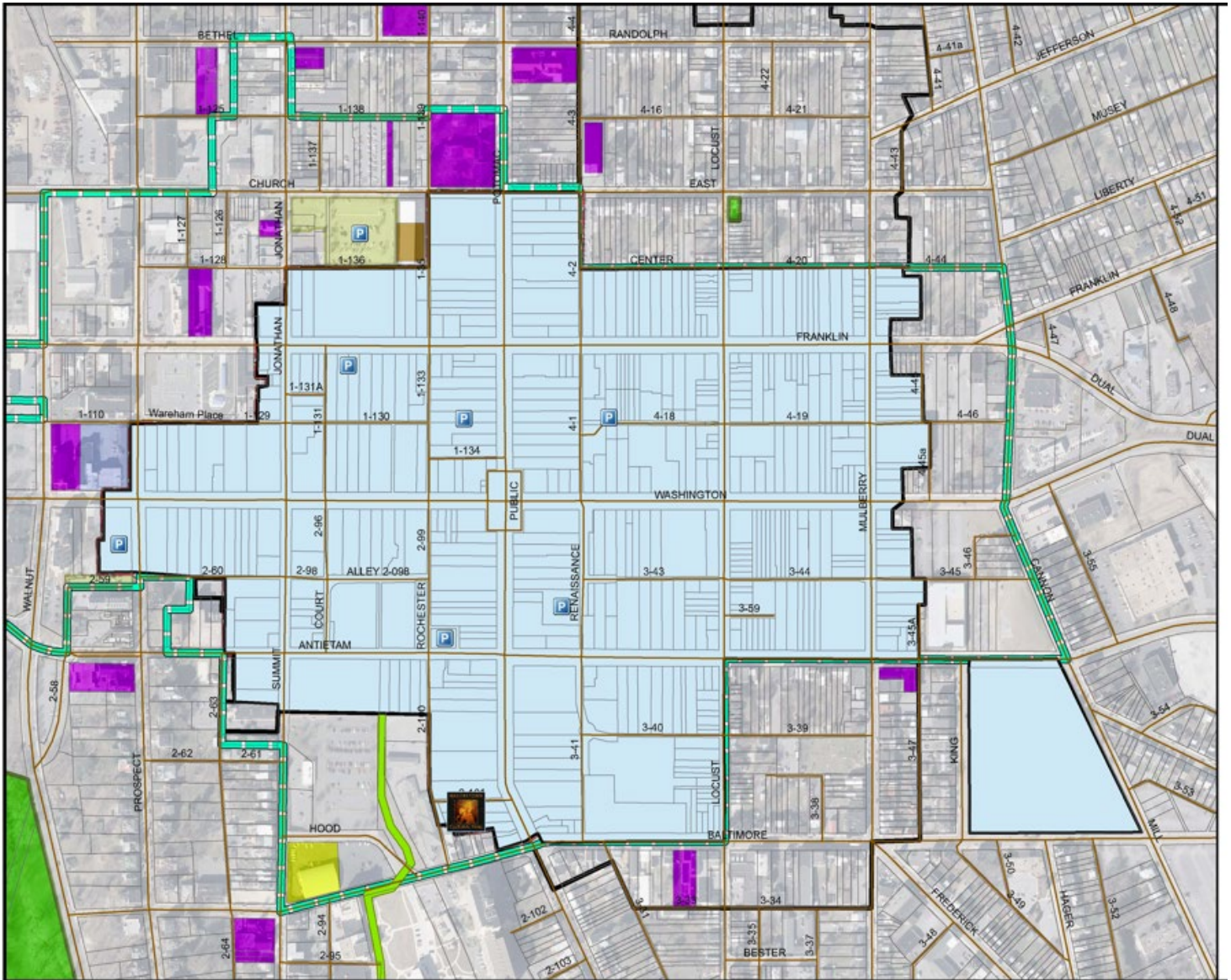
Boundaries:

Current boundaries and proposed boundaries are shown on the attached maps. Staff recommend changes to the boundaries to better align them with other designations, including Main Street and the CC-MU, and also to include assets that are currently A&E enterprises and are in the current A&E district (Mulberry Lofts, Massey Building) or that we would like to incentivize to become A&E enterprises (old hospital site, Herald Mail building).

Current A&E Boundaries (orange dashed line)



Proposed Boundaries (blue shading)



c: Jill Thompson, Director of Community and Economic Development

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

Topic:

Temporary Lease Agreement with The Foundry Pop-Ups – 6 N Potomac Street - *Doug Reaser, Business Development Specialist*

Mayor and City Council Action Required:

Staff request that the Mayor & Council approve the proposed lease agreement with The Foundry Pop-Ups for retail space located at 6 North Potomac.

Discussion:

The temporary lease will enable the space to be utilized by the business in advance of the permanent lease which was approved at the September 28, 2021 Regular Session. The Foundry Pop-Ups intends to sign the permanent lease effective January 1, 2022 in anticipation of state grant funds through Project Restore.

Key terms and conditions of the proposed temporary lease include:

- Lease to be effective November 17, 2021 – December 31, 2021
- Rent will be \$0/mo during this period
- Utilities will be tenant paid excluding water and sewer

Staff have worked with the City Attorney to review the proposed lease. A copy of the lease agreement is attached.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

110921_TheFoundryPop-UpsLLC.pdf

Description

110921_The Foundry Pop
Ups



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator

FROM: Doug Reaser, Business Development Specialist

DATE: November 3, 2021

RE: **Temporary Lease Agreement with The Foundry Pop-Ups – 6 N Potomac**

Mayor & Council Action Requested

Staff request that the Mayor & Council approve the proposed lease agreement with The Foundry Pop-Ups for retail space located at 6 North Potomac.

The temporary lease will enable the space to be utilized by the business in advance of the permanent lease which was approved at the September 28, 2021 Regular Session. The Foundry Pop-Ups intends to sign the permanent lease effective January 1, 2022 in anticipation of state grant funds through Project Restore.

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- Rent will be \$0/mo during this period
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Staff have worked with the City Attorney to review the proposed lease. A copy of the lease agreement is attached.

Attachments: Motion, Resolution, Lease

- c. Eric Deike
Michelle Hepburn
Jill Thompson
Jonathan Kerns

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 16, 2021

TOPIC: **Approval of a Resolution: Lease Agreement with The Foundry Pop-Ups LLC for the City of Hagerstown property located at 6 N Potomac St, Hagerstown, Maryland.**

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

MOTION: I hereby move that the Mayor and City Council to approve the attached resolution authorizing the Lease Agreement with The Foundry Pop-Ups LLC at the City of Hagerstown property located at 6 North Potomac Street, in Hagerstown, MD. The term of the lease shall be November 17, 2021 through December 31, 2021. The approval provides that the City Administrator and/or the City Attorney may make administrative edits to attached Agreement if necessary prior to execution.

DATE OF INTRODUCTION:	N/A
DATE OF PASSAGE:	11/16/2021
EFFECTIVE DATE:	11/16/2021

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE CITY OF HAGERSTOWN
TO ENTER INTO A NEW LEASE AGREEMENT WITH
THE FOUNDRY POP-UPS LLC
FOR A PORTION OF THE PROPERTY KNOWN AS
6 NORTH POTOMAC STREET**

RECITALS

WHEREAS, the City of Hagerstown owns property known as 6 North Potomac Street in Hagerstown, Maryland; and

WHEREAS, a portion of the said property is available for lease (“the Premises”) for the period from November 17, 2021 and ending on December 31, 2021; and

WHEREAS, the City of Hagerstown desires to lease said Premises to The Foundry Pop-Ups LLC; and

WHEREAS, The Foundry Pop-Ups, LLC, is a limited liability company organized and existing under the laws of the State of Maryland, desires to lease the Premises from the City and operate its business at said location; and

WHEREAS, the Mayor and Council find it to be in the best interests of the citizens to do so;

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 it adopts herein the foregoing Recitals and authorizes the City of Hagerstown to enter into a Lease Agreement with The Foundry, LLC for the Premises, pursuant to the terms of the Lease Agreement attached hereto and incorporated herein by reference.
2. That upon The Foundry Pop-Ups LLC providing written proof that it has a valid trader’s license, and all other applicable licenses and approvals, the Mayor be and is hereby authorized to execute and deliver the Lease Agreement attached hereto, and to execute any additional documentation required to effectuate the purpose of this Resolution.

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 Spickler, City Clerk

Emily Keller, Mayor

Date of Introduction: November 16, 2021
Date of Passage: November, 16, 2021
Effective Date: November 16, 2021

Prepared by:
SALVATORE & MORTON, LLC
City Attorneys

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") entered into on ____ day of _____, 2021, by and between THE CITY OF HAGERSTOWN, a Maryland Municipal Corporation, existing under and by virtue of the laws of the State of Maryland, hereinafter called "City" or "Landlord," and The Foundry Pop-Ups LLC, a limited liability company organized and existing under the laws of the State of Maryland, hereinafter called "Tenant".

WHEREAS, the City owns a certain property located in Hagerstown, Washington County, Maryland, known as 6 North Potomac Street, (the "Property"); and

WHEREAS, the City desires to Lease a portion of the aforesaid Property to the Tenant; and

WHEREAS, Tenant desires to enter into a lease of a portion of the Property pursuant to the terms hereof;

NOW THEREFORE, in consideration of the obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1 **DEMISE OF PREMISES**

Landlord, for and in consideration of the payment of the rent and performance of the covenants and agreements hereinafter mentioned, hereby leases to Tenant and tenant hereby leases from Landlord all of the following space located at 6 North Potomac Street, Hagerstown, Maryland, consisting of approximately 1,400 total square feet, more particularly identified on the highlighted portion of the floor plan attached **Exhibit 1** ("the Premises").

SECTION 2 **TERM**

The Premises described herein are leased by Landlord to Tenant for an initial term beginning on the 17th day of November, 2021 and terminating on the 31st day of December, 2021 at and for rental as set forth in Section 3 – Rent. Upon the expiration of the term, the rights of the Parties shall be construed pursuant to Section 17 hereof. In no event shall the tenancy be extended or renewed absent an express written agreement between the Parties.

SECTION 3 **RENT**

A. For the period of November 17, 2021 to December 31, 2021, the annual rental shall be Zero and 00/100 Dollars (\$0.00).

SECTION 4 **USE FEES; UTILITIES**

Tenant shall be responsible for paying for electricity, gas, heating, and all utilities except as provided herein. Tenant shall place the account for said utilities in its name and same shall be payable directly by Tenant to the applicable utility provider. Tenant shall be responsible for all trash removal services.

TENANT SHALL NOT BE RESPONSIBLE FOR OR PAY REAL ESTATE PROPERTY TAXES. TENANT SHALL NOT BE RESPONSIBLE FOR WATER/SEWER WATER FEES. Tenant shall be responsible for any other applicable taxes or fees.

SECTION 5 **COMPLIANCE TO MAINTAIN PROPERTY** **IN COMPLIANCE WITH INSURANCE**

Tenant covenants that it will not do nor permit to be done, nor keep nor permit to be kept upon the Premises, anything which will contravene the policy or policies of insurance against loss by fire or other causes, or which will increase the rate of fire or other insurance on the Property beyond the current rate. Should any act of Tenant so increase the rate, then, in addition to the rent hereinabove provided for, Tenant shall be liable for such additional premium, which shall be payable when billed as additional rent, collectible in the same manner as the annual rent. Tenant covenants that under no circumstances will it keep or permit to be kept, do or permit to be done, in or about the Premises, anything of a character so hazardous as to render it difficult, impracticable, or impossible to secure such insurance in companies acceptable to Landlord. Tenant further covenants, immediately upon notice, to remove from the Premises and/or to desist from any practice deemed by the insurance companies or the Fire Marshall as so affecting the insurance risk or otherwise presenting a hazard.

SECTION 6 **MAINTENANCE**

Tenant agrees to keep the interior of the Premises, including the fixtures, equipment and personalty and appurtenances thereto in good repair and will make all ordinary and replacement repairs as its expense. Tenant agrees to be responsible for all interior and exterior window cleaning. Tenant shall be responsible for snow removal and cleaning on front sidewalk as needed. Tenant shall maintain the Premises in a neat and clean condition and upon the expiration of the term of this Agreement surrender the entire premises in as good a state and condition as they were in at the commencement of the term, ordinary wear and tear excepted. If Tenant refuses or neglects to repair or replace the fixtures, equipment or personal property as required hereunder to the reasonable satisfaction of Landlord within a reasonable time following written demand to Tenant by Landlord, Landlord may make such repairs or replacements, and upon completion, Tenant shall pay Landlord's costs for making such repairs or replacements upon presentation of bills therefore, payable and collectible as additional rent.

Tenant shall be responsible and pay for all janitorial and cleaning services as may be required for the Premises. Tenant shall be responsible and pay for all pest/insect/rodent control services for the Premises.

Landlord agrees to keep and maintain in good order and repair the exterior, the roof and all structural parts of the Premises and the Property. Landlord shall maintain in good condition and repair the electrical, heating, cooling and plumbing systems which serve the Premises.

SECTION 7

TERMINATION OF LEASE IN CASE OF TENANT'S EXPANSION

If Tenant has the *bona fide* need for additional space, and if Tenant finds alternative premises consisting of 2,500 square feet or more, and enters into a written lease (or purchase agreement) for same within limits of the City of Hagerstown, the Tenant may terminate this Lease Agreement after the initial term of the Lease upon ninety (90) days' written notice to the Landlord. As a condition of this Section, Tenant must furnish to Landlord a true and accurate copy of the written lease or purchase agreement, as the case may be, at the time that Tenant provides notice.

SECTION 8

ALTERATIONS

Tenant further covenants that it will not make any alterations, additions, or changes of any kind to the Premises, without first securing the written consent of Landlord, after submission of the plans therefor to Landlord for review and prior approval. Any alterations, additions, or changes as Landlord shall permit in writing shall be made at Tenant's expense. This shall not be construed to deny the Tenant the right to do usual and customary decorating of the Premises. Tenant agrees that all improvements to the Premises shall become the property of the Landlord at the time of installation.

SECTION 9

USE

The demised Premises shall be used by the Tenant solely for the purpose of conducting a retail business and any related business activities incidental thereto. No other use may be made of the premises unless approved in writing by the Landlord.

Tenant shall at all times during the term hereof remain in good standing with the State of Maryland, maintain its trader's license, and all other applicable licenses and approvals current and valid. Failure to cure a violation of this provision within thirty (30) days of written notice to do so shall constitute an event of default hereunder.

Tenant's agents, servants, employees, invitees, or other persons upon the Premises under the control and direction of the Tenant shall not engage in any criminal activity upon the Premises. Tenant, its agents, servants and employees shall not engage in any act intended to facilitate criminal activity upon the Premises or permit the Premises to be used for any such criminal activity. Any violation of this warranty shall be deemed an event of default hereunder.

SECTION 10 **SIGNS**

Tenant shall be permitted to install the name of Tenant and/or its trade name, on any interior walls. The Tenant may not erect or place any signs on the exterior of the Premises or Property or which are visible from the exterior of the building unless same are in compliance with all applicable regulations and have been approved in writing and in advance by the Landlord. Said approval shall not be unreasonably withheld.

SECTION 11 **ASSIGNMENT AND SUBLEASE**

Tenant shall not assign this Lease nor sublet all or any portion of the Premises to any person or entity without prior written approval from Landlord. Said approval shall be in the sole and absolute discretion of the Landlord.

SECTION 12 **INDEMNITY AND LIABILITY INSURANCE**

Tenant shall save and hold harmless and indemnify Landlord, its agents, servants, employees, officers and representatives from any and all claims of whatsoever nature or kind arising directly or indirectly from Tenant's use of the Premises including any suits, demands, claims or fines of whatsoever nature or kind including personal injuries and property damage arising directly or indirectly under any circumstances by the exercise of the Tenant in the use of the premises.

Tenant agrees to maintain general liability, fire and casualty and property damage insurance with an insurance company acceptable to Landlord and to protect Landlord as an additional insured in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate. The insurer must be approved or acceptable to the Landlord. Such policy shall cover the demised Premises only and shall name Landlord as an additional insured. Said policies shall provide for at least 30 days' notice to the Landlord before cancellation and an endorsement shall be delivered to Landlord. A certificate of insurance shall be furnished to Landlord upon the execution of this Lease, and annually thereafter.

SECTION 13 **QUIET ENJOYMENT; SUBORDINATION TO MORTGAGES**

Provided Tenant is not in default hereunder, Landlord agrees to permit Tenant quiet enjoyment of the Premises. Tenant agrees that this Lease is and shall be subordinate to any existing or future liens or encumbrances of the Premises either by Landlord or its successors or assigns.

SECTION 14

INSPECTION OF PREMISES

Tenant agrees that Landlord shall have the right to inspect the Premises at all reasonable times during business hours, and to place upon the Premises or Property, where Landlord shall choose, "For Sale" or "For Rent" signs at any time during the term of this agreement.

SECTION 15

FIRE DAMAGE/CONDEMNATION

In the event the Premises is damaged by fire, storm, the elements, act of God, unavoidable accident and/or the public enemy, to such an extent as to render it partially untenable, Landlord shall restore such portion of the Premises so injured or damaged as speedily as possible. The rent shall abate proportionately on such part of the Premises as may have been rendered untenable until such time as such part shall be fit for use, and after which time, the full amount of rent reserved in this Lease shall be payable as hereinabove set forth. If the Premises is injured or damaged by any of the aforesaid causes to such an extent as to render the same wholly untenable, then this Lease shall thereupon become null and void, and all liability of Tenant shall terminate upon payment of all rent and additional rent or other charges due and payable to the date of such happening.

Should the Premises or any part thereof be condemned, appropriated and/or required for public use, then this Lease Agreement at the option of Landlord, shall terminate upon the date when the Premises or any part thereof shall be taken. Rent shall be apportioned as of the date of such termination. Tenant shall not be entitled to any portion of a damage award.

In the event of partial or entire untenability or condemnation, Landlord shall not be responsible for relocation costs and/or loss of business or income to Tenant. The term untenable shall be defined as meaning the premises are unable to be used for a commercial business.

SECTION 16

DEFAULT OF TENANT; REMEDIES OF LANDLORD

In addition to, and not in contravention of any other provision hereof, it is further agreed and understood that if any default is made in the payment of the rental or any other provisions as herein agreed by the Tenant, then the relationship of Landlord and Tenant at the option of the Landlord shall wholly cease and terminate, and the Landlord, its agents or attorneys, shall have the absolute right to re-enter said premises and assume and take possession of the same and the said Tenant waives service of any Notice of Intention to Re-enter, Notice to Terminate Tenancy, or Notice to quit or Demand for Possession.

SECTION 17

TENANT HOLDING OVER

This agreement shall terminate automatically upon the expiration of the term. However, if Tenant does not immediately surrender possession of the Premises upon the termination, and there is a holding over by Tenant, then and in said event, the tenancy of this lease shall be considered at will, and Landlord shall be entitled to retake possession of the Premises without any prior notice to Tenant. Tenant hereby waives Demand for Possession and Service of Notice to Re-enter and Notice of any kind in connection with Landlord's right to re-enter and take possession of the Premises upon expiration of the term. If, despite the intent of the Parties, a Court of competent jurisdiction shall hold that a periodic tenancy exists upon the expiration of the initial term or any renewal hereof, the Parties hereto agree that said periodic tenancy shall be month-to-month at 150% of the monthly rent applicable prior to the expiration of the initial term or any validly exercised renewal thereof.

SECTION 18 **CONTINGENCY**

It is recognized by and between the parties that it is necessary for the Landlord to pass a resolution approving the execution of this Lease and the provisions hereof. In the event that said resolution should not become effective for any reason, then in said event, this agreement is null and void of no effect. It is agreed that the necessary resolution required by the Landlord shall be introduced as expeditiously as possible.

SECTION 19 **SMOKING**

No smoking will be permitted on the Premises by the public or the guests, invitees, agents, servants or employees of Tenant. No candle, incense or open flame shall be permitted on the Premises.

SECTION 20 **NOTICES**

Any notice required or permitted by this Lease to be given by either party may be personally delivered or sent by certified mail, properly addressed and prepaid, to the addresses of the parties herein given, unless another address shall have been substituted for such address by notice in writing. The date of delivery, being taken as the date of the receipt of such notice.

City of Hagerstown: City Clerk
 City of Hagerstown
 City Hall
 1 E. Franklin Street
 Hagerstown, MD 21740

With a courtesy copy to: Jason Morton, Esquire
 Salvatore & Morton, LLC

82 West Washington Street, Suite 100
Hagerstown, Maryland 21740

Tenant:

The Foundry Pop-Ups LLC
104 S New St Apt 404
Staunton, VA 24401
Attn: Ms. Jennifer Mulledy Graybash
Managing Member

SECTION 21
ADDITIONAL DOCUMENTS

The parties agree to execute, acknowledge and deliver, any and all further documents and instruments that may be required or necessary to carry out and effectuate the purpose of this Agreement or any provisions contained herein.

SECTION 22
PARTIAL INVALIDITY

If any term, covenant or condition of this Agreement shall be deemed invalid or unenforceable, then the remainder of this Agreement shall not be affected and same shall remain in full force and effect.

SECTION 23
GOVERNING LAW

This Agreement shall be construed, interpreted and enforced according to the Laws of the State of Maryland, without regard to principles of conflicts of law. The parties hereto agree to the exclusive jurisdiction and venue of the State Courts of Maryland located in Washington County. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY.

SECTION 24
PERMITS

In the event that it becomes necessary for any special permits, licenses or anything that may be requisite for the Tenant to occupy and use the Premises for the purposes set forth herein or as hereinafter may be agreed upon, then in said event, Tenant shall be responsible for the application and payment of any such permit or license fee if required.

SECTION 25
SECURITY DEPOSIT

N/A

SECTION 26
PERSONAL GUARANTEE

N/A

SECTION 27
MISCELLANEOUS

The headings in the Agreement are solely for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement, nor affect the interpretation thereof.

All references made, and nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their grantees, successors and assigns, if applicable.

This Agreement is subject to and contingent on the passage of any ordinances or resolutions required as indicated, and upon the adoption of this Agreement by formal action of the Mayor and Council.

This Agreement contains the final and entire Agreement between the parties and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. Any subsequent amendment to the Agreement shall be valid only if executed in writing by the parties or their grantees, successors or assigns, if applicable.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

**WITNESS AND ATTEST
AS TO CORPORATE SEAL**

CITY OF HAGERSTOWN

Donna Spickler, City Clerk

By: _____
Emily Keller, Mayor

ATTEST

**TENANT
THE FOUNDRY POP-UPS LLC**

Member

By: _____
Jennifer Mulledy Graybash, Managing

PUBLIC
SQUARE

91#

CRAMER'S ALLEY

FIRST FLOOR PLAN
1/8" = 1'-0"

EXISTING CITY FACILITIES
25-1 NORTH FOTONAC ST.
Dwg. No. 61-115-01

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

Topic:

Updates to Farmer's Market Guidelines ~ *Christopher Siemerling, Economic Development Specialist*

Mayor and City Council Action Required:

Discussion:

Staff will attend the November 9, 2021 Work Session to review proposed changes to the Historic City Farmers Market Guidelines necessary due to the listing of the property for sale under the City's Competitive Negotiated Sale (CNS) process.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

110921_MCC_Packet_FM_Guideline_Changes_(1).pdf

Description

110921_FM Guideline
Changes



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator
FROM: Christopher Siemerling, Economic Development Specialist
DATE: November 3, 2021
RE: Updates to Farmer's Market Guidelines

Staff will attend the November 9, 2021 Work Session to review proposed changes to the Historic City Farmers Market Guidelines necessary due to the listing of the property for sale under the City's Competitive Negotiated Sale (CNS) process.

Attachments

- Signature Form for Existing Vendors to Acknowledge Receipt and Agreement to Revised Guidelines
- Motion
- Redline Changes to Farmer's Market Application and Guidelines Packet

c: Jason Morton
Jill Thompson, Director of Community and Economic Development
Doug Reaser, Business Development Specialist
Kitty Clark, Community Events Coordinator



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

Dear Vendor,

Thank you for your services as a vendor at the Historic City Farmers Market.

Attached are the (1) Hagerstown Hold Harmless Agreement; and (2) Historic City Farmers Market Guidelines, both revised as of November 16, 2021. An extra copy of each document is being provided to you at the time of your signature.

As a condition of your remaining a vendor, please counter-sign this letter and return it to me by November 27, 2021.

Again, thank you for interest in the City Farmers' Market. If you have any questions or concerns, please call 240-675-5965 or email cmiller@hagerstownmd.org.

Sincerely,

CITY OF HAGERSTOWN

Cathleen Miller
Farmers Market Coordinator
240-675-5965
cmiller@hagerstownmd.org

I have read, fully understand, and agree to abide by the Historic City Farmers Guidelines (revised as of November 16, 2021), as well as any future additions, modifications and/or amendments to these Guidelines. I understand that my failure to comply with any and all Guidelines may result in the loss of all Market privileges, and termination of the Vendor Agreement.

Printed Name of Vendor:

Printed Name of Person Signing:

Signature

Date

14 N. Potomac Street, Suite 200A
Hagerstown, MD 21740
301-739-8577 ext 111 DCED@hagerstownMD.org

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

DATE: November 16, 2021

TOPIC: **Approval of Revised Application and Guidelines for the Historic City Farmers Market**

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

MOTION: I hereby move for the Mayor and City Council approval of the attached revised Application and Guidelines for the Historic City Farmers Market, dated November 16, 2021. Staff may make administrative edits from time to time with the approval of the City Administrator.

DATE OF INTRODUCTION:	11/16/2021
DATE OF PASSAGE:	11/16/2021
EFFECTIVE DATE:	11/16/2021



CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development

Dear Prospective Vendor,

Thank you for your interest in becoming a vendor at the Historic City Farmers Market. ~~The application and guidelines are attached.~~

Attached are the (1) Vendor Application and Agreement; (2) Hagerstown Hold Harmless Agreement; and (3) Market Guidelines, both revised as of November 16, 2021. An extra copy of each document is being provided to you at the time of your signature.

The Historic City Farmers Market is an indoor, year-round, rent-free market located at 25 West Church Street. It offers booth space to vendors who sell locally grown and locally produced products. The Market hours are from 6 am-12 pm every Saturday.

When filling out the application, please be specific about your products and list all of the items you intend to sell at the Market. We ask for photographs of your items and of your merchandising setups so that we can understand your product.

Again, thank you for interest in the City Farmers' Market. We look forward to reviewing your application. If you have any questions or concerns, please call 240-675-5965 or email cmiller@hagerstownmd.org.

Sincerely,

City of Hagerstown

Cathleen Miller
Farmers Market Coordinator
240-675-5965
cmiller@hagerstownmd.org

Rev. November 16, 2021

**City of Hagerstown, Maryland
Historic City Farmers Market**

VENDOR APPLICATION and AGREEMENT

Please complete this application in full. Market staff will review the entire application and notify you when a decision has been made on your application.

Date: _____ Desired Market Start Date: _____

Name: _____

Name of Business (if applicable): _____

Address: _____

City/State/Zip: _____

Phone: _____ Cell: _____

Email: _____

Website: _____

Social Media: _____

Maryland Business Registration #: _____
(Number from Department of Assessments & Taxation)

Check the vendor categories that apply to the products you intend to sell:

☐ **Farmer** (grows and/or produces agricultural products)

☐ **Farmer Representative** (resells agricultural products that have been purchased directly from farmers; representatives must be able to show verification of purchase from farmer, including name and contact information of farmer)

☐ **Artisan Foods** (hand-crafted products such as cheese, bread, preserves, beverages, baked goods)

☐ **Ready-to-Eat Food** (locally prepared, including meals prepared at Market)

☐ **Flowers/Plants** (cut or living plants)

☐ **Arts and Crafts** (handcrafted items)

Do you intend to cook in the Market House? ____ Yes ____ No

Do you wish to be placed on the wait list for a hood space? ____ Yes ____ No

Number of Booth Spaces Desired: No. of 6 ft lengths ____ No. of 3 ft lengths ____

Will you require electrical use at your stall? ____ Yes ____ No

If YES, please explain what for: _____

List any other equipment you intend to use at the Market House:

List all the products you intend to sell. Attach additional pages if necessary. We encourage the submission of photographs to show your products. Vendors are only permitted to sell that which is listed on this application.

Why do you want to sell your products at the City Market?

Are the items you intend to sell at the market made and/or grown by you?

If not, where and by whom are they made or grown? Do they contain local products or components? Are they unique from products found in retail stores? Please describe fully.

Are you able to supply products year-round?

Please tell us ways in which you intend to promote your business.

REQUIRED ATTACHMENTS:

- ☐ Photos of the products you intend to sell and photos of your booth setup at other events, if available.
- ☐ Hold Harmless Agreement (signed)
- ☐ Copy of current Washington County Health Department Permit (if applicable)
- ☐ Copy of Maryland Sales and Use Tax License
- ☐ Certificate of Insurance (food vendors only)

We will notify you when we have made a decision on your application.

I have read, fully understand, and agree to abide by the Historic City Farmers Market ~~Rules and Regulations~~ Guidelines (attached to this application), as well as any future additions, modifications and/or amendments to the Guidelines. I understand that my failure to comply with any and all ~~Rules and Regulations~~ Guidelines may result in the loss of all Market privileges, and termination of the Vendor Agreement.

Signature

Date

This application becomes an accepted Agreement when countersigned by the City of Hagerstown.

City of Hagerstown
Cathleen Miller

Date

Return this application and the Hold Harmless Agreement to:

Cathleen Miller, Farmers Market Coordinator
cmiller@hagerstownmd.org
14 N. Potomac St., Suite 200A
Hagerstown, MD 21740

Rev. ~~January, 2021~~ November 16, 2021

**CITY OF HAGERSTOWN
HOLD HARMLESS AGREEMENT**

Lessee/User Vendor: _____
Event/Use: Hagerstown City Farmers' Market
Location: 25 W. Church St. (Market House) and ~~all related special~~ any future Market locations
Dates of Use: Saturday (Market Days) and all other special Market times

The ~~Lessee/User~~ Vendor agrees that it shall indemnify the City of Hagerstown and Hagerstown City Farmers' Market and hold harmless the City of Hagerstown and Hagerstown City Farmers' Market against any and all fines, suits, claims, demands, expenses, actions, losses, alleged losses, or liabilities of whatsoever nature or kind incurred either directly or indirectly either in law or equity, paid, suffered or incurred as a result of the acts, activities, or omissions of the ~~Lessee/User~~ Vendor, its agents, servants, or employees, due to the operation and use of the premises. It is further agreed that the ~~Lessee/User~~ Vendor shall in addition to holding the City of Hagerstown and Hagerstown City Farmers' Market harmless from any and all liabilities or damage or injury to both persons and property, occurring as a result of the use of said premises, shall defend The City of Hagerstown and Hagerstown City Farmers' Market at ~~Lessee's/User's~~ Vendor's expense against any and all claims, suits, demands, of whatsoever nature or kind.

~~Lessee/User~~ Vendor: _____
(print)

Signed: _____
(signature)

Address: _____

Email: _____

Telephone: _____

Witness: _____

Return to:

Cathleen Miller
Farmers Market Coordinator
14 N. Potomac Street, Suite 200A
Hagerstown, MD 21740
cmiller@hagerstownmd.org

Historic City Farmers Market

~~Application and~~ Guidelines

Rental Rates

1. The Historic City Farmers Market is a rent free market. Booth space is assigned on a first come, first served basis, at no charge.

Allowed Market Products

2. The City Market provides the community with the opportunity to shop for a wide variety of locally grown and produced products. We accept vendors selling:
 - o Locally grown fruits and vegetables
 - o Locally raised meat
 - o Locally baked goods
 - o Locally made artisan foods
 - o Local dairy products
 - o Handcrafted arts and crafts items
 - o Locally prepared, ready-to-eat food (including meals prepared at the Market)
3. Vendors may only sell those items specified on their application. Vendors wishing to make changes to the products they sell must notify the Market Staff in writing by filling out a "Vendor Communication & Change Form" (attached). These changes must be approved by Market Staff BEFORE the new changes may be implemented. Each vendor is limited to TWO changes in inventory per calendar year. Frequencies greater than 2 will be reviewed by Market Staff.

Criteria for Selection of Vendors

4. The following criteria will be used to select vendors for the Market:
 - o Proposed products fit in one or more of the following categories:
 - i. **Farmer:** grows and/or produces agricultural products
 - ii. **Farmer Representative:** resells agricultural products that have been purchased directly from farmers; representatives must be able to show verification of purchase from farmer, including name and contact information of farmer
 - iii. **Artisan Foods:** hand-crafted products including cheese, bread, preserves, beverages, baked goods
 - iv. **Ready-to-Eat Food:** locally prepared, including meals prepared at Market
 - v. **Flowers/Plants:** cut or living plants
 - vi. **Arts and Crafts:** handcrafted items
 - o Availability of products throughout the year
 - o Community needs
 - o Uniqueness of the product
 - o The manner in which the product will be presented
 - o Ability of vendor to promote their business

Market Hours of Operation

5. Market hours are 6:00 am-12:00 pm, every Saturday, year round.

6. All vendors are required to be at Market between 8:00 am and 12:00 pm and have the option of being present from 6:00-8:00 am..

Booth Assignment

7. Booths are assigned at no cost to vendors for Saturdays only. Booths are assigned on a first come, first served basis. Vendors may request particular booths and Market Staff will try to accommodate requests.
8. As a courtesy, the City permits vendors to leave things at the Market House during the week. All merchandise left at the Market House shall be removed from top of booth or covered at conclusion of business hours. No merchandise shall be left uncovered on top of booths.
9. Vendors may be required to remove their merchandise from booths if the City needs the space for an event held at a time other than Saturdays, 6 am-12pm. Vendors will be given at least 1 week's notice to remove their merchandise if this is required. The City is not responsible for vendors' wares if they are not removed.
10. Stalls are not transferable. Allowing adjacent vendors use of a Market stall when absent is not permitted, unless approved by Market Staff. If use of empty stall is allowed by Market Staff, unassigned booths must be cleared within 24 hours of notice from Market Staff.
11. Vendors bringing children under the age of 12 to Market must keep them in their own stall area, unless accompanied by an adult.

Booth Relocation

12. The City reserves the right to relocate a vendor from one stall to another. Vendor will be notified verbally and in writing of such a move and provided with a reason for the move.

Booth Termination

- ~~13.~~ The City reserves the right to terminate the Vendor Agreement for violation of the Market ~~Rules and Regulations~~ Guidelines. Vendor will be notified verbally and in writing of termination and provided with reason for termination.

- ~~14.~~ The City reserves the right to terminate Vendor Agreements at any time, and for any reason, with at least 30-days' notice. Vendor will be notified verbally and in writing of termination. Vendor shall remove all of its equipment, wares and supplies from the Market on or before the expiration of the thirty (30) day period, or such items will be disposed of by the City.

- ~~13, 15.~~ The City reserves the right to suspend or discontinue the operation of the Farmer's Market. In the event the City suspends or discontinues the Farmer's Market, the City will terminate all Vendor Agreements with at least 30-days' notice, and all Vendors shall remove their equipment, wares and supplies in accordance with Paragraph 14, above.

- ~~14, 16.~~ Except as set forth in Paragraphs 14 and 15, in the event of termination of Vendor Agreement for any reason, all property shall be removed by the vendor within twenty-four (24) hours of receipt of notice to so remove. If not removed, the City shall dispose of said property in whatever manner it deems appropriate at vendor's cost.

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Prohibited Activities / Activities Requiring Permission

- ~~15-17.~~ Solicitation or electioneering of any kind, including campaigning, distribution of election or religious literature, or panhandling, is not permitted in the Market House, loading dock, or within five feet of the Market House Door.
- ~~16-18.~~ Vendors are required to make all sales at their assigned booth area. Selling outside the Market House (in parking lot or on loading dock) is prohibited, except with permission from Market Staff.
- ~~17-19.~~ Alcoholic beverages are not allowed on the premises at any time.
- ~~18-20.~~ Fastening or affixing things to walls is prohibited, except by permission from Market Staff.
- ~~19-21.~~ Defacing, damaging, or theft of City property shall not be permitted and shall result in loss of Market privileges and/or legal action.

Attendance Policy

- ~~20-22.~~ Vendors are permitted up to 6 absences per year. After 6 absences, vendors may be asked to leave the Market.
- ~~21-23.~~ Vendors must notify Market Staff of absences in advance. After two 2 weeks of consecutive absences without notification, the booth may be considered abandoned and provided to another vendor.
- ~~22-24.~~ Vendors are permitted to have substitutes tend their booths in their absence, and should notify Market Staff of this situation. In the event of absence, and without a substitute person tending the booth, vendors must place a sign on their stall notifying customers when they expect to return to Market.

Market House Maintenance, Cleanliness, and Booth Displays

- ~~23-25.~~ Vendors are responsible for maintenance and cleanliness of their booth and booth area, including floors. Vendors shall keep vendor areas in a neat, clean, and sanitary condition.
- ~~24-26.~~ All places where food is stored, sold, sampled, or handled shall be maintained and operated in a sanitary manner in accordance with applicable local, state, and federal regulations.
- ~~25-27.~~ All stall tops are to be covered with a cloth or plastic-type covering (not newspaper or contact paper).
- ~~26-28.~~ Product displays and signage must be within designated vendor space and may not impede access to adjoining booths or pedestrian access in the walkways. All aisles must be kept open and clear.
- ~~27-29.~~ All trash (including food trash) must be placed in the outside dumpster at the end of the market day. The dumpster key is available in the Market House by the sinks nearest the

women's bathroom. Vendors who do not remove their trash may be charged for vermin control or be expelled from the Market.

~~28-30.~~ All recycling must be placed in the recycling containers inside the Market House.

~~29-31.~~ Hand-sinks must be kept clean by adjoining stall renters. Do not allow any food items or residue to remain in sinks. Towel and soap dispensers must be kept clean.

~~30-32.~~ The maintenance worker on duty during Market hours is there to maintain the Market house. The maintenance worker cannot assist individual vendors in loading or unloading vehicles.

~~31-33.~~ In the event of pest control fogging, vendors will be given notice of fogging no later than the preceding Saturday, and all stalls must be covered by the vendor for the fogging. Market Staff will not cover exposed stalls, and the City is not responsible for vendors' wares if they are not covered.

Parking, Unloading, Loading

~~32-34.~~ All vehicles must be unloaded and moved from the loading dock area immediately upon unloading and no later than 8:00 am.

~~33-35.~~ Long-term parking in the fire lane behind Market building is not allowed. Please obey all posted signs.

~~34-36.~~ Market cart shall be returned to the front of the Market as soon as merchandise has been carted to the stall. Carts shall be kept at individual stalls or on the loading dock.

~~35-37.~~ Vendors using their own hand carts and wagons are asked to use the hooks to hold doors open, rather than pushing their carts/wagons into the door.

Security

~~36-38.~~ The Market House doors are programmed to unlock at 5:55 am and to lock at 12:00 pm each Saturday.

~~37-39.~~ It is the responsibility of vendors to ensure that Market House doors are closed properly when leaving the building.

~~38-40.~~ Key fobs are available upon request and approval by City staff for vendors who need necessary, regular, and frequent access to the Market House outside of Market hours (e.g., weekly re-stocking of perishables, pre-cooking). Other vendors who require occasional access to the Market House outside of Market hours may contact Market Staff to arrange to be met at the Market House.

A request form to obtain a key fob must be completed by vendor and will be reviewed by City staff. Upon approval, a signed vendor key fob form is required, prior to issuance of the fob. Key fobs are not guaranteed for every vendor.

The Department of Community and Economic Development reserves the right to request the return of the key fob. A key fob is not to be shared with other vendors, family members, or

friends. Only the person who has signed the Farmers Market agreement is allowed in the building outside of Market hours.

Health Permit

[39-41.](#) All vendors selling food items shall comply with all applicable Health Department Regulations. Please contact the Washington County Health Department directly about obtaining a permit:

Washington County Health Department
Environmental Health Division
1302 Pennsylvania Avenue, Hagerstown, MD 21742
240-313-3400

The Health Permit needs to be kept current and displayed at all times in your stall in the Market. A copy of the permit needs to be provided to Market Staff.

Cooking and Fire Safety

[40-42.](#) The Market currently has three hood spaces for on-site cooking. If you are interested in cooking on-site, please note that you will need one of these hood spaces (a wait list is maintained) or you will need to show Market Staff that you have gained approval from the Hagerstown Fire Marshal to use alternate cooking methods inside the Market House.

[41-43.](#) All vendors cooking at the Market shall comply with all Fire Safety Codes.

Please contact the Fire Marshal directly to ensure compliance:

Hagerstown City Fire Marshal's Office
25 Church Street, Hagerstown, MD 21740
301-790-2476

Business Requirements

[42-44.](#) All vendors shall comply with state and county business regulations, as set forth by the Maryland Department of Assessments and Taxation (business registration), the Maryland Comptroller's Office (sales tax collection), and the Washington County Circuit Court (trader's license). Specific details about Business Registration, Sales Tax Collection, and Trader's Licenses can be found on the attached **BUSINESS RESOURCES** page.

Annual Good Standing Check

[43-45.](#) Once a year, Market staff will check that Market vendors are compliant with state and county business regulations and Health Department requirements (if applicable). Those businesses not found in compliance with State and County regulations and requirements will be notified and given 30 days to become compliant. See **BUSINESS RESOURCES** section attached here for more information.

Insurance

[44-46.](#) All vendors selling food of any type are required to carry product liability insurance and

provide proof of said insurance upon request. All vendors are encouraged to obtain business insurance but this is not currently a requirement to be a City Farmers Market vendor. All vendors must sign a hold harmless agreement, attached at the end of this document.

Photographic and Video Consent

[45-47.](#) The City of Hagerstown reserves the right to photograph or videotape vendors and their products for the purpose of promoting the Historic City Farmers Market via Facebook, the City of Hagerstown website, or newsletter. Any images or video may be retained by, and will only be accessed by, Market or City of Hagerstown Staff.

Business Promotion

[46-48.](#) The City of Hagerstown does general promotion of the Historic City Farmers Market. However, vendors are highly encouraged to promote their individual businesses through social media, websites, and via other forms of promotion and advertisements.

Communication

[47-49.](#) Market Staff will update vendors on special events at the Market House as well as other business issues that may affect vendors. Notifications will be made by the email address we have on file and by hard copies left at each vendor's stall.

City Limits of Responsibility

[48-50.](#) The City of Hagerstown is NOT responsible for any accidents on the premises or for damage to vendor merchandise. Vendors operate at their own risk. Any items left in stalls are left at vendors' own risk. All vendors are required to sign a Hold Harmless Agreement with the City, and will not be permitted to vend without a signed form on file.

[49-51.](#) The City of Hagerstown reserves the right to refuse vendor space to, as well as suspend and/or expel, violators of the Market Guidelines and/or local, state, or federal ordinances and laws.

BUSINESS RESOURCES

Below is information on establishing your business within the State of Maryland.

Business Registration:

All vendors must register with the Maryland Department of Assessments and Taxation:
www.dat.maryland.gov; 410-767-1170.

Sole proprietors can go to www.dat.maryland.gov, click on **FORMS**, and scroll down to **CREATE OR START A BUSINESS IN MARYLAND**. Click on **Application for Sole Proprietorship and/or General Partnership**. Completing this application will generate an 'L' number (L followed by 8 digits). There is no cost to register.

The number that you receive upon registration must be listed on your application.

To incorporate your business into an LLC or corporation, see the resources also available at www.dat.maryland.gov or call 410-767-1170.

The number that you receive upon registration must be listed on your application. Numbers for a sole proprietor will begin with L; numbers for LLCs will begin with W or Z; numbers for corporations will begin with D.

Numbers beginning with T are trade name registrations, which are different than business registrations.

If you want to register a trade name, that form is also available on the 'FORMS' page. The cost is \$25 and is good for 5 years.

Maryland State Sales Tax:

All businesses, regardless of whether incorporated or operating as a sole proprietor, are required have a Maryland Sales & Use tax account and may be required to collect Maryland state sales tax. The only exception is agricultural products sold by farmers, which are exempt from sales tax.

To apply for a Sales and Use tax account, visit the Maryland Comptroller's Office, www.marylandtaxes.gov, click on the **SEARCH** field, and type **Maryland Combined Registration Online Application**; or phone 410-260-7980 or 800-638-2937.

Your Sales and Use Tax license must be displayed at your booth.

Trader's License:

Some businesses may need to obtain a Trader's License from the Washington County Circuit Court. Please call 301-733-8660 or visit 24 Summit Avenue, Hagerstown, MD, to get more information about what is required for your particular business.

If you are required to have a Trader's License, it must be displayed at your market stall. Trader's Licenses must be renewed annually.

Washington County Health Department:

All vendors selling food items shall comply with all applicable Health Department Regulations. Contact the Health Department directly to find out which permits you may need.

Washington County Health Department
1302 Pennsylvania Avenue, Hagerstown, MD 21742
www.washcohealth.org
240-313-3400

STARTING, GROWING, AND PROMOTING YOUR BUSINESS

The following organizations may be helpful in the growth of your business and in maintaining compliance with Farmers Market ~~regulations~~[Guidelines](#):

City of Hagerstown Fire Marshal's Office
25 Church Street, Hagerstown, MD 21740
301-790-2476

Maryland Business Express
Maryland Department of Assessments & Taxation
<https://businessexpress.maryland.gov>
410-767-1170

Maryland Comptroller's Office
www.marylandtaxes.gov
800-638-2937

SCORE
www.hagerstown.score.org
14 N Potomac St., Suite 200B, Hagerstown, MD 21740
(301) 766-2043

Small Business Development Center (Western Maryland)
888-237-9007
www.mdsbdc.umd.edu

The Washington County Chamber of Commerce
<http://hagerstown.org>
1 South Potomac St., Hagerstown, MD 21740
(301) 739-2015

Washington County Circuit Court
24 Summit Avenue, Hagerstown, MD 21740
www.mdcourts.gov/clerks/washington/business
301-733-8660

Washington County Health Department
1302 Pennsylvania Avenue, Hagerstown, MD 21742
www.washcohealth.org
240-313-3400

HISTORIC CITY FARMERS' VENDOR COMMUNICATION & CHANGE FORM
25 West Church Street
Hagerstown, MD 21740

Business/Vendor Name: _____

Mailing Address: _____

Telephone Number: _____

Email Address: _____

Date: _____

Type of Change:

- ☐ Change in Contact Information
- ☐ Other Change or Communications
- ☐ Change in Products to be Sold

Requested change of products must be approved by Market Staff BEFORE the new changes may be implemented. Each vendor is limited to TWO changes in inventory per calendar year. Frequencies greater than 2 will be reviewed by Market Staff.

Please describe your change and/or communications:

Return to:

Farmers Market Coordinator
City of Hagerstown
Department of Community & Economic Development
14 N. Potomac Street, Suite 200A
Hagerstown, MD 21740
cmiller@hagerstownmd.org

REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Topic:

Incentive Review – Market Vendors ~ *Doug Reaser, Business Development Specialist & Chris Siemerling, Economic Development Specialist*

Mayor and City Council Action Required:

Discussion:

Staff will attend the November 9, 2021 Mayor & Council Work Session to review a proposed incentive for market vendors that wish to establish a permanent commercial presence in the City following notice that the City is terminating Vendor Agreements due to the sale of the property at 25 W. Church Street. Staff seek Mayor and Council input on the proposed incentive terms and conditions.

Key terms and conditions of the incentive include:

- Upon receipt of 30 days' notice to vacate the market, an incentive will be offered for vendors who relocate their business into a commercial space within City Limits.
- The incentive will provide \$1,500.00 to any current vendor provided that:
 - The business executes a lease with a landlord within 120 days of receiving the notice to vacate the Market House.
 - Leased space must reside within the City of Hagerstown's corporate limits.
 - The lease must be for a minimum of 12 months.
 - Payment will be made directly to the business to assist with costs associated with rental expense, moving, or utilities.
- This incentive will only be available should a sale of the Market House become imminent. The incentive will only be valid when a notice to vacate is provided.
- This incentive will be funded from the Department of Community and Economic Development Economic Incentives line item from the budget.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

110921_MCC_WS_Vendor_Incentive.pdf

Description

110921_FM Vendor
Incentive



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

To: Scott Nicewarner, City Administrator

From: Doug Reaser, Business Development Specialist
Chris Siemerling, Economic Development Specialist

Date: November 3, 2021

RE: Incentive Review – Market Vendors

Staff will attend the November 9, 2021 Mayor & Council Work Session to review a proposed incentive for market vendors that wish to establish a permanent commercial presence in the City following notice that the City is terminating Vendor Agreements due to the sale of the property at 25 W. Church Street. Staff seek Mayor and Council input on the proposed incentive terms and conditions.

Key terms and conditions of the incentive include:

- Upon receipt of 30 days' notice to vacate the market, an incentive will be offered for vendors who relocate their business into a commercial space within City Limits.
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 - The business executes a lease with a landlord within 120 days of receiving the notice to vacate the Market House.
 - Leased space must reside within the City of Hagerstown's corporate limits.
 - The lease must be for a minimum of 12 months.
 - Payment will be made directly to the business to assist with costs associated with rental expense, moving, or utilities.
- This incentive will only be available should a sale of the Market House become imminent. The incentive will only be valid when a notice to vacate is provided.
- This incentive will be funded from the Department of Community and Economic Development Economic Incentives line item from the budget.

Attachments: Incentive Application and Guidelines and Draft Motion

c. Jill Thompson
Michelle Hepburn

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 16, 2021

TOPIC: Approval of Incentive for City Farmer's Market Vendors

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

MOTION: I hereby move for the Mayor and City Council to approve the attached Guidelines and Application Form for an incentive for existing City Farmer's Market vendors, to be offered only following notice that the City is terminating Vendor Agreements due to the sale of the property at 25 W. Church Street.

Staff may make administrative edits with the approval of the City Administrator. The incentive will be funded from the Department of Community and Economic Development Economic Incentives line item.

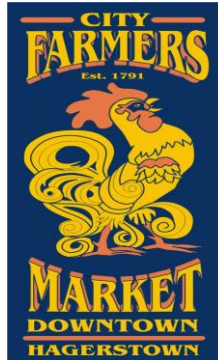
DATE OF INTRODUCTION:	11/16/2021
DATE OF PASSAGE:	11/16/2021
EFFECTIVE DATE:	11/16/2021



Community & Economic Development

Advancing the Economy, Image and Quality of Life

FARMER'S MARKET INCENTIVE FOR VENDORS - DRAFT



The City of Hagerstown's Department of Community and Economic Development is accepting grant applications from existing Farmer's Market vendors following notice that the City is terminating Vendor Agreements due to the sale of the property at 25 W. Church Street. This incentive is being made to assist those vendors who may be interested in relocating to their own commercial location within the city's corporate limits.

An incentive will be provided in the amount of \$1,500.00 to any current vendor provided that:

- The business executes a lease with a landlord within 120 days of receiving the notice to vacate the Market House.
- Leased space must reside within the city of Hagerstown's corporate limits.
- The lease must be for a minimum of 12 months.
- Payment will be made directly to the business to assist with costs associated with rental expense, moving, or utilities.
- The vendor must be in good standing with the City and State of Maryland.

Application Process

- Complete the attached application and provide signed/executed lease agreement.
- Return the application and attachments, along with **the attached W9 and Vendor Form** to the Department of Community & Economic Development.
 - Email to dced@hagerstownmd.org
 - OR, mail/deliver to 14 N. Potomac St., Suite 200A, Hagerstown, MD 21740.

QUESTIONS: Chris Siemerling, 301-739-8577, X. 822; csiemerling@hagerstownmd.org



Community & Economic Development

Advancing the Economy, Image and Quality of Life

FARMER'S MARKET INCENTIVE FOR VENDORS

COMMERCIAL RELOCATION INCENTIVE APPLICATION

Applicant/Business Name: _____

Contact Name: _____

Applicant's Address: _____

Phone Number: _____

Email Address: _____

Business's New Address: _____

- Are you a current operating Farmer's Market Vendor? [] Yes [] No
- Have you executed a commercial lease within the City's corporate limits? [] Yes [] No
 - If Yes, please attach a copy of your executed lease.

Please describe the type of business you will be opening a commercial space for, and what products you may sell:



Community & Economic Development

Advancing the Economy, Image and Quality of Life

Applicant Signature:

By signing below, I certify that the information above is true and correct, and that my business must be in good standing with the City and State to receive funding.

Applicant's Signature

Date

Return to:

City of Hagerstown
Department of Community & Economic Development
14 N. Potomac, Suite 200A, Hagerstown, MD 21740
Phone: 301-739-8577 ext 111 Email: dcled@hagerstownmd.org

[PLACEHOLDER FOR CITY LIMITS MAP]



Vendor Application

Phone 301-739-8577 Fax 301-733-1205

Date: _____

Vendor Information

Employer Identification #/SSN# _____ Contractor's License #: _____

Individual Taxpayer Identification Number (ITIN) _____
(only if you are a Permanent Resident Alien without a Social Security Account No.)

Individual or Company Name: _____

Legal Name: _____
(If different from above Individual/Company Name)

Address: _____

City: _____ State: _____ Zip: _____

Contact Name: _____ Phone: () _____ Fax: _____

E-Mail Address: _____ Web Address: _____

Remit to Address: _____

Terms: _____

Legal Structure

☐ Sole Proprietor Independent ☐ Incorporated ☐ Limited Liability Company/
Partnership ☐ Non-Profit ☐ Other _____

Are you or have you been an employee of the City of Hagerstown? ☐ Yes ☐ No

References-Provide References of Companies to Whom You Have Supplied Your Goods and/or Services

Company Name: _____ Telephone No.: _____

Location: _____ Value \$: _____

Company Name: _____ Telephone No.: _____

Location: _____ Value \$: _____

☐

Minority Business Enterprise? (If so, please indicate the applicable criteria for your certification as such.)

- | | | |
|---|---|--|
| ☐ Alaskan/Aleut Female | ☐ Black Male | ☐ Hispanic Female |
| ☐ Alaskan/Aleut Male | ☐ Disabled Female | ☐ Hispanic Male |
| ☐ American Indian Female | ☐ Disabled Male | ☐ Near Eastern Female |
| ☐ American Indian Male | ☐ Far Eastern Female | ☐ Near Eastern Male |
| ☐ Black Female | ☐ Far Eastern Male | ☐ White Female |

** Informational purposes only

For Purchasing & Materials Management Division Use Only

Date Received	Date Entered	Entered by	Vendor Number
---------------	--------------	------------	---------------

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. ☐ Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number										
				-				-		
or										
Employer identification number										
					-					

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Topic:

Request to Purchase Competitive Negotiated Sale (CNS) Property: 25 West Church Street
~ *Christopher Siemerling, Economic Development Specialist & Doug Reaser, Business Development Specialist*

Mayor and City Council Action Required:

At the November 9 Work Session, staff request Mayor & City Council consideration of a purchase offer of the City-owned property at 25 West Church Potomac Street. This property has been advertised for sale as part of the City's Competitive Negotiated Sale (CNS) program. Mr. David Blackmon of Marketplace, LLC has submitted an application and purchase price which can be found below.

Discussion:

Details of Purchase

Mr. Blackmon's purchase offer is as follows:

- Purchase price for 25 W. Church St. Building: \$1
- Purchase price of accompanying parking lot: \$400,000 over 5 years
- Hagerstown Fire Department will enter into a lease for 24 months from the date of settlement at a rate of \$1 annually, with consideration for extension if mutually agreed upon.
- Right of first refusal.
- The proposed use of the property would be to maintain ownership of the building long term, and convert it into a brewery/distillery/winery and community-based entertainment district.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Description

110921_Request to



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator

FROM: Christopher Siemerling, Economic Development Specialist
Doug Reaser, Business Development Specialist

DATE: November 3, 2021

RE: Request to Purchase Competitive Negotiated Sale (CNS) Property: 25 West Church Street

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Additional Background

25 West Church Street

- 22,000 square foot commercial property.
- Current location of Hagerstown Fire Department operations.
- Current location of the City Farmer's Market.
- Property is managed and maintained within the City's General Fund.
- USPS currently lease up to 74 parking spots in the lot; current lease expires February 28th with the option to renew with 30 days' notice.

Applicant Information

- Submitted by David Blackmon, owner of Smoketown Brewing Station.
- Smoketown Brewing Station currently owns a brewery in Brunswick and leases space in Frederick for their two operating entities and has been in operation since 2015.
- 25 W. Church St. location will be known as "Hub City Brewing" leased under the "Marketplace, LLC" entity.
- In addition to a brewery, the proposed use would also include a cidery/winery and a distillery.
- Capital investment is expected to exceed \$1 million.
- David anticipates up to 12 full time employees and more than 20 part time employees.
- Hub City Brewing would seek to create community-based entertainment in the parking lot, such as festivals, movie nights, car shows and other events.

Attached: CNS Application,
 Draft Motion
 Ordinance
 Purchase Agreement and Exhibits

c: Jill Thompson, Director of Community and Economic Development
 Eric Deike, Manager of Public Works
 Steve Lohr, Fire Chief
 Review Committee

City of Hagerstown
Department of Community & Economic Development
14 North Potomac Street Suite 200A
Hagerstown, 21740



Competitive Negotiated Sale (CNS) of City Owned Property

PROGRAM OVERVIEW

The Competitive Negotiated Sale is a process that facilitates the sale of City-owned properties. The City of Hagerstown makes real estate available for purchase and redevelopment. The Department of Community and Economic Development (DCED) coordinates the process and accepts purchase applications. The Mayor and City Council identify properties to be offered for sale and ultimately approve any development concept and purchase.

Who Is Eligible To Purchase City Property through the Competitive Negotiated Sale Process?

Any entity or individual may qualify to purchase City property through this process except that some restrictions may apply to City of Hagerstown employees. The purchaser must be able to demonstrate the financial ability and experience necessary to complete the purchase, any proposed development plan and /or the operation and proper maintenance of the property.

What Financial Incentives Are Available?

Redevelopment projects that will create visible change and provide tangible public benefits may be eligible for various forms of financial assistance, such as facade grants. Eligibility for most financial assistance programs requires a property location in a designated redevelopment area. For more information on the various assistance programs administered by DCED, visit the department's webpage at www.hagerstownmd.org

Application and Approval Process

Applicants must submit a completed CNS application form, along with any and all required supporting documents, to DCED. A staff committee will review all complete application submittals and recommend certain applications to be presented to the Mayor and City Council. Competitive proposals are accepted on an ongoing basis. Application reviews occur the first week of each month. In order to be considered in a timely fashion, please submit a completed application before the end of the month. If a concept is approved by the Mayor and City Council, staff will be authorized to negotiate a Purchase Agreement consistent with the terms of the application.

Application for Purchase of City-Owned Property

Please return the completed application and supporting documentation to:

City of Hagerstown
Department of Community and Economic Development
14 N. Potomac Street, Suite 200A
Hagerstown, MD 21740

I. Information

1. This is a proposed: ☐ Purchase ☒ Purchase and Redevelopment

a. If redevelopment, the project name: Smoketown Entertainment District

2. Provide the street address of the property to be purchased below:

25 West Church St.

3. Current Use of Property: ☐ Vacant Land ☒ Improved with Building

II. Applicant Information

4. Name of Applicant: David Blackmon

5. Business Name: _____

6. Business Address: _____

7. Phone Number: 301-401-1273 Fax Number: _____

8. Email Address: david@smoketownbrewing.com

9. Type Of Business: ☐ Individual ☐ Sole Proprietorship ☐ Nonprofit Corporation
☐ For-Profit Corporation ☐ Partnership ☒ LLC

10. Name, address and phone numbers of other persons or entities having an ownership in the applicant business entity:

David Valia 760-685-8677

11. Provide a description of your real estate development or related business experience.
Attach additional sheets if necessary:

III. Purchase and Redevelopment Proposal

12. Do you own or control an adjacent property? If so, identify the property by address, describe your interest and describe its current use:

13. Type of Redevelopment Proposed: ☐ Commercial/Retail ☐ Multi-Family Residential
☐ Single Family/Townhouse ☐ Industrial ☐ Institutional/Nonprofit
☐ Accessory Parking/Open ☐ Mixed Use ☐ Other _____

14. Project narrative: Write a brief description of the project. Be as specific as possible about the project budget, timing, scope of work, intended end users of the property, type of construction and financing. If you own an adjacent property, describe how the City parcel will enhance the overall project. Attach additional sheets if necessary.

15. Provide sources, project budget and and uses of funds.

16. Proposed Purchase Price: \$_____

17. If you have copies of site plans or concept drawings, please attach them.

18. Job Retention/Creation: List projected number of part time and full time jobs at the project after completion if applicable.

	<u>Jobs Retained</u>	<u>Jobs Created</u>	<u>Total Jobs</u>
<u>Full Time</u>	_____	_____	_____
<u>Part Time</u>	_____	_____	_____

19. Identify any public benefits, if any, to be created by the project:

20. Please attach construction pro-forma, project budget and revenue projections if available.

Supplement to Application

One part will be the basic information on page two and signature page. (Will scan to you).

The other part will be the more in depth aspect which requires much more detail points 11-20.

Please let me know if you want to translate to paper in future. This will make it much easier and cleaner for me to submit.

11.

- a. Currently own and operate two independent brewery production and retail (taproom) locations
- b. Own property housing our original location (Est. 2015), lease 2nd location. Managed full rehab and modification projects for both locations.
- c. Currently establishing 2 independent entertainment venues connected to our brand, expect to be operating by the end of Summer 2021.
- d. 15 years previous experience remodeling properties in Maryland

12. N/A

13. Type of Redevelopment: Commercial, Retail, Production

14.

a. Our footprint is expanding, requiring additional production of product. Our current capacity can accommodate approx. 4,000bbl per year. Our plan is to expand our market to 20,000bbl in the next few years. This location can provide us the space and mechanics to fill our needs in the future.

b. The trend in the industry, due to changes in Federal policy, is to set up what we call a "Triple Play". Triple Play refers to establishing a brewery/taproom, winery (cidery), and distillery all in the same area (land footprint). This model has been very successful in the immediate area as well across state lines. This will require three independent entities under one roof.

- 1. The Smoketown Beer brand will establish the taproom/production aspect.
- 2. We are working on a plan to team up with the owner of McCutcheon's Apple Products to produce locally sourced hard ciders. Winery aspect will be established as well, concurrently.
- 3. We currently employ a former Flying Dog employee that has extensive experience with distilling spirits, he will head our distillery division.

c. Construction/remodel will be extensive, at least one year to finish

- 1. New brewhouse will run approx \$300,000 installed.
- 2. Building renovations expected to run approx \$250,000 plus.
- 3. Exterior renovations are yet to be determined (roof and surrounding)
- 4. Mechanical upgrades tbd

Over time, I anticipate approx. \$1,000,000 in improvements.

d. We have exciting and interesting plans for the parking lot area. Our philosophy is grounded in finding interesting, community based entertainment that will include the whole family, young and old. This will include (all with City approval) music festivals, movie nights, car shows, among many, many other social events.

15.

Financing

- a. Private funding

- b. M&T financing
- c. Plan to use available grant monies as well as City's incentive programs tbd

16.
Undetermined

17. N/A

- 18.
- Since this will encompass three separate projects under one roof:
- a. We anticipate the need for at least 2 full time employees for each entity (retail) and four to five full time production staff. A project manager will also be involved to control all three businesses. Potentially looking at 12 full time employees
 - b. Part time employee requirements will be more substantial. Dozens of part time workers will be needed on a daily basis.
 - c. Indoor and outdoor events may require an additional 10-20 part time temporary employees depending on the event size/structure.

19.

When we started Smoketown in 2015, there were 3,000 breweries in the U.S. Today there almost 10,000 independent breweries in 50 states. Distilleries and wineries have similar growth and expansion. Breweries are replacing the traditional "corner bar" with a European pub feel. A place where kids are welcome, unique foods and food trucks bring mobile restaurants into town. The event aspect is key to develop a culture of safe fun, entertainment, and social interaction. And probably the most encouraging aspect is the ability of the Hagerstown residents to literally walk or Uber to this spot safely and conveniently.

IV. Signature

I, the undersigned, affirm that the project descriptions, numerical and financial estimates, and all other information I have provided in this application are true and complete to the best of my knowledge. I have read and understood the requirements described in the overview and application. Furthermore, I certify that I am authorized to initiate the application process on behalf of the project described.

I understand that I must demonstrate to the satisfaction of the department the ability of the purchasing entity to complete the proposed project. I understand that all documents submitted on behalf of this application become the property of the City of Hagerstown and may be subject to inspection and copying pursuant to the Public Information Act.

Signed: _____

A handwritten signature in black ink, appearing to be 'J. B. H.', written over a horizontal line.

Date: _____

5/19/21



Confidential Information Form

Please be advised that documents submitted to the City of Hagerstown are considered public records. As such, they are subject to the dictates of Maryland's Public Information Act, which permits inspection and copying of most public records in an effort to ensure open and fair governance within the State. However, certain records are affirmatively protected from disclosure by specific exceptions found in the Act. Among other categories, these exceptions include personal identification information of individuals, trade secrets, and confidential commercial or financial information.

If you believe information contained in the documents or other materials submitted to the City of Hagerstown are confidential based upon these or other exceptions contained in the Act, please identify the sections of the document which contain confidential information by listing the document section below:

	<u>Section</u>	<u>Reason for Confidentiality</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

The determination of whether the above information falls within an exception to disclosure contained in the Act will be made by City staff in consultation with its legal advisors. You will be informed of any determination made in this regard. You can be assured that the City of Hagerstown will comply with the requirements of the Act, and will maintain all appropriately confidential material in strict confidence to the extent permitted by law.

Applicant Print: David Blackmon Date: 5/19/21

Applicant Signature: [Signature]

Staff Signature: _____

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

DATE: November 16, 2021

TOPIC: **Introduction of an Ordinance: Authorizing the Sale of Property
Located at 25 W. Church Street, Hagerstown, Maryland**

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

MOTION: I hereby move to introduce an ordinance authorizing the sale of property located at 25 W. Church Street, Hagerstown, MD to Marketplace, LLC for a purchase price of \$400,001. The sale will provide the opportunity for new investment and redevelopment at 25 W. Church Street. The sale will be in accordance with all of the terms and conditions outlined in the attached Purchase Agreement.

DATE OF INTRODUCTION:	11/16/2021
DATE OF PASSAGE:	11/23/2021
EFFECTIVE DATE:	12/24/2021

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO APPROVE THE SALE
OF A PROPERTY KNOWN AS
25 WEST CHURCH STREET,
HAGERSTOWN, MARYLAND
AND AUTHORIZING EXECUTION AND DELIVERY OF A
PURCHASE AGREEMENT BETWEEN THE
CITY AND MARKETPLACE, LLC**

RECITALS

WHEREAS, the City of Hagerstown, hereinafter called “the City,” is the owner of certain improved real property consisting of multiple parcels of land located in Hagerstown, Washington County, Maryland known as 25 West Church Street located in Hagerstown, Washington County, Maryland (“the Property”);

WHEREAS, the Property is more particularly described as follows, to the best of the City’s knowledge, on the drawing attached as Exhibit 1 to the Purchase Agreement which is attached hereto and incorporated herein. The Property is improved with a building situated on the easternmost five (5) parcels (“the Market House”) and a parking lot situated on the western balance (“the Parking Lot.”), as shown on said Exhibit 1;

WHEREAS, Marketplace LLC, a Maryland limited liability company, (“Marketplace”) desires to purchase the Property, as well as all improvements thereon;

WHEREAS, in exchange for conveyance of the Property, Marketplace agrees to (i) pay the City the monetary consideration of FOUR HUNDRED THOUSAND AND ONE DOLLARS and 00/100 CENTS (\$400,001.00), which price shall be paid over a period of four (4) years, but shall not be secured by a mortgage or other security; and

WHEREAS, the City has determined that the Property is no longer needed for a public purpose; and

WHEREAS, the introduction of this Ordinance shall constitute the twenty (20)-day notice of the proposed transfer as required by law; and

WHEREAS, attached hereto and incorporated herein is a Purchase Agreement, for the purchase of the Property; and

WHEREAS, the Purchase Agreement requires Marketplace to lease a portion of the Market House to the City for use by its Fire Department for a period of two (2) years and also to execute a Right of First Refusal in the event that Marketplace should decide to sell the Market House; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to enter into said Purchase Agreement.

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

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.
2. That the Mayor and Council find that the Property is not needed for any public purpose.
3. That the sale of the Property pursuant to the terms of the attached Purchase Agreement is hereby approved.
4. That the Mayor be and is hereby authorized to execute and deliver the Purchase Agreement with Marketplace, LLC, a copy of which is attached hereto and incorporated herein by reference.
5. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid Purchase Agreement.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT this ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler,
City Clerk

Emily N. Keller, Mayor

Date of Introduction: November 16, 2021
Date of Passage: November 23, 2021
Effective Date: December 24, 2021

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "**Agreement**") is made as of the ___ day of 2021, (the "**Effective Date**") by the City of Hagerstown, a Maryland municipal corporation ("**Seller**"), and Marketplace, LLC, a limited liability company formed and existing under the laws of the State of Maryland ("**Buyer**").

RECITALS

Seller is the owner in fee simple of certain improved real property consisting of multiple parcels of land located in Hagerstown, Maryland known as 25 West Church Street and described, to the best of Seller's knowledge, on the drawing attached hereto as Exhibit 1 and highlighted in yellow, and incorporated herein. The foregoing real property is referred to herein as the "Property." The Property is improved with a building situated on the easternmost five (5) parcels ("the Market House") and a parking lot situated on the western balance ("the Parking Lot."), as shown on Exhibit 1. The Market House is highlighted in red, and the Parking Lot is highlighted in blue on Exhibit 1.

Seller has agreed to sell the Property to Buyer, and Buyer has agreed to purchase the Property from Seller, under all of the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated herein by reference as a substantive part of this Agreement.

2. Purchase and Sale of the Property. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property in accordance with the terms of this Agreement.

3. Purchase Price: Terms of Payment.

3.1 Purchase Price. The purchase price for the Property ("Purchase Price") shall be FOUR HUNDRED THOUSAND ONE DOLLARS and 00/100 CENTS (\$400,001.00) of which \$1 is for the Market House and \$400,000 is for the Parking Lot, to be deeded to Buyer in as two (2) separate tracts.

3.2 Terms of Payment. The Purchase Price shall be paid to Seller in immediately available funds by cash, certified check or wire transfer, as follows:

- (a) \$1 at closing;
- (b) \$100,000.00 due on or before January 1, 2023;
- (c) \$100,000.00 due on or before January 1, 2024;
- (d) \$100,000.00 due on or before January 1, 2025; and
- (e) \$100,000.00 due on or before January 1, 2026.

The parties agree that Seller shall not take back a mortgage or other security for the payments set forth in (b) – (e); however, the Seller shall have available to it all other remedies available to it by law, should Purchaser fail to make any payment in accordance with this Agreement. The obligations, representations and warranties of the Purchaser contained in Section 3.2 hereof shall survive the Closing for the applicable statute of limitations.

4. Closing. The closing of the purchase and sale of the Property shall be held on or before _____ at the office of _____, or such other mutually agreeable place in Washington County, Maryland.

4.1 Seller's Closing Deliverables. At the closing, Seller shall deliver the following documents (collectively the "Closing Documents") and such other items described below:

4.1.1 a deed without warranty to the Real Property, duly executed and acknowledged by Seller and in proper form for recording, conveying fee simple title to the Real Property to Buyer or its designee subject to all conditions, restrictions, rights of way and easements of record and any Permitted Exceptions.

4.1.2 a certificate updating the representations and warranties made pursuant to Section 7;

4.1.3 a FIRPTA affidavit;

4.1.4 any transfer tax statements, declarations, filings and other similar documents that may be necessary, to the extent the same are required to be executed by Seller;

4.1.5. usual and customary Closing Affidavits as required by the Buyer's title insurance carrier;

4.1.6 a closing statement conforming to the proration and other relevant provisions of this Agreement;

4.1.7 such other information as Buyer may reasonably require to demonstrate Seller's due authorization and performance of this Agreement and the foregoing documents; and

4.1.8. Such other information as the Settlement Agent may reasonably require to demonstrate Seller's due authorization and performance of this Agreement and the foregoing documents.

4.2 Buyer's Closing Deliverables. At the closing, Buyer shall deliver the following:

4.2.1 Buyer's Proof of Good Standing with the Maryland State Department of Assessments and Taxation and related LLC documentation;

4.2.2 a closing statement conforming to the proration and other relevant provisions of this Agreement; and

4.2.3 a certificate updating the representations and warranties made pursuant to Section 8.

4.2.4. A personal guaranty signed by all members of Market Place, LLC, and their respective spouses, if any, in the form attached hereto as Exhibit 2.

5. Closing Adjustments/Costs.

5.1 Expense Adjustments. The following items of expense shall be adjusted as of 11:59 p.m., of the day immediately preceding the Closing Date such that Seller shall be responsible for all days prior to the Closing Date and Purchaser shall be responsible for the Closing Date and all days thereafter:

5.1.1 Taxes. Real estate, personal property, ad valorem taxes, assessments payable in installments and front foot benefit charges payable in installments that are due and payable with respect to Seller and the Property, respectively, on the basis of the most current bills or other current information available. Assessments payable in a lump sum and not in monthly installments, if any, for improvements completed prior to the Closing Date, whether assessment therefor has been levied or not, shall be paid by Seller or allowance therefor made at the closing.

5.1.2 Utilities. Fuel, water and sewer service charges, and charges for gas, electricity, telephone and all other public utilities. If there are meters on the Property measuring the consumption of water, gas or electric current, Seller shall cause such meters (for utilities for which Seller, and not tenants, are responsible) to be read not more than one (1) day prior to the Closing Date, and shall pay promptly all utility bills for which Seller is liable upon receipt of a statement therefor. Purchaser shall be liable for and shall pay all utility bills for services rendered after such meter readings.

5.2 Final Reconciliation. The adjustments described in this Section 5 shall be paid on the Closing Date. If the amount of any of the adjustments described in this Section 5 cannot be determined on the Closing Date, the adjustment therefor shall be made within thirty (30) days after the Closing Date by cashier's check. In making the adjustments required by this subsection, Seller shall be given credit for all amounts prepaid for the Closing Date and any period thereafter, and Seller shall be charged with any unpaid charges for the period prior to the Closing Date.

5.3 Closing Costs. Buyer shall pay all expenses of examination of title, title insurance commitment and title premiums. All state, county, city, local, and municipal transfer and recordation taxes, if any, owing with respect to the sale of the Property, if any, shall be paid equally by Buyer and Seller. Each of Buyer and Seller shall pay their own attorneys' fees and expenses incurred in connection with this negotiation of this Agreement and the closing of the transactions contemplated hereby.

6. Title. Buyer shall have the right to inspect the status of title to the Property. Promptly after execution hereof, Buyer may obtain at Buyer's expense a title report or title commitment ("**Commitment**") and, at Buyer's election, a UCC lien search for the Property. Buyer may also obtain, at Buyer's sole cost and expense, a current ALTA/ASCM survey of the Property. In the event the Commitment discloses or Buyer becomes aware of any lien on the Property created by Seller that can be discharged or satisfied by the payment of money ("**Monetary Title Matters**"), Seller shall discharge or satisfy such Monetary Title Matters on or prior to the Closing Date. If Seller fails to discharge or satisfy any such Monetary Title Matters as aforesaid, Buyer, at its sole option, and in addition to any other rights and remedies it may have under this Agreement, at law and/or in equity, shall have the right to discharge and satisfy the same from the proceeds of the Purchase Price to be paid to Seller at closing. Title to the Property shall be subject only to the following matters: (i) the lien of real estate taxes and sewer and water rents not yet due and payable; and (ii) such matters appearing on the Commitment to which Buyer shall fail to object during the Feasibility Period (defined below) (collectively, the "**Permitted Exceptions**"). Title to the Property shall be insurable, together with such title insurance endorsements as Buyer may reasonably request, at regular rates (including applicable rates for such endorsements) from a title insurance company licensed in the State of Maryland and selected by Buyer. In the event Buyer's review of title to the Property reveals any matters that are unacceptable to Buyer in its sole and absolute discretion (other than Monetary Title Matters which Seller is required to remedy as aforesaid), Buyer shall notify Seller promptly (**the "Objection Notice"**). Within ten (10) days after receipt of the Objection Notice, Seller shall notify Buyer in writing, whether Seller shall undertake to cure such unacceptable exception(s). In the event Seller elects not to cure any unacceptable exception or is unable with the exercise of due diligence to satisfy said objection before the Closing Date, Buyer may, at its option, either (a) accept title subject to the objections raised by Buyer, without an adjustment of the Purchase Price, in which event each of said objections shall be deemed waived for all purposes and considered a Permitted Exception, or (b) terminate this Agreement. If Buyer shall terminate this Agreement, then (i) this Agreement shall be deemed to have terminated as of the date of Buyer's notice without need for any further action by either party, or written release (ii) the Deposit shall be returned to the Buyer and (iii) neither Buyer nor Seller shall have any further obligations to one another hereunder, except for those which expressly survive termination of this Agreement. Buyer shall have the right to bring to date any title report at the time of settlement, and Buyer may terminate this Agreement if such title report contains any additional exceptions from the previous title report furnished to the Buyer.

7. Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer, all of which are made as of the Effective Date and shall be true and correct in all material respects on and as of the Closing Date.

7.1 Enforceability: Authorization. This Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto are, or will be when executed and delivered by Seller, the legal, valid and binding obligations of Seller and enforceable against Seller in accordance with its terms. Seller has obtained all consents necessary for, and possesses full authority and legal right to authorize Seller's entry into and performance of this Agreement, the documents, affidavits, certificates and other instruments to be executed and delivered by Seller pursuant hereto and/or the transactions contemplated hereby or thereby.

7.2 Ownership of the Property. Seller is the fee simple record or de facto owner of the Property. No person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Property. Seller has performed all obligations under and is not in default in complying with the terms and provisions of any covenants, conditions, restrictions, rights-of-way or easements applicable to the Property.

7.3 No Conflicts. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party.

7.4 Third Party Consents. All consents required from any governmental authority or third party in connection with the execution and delivery of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby have been made or obtained or shall have been made or obtained by the Closing Date.

7.5 Leases. The following lease exists on the Property: March 17, 2017 Ground Lease with United States Postal Service, a copy of which is attached hereto as Exhibit 3, and incorporated herein.. At closing, the parties shall enter into a lease for the benefit of the City's Fire Department in the form set forth on Exhibit 4, a copy of which is attached hereto and incorporated herein.

7.6 Other Agreements. A June 9, 1980 Easement Exchange Agreement with the United States Postal Service, a copy of which is attached hereto as Exhibit 5.

7.7 Condemnation, Violation of Laws, Etc. Seller has not received notice of, and, to Seller's knowledge, there are no existing violations of any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements affecting all or any portion of the Property, including, without limitation, violations of housing, building, safety, health, environmental, fire or zoning ordinances, codes and regulations of the respective jurisdictions within which the Property is located or any certificate(s) of occupancy issued for the Property.

7.8 No Flood Hazard Area. To Seller's knowledge, no portion of the Real Property is located in an area designated by any governmental entity as a flood hazard area.

7.9 Environmental Condition. Seller makes no representations as to the environmental condition of the Property and no representation as to the presence of any Hazardous

Conditions in and around the Property. "Hazardous Conditions" shall mean the presence on, in or about the Property (including ground water) of Hazardous Materials, the concentration, condition, quantity, location or other characteristic of which fails to comply with applicable Environmental Laws. "Hazardous Material" shall mean any chemical, substance, waste, material, equipment or fixture defined as or deemed hazardous, toxic, a pollutant, a contaminant, or otherwise regulated under any Environmental Law, including but not limited to, petroleum and petroleum products, waste oil, halogenated and non-halogenated solvents, PCBs, asbestos and asbestos containing materials.

7.10 Litigation. No proceeding, suit or litigation relating to Seller or the Property or any part thereof is pending or, to Seller's knowledge, threatened in any court or other tribunal or before any Governmental Authority. Seller is not the subject of, nor has Seller received any written notice of or threat that it has or will become the subject of, any actions or proceedings under the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. ("Bankruptcy Code"), or under any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary and including, without limitation, proceedings to set aside or avoid any transfer of any interest in property or obligations, whether denominated as a fraudulent conveyance, preferential transfer or otherwise, or to recover the value thereof or to charge, encumber or impose a lien thereon.

7.11 FIRPTA. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "**Code**"), and the sale of the Property is not subject to the federal income tax withholding requirements of such section of the Code.

7.12 Mechanic's Liens. There are no claims for labor performed, materials furnished or services rendered in connection with the development, construction, improvement, renovation or repair of the Property with respect to which liens may or could be filed against the Property, either pending or threatened.

7.13 Tax Matters. No federal or other taxing authority (each, a "**Taxing Authority**" and collectively, the "**Taxing Authorities**") has asserted in writing any tax deficiency, lien, interest or penalty against Seller or the Property that has not been paid, and there is no pending audit or inquiry from any Taxing Authority relating to Seller or the Property, and to Seller's knowledge, no event has occurred and no condition or circumstance exists which presents a material risk that any tax deficiency, lien, interest, penalty or other assessment will be imposed against Seller or the Property.

7.14 Re-Zoning. Seller is not a party to, nor does Seller have any actual knowledge of, any threatened proceeding for the rezoning of the Property or any portion thereof, or the taking of any other action by governmental authorities that would have an adverse or material impact on the value of the Property or use thereof.

7.15 Condemnation. Seller has not received any written notice advising it of any pending or threatened condemnation or other governmental taking proceedings affecting all or any part of the Property and knows of no plans on the part of any governmental entity to institute any such proceeding.

7.16 Right of First Refusal. At closing, the parties will enter into a Right of First Refusal in the form attached hereto as Exhibit 6.

7.17 Except as otherwise provided herein Seller is making no warranties as to the condition of the property and the property is being sold "AS IS."

8. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller that: (i) Buyer is a limited liability company formed under the laws of the State of Maryland and presently in good standing; (ii) this Agreement and the documents, affidavits, certificates and other instruments to be executed and delivered by Buyer pursuant hereto are, or will be when executed and delivered by Buyer, legally binding on, and enforceable against, Buyer in accordance with their respective terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity (whether applied by a court of law or equity); and (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Buyer is a party.

9. Seller Covenants.

9.1 Inspection. Seller shall make available to Buyer during normal business hours prior to the Closing Date all information in Seller's or its management agent's possession or control concerning the Property, including, without limitation, all books and records and plans and specifications.

9.2 Operation and Maintenance. Seller agrees that from the date of this Agreement to the Closing Date, Seller will, at its sole cost and expense: (i) maintain the Property in its current condition (ii) comply with and perform all material provisions and obligations to be complied with and/or performed by Seller under each Contract; (iii) not mortgage or otherwise encumber all or any part of the Property; and (iv) maintain in full force and effect its current all-risk casualty insurance and liability policy for the Property.

9.3 Contracts. Seller shall not enter into any Contracts of any kind with respect to the Property or any portion thereof, except as mutually agreed.

9.4 Leases. Seller shall not enter into any leases or other occupancy agreements of any kind with respect to the Property or any portion thereof. The parties do agree to enter into a Lease Agreement for the use of Seller's Fire Department, pursuant to Paragraph 7.5, above.

9.5 Correspondence. Promptly upon receipt, Seller shall provide Buyer with copies of any notices (including all written notices and summaries, including requests for rental concessions), and sales reports and correspondence received from tenants, neighboring property owners, any insurance company which carries insurance on the Property or Board of Fire Underwriters, from any Governmental Authorities or from any other person or entity with respect to the Property or any portion thereof.

9.6 Title and Encumbrances. Seller hereby agrees that, after the date of this Agreement, it shall not take any action affecting title to the Property or encumbering the Property (except for actions effectuating the release of liens or encumbrances in accordance with the terms of this Agreement) unless consented to by Buyer, which consent may be withheld in Buyer's sole and absolute discretion. In all events, Seller will cause to be removed, paid off, released and/or discharged at closing any mortgage, judgment, deed of trust, lien or other evidence of a monetary charge against the Property and any lien or other encumbrance affecting title to the Property and arising subsequent to the date of the Commitment referred to above.

9.7 Real Estate Tax Assessments. Prior to the Closing Date, Seller shall not institute any proceeding or application for a reduction in the real estate tax assessment of the Real Property for any tax year without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

9.8 Payment of Taxes. Subject to proration in Paragraph 5, Seller shall pay all federal, state, county, local and foreign income, excise, real and personal property, sales and other taxes, if any, which first become due and payable prior to or on the Closing Date.

9.9 Claims. Seller hereby agrees to cooperate with Buyer in connection with the pursuit of any claims resulting from or based on an event that occurred prior to closing that are covered under the casualty or liability insurance policies for the Property that were in effect prior to closing to assist Buyer in filing a claim under such insurance policies, including, but not limited to executing any assignment of such policy or proceeds to Buyer. The obligations of Seller under this Section shall survive closing for a period of three (3) years.

10. Buyer Covenants.

10.1. For a period of six (6) months after closing, Seller shall operate, at its expense, the streetlights on the Parking Lot. During this period, Purchaser shall connect and meter all streetlights to the Market House and establish an electric account in its own name for said streetlights. At the conclusion the six (6) month period, Purchaser shall be solely responsible for the maintenance of the streetlights in the Parking Lot and the cost of operating them.

10.2. No sidewalk on the Property shall be constructed, reconstructed, repaired or altered, except in accordance with City Code.

10.3. The representations and warranties of Purchaser contained in Section 10 hereof shall survive the Closing for the applicable statute of limitations.

11. Conditions Precedent to Buyer's Obligation to Purchase. The obligation of Buyer to acquire the Property and to perform the other covenants and obligations to be performed by it on the Closing Date shall be subject to the following conditions precedent (which conditions precedent shall inure solely to the benefit of Buyer and no other person or entity, including, without limitation, Seller, shall have any right to waive or defer any of such conditions in whole or in part):

(i) Seller shall have performed in all material respects its covenants and obligations required by this Agreement to be performed or complied with by it on or before the Closing Date;

(ii) All of Seller's representations and warranties in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of such date and Seller shall have executed and delivered to Buyer, upon written Request by Buyer, a certificate, dated as of the Closing Date, to the foregoing effect;

(iii) Delivery of possession of the Property to Buyer at Closing, which shall be in substantially the same condition it is in on the date of this Agreement, subject to casualty and/or condemnation and the provisions of this Agreement relating thereto. The property shall be in clean condition at Closing; and

(iv) Title to the Property on the Closing Date shall be in accordance with Section 6, above.

12. Condemnation and Casualty. If prior to the Closing Date Seller receives written notice of any pending or threatened condemnation proceedings or actions or if there occurs any damage, destruction or casualty with respect to all or any portion of the Property, Seller shall promptly notify Buyer thereof in writing. In the event there occurs: (i) any actual or pending condemnation of any portion of the Property; or (ii) any casualty, Buyer shall have the right to terminate this Agreement by giving notice to Seller within thirty (30) days after receipt of Seller's notice advising Buyer of the occurrence of any casualty or condemnation. If: (i) Buyer fails to notify Seller of Buyer's election to terminate this Agreement within such 30-day period; or (ii) Buyer elects to proceed to closing and not terminate this Agreement, then Buyer shall proceed to closing, without adjustment of the Purchase Price, subject to such condemnation or casualty, in which event at closing, Seller shall, as applicable: (A) assign to Buyer any condemnation award or rights thereto paid or payable or otherwise accruing to Seller on account of such condemnation; or (B) assign to Buyer all of Seller's right, title and interest in and to the proceeds of any casualty insurance payable to Seller on account of such casualty and pay to Buyer an amount equal to any deductible or coinsurance applicable to the casualty insurance under such insurance policies. If Buyer timely elects to terminate this Agreement as aforesaid, the Deposit shall be returned to the Buyer and neither Buyer nor Seller shall have any further rights or liability under this Agreement except for such rights and liabilities as expressly survive termination hereof.

13. Breach/Termination.

13.1 Breach by Seller. If Seller shall fail to perform its covenants or agreements hereunder and such failure shall continue for five (5) days after written notice from Buyer, or if any of Seller's representations and warranties set forth in this Agreement are not true and correct in all material respects on the date hereof or on the Closing Date, Buyer shall have the sole right, at its option, to terminate this Agreement with neither party having any further rights or obligations to the other under this Agreement except for (a) return of the Deposit to the Buyer and (b) such rights and obligations as expressly survive termination of this Agreement, .

13.2 Breach by Buyer. If Buyer shall fail to perform any of the covenants or agreements to be performed by it hereunder and such failure shall continue for five (5) days after written notice from Seller, or if any of Buyer's representations and warranties set forth herein shall not be true and correct in all material respects as of the date made or deemed made, Seller's remedy, at its option, shall be to: (i) terminate this Agreement with neither party having any further rights or obligations to the other under this Agreement except such rights and obligations as expressly survive termination of this Agreement; and also retain the Buyer's deposit; or (ii) pursue any legal or equitable remedies to which Seller may be entitled on account of the foregoing, including, without limitation, specific performance, recovery of consequential damages and actual third party costs and expenses incurred by Seller with respect to this Agreement.

13.3 Litigation Costs. In the event of any litigation between the parties with respect to this Agreement, including any action for specific performance that may be brought as provided above, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.

14. Brokers. Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction. Each of the parties hereto hereby represents and warrants that neither has authorized any real estate broker, agent or finder to act on its/their behalf in connection with the transaction contemplated by this Agreement, nor does it have any knowledge of any other broker, agent or finder purporting to act on its behalf in respect to this Agreement and the sale of the Property to be made pursuant hereto, and that the other party hereto shall have no liability to any broker for compensation, commission or otherwise. Each party agrees that it shall indemnify, defend and save the other harmless from and against any cost, expense, claim, loss, liability or damages, including reasonable attorneys' fees, and court costs, resulting from a breach of the foregoing representation and warranty by such party. The provisions of this Section shall survive closing or termination of this Agreement.

15. Entire Agreement/Modification. This Agreement, including any exhibits attached hereto, and the Closing Documents contain the entire agreement between the parties relating to the conveyance of the Property, all prior negotiations between the parties are merged into this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as set forth in this Agreement, including the exhibits attached hereto, and the Closing Documents. No change or modification of this Agreement or any of the Closing Documents shall be valid unless the same is in writing and signed by each of the parties hereto or thereto. No waiver of any of the provisions of this Agreement or any of the Closing Documents executed or to be executed in connection herewith shall be valid unless in writing and signed by the party against whom it is sought to be enforced.

16. Miscellaneous.

16.1 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the respective personal representatives, successors and permitted assigns of the parties hereto.

16.2 Governing Law: Venue. The provisions of this Agreement shall be governed by the laws of the state of Maryland, without regard to the conflicts of laws provisions thereof. Any suit involving any dispute or matter arising under this Agreement shall be brought in the Circuit Court for Washington County, Maryland, except that in an action for money damages only and in which the amount in controversy does not exceed THIRTY THOUSAND DOLLARS (\$30,000.00), the action shall be brought in the District Court of Maryland for Washington County. All parties hereto consent to such jurisdiction.

16.3 Notices. Any notice, demand, consent/election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and delivered (i) personally, or (ii) sent by certified or registered mail, postage prepaid, return receipt requested, or (iii) by a nationally recognized overnight courier. A notice must be addressed to a party as indicated below. Any notice hereunder shall be deemed duly delivered (a) when delivered, with written receipt, if personally delivered or delivered by nationally recognized overnight courier, or (b) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid. Any party may designate a change of address by written notice to the other in accordance with the provisions set forth above, which notice shall be given at least ten (10) days before such change of address is to become effective.

Sellers's notice address:

Scott A. Nicewarner
City Administrator
1 East Franklin Street
Hagerstown, MD 21740

With a copy to:

Jason Morton
Salvatore & Morton, LLC
82 West Washington Street, Ste 100
Hagerstown, MD 21740

Buyer's notice address:

Marketplace, LLC
PO Box 112
Brunswick, Maryland 21716
Attn: David Scott Blackmon, Member
203 Washington Street
Frederick, MD 21701

With a copy to:

16.4 Incorporation. Each and all of the exhibits and schedules attached hereto are hereby incorporated into this Agreement by reference.

16.5 Further Assurances. Seller agrees that it will, at any time and from time to time after the Closing Date, upon reasonable request of Buyer, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the better assigning, transferring, granting, assuring and confirming to Buyer, or to its successors and assigns of, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property being transferred to Buyer pursuant to this Agreement; provided, however, that any instruments to be executed by Seller shall be in form and substance reasonably acceptable to Seller and in no event shall Seller be required to incur any liability or obligation in addition to that which it is obligated to incur under this Agreement. The provisions of this Section shall survive the closing of the transactions contemplated by this Agreement.

16.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument; provided, however, in no event shall this Agreement be effective unless and until signed by all parties hereto. Fax or email copies of this Agreement shall be sufficient for all purposes.

16.7 Seller shall vacate the basement/exit storage space of the Market House upon closing, and leave that portion of the Market House in broom-clean condition.

17. Risk of Loss. Risk of loss or damage from fire or other casualty until recordation of the deed conveying the Property to Buyer is assumed by Seller.

18. Rules of Construction. Section captions used in this Agreement are for convenience only and shall not affect the construction of the Agreement. All references to "Sections", without reference to a document other than this Agreement are intended to designate articles and sections of this Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, unless specifically designated otherwise. The use of the term "including" shall mean in all cases "including but not limited to," unless specifically designated otherwise. No rules of construction against the drafter of this Agreement shall apply in any interpretation or enforcement of this Agreement, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

19. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday in Maryland, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday.

20. Time of the Essence. **Time shall be of the essence under this Agreement.**

21. No Third Party Beneficiaries. None of the rights or obligations provided hereunder shall inure to the benefit of any third party.

22. Waiver of Trial by Jury. THE PARTIES HERETO HEREBY AGREE TO WAIVE ANY RIGHTS THEY MIGHT OTHERWISE HAVE TO A TRIAL BY JURY UNDER ANY PROVISION OF ANY APPLICABLE LAW.

23. Assignment. Buyer may not assign the Agreement, or any part hereof, without the express written consent of Seller, in its sole and absolute discretion.

24. Approvals. This Agreement is subject to and contingent on the passage of any Ordinance required by State and/or municipal law, and upon adoption of this Agreement by formal action of the Mayor and Council.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

ATTEST:

SELLER:

CITY OF HAGERSTOWN
A Maryland municipal corporation

Name:

By: _____
Emily N. Keller
Mayor

WITNESS:

BUYER:
MARKETPLACE, LLC
A Maryland limited liability company

Name:

By: _____
David Scott Blackmon
Managing Member

Washington County, Md.
Plat No. 100
Date of Survey, 1880
Surveyed by, J. H. Smith
Approved by, J. H. Smith
Filed for Record, 1880
Book, 100
Page, 100

Church Street

Washington Street

Potomac River

District of Columbia

City of Washington

State of Maryland

Parcel 100

Parcel 101

Parcel 102

Parcel 103

Parcel 104

Parcel 105

Parcel 106

Parcel 107

Parcel 108

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JONATHAN STREET
U.S. Route 11

--- T. N. Safonov Jr.

Notes

1 All Property Plans Drawn From Deed Descriptions Found In The City Clerks Office.

2 Reference Drawings -- 71-004-01, 71-005-01, 65-017-01, 64-017-02, 61-045-01, 61-076-01.

3 No Deed Can Be Found For The Areas Marked As "No Deed Found"

CITY OF HAGERSTOWN
MARYLAND
ENGINEERING DEPARTMENT

LEWIS CHURCH ST. JOHN'S PARISH
St. Anthony St.

THIS PROPERTY CONVEYED TO THE
CITY OF HAGERSTOWN, Md.

DRAWN BY P. E. Giffin Date Sept. 8, 1916
Survey By _____ Date _____
Scales Mer. 1"=30' Vert. _____
Approved _____ FILE NUMBER
9-001-03

Blumberg No. 5119

GUARANTEE OF PURCHASE AGREEMENT

As a material inducement of the City to execute the foregoing Purchase Agreement (the "Agreement") by and between The City of Hagerstown, a Maryland Municipal Corporation ("City"), and Marketplacce, LLC, a Maryland Limited Liability Company ("Marketplace"), for the sale of the real property located at 25 West Church Street, Hagerstown, Maryland, the undersigned David Scott Blackmon and spouse _____ (collectively "Guarantor") hereby unconditionally and absolutely guarantees unto City, its successors and assigns, the full, prompt, faithful and complete performance and observance by Marketplace of all of the terms, covenants and conditions of the Agreement to be performed or observed by Marketplace (the "Guarantee").

Guarantor hereby waives (i) notice of any and all defaults by Marketplace, (ii) all demands for payment and/or performance, and (iii) all rights of indemnification, recourse or reimbursement for any liability under this Guarantee. Guarantor agrees that no delay by City in enforcing any of its rights or remedies, nor any extension of time, nor any modification to the Agreement, shall limit, affect or impair the liability of Guarantor, and Guarantor expressly consents to any such delays, extensions, and modifications with the same force and effect as though its consent had been given to each of them.

This Guarantee is independent of and in addition to any security or other remedies which City may have for the performance or satisfaction of any of the Marketplace's obligations under the Agreement. City shall not be required to resort to any other security or other remedies before proceeding upon this Guarantee. City may proceed against Guarantor at any time it sees fit, independently of or concurrently with any other remedies.

Guarantor agrees to pay City, on City's request, any costs (including, but not limited to, reasonable attorney's fees) incurred by City to enforce this Guarantee. In addition, Guarantee agrees to promptly acknowledge and confirm, in such form as City may request from time to time, Guarantor's obligations under this Guarantee.

This Guarantee shall be binding upon the undersigned, his/her heirs and personal representatives, and shall inure to the benefit of City, its successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Guarantee on the ____ day of _____, 2021, intending it to be both legally binding and an instrument under seal.

WITNESS:

WITNESS:

GUARANTOR:

_____(SEAL)

David Scott Blackmon

GUARANTOR:

_____(SEAL)

XXXXXXXXXXXXXXXXXX



STATE OF _____, COUNTY OF _____

I hereby certify that on _____, 2021, before me, a Notary Public of the above-referenced jurisdiction, personally appeared David Scott Blackmon and ~~XXXXXXXXXXXXX~~, known to me or satisfactorily proven to me to be the persons whose names are subscribed to the within instrument, who acknowledged the he/she executed the same for the purposes contained herein.

WITNESS my hand and Notarial Seal.

My Commission Expires:

_____, Notary Public



Ground Lease

HAGERSTOWN - EMPLOYEE PARKING (234068-003)
JONATHAN STREET & CHURCH STREET, HAGERSTOWN, MD 21740-9998





Ground Lease

Facility Name/Location

HAGERSTOWN - EMPLOYEE PARKING (234068-003)

County: Washington

JONATHAN STREET & CHURCH STREET, HAGERSTOWN, MD 21740-9998

Lease: QU0000489751

This Lease made and entered into by and between THE CITY OF HAGERSTOWN, MD hereinafter called the Landlord, and the United States Postal Service, hereinafter called the Postal Service:

In consideration of the mutual promises set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. The Landlord hereby leases to the Postal Service and the Postal Service leases from the Landlord the following premises, hereinafter legally described in paragraph 7, in accordance with the terms and conditions described herein and contained in the 'General Conditions to USPS Ground Lease,' attached hereto and made a part hereof:
74 Paved Parking Spaces at the Market House Parking Lot

2. RENTAL: The Postal Service will pay the Landlord an annual rental of: \$40,000.00 (Forty Thousand and 00/100 Dollars) payable in equal installments at the end of each calendar month. Rent for a part of a month will be prorated.

Rent checks shall be payable to:

CITY OF HAGERSTOWN

PUBLIC WORKS

51 W MEMORIAL BLVD

HAGERSTOWN, MD 21740-4915

3. TO HAVE AND TO HOLD the said premises with their appurtenances for the following term:

FIXED TERM: The term becomes effective March 01, 2017 with an expiration date of February 28, 2022, for a total of 5 Years.

4. **RENEWAL OPTIONS:** The Lease may be renewed at the option of the Postal Service, for the following separate and consecutive terms and at the following annual rentals:

EFFECTIVE DATE	EXPIRATION DATE	PER ANNUM RENTAL
03/01/2022	02/28/2027	\$42,550.00

provided that notice is sent, in writing, to the Landlord at least 30 days before the end of the original lease term and each renewal term. All other terms and conditions of this Lease will remain the same during any renewal term unless stated otherwise herein.

5. **TERMINATION:**

The Postal Service may terminate this Lease at any time by giving 120 days written notice to the Landlord.

6. **OTHER PROVISIONS:** The following additional provisions, modifications, riders, layouts, and/or forms were agreed upon prior to execution and made a part hereof:

Landlord shall be solely responsible for all maintenance, taxes, insurance, utilities, landscaping and custodial services incurred by Lessor during the operation, maintenance and/or repair of the Premises.

The attached General Conditions are incorporated herein by reference with the exception of Section 7 (Alterations) which is hereby deleted in its entirety.

7. **LEGAL DESCRIPTION:**

74 paved parking spaces on a municipal parking lot located at the corner of Jonathan Street and Church Street in Hagerstown, Washington County, MD commonly known as the Market House Parking Lot.



Ground Lease

EXECUTED BY LANDLORD this 1st day of March, 2017.

GOVERNMENTAL ENTITY

By executing this Lease, Landlord certifies that Landlord is not a USPS employee or contract employee (or an immediate family member of either), or a business organization substantially owned or controlled by a USPS employee or contract employee (or an immediate family member of either).

Name of Governmental Entity: CITY OF HAGERSTOWN, MD

Name & Title: [Signature]

Name & Title: _____

Name & Title: _____

Name & Title: _____

Landlord's Address: PUBLIC WORKS 51 W MEMORIAL BLVD
HAGERSTOWN, MD 21740-4915

Landlord's Telephone Number(s): _____

Federal Tax Identification No.: XX-XXX0794

Witness

Witness

- Where the Landlord is a governmental entity or other municipal entity, the Lease must be accompanied by documentary evidence affirming the authority of the signatory(ies) to execute the Lease to bind the governmental entity or municipal entity for which he (or they) purports to act.
- Any notice to Landlord provided under this Lease or under any law or regulation must be in writing and submitted to Landlord at the address specified above, or at an address that Landlord has otherwise appropriately directed in writing. Any notice to the Postal Service provided under this Lease or under any law or regulation must be in writing and submitted to "Contracting Officer, U.S. Postal Service" at the address specified below, or at an address that the Postal Service has otherwise directed in writing.

ACCEPTANCE BY THE POSTAL SERVICE

Date: 03/17/2017

Esther M Tinort
Contracting Officer

[Signature]
Signature of Contracting Officer

FACILITIES REAL ESTATE 7029 ALBERT PICK ROAD, GREENSBORO, NC 27498-1103
Address of Contracting Officer



General Conditions to USPS Ground Lease

1. CHOICE OF LAW

This Lease shall be governed by federal law.

2. RECORDING

Not Required

3. MORTGAGEE'S AGREEMENT

If there is now or will be a mortgage on the property which is or will be recorded prior to the recording of the Lease, the Landlord must notify the contracting officer of the facts concerning such mortgage and, unless in his sole discretion the contracting officer waives the requirement, the Landlord must furnish a Mortgagee's Agreement, which will consent to this Lease and shall provide that, in the event of foreclosure, mortgagee, successors, and assigns shall cause such foreclosures to be subject to the Lease.

4. ASSIGNMENTS

a. The terms and provisions of this Lease and the conditions herein are binding on the Landlord and the Postal Service, and all heirs, executors, administrators, successors, and assigns.

b. If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:

1. the contracting officer; and
2. the surety or sureties upon any bond.

c. Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.

d. Nothing contained herein shall be construed so as to prohibit transfer of ownership of the demised premises, provided that:

1. such transfer is subject to this Lease agreement;

2. both the original Landlord and the successor Landlord execute the standard *Certificate of Transfer of Title to Leased Property and Lease Assignment and Assumption* form to be provided by the USPS Contracting Officer.

5. APPLICABLE CODES AND ORDINANCES

The Landlord, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the parcel on which the premises are situated and to obtain all necessary permits and related items at no cost to the Postal Service. When the Postal Service or one of its contractors (other than the Landlord) is performing work at the premises, the Postal Service will be responsible for obtaining all necessary and applicable permits, related items, and associated costs.

6. SUBLEASE

The Postal Service may sublet all or any part of the premises or assign this lease but shall not be relieved from any obligation under this lease by reason of any subletting or assignment.

7. ALTERATIONS

~~The Postal Service shall have the right to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property on which said premises are located); which fixtures, additions or structures so placed in, upon or attached to the said premises shall be and remain the property of the Postal Service and may be removed or otherwise disposed of by the Postal Service.~~

8. CLAIMS AND DISPUTES

a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) ("the Act").

b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.

c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Landlord seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a



General Conditions to USPS Ground Lease

claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

d. A claim by the Landlord must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the Landlord is subject to a written decision by the contracting officer. For Landlord claims exceeding \$100,000, the Landlord must submit with the claim the following certification:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Landlord believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the Landlord."

The certification may be executed by any person duly authorized to bind the Landlord with respect to the claim.

e. For Landlord claims of \$100,000 or less, the contracting officer must, if requested in writing by the Landlord, render a decision within 60 days of the request. For Landlord-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the Landlord of the date by which the decision will be made.

f. The contracting officer's decision is final unless the Landlord appeals or files a suit as provided in the Act.

g. When a claim is submitted by or against a Landlord, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in subparagraph d of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.

h. The Postal Service will pay interest on the amount found due and unpaid from:

1. the date the contracting officer receives the claim (properly certified if required); or
2. the date payment otherwise would be due, if that date is later, until the date of payment.

i. Simple interest on claims will be paid at a rate determined in accordance with the Act.

j. The Landlord must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

9. HAZARDOUS/TOXIC CONDITIONS CLAUSE

"Asbestos containing building material" (ACBM) means any material containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E. "Friable asbestos material" means any ACBM that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

The Landlord must identify and disclose the presence, location and quantity of all ACBM or presumed asbestos containing material (PACM) which includes all thermal system insulation, sprayed on and troweled on surfacing materials, and asphalt and vinyl flooring material unless such material has been tested and identified as non-ACBM. The Landlord agrees to disclose any information concerning the presence of lead-based paint, radon above 4 pCi/L, and lead piping or solder in drinking water systems in the building, to the Postal Service.

Sites cannot have any contaminated soil or water above applicable federal, state or local action levels or undisclosed underground storage tanks. Unless due to the act or negligence of the Postal Service, if contaminated soil, water, underground storage tanks or piping or friable asbestos material or any other hazardous/toxic materials or substances as defined by applicable Local, State or Federal law are subsequently identified on the premises, the Landlord agrees to remove such materials or substances upon notification by the U. S. Postal Service at Landlord's sole cost and expense in accordance with EPA and/or State guidelines. If ACBM is subsequently found which reasonably should have been determined, identified, or known to the Landlord, the Landlord agrees to conduct, at Landlord's sole expense, an asbestos survey pursuant to the standards of the Asbestos Hazard Emergency Response Act (AHERA), establish an Operations and Maintenance (O&M) plan for asbestos management, and provide the survey report and plan to the Postal Service. If the Landlord fails to remove any friable asbestos or hazardous/toxic materials or substances, or fails to complete an AHERA asbestos survey and O&M plan, the Postal Service has the right to accomplish the work and deduct the cost plus administrative costs, from future rent payments or recover these costs from Landlord by other means, or may, at its sole option, cancel this Lease. In addition, the Postal Service may proportionally abate the rent for any period the premises, or any part thereof, are determined by the Postal Service to have been rendered unavailable to it by reason of such condition.

The Landlord hereby indemnifies and holds harmless the Postal Service and its officers, agents, representatives, and employees from all claims, loss, damage, actions, causes of action, expense, fees and/or liability resulting from, brought for, or on account of any violation of this clause.

The remainder of this clause applies if this Lease is for premises not previously occupied by the Postal Service.

By execution of this Lease the Landlord certifies:

- a. the property and improvements are free of all contamination from petroleum products or any hazardous/toxic or unhealthy materials or substances, including friable asbestos materials, as defined by applicable State or Federal law;

- b. there are no undisclosed underground storage tanks or associated piping, ACBM, radon, lead-based paint, or lead piping or solder in drinking water systems, on the property; and
- c. it has not received, nor is it aware of, any notification or other communication from any governmental or regulatory entity concerning any environmental condition, or violation or potential violation of any local, state, or federal environmental statute or regulation, existing at or adjacent to the property.

10. FACILITIES NONDISCRIMINATION

- a. By executing this Lease, the Landlord certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained.
- b. The Landlord will insert this clause in all contracts or purchase orders under this Lease unless exempted by Secretary of Labor rules, regulations, or orders issued under Executive Order 11246.

11. CLAUSES REQUIRED TO IMPLEMENT POLICIES, STATUTES, OR EXECUTIVE ORDERS

The following clauses are incorporated in this Lease by reference. The text of incorporated terms may be found in the Postal Service's Supplying Principles and Practices, accessible at www.usps.com/publications.

Clause 1-1, *Privacy Protection* (July 2007)
Clause 1-5, *Gratuities or Gifts* (March 2006)
Clause 1-6, *Contingent Fees* (March 2006)
Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders* (July 2009)
Clause 9-3, *Davis-Bacon Act* (March 2006)¹
Clause 9-7, *Equal Opportunity* (March 2006)²
Clause 9-13, *Affirmative Action for Handicapped Workers* (March 2006)³
Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (March 2006)⁴
Clause B-25, *Advertising of Contract Awards* (March 2006)

Note: For purposes of applying the above standard clauses to this Lease, the terms "supplier," "contractor," and "lessor" are synonymous with "Landlord," and the term "contract" is synonymous with "Lease."

¹ For premises with net interior space in excess of 6,500 SF and involving construction work over \$2,000.

² For leases aggregating payments of \$10,000 or more.

³ For leases aggregating payments of \$10,000 or more.

⁴ For leases aggregating payments of \$25,000 or more.

Facility Name: HAGERSTOWN, MD EMPLOYEE
PARKING

Fin/Sub No: 234068-003

Real Estate Conflict of Interest Certification

To avoid actual or apparent conflicts of interest, the United States Postal Service ("Postal Service") requires the following certification from you as a potential Landlord/Supplier/Contractor to the Postal Service. Please check all that apply in item A below. Further, please understand that the Postal Service will be relying on the accuracy of the statements made by you in this certification in determining whether to proceed with any possible transaction with you.

I, City of Hagerstown hereby certify to the Postal Service as follows:
[PRINT: Name of potential Landlord/Supplier/Contractor]

A. (Check all that apply) I am:

- (i.) ☐ A Postal Service employee;
(ii.) ☐ The spouse of a Postal Service employee;
(iii.) ☐ A family member of a Postal Service employee; (Relationship) _____
(iv.) ☐ An individual residing in the same household as a Postal Service employee;
(v.) ☐ I am one of the individuals listed in (i) through (iv) above AND a controlling shareholder or owner of a business organization leasing space or intending to lease space to the Postal Service; OR
(vi.) ☒ None of the above.

B. (Complete as applicable):

- i. I have the following job with the Postal Service
(Title) _____ (Location) _____
ii. My Spouse who works for the Postal Service holds the following job:
(Title) _____ (Location) _____
iii. My family member who works for the Postal Service holds the following job:
(Title) _____ (Location) _____
iv. My household member who works for the Postal Service holds the following job:
(Title) _____ (Location) _____

C. If you have checked "none of the above" and during the lease term or any renewal term, you do fall into any of the categories listed in A (i) through (v) above, you shall notify the Postal Service Contracting Officer in writing within 30 days of the date you fall into any of the such categories and shall include an explanation of which of the above categories now applies.

D. The person signing this certification has full power of authority to bind the potential Landlord / Supplier / Contractor named above.

Executed this 7th day of March, 20 17

BY: [Signature]
[Insert Signature]

BY: Robert E. Bruchey, II Mayor
[PRINT: Name of entity or person]

Title: Mayor
[Insert Title]

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") entered into on ____ day of _____, 2021, by and between THE CITY OF HAGERSTOWN, a Maryland Municipal Corporation, existing under and by virtue of the laws of the State of Maryland, hereinafter called "City" or "Tenant", and Marketplace, LLC, a limited liability company organized and existing under the laws of the State of Maryland, hereinafter called "Landlord" or "Marketplace."

WHEREAS, Marketplace owns a certain property located in Hagerstown, Washington County, Maryland, known as 25 West Church Street (the "Property"); and

WHEREAS, Marketplace desires to Lease a portion of the aforesaid Property to the Tenant; and

WHEREAS, the City presently occupies and desires to enter into a lease for a portion of the Property for the operation of its Fire Department pursuant to the terms hereof;

NOW THEREFORE, in consideration of the obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

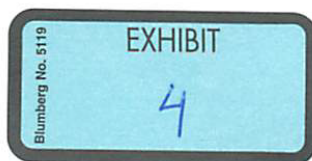
SECTION 1 **DEMISE OF PREMISES**

Landlord, for and in consideration of the payment of the rent and performance of the covenants and agreements hereinafter mentioned, hereby leases to Tenant and tenant hereby leases from Landlord all of the following space located at 25 West Church Street, Hagerstown, Maryland, consisting of approximately 9100 total square feet, more particularly identified as the shaded portion on the attached **Exhibit A**, together with twelve (12) designated parking spaces in the parking lot west of the Property (said portion of the Property and parking spaces are hereinafter call the "Premises").

SECTION 2 **TERM**

The Premises described herein are leased by Landlord to Tenant for an initial term of two (2) years (24 months) beginning on the 1st day of _____, 2022 and terminating on the 31st day of _____, 2024 at and for rental as set forth in Section 3 – Rent. Upon the expiration of the term and/or any renewal thereof (collectively the "term"), the rights of the Parties shall be construed pursuant to Section 17 hereof.

Thereafter, the Tenant is given and shall have the option to renew this Lease for one (1) additional two-year terms, so long as Tenant is in compliance with the terms of this Lease, and is utilizing the Premises described herein as contemplated hereunder.



In order to renew this Lease as outlined above Tenant must give Landlord notice in writing ninety (90) days prior to the expiration of the initial term of its desire to renew pursuant to the terms and conditions contained in this Lease Agreement. In the event Tenant fails to give any such notice to the City, it shall be presumed that Tenant has elected to terminate this Lease. **Tenant's option to renew is subject to Landlord's approval in its sole discretion. Landlord shall notify Tenant of its decision regarding renewal within ten (10) days of Tenant giving notice.**

SECTION 3 **RENT**

The annual rental shall be ONE DOLLAR and 00/100 CENTS (\$1.00). Tenant shall pay on or before the ____ day of _____ each year, beginning the first payment on _____, 2022.

SECTION 4 **USE FEES; UTILITIES**

Tenant shall be responsible for paying for water, sewer, electricity, gas, heating, and all utilities except as provided herein. To the extent possible, Tenant shall place the account for said utilities in its name and same shall be payable directly by Tenant to the applicable utility provider. Tenant shall be responsible for all trash removal services.

TENANT SHALL NOT BE RESPONSIBLE FOR OR PAY REAL ESTATE PROPERTY TAXES. Tenant shall be responsible for any other applicable taxes or fees.

SECTION 5 **COMPLIANCE TO MAINTAIN PROPERTY** **IN COMPLIANCE WITH INSURANCE**

Tenant covenants that it will not do nor permit to be done, nor keep nor permit to be kept upon the Premises, anything which will contravene the policy or policies of insurance against loss by fire or other causes, or which will increase the rate of fire or other insurance on the Property beyond the current rate. Should any act of Tenant so increase the rate, then, in addition to the rent hereinabove provided for, Tenant shall be liable for such additional premium, which shall be payable when billed as additional rent, collectible in the same manner as the annual rent. Tenant covenants that under no circumstances will it keep or permit to be kept, do or permit to be done, in or about the Premises, anything of a character so hazardous as to render it difficult, impracticable, or impossible to secure such insurance in companies acceptable to Landlord. Tenant further covenants, immediately upon notice, to remove from the Premises and/or to desist from any practice deemed by the insurance companies or the Fire Marshall as so affecting the insurance risk or otherwise presenting a hazard.

SECTION 6 **MAINTENANCE**

Tenant agrees to keep the interior of the Premises, including the fixtures, equipment and personalty and appurtenances thereto in good repair and will make all ordinary and replacement

repairs as its expense. Tenant agrees to be responsible for all interior and exterior window cleaning. Tenant shall be responsible for snow removal and cleaning on front sidewalk on the north side of the Premises as needed. Tenant shall maintain the Premises in a neat and clean condition and upon the expiration of the term of this Agreement surrender the entire premises in as good a state and condition as they were in at the commencement of the term, ordinary wear and tear excepted. If Tenant refuses or neglects to repair or replace the fixtures, equipment or personal property as required hereunder to the reasonable satisfaction of Landlord within a reasonable time following written demand to Tenant by Landlord, Landlord may make such repairs or replacements, and upon completion, Tenant shall pay Landlord's costs for making such repairs or replacements upon presentation of bills therefore, payable and collectible as additional rent.

Tenant shall be responsible and pay for all janitorial and cleaning services as may be required for the Premises. Tenant shall be responsible and pay for all pest/insect/rodent control services for the Premises.

Landlord agrees to keep and maintain in good order and repair the exterior, the roof and all structural parts of the Premises and the Property. Landlord shall maintain in good condition and repair the electrical, heating, cooling and plumbing systems which serve the Premises.

SECTION 7 **USE OF EQUIPMENT AND PERSONALTY**

N/A

SECTION 8 **ALTERATIONS**

Tenant further covenants that it will not make any alterations, additions, or changes of any kind to the Premises, without first securing the written consent of Landlord, after submission of the plans therefor to Landlord for review and prior approval. Any alterations, additions, or changes as Landlord shall permit in writing shall be made at Tenant's expense. This shall not be construed to deny the Tenant the right to do usual and customary decorating of the Premises. Tenant agrees that all improvements to the Premises shall become the property of the Landlord at the time of installation.

SECTION 9 **USE**

The demised Premises shall be used by the Tenant solely for the purpose of operating a fire department and any related business activities incidental thereto. No other use may be made of the premises unless approved in writing by the Landlord.

SECTION 10 **SIGNS**

Tenant shall be permitted to maintain existing signs on the exterior walls, and on any interior walls. The Tenant may not erect or place any additional signs on the exterior of the Premises or Property or which are visible from the exterior of the building unless same are in compliance with all applicable regulations and have been approved in writing by the Landlord. Said approval shall not be unreasonably or arbitrarily withheld.

SECTION 11 **ASSIGNMENT AND SUBLEASE**

Tenant shall not assign this Lease nor sublet all or any portion of the Premises to any person or entity without prior written approval from Landlord. Said approval shall be in the sole and absolute discretion of the Landlord. Landlord shall not assign this Lease to any person or entity without prior written approval from Tenant. Said approval shall be in the sole and absolute discretion of the Tenant.

SECTION 12 **INDEMNITY AND LIABILITY INSURANCE**

Tenant shall save and hold harmless and indemnify Landlord, its agents, servants, employees, officers and representatives from any and all claims of whatsoever nature or kind arising directly or indirectly from Tenant's use of the Premises including any suits, demands, claims or fines of whatsoever nature or kind including personal injuries and property damage arising directly or indirectly under any circumstances by the exercise of the Tenant in the use of the premises.

Tenant agrees to maintain general liability, fire and casualty and property damage insurance with an insurance company acceptable to Landlord in the minimum amount of \$1,000,000.00 per occurrence. The insurer must be approved or acceptable to the Landlord. Such policy shall cover the demised Premises only. Said policies shall provide for at least 30 days' notice to the Landlord before cancellation and an endorsement shall be delivered to Landlord. A certificate of insurance shall be furnished to Landlord upon the execution of this Lease, and annually thereafter.

SECTION 13 **QUIET ENJOYMENT**

Provided Tenant is not in default hereunder, Landlord agrees to permit Tenant quiet enjoyment of the Premises.

SECTION 14 **INSPECTION OF PREMISES**

Tenant agrees that Landlord shall have the right to inspect the Premises at reasonable times during business hours, upon reasonable advance notice to Tenant.

SECTION 15
FIRE DAMAGE/CONDEMNATION

In the event the Premises is damaged by fire, storm, the elements, act of God, unavoidable accident and/or the public enemy, to such an extent as to render it partially untenable, Landlord shall restore such portion of the Premises so injured or damaged as speedily as possible. The rent shall abate proportionately on such part of the Premises as may have been rendered untenable until such time as such part shall be fit for use, and after which time, the full amount of rent reserved in this Lease shall be payable as hereinabove set forth. If the Premises is injured or damaged by any of the aforesaid causes to such an extent as to render the same wholly untenable, then this Lease shall thereupon become null and void, and all liability of Tenant shall terminate upon payment of all rent and additional rent or other charges due and payable to the date of such happening.

Should the Premises or any part thereof be condemned, appropriated and/or required for public use, then this Lease Agreement at the option of Landlord, shall terminate upon the date when the Premises or any part thereof shall be taken. Rent shall be apportioned as of the date of such termination. Tenant shall not be entitled to any portion of a damage award.

In the event of partial or entire untenability or condemnation, Landlord shall not be responsible for relocation costs and/or loss of business or income to Tenant. The term untenable shall be defined as meaning the premises are unable to be used for a restaurant business.

SECTION 16
DEFAULT OF TENANT; REMEDIES OF LANDLORD

If any default is made in the payment of the rental or any other provisions as herein agreed by the Tenant, then the Landlord shall have any and all such rights as are available to it by law.

SECTION 17
TENANT HOLDING OVER

This agreement shall terminate automatically upon the expiration of the initial term or any validly exercised renewal thereof. However, if Tenant does not immediately surrender possession of the Premises upon the termination, and there is a holding over by Tenant, then and in said event, the tenancy of this lease shall be a periodic tenancy, the Parties hereto agree that said periodic tenancy shall be month-to-month, terminable by either party upon 30 days' written notice.

SECTION 18
CONTINGENCY

It is recognized by and between the parties that it is necessary for the Landlord to pass a resolution approving the execution of this Lease and the provisions hereof. It is agreed that the necessary resolution required by the Tenant shall be introduced as expeditiously as possible.

SECTION 19
SMOKING

No smoking will be permitted on the Premises by the public or the guests, invitees, agents, servants or employees of Tenant. No candle, incense or open flame shall be permitted on the Premises.

SECTION 20
NOTICES

Any notice required or permitted by this Lease to be given by either party may be personally delivered or sent by certified mail, properly addressed and prepaid, to the addresses of the parties herein given, unless another address shall have been substituted for such address by notice in writing. The date of delivery, being taken as the date of the receipt of such notice.

City of Hagerstown: City Clerk
 City of Hagerstown
 City Hall
 1 E. Franklin Street
 Hagerstown, MD 21740

Copy to: Fire Chief
 Hagerstown Fire Department
 25 West Church Street
 Hagerstown, Maryland 21740

Tenant: Marketplace, LLC
 PO Box 112
 Brunswick, Maryland 21716
 Attn: Mr. David S. Blackmon, Managing Member

SECTION 21
ADDITIONAL DOCUMENTS

The parties agree to execute, acknowledge and deliver, any and all further documents and instruments that may be required or necessary to carry out and effectuate the purpose of this Agreement or any provisions contained herein.

SECTION 22
PARTIAL INVALIDITY

If any term, covenant or condition of this Agreement shall be deemed invalid or unenforceable, then the remainder of this Agreement shall not be affected and same shall remain in full force and effect.

SECTION 23
GOVERNING LAW

This Agreement shall be construed, interpreted and enforced according to the Laws of the State of Maryland, without regard to principles of conflict of law. The parties hereto agree to the exclusive jurisdiction and venue of the State Courts of Maryland located in Washington County. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY.

SECTION 24
PERMITS

In the event that it becomes necessary for any special permits, licenses or anything that may be requisite for the Tenant to occupy and use the Premises for the purposes set forth herein or as hereinafter may be agreed upon, then in said event, Tenant shall be responsible for the application and payment of any such permit or license fee if required.

SECTION 25
MISCELLANEOUS

The headings in the Agreement are solely for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement, nor affect the interpretation thereof.

All references made, and nouns and pronouns used herein, shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

This Agreement shall enure to the benefit of and be binding upon the parties hereto, their grantees, successors and assigns, if applicable.

This Agreement is subject to and contingent on the passage of any ordinances or resolutions required as indicated, and upon the adoption of this Agreement by formal action of the Mayor and Council.

This Agreement contains the final and entire Agreement between the parties and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. Any subsequent amendment to the Agreement shall be valid only if executed in writing by the parties or their grantees, successors or assigns, if applicable.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

**WITNESS AND ATTEST
AS TO CORPORATE SEAL**

Donna Spickler, City Clerk

CITY OF HAGERSTOWN

By:_____
Emily N. Keller, Mayor

**WITNESS AND ATTEST
AS TO CORPORATE SEAL**

MARKETPLACE, LLC

BY:_____(SEAL)
David S. Blackmon, Managing Member

*of 10 is retained
by City*

Received for record June 20th, 1980
at 3:45 p.m. Liber #702

THIS AGREEMENT, entered into this 9th day of June 1980, by and between the UNITED STATES POSTAL SERVICE, an independent establishment of the executive branch of the Government of the United States (hereinafter, Postal Service), and the CITY OF HAGERSTOWN, MARYLAND, a Municipal Corporation of the State of Maryland (hereinafter, the City).

WITNESSETH, that the parties hereto, in consideration of the mutual covenants and agreements contained herein, and of the mutual benefits derived thereof, hereby give, grant, quit-claim and exchange certain perpetual and permanent easements unto each other as more particularly described and under the terms and conditions hereinafter set forth.

1. A perpetual and permanent easement from the City to the Postal Service as follows:

(a) The exclusive use of an area comprising of ten (10) parking spaces on the Municipal Market House Parking Lot as shown and designated on City of Hagerstown, Maryland Engineering Department Drawing Number 83-490-03 on file in the Office of the City Engineer, a copy of which is attached hereto and made a part hereof; being portions of the land that was conveyed to The City of Hagerstown, Maryland (formerly The Mayor and Council of Hagerstown), by Anna H. K. Findlay be deed dated October 23, 1926, and recorded in Liber 175, Folio 665, and by Florence Harmon, Widow, by deed dated June 17, 1927, and recorded in Liber 177, Folio 436 and by Clarine V. Warner and Richard Warner, her husband, by deed dated November 6, 1926, and recorded in Liber 175, Folio 167, of the Land Records of Washington County, Maryland.

(b) The non-exclusive use of a gate and steps, both to be constructed and maintained by the City, so as to permit pedestrian access to the aforesaid Parking Lot, together with the nonexclusive use of such additional space in the Parking Lot as is reasonably necessary for pedestrian access to the hereinabove described parking spaces, and also such additional space as is reasonably necessary for vehicles which use those parking spaces to enter and exit the aforesaid Parking Lot.

2. A perpetual and permanent easement from the Postal Service to the City as follows:

An easement, privilege and/or right-of-way for the construction, improvement, operation, and maintenance of a public pedestrian thoroughfare, with respect to a strip of land twelve (12) feet wide, for a depth of two hundred and forty feet (240+) more or less, running from the north marginal line of West Franklin Street to the south marginal line of the alley north of West Franklin Street and being the eastern most twelve (12) feet of the property of the said Postal Service, together with an easement, privilege and/or right-of-way in perpetuity for the purpose of constructing, reconstructing, inspecting, operating and maintaining an underground electric system and lighting system, including all necessary poles, bases, anchors, wires, trenches, conduits, pull boxes, and other such related facilities under, over

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and upon said strip of land, and to permit the installation of wires, cable or other facilities as may be required, said strip of land being more particularly shown and described on City of Hagerstown, Maryland Drawing Number 83-490-02, on file in the Office of the City Engineer, a copy of which is attached hereto and made a part hereof, and being a portion of the land that was conveyed to the United States of America by deed dated April 29, 1933, and recorded in Liber 193, Folio 372 of the Land Records of Washington County, Maryland.

3. Hold Harmless Agreement:

(a) The Postal Service shall save harmless and indemnify the City and its officers, agents, representatives, and employees from all claims, loss, damage, actions, causes of action, expense and/or liability resulting from, brought for, or on account of any personal injury or property damage received or sustained by any person, persons, or property growing out of, occurring, or attributable to the easement described in Clause 1(a) hereof.

(b) The City shall save harmless and indemnify the Postal Service and its officers, agents, representatives, and employees from all claims, loss, damage, actions, causes of action, expense and/or liability resulting from, brought for, or on account of any personal injury or property damage received or sustained by any person, persons, or property growing out of, occurring, or attributable to the easement described in Clause 2 hereof.

4. Erection of Buildings or Other Structures:

Except as expressly provided by this Agreement, neither party shall erect or permit the erection of any building or permanent structure on the land within the scope of the easements described herein.

5. Construction Work to be Performed by City:

The City shall perform the following construction items concerned with the Market House Walk and West Franklin Street Redevelopment Project, all as shown on the drawings incorporated herein.

(a) Remove portion of existing fence along the Municipal Parking Lot, to provide access to Postal Service employees to the land described in Clause 1(a) hereof.

(b) Install a pedestrian gate between the alley and the Postal Service parking lot, including steps from the parking lot down to alley level to provide access to the land described in Clause 1(a) hereof.

(c) Relocate existing 8' high chain link security fence along the Market House walk on the ease side of the Postal Service property.

(d) Construct a standard brick sidewalk to replace the existing concrete sidewalk of the Market House Walk.

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(e) Relocate existing USPS parking lot light standard that is within the proposed 12' walkway at a point approximately 50' from rear property line to a parallel location just outside the 12' walkway.

(f) Replace existing 4 1/2" high chain link fence with a solid brick wall approximately 30" high.

(g) Install and maintain appropriate number of no parking signs along east side of USPS property which abuts the property described in Clause 2 hereof.

(h) Install underground electrical duct banks under the brick sidewalk together with walkway light poles and bases, pull boxes, wiring and related items.

6. Maintenance of Improvements on Easement Land:

The City shall maintain the paving and all other improvements upon the land which is within the scope of the easements described herein.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands the day and year first above written.

UNITED STATES POSTAL SERVICE

By: B. W. Wright
B.W. WRIGHT
Acting Regional Director
Real Estate & Buildings Dept.

CITY OF HAGERSTOWN, MARYLAND

By: Varner L. Paddack
Varner L. Paddack

Its: Mayor

COMMONWEALTH OF PENNSYLVANIA)
) SS:
 COUNTY OF PHILADELPHIA)

On this the 9th day of June, 1980,
 before me appeared Billy W. Wright, to me personally
 known, who being by me duly sworn, did say that he
 is the ^{Acting} Regional Director, Real Estate and Buildings
 Department, Eastern Region of the United States
 Postal Service, and that the seal affixed to the
 foregoing instrument is the seal of the United
 States Postal Service, Eastern Region, and that
 the instrument was signed and sealed in behalf of
 the United States Postal Service, and the said
 Billy W. Wright acknowledged said instrument to
 be the free act and deed of the United States
 Postal Service

Elmira A. Ruffin
 Notary Public

ELMIRA A. RUFFIN, NOTARY PUBLIC
 PHILADELPHIA, PHILADELPHIA COUNTY
 MY COMMISSION EXPIRES MAY 18, 1981
 Member, Pennsylvania Association of Notaries

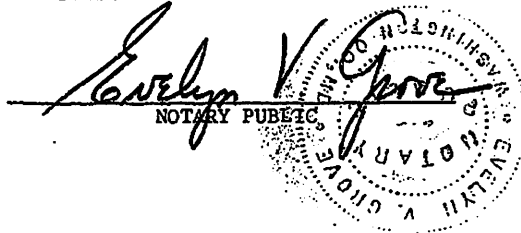
STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY, That on this 16th day of June, 1980,
before me, the subscriber, a Notary Public in and for the State and
County aforesaid, personally appeared Varner L. Paddack, Mayor of the
City of Hagerstown, and made oath in due form of law that the
consideration mentioned in the foregoing Easement Exchange Agreement
is true and bona fide as therein set forth and further made oath that
he is the Mayor for said City of Hagerstown and is duly authorized to
make this affidavit.

WITNESS my hand and Official Notarial Seal.

My Commission Expires:

July 1, 1982



MARKET
HOUSE



Drawn by: A.W.
Date: March 11, 1980
Revised 3-28-80, by A.W.
Revised 4-1-80, by A.W.
Revised 6-13-80, by T.J.Y.

DRAWING No.
22-490-73

RIGHT OF FIRST REFUSAL

THIS RIGHT OF FIRST REFUSAL AGREEMENT is made on this the ____ day of _____, 2021, by and between Marketplace, LLC a limited liability company formed and existing, hereinafter referred to as the "SELLER" and the City of Hagerstown, under the laws of the State of Maryland, a Maryland Municipal Corporation, and its assigns, hereinafter referred to as the "PURCHASER".

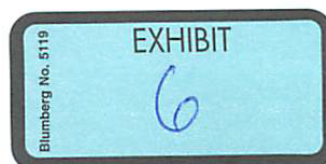
Seller is the owner in fee simple of certain improved real property consisting of multiple parcels of land located in Hagerstown, Maryland known as 25 West Church Street and described, to the best of Seller's knowledge, on the drawing attached hereto as Exhibit 1, and incorporated herein. The foregoing real property is referred to herein as the "Property." The Property is improved with a building ("the Market House") and a parking lot ("the Parking Lot.")

The Seller desires to grant to the Purchaser, for a period of five (5) years beginning on the date hereof and expiring on the fifth anniversary of the date hereof, a right of first refusal to purchase the Market House on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. If, at any time after the date of this Agreement, the Seller shall desire to offer to sell the Market House or any part thereof, or shall receive from a third party a *bona fide* offer to purchase the Market House or any part thereof which the Seller desires to accept, the Seller, before making or accepting the offer, as the case may be, shall send the written notification from the Seller of Seller's intention to make or accept the offer embodied in the contract, as the case may be. The Purchaser shall have the right, within ninety (90) days of the receipt of the contract and the written notice, to purchase the Market House or such part thereof on the terms and conditions set forth in the contract, **except that the purchase price shall be ONE DOLLAR and 00/100 CENTS (\$1.00)**. In the event the Purchaser elects to accept the offer embodied in the contract, the Purchaser must do so by executing one copy of the contract (*with the one revision noted in bold in the previous sentence*) and returning it to the Seller within the ninety (90) day period.

2. If the Purchaser does not accept the offer embodied in the contract within the ninety (90) day period provided in paragraph 1 hereof, then the offer embodied in the contract shall be deemed withdrawn and the Seller shall be free for a period of three (3) months from the expiration of the ninety (90) day period to sell or offer to sell the Market House or such part thereof to third parties on terms not less favorable to the Seller than those set forth in the contract free and clear of this Right of First Refusal. In the event the Market House or such part



thereof is not sold to a third party within the three (3) month period, then any further offer to sell or the purchase the Market House or any part thereof must first be submitted to the Purchaser in accordance with the provisions of paragraph 1.

3. In the event the Seller shall, during the aforesaid three (3) month period (or during a subsequent three (3) month period as in this paragraph 3 provided), decide to revise the terms of its offer so that the Market House or any part thereof shall be offered for sale upon terms less favorable to the Seller than those contained in any contract previously submitted to the Purchaser, or shall receive from a third party a *bona fide* offer to purchase the Market House or any part thereof on less favorable terms, which offer the Seller is willing to accept (such less favorable terms being hereinafter referred to as "New Offer"), then the Seller shall, with respect to each such New Offer, before offering the Market House or such part thereof for sale to others on the terms embodied in the New Offer, or accepting the New Offer, as the case may be, offer to sell the Market House or such part thereof to the Purchaser on the terms contained in the then current New Offer, **except that the purchase price shall be ONE DOLLAR and 00/100 CENTS (\$1.00)**. The terms of the New Offer shall be embodied in a new contract for the sale of the Market House or such part thereof, which shall be submitted to the Purchaser in accordance with the requirements of paragraph 1 above.

If the Purchaser shall not accept the New Offer within ninety (90) days after the receipt of the new contract and the written notice referred to in paragraph 1 above, then the Seller shall be free for a period of one (1) month from the expiration of the ninety (90) day period to sell or offer to sell the Market House or such part thereof to third parties on terms not less favorable to the Seller than those contained in the New Offer free and clear of this Right of First Refusal. Provided, however, that in the event the Market House or such part thereof is not sold to a third party within the ninety (90) period, then any further offers with respect to the Market House or any part thereof must be submitted to the Purchaser in accordance with the provisions of paragraph 1.

4. Within fifteen (15) days after the Purchaser has exercised its right of first refusal, the Seller shall deliver to the Purchaser a Certificate of Title or title abstract covering the Market House described in paragraph 1 above which shall reflect that marketable fee simple title to the subject Market House is vested in Seller and that same is insurable by a title insurance company licensed to do business in the State of Maryland . Said Certificate or abstract shall be subject only to taxes for the current year, easements, and rights of way of record, and prior mineral reservations. Should said Certificate or Abstract reflect any other exceptions to the title unacceptable to Purchaser, Purchaser shall notify the Seller in writing of any defects within fifteen (15) days (the title review period) and the Seller shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence the Seller is unable to make the title acceptable to Purchaser within such reasonable time, it shall be the option of the Purchaser either to accept the title in its existing condition with no further obligation on the

part of the Seller to correct any defect, or to cancel this Agreement. If this Agreement is thus cancelled, all money paid by the Purchaser to the Seller upon the execution of this Agreement or upon any extension shall be returned to the Purchaser, and this Agreement shall terminate without further obligation of either party to the other.

This Agreement shall be subordinate and junior to the legal operation and effect of any present or future mortgage or deed of trust which is now or hereafter becomes a lien on the Market House.

5. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs and assigns.

6. All notices pursuant to this Agreement shall be in writing and delivered (i) personally, or (ii) sent by certified or registered mail, postage prepaid, return receipt requested, or (iii) by a nationally recognized overnight courier. A notice must be addressed to a party as indicated below. Any notice hereunder shall be deemed duly delivered (a) when delivered, with written receipt, if personally delivered or delivered by nationally recognized overnight courier, or (b) three (3) days after mailing, if mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

Purchaser's notice address:

City Clerk
City of Hagerstown
1 East Franklin Street
Hagerstown, MD 21740

With a copy to:

Fire Chief
25 West Church Street
Hagerstown, MD 21740

Seller's notice address:

Marketplace, LLC
PO Box 112
Brunswick, Maryland 21716
Attn: Mr. David S. Blackmon, Managing Member

With a copy to:

Either party may change its address for the purposes of this section by giving notice of the changed address to the other party in the manner provided for above.

IN WITNESS WHEREOF the parties executed this Agreement and affixed their seals as of the date and year first above written.

ATTEST:

BUYER:

CITY OF HAGERSTOWN
A Maryland municipal corporation

Name:

By: _____
Emily N. Keller
Mayor

ATTEST:

SELLER:
MARKETPLACE, LLC

Name:

By: _____
David S. Blackmon, Managing Member

STATE OF MARYLAND, WASHINGTON COUNTY, TO WIT:

I HEREBY CERTIFY, That on this _____ day of _____, 2021, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Emily N. Keller, Mayor of the City of Hagerstown, and acknowledged that she, as such officer, being authorized to do so, executed the foregoing instrument as the voluntary act and deed of said municipal corporation and did make oath that the within instrument is not a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the municipal corporation.

WITNESS my hand and Official Notarial Seal.

My Commission Expires:

Notary Public

STATE OF MARYLAND, WASHINGTON COUNTY, TO WIT:

I HEREBY CERTIFY, That on this _____ day of _____, 2021, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared David Scott Blackmon, Managing Member of Market Place, LLC, and acknowledged that he, as such member, being authorized to do so, executed the foregoing instrument as the voluntary act and deed of said limited liability company and did make oath that the within instrument is not a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the limited liability company.

WITNESS my hand and Official Notarial Seal.

My Commission Expires:

Notary Public