

**113th Regular Session
Mayor and City Council
November 17, 2020
Agenda**

In accordance with CDC guidelines, attendees are required to wear face coverings, and seating is limited to provide social distancing.

7:00 PM - November 17, 2020 - REGULAR SESSION -*Council Chamber, 2nd Floor, City Hall*

I. CALL TO ORDER

II. INVOCATION

Mayor Robert E. Bruchey, II

III. PLEDGE TO THE FLAG

IV. ANNOUNCEMENTS

- A. A. Rules of Procedure - *Effective January 21, 2020*
- B. Use of cell phones during meetings is restricted.
- C. All correspondence for distribution to Elected Officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.
- D. Meeting Schedule:
 - 1. Monday, November 23, 2020 - Oath of Office to New Administration - Location TBD, tentatively at 7:00 p.m.
 - 2. Tuesday, November 24, 2020 - Work Session Organization Meeting - 4:00 p.m.
The future meeting schedule will be determined by the Mayor and City Council on November 24, 2020. The following dates and times are tentative:
 - 3. Tuesday, December 1, 2020 - Work Session at 4:00 p.m.
 - 4. Tuesday, December 8, 2020 - Work Session at 4:00 p.m.
 - 5. Tuesday, December 15, 2020 - Regular Session at 7:00 p.m.
 - 6. Tuesday, December 22, 2020 - No Meeting Scheduled
 - 7. Tuesday, December 29, 2020 - No Meeting Scheduled

V. APPOINTMENTS

- A. City Ethics Commission:
 - Lewis C. Metzner, Term to Expire September 1, 2025
 - Joseph Jefferson, Term to Expire September 1, 2021
- Hagerstown Housing Authority:
 - Lynette Cunningham, Resident Commissioner, Term to Expire August 30, 2023
- Historic District Commission:
 - Chris George, Term to Expire November 30, 2023
- Board of Zoning Appeals:
 - Janice Kelsh, Term to Expire November 30, 2023

VI. PROCLAMATION

A. Proclamation: Transgender Day of Remembrance

VII. GUESTS

Special Recognitions

VIII. AGENDA ITEM CITIZEN COMMENTS

Citizens are welcome to provide comments in person or by sending an email to councilcomments@hagerstownmd.org no later than 5:00 p.m. on Tuesday, November 17, 2020. Include your full name, home street address, and topic of your comments. You may attach a letter to the email, or write your comments in the body of the message. The City Clerk will read your name, address, and provide a summary of the comments. The full copy of the comments will be provided for public viewing as part of the minutes.

IX. MINUTES

October 6, 2020, October 13, 2020, October 20, 2020, and October 27, 2020

X. CONSENT

B. Fire

1. Annual Uniform Purchase - BJ's Custom Creations (Hagerstown, MD) Estimated Cost \$ 35,000.00
2. Triple Combination Attack Pumper - 4 Guys Stainless Tank and Equipment (Meyersdale, PA) \$ 573,259.00

C. Information Technology

1. Tyler PACE-15 Training Package- Tyler Technologies (Dallas, TX) \$ 11,775.00
2. Barracuda Essentials Security Software Renewal - System Source (Hunt Valley, MD) \$ 12,986.00

D. Parks and Engineering

1. Mitchell Avenue at Railroad Overpass Traffic Signal - Milton Stamper Builders (Hagerstown, MD) Not to Exceed \$ 199,754.00
2. Deck Replacement Hamilton Run Box Culvert - Jefferson Boulevard - Concrete General, Inc. (Gaithersburg, MD) \$ 94,800.00

E. Utilities

1. Electric - Reimbursement to Easton Utilities Commission for Lobbyist Service (Easton, MD) \$ 20,014.00
2. Wastewater: Sludge Holding Tank Cleaning Services - Synagro (Baltimore, MD) \$ 25,857.00

XI. UNFINISHED BUSINESS

- A. Approval of an Ordinance: Authorizing the Sale of Property Located at 170 West Washington Street
- B. Approval of an Ordinance: 352 Summit Avenue Quit Claim
- C. Approval of an Ordinance: Amending Chapter 82, Discriminatory Practices, of the City Code - Updated Personal Protections
- D. Approval of an Ordinance: Acquisition of Real Property for the Urban Improvement Project

XII. NEW BUSINESS

- A. Approval of a Resolution: Comprehensive Settlement Agreement and Mutual Release with Cascades Holding US, Inc.
- B. Approval of a Resolution: Addendum to Residential Lease for 11850 Indian Lane
- C. Approval of a Resolution: Amendment to Agreement with American Traffic Solutions, Inc. d/b/a Verra Mobility
- D. Approval of Amendments to FY20 and FY21 Community Development Block Grant (CDBG) Annual Action Plans – CIP Funding Reallocation
- E. Approval of Purchase for Materials for NorthPoint and Former Cascades
- F. Approval of a License Agreement: Barbara Ingram School for the Arts Foundation, Inc. for Engraved Pavers
- G. Approval of Change Order for the 2020 Pavement Preservation Program
- H. Approval of Management Services for Potterfield Pool
- I. Approval of Temporary Overfill of Fire Department Position
- J. Approval of Temporary Banner - Maryland Theatre - Donut Drive-by
- K. Approval of Noise Ordinance Exemption - Mulberry Lofts Jingle Mingle

XIII. GENERAL CITIZEN COMMENTS

XIV. CITY ADMINISTRATOR'S COMMENTS

XV. MAYOR AND COUNCIL COMMENTS

XVI. ADJOURN

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

Topic:

In accordance with CDC guidelines, attendees are required to wear face coverings, and seating is limited to provide social distancing.

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

Mayor Robert E. Bruchey, II

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

- A. Rules of Procedure - *Effective January 21, 2020*
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**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

City Ethics Commission:

Lewis C. Metzner, Term to Expire September 1, 2025

Joseph Jefferson, Term to Expire September 1, 2021

Hagerstown Housing Authority:

Lynette Cunningham, Resident Commissioner, Term to Expire August 30, 2023

Historic District Commission:

Chris George, Term to Expire November 30, 2023

Board of Zoning Appeals:

Janice Kelsh, Term to Expire November 30, 2023

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

Topic:

Proclamation: Transgender Day of Remembrance

Mayor and City Council Action Required:

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Recommendation:

Motion:

Action Dates:

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

Topic:

Special Recognitions

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

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Discussion:

Financial Impact:

Recommendation:

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

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October 6, 2020, October 13, 2020, October 20, 2020, and October 27, 2020

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

Annual Uniform Purchase - BJ's Custom Creations (Hagerstown, MD) Estimated Cost \$ 35,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Fire_-_Annual_Uniform_Purchase.pdf

Description

Signed Consent Form

**City of Hagerstown Mayor and Council
Purchase / Contract Information
Meeting of November 17, 2020**

Do Not Complete This Section
Approved Consent Agenda: _____
New Business: _____

Originating Department: Fire Department By: Steve Lohr, Fire Chief
Account Number: 0112001 Account / Project Name: 5572
Budget Amount: \$50,000.00 Account Balance: \$46,070.00 Year: 21 CIP Control No. _____
Unbudgeted \$: — Source of Funds: General Fund

Quantity	Description	Value
	Annual Uniform Purchase	Varies
	Cost varies by number of items purchased. Each employee is allotted \$450.00 per	
	contract year to purchase uniforms/boots.	

TOTAL VALUE OF PROJECT: Estimated cost
\$35,000.00

ABOVE TO BE USED FOR:

As approved in the Departmental Standard Operating Procedures each employee shall receive an annual uniform allotment to include any combination of: pants, golf style shirts, work t-shirts, ball cap, uniform work jacket, shorts, sweat shirts and sweat pants.

Recommended Vendor:

Business Name: BJ's Custom Creations
Address: 900 Sweeney Drive
City, State: Hagerstown, Maryland
Bid/Proposal/Quote No.: B1600.16

OTHER VENDORS:		
Firm	City/State	Total Amount
N/A		

(1) Department Manager

Recommend Approval. Please see attached memo.

Steven C. Lake

Signature / Date 11/5/20

(2) Purchasing Agent:

Recommend approval.

Jacoby Miller
11/05/2020

Signature / Date

(3) Finance Manager:

Approve - these uniform purchases are a contractual obligation per current 1605 collective bargaining agreement.

Michelle Hylton

Signature / Date 11/5/20

(4) City Administrator's Recommendation:

Recommend Approval per Contract

Steve Newman 11/5/2020

Signature / Date



CITY OF HAGERSTOWN, MARYLAND

Steven E. Lohr
Fire Chief

November 5, 2020

TO: Hagerstown Mayor and Council
FROM: Fire Chief Steven E. Lohr 
SUBJECT: Request to Award FD Clothing Contract

Staff recommends that bid # B1717.21, *Hagerstown Firefighter Clothing* be awarded to BJ's Custom Creations of Hagerstown, MD. BJ's Custom Creations was the sole vendor to place a bid on B1717.21. This bid will expire on December 31, 2022.

The amount spent with the vendor will exceed \$10,000, and could approach \$35,000. An exact amount to be expended is unknown, due to the fact that each employee is permitted by contract to spend their allotment of \$450.00 as needed among several vendors for items that BJ's does not supply.

Both career and volunteer personnel are eligible to electronically order through an online store provided by the vendor.

cc: Scott Nicewarner
Michelle Hepburn
Tyler French

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

Topic:

Triple Combination Attack Pumper - 4 Guys Stainless Tank and Equipment (Meyersdale, PA) \$ 573,259.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Fire_-_Triple_Combination_Attack_Pumper.pdf

Description

Signed Consent Agenda

Do Not Complete This Section

Approved Consent Agenda: _____

New Business: _____

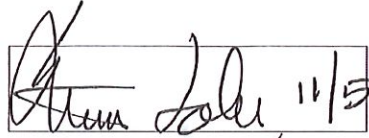
Quantity	Description	Value
1	Triple Combination Attack Pumper	573,259.00

Business Name:	4 Guys Stainless Tank and Equipment
Address:	230 Industrial Park Road, PO Box 90
City, State:	Meyersdale, PA
Bid/Proposal/Quote No.:	P1660.18

[illegible]

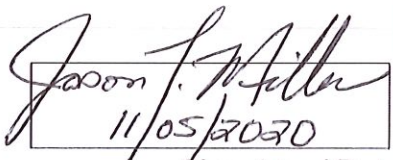
(1) Department Manager

RECOMMEND APPROVAL. PLEASE SEE
ATTACHED MEMO.

 11/5/20
Signature / Date

(2) Purchasing Agent:

Recommend approval.

 11/05/2020
Signature / Date

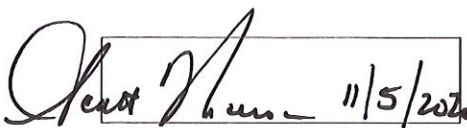
(3) Finance Manager:

Recommend approval - the initial FY21 budget included the purchase of (3) pumpers. At this time can only approve (1) pumper that utilizes GF Fund Balance Reserves as the funding source. The lead time of this item will result in 1/2 of payment not due until FY22.

 11/5/20
Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval

 11/5/2020
Signature / Date



CITY OF HAGERSTOWN, MARYLAND

Steven E. Lohr
Fire Chief

November 5, 2020

TO: Hagerstown Mayor and Council

FROM: Fire Chief Steven E. Lohr

SUBJECT: Request to purchase one (1) Fire Department Pumper

Staff recommends that **Mayor and Council fund the purchase of one pumper in the amount of \$573,259.00** as the 2020 updated unit price from Commonwealth Fire Equipment Company, Inc.; representing 4-Guys Fire Trucks of Meyersdale, PA. The money to fund this purchase has the support of both the City Administrator and Finance Director and will be funded from the general fund balance reserve.

Per the contract, this pricing will be in effect until December 4, 2020. The first payment of 50% will not be due before 190-210 calendar days from the date the contract is issued and the chassis ordered. The balance will be due upon acceptance of the unit approximately 180 days after that.

The city is in the next to the last year of a multi-year contract to replace up to seven FD pumpers with like units that are identically built and equipped. This particular unit will be the fourth pumper replaced under this contract and replaces the last 2003 front line pumper currently in-service as E-5 at the South Hagerstown Fire Company. That existing unit will be redeployed to reserve status.

Of particular note, Commonwealth Fire will be unable to honor the modest 3.3% annual increase beyond December 4, 2020 due to increased regulations for next generation emissions requirements on all future diesel motors and unplanned materials pricing for both aluminum and stainless steel (please see attached quote).

To avoid any need to bond fund the last two pumpers scheduled to be replaced as ready reserves, we have deferred those final purchase requests to FY21-22 at the request of finance and to fully determine the effects of COVID on the overall city budget. Even though we cannot receive an updated pumper price until after 1/31/2021, it is anticipated that the price increases described above will be between 8% -12%.

Thank you for your continued support and consideration of this time-sensitive request.

cc: Scott Nicewarner
Michelle Hepburn
Tyler French



Toll Free 1-866-826-5371

Simply...THE BEST CHOICE!

FAX 540-678-0185

November 3, 2020

City of Hagerstown Fire Dept.
25 West Church Street
Hagerstown, MD 21740
Attn: Steve Lohr, Fire Chief

City of Hagerstown
1 East Franklin Street
Hagerstown, MD 21740
Attn: Ms. Tyler French, Procurement Administrator

Ref: Fire Dept. Pumper Bid, P1660.18

Chief Lohr,

We recently received some news from Spartan on 2021 EPA emission changes (copy attached) that requires this quote to be updated and the previous 2/20/2020 pricing is now void as per 4/3/2018 Bid clarification "#6-PG 5 – CONTRACTOR QUALIFICATIONS – ITEM 1 - ANY PRICING INCREASE...." and "4G/HFD revised 7/2/18 revised pricing, page 3, Multi-Year fixed pricing" (copy attached)

Below is the updated 2020 updated pricing for the above 4 Guys bid based on the current 2019 contract and approved change orders as of this initial 2/20/2020 date.

\$540,355.00 – 2019 Contract 7/1/19

+1,327.00 – Change Order #1 – 7/26/19 - Bumper chevrons

+807.00 – Change Order #2 – 10/11/19 – Extra switches, wheel chock remount

+6,968.00 – Change Order #3 – 10/18/19 – Frame paint, battery slide trays, extra panel switches

\$549,457.00 Current total as of 2/20/2020

X .033% - (Agreed Bid Annual Increase)

\$567,589.00 - New 2020 Per Unit Price,

+5,670.00 – new 2021 EPA engine increase

****\$573,259.00 – Updated 2020 Per Unit Price** based on a chassis payment of \$277,764.00 within (10) days of receipt from Spartan. Estimated chassis delivery is 180-200 calendar days ARO. Balance of contract and any additional change orders will be due at the final inspection. (Pricing quoted is valid for any unit under contract prior to December 4, 2020)

**(Amount does not include any Change Orders issued/approved after 2/20/2020)

108 Alpine Meadow Road, Winchester, VA 22602-6700

Based on current production schedules, we are pleased to quote 345-375 calendar days ARO

PLEASE NOTE! We will not extend the current fixed price increases beyond the 12/4/2020 date due to the EPA engine change, aluminum and stainless steel metal being imported and associated surcharges, component supplier increases over the past three (3) years as well as recent COVID related costs, all items that could not be known or anticipated when the initial bid was submitted in April 2018. Please refer to Bid Clarification #6 mentioned above for the pricing disclaimer.

However, we will accept new 2021 calendar year orders at a new adjusted cost, unfortunately we will not be able to provide that new cost at this time and not until we receive all vendor increases in late December. Spartans new chassis pricing will not be available before January 31, 2021 at the earliest.

Based on the current pricing information and historical data, it could be as much as 8% to 12% (\$45k - \$69k) of the current 2020 per unit price quoted above. Both Spartan and 4 Guys will keep it as low as possible as we value the City of Hagerstown current and future business and want to maintain that relationship.

On behalf of 4 Guys and Commonwealth Fire, we apologize for this additional pricing cost but it is beyond our control. We appreciate this opportunity to provide this updated 2020 proposal and look forward to working with the HFD on future orders. I may be reached directly Toll Free at 1-866-826-5371.

Sincerely,

Robert E. Pursel,
President

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

Topic:

Tyler PACE-15 Training Package- Tyler Technologies (Dallas, TX) \$ 11,775.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

IF_-_Tyler_PACE-15_Training_Package.pdf

Description

Signed Consent Form

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 11/24/20**

11/17/20

Do Not Complete This Section
Approved Consent Agenda: _____
New Business: _____

Originating Department: Technology & Support Services By: James R. Snyder – IT Manager
Account Number: 0107200-537702 Account / Project Name: PACE-15 Training Package
Budget Amount: \$11,775.00 Account Balance: 88707.54 Year: FY20- FY21 CIP Control No. _____
Unbudgeted \$: _____ Source of Funds: General Fund

Quantity	Description	Value
1	Tyler PACE-15 Training Package	\$11,775.00

TOTAL VALUE OF PROJECT: \$11,775.00

ABOVE TO BE USED FOR:

The PACE-15 training package from Tyler Technologies is a bundled group of pre-paid training days the City of Hagerstown may use for training with any Tyler Technologies software that the city uses (this includes all of our MUNIS Financial System software) and also covers any technical consultations or assistance from Tyler.

Recommended Vendor:

Business Name: Tyler Technologies
Address: PO Box 203556
City, State: Dallas, TX 75320-3556
Bid/Proposal/Quote No.: _____

OTHER VENDORS:		
Firm	City/State	Total Amount
THIS IS A SOLE SOURCE DUE TO THE PROPRIETARY VENDOR SOFTWARE		

(1) Department Manager

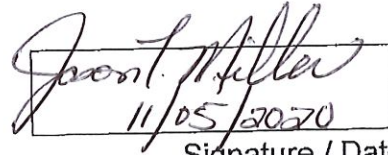
The City successfully used the PACE-10 training package last year, and this upgrade grants us an additional five (5) days of training. This is an upgrade from PACE-10 (which we previously paid for in FY20-FY21 - \$9,213.75), but has been credited towards the upgrade purchase price. This bundle grants fifteen (15) training days at a discounted rate and allows staff to receive important training and consultations for Tyler products (such as MUNIS), which will be vital as we plan on upgrading our financial software in FY20-FY21.

 11/3/20

Signature / Date

(2) Purchasing Agent:

Recommend approval.

 11/05/2020

Signature / Date

(3) Finance Manager:

Approve - this service has helped with improved efficiencies in several software modules utilized.

 11/5/20

Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval

 11/5/2020

Signature / Date



Quoted By: Steve Simmons
 Date: 10/6/2020
 Quote Expiration: 3/30/2021
 Quote Name: City of Hagerstown - ERP - PACI
 Quote Number: 2020-117337
 Quote Description: PACE 15

Sales Quotation For
 City of Hagerstown
 Suite 3
 1 E Franklin Street
 Hagerstown, MD 21740-4859
 Phone +1 (301) 790-3200

Tyler Software and Related Services

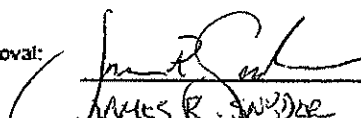
Description	License	Impl. Hours	Impl. Cost	Data Conversion	Module Total	Year
Additional:						
PACE-15	\$0.00	0	\$0.00	\$0.00	\$0.00	
TOTAL:	\$0.00	0	\$0.00	\$0.00	\$0.00	

Summary	One Time Fees	Recurring Fees
Total Tyler Software	\$0.00	\$11,775.00
Total Tyler Services	\$0.00	\$0.00
Total 3rd Party Hardware, Software and Services	\$0.00	\$0.00
Summary Total	\$0.00	\$11,775.00
Contract Total	\$11,775.00	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

2020-117337 - PACE 15

CONFIDENTIAL

Customer Approval:  Date: 10-7-20
Print Name: James R. Snyder P.O. #: TBD
All primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement" subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available to the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any subsequent renewals shall be invoiced with the applicable term under the Agreement, with renewals invoiced annually thereafter in accordance with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to the Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual service materials basis.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, when "Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management Services are invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be due upon the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. If this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by Client. If a service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the size and scope of your project. The quote is subject to change based on such factors as your level of involvement in the project and the speed of knowledge transfer.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for.

Comments

remitting. Installations are completed remotely, but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or in class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby of the initial training can thereafter train the remaining users.

Tyler's pricing is based on the scope of proposed products and services being obtained from Tyler. Should portions of the scope of products or services Tyler reserves the right to adjust prices for the remaining scope accordingly.

Pace 15: Includes 15 training days and 3 connect passes. The first annual term for PACE commences on the 1st of the month following the date of sales quotation or amendment. Upon expiration of the first annual term, the term will renew automatically for additional one (1) year terms at our then-current rates. Implementation days and conference passes are terminated in writing by either party at least thirty (30) days prior to the end of the then-current term. Implementation days and conference passes are order date, and implementation days can only be utilized on five modules. PACE services also include one (1) Investment Assessment per each three purchased. Connect passes for the current year are available to clients with a cycle start date on or before 03/01. Clients with a cycle start date of 04/01 Connect passes the following year.

In advance of any annual renewal term, the client may elect to purchase a different PACE option, subject to then-current Tyler pricing for that option.

Development modifications, interfaces and services, where applicable, shall be invoiced to the client in the following manner: 50% of total upon approval of program specifications and the remaining 50% of total upon delivery of modifications, interface and services.

Service Date will run 9/01/2020 - 8/31/2021. Eligible for a new Investment Assessment on 09/01/2022.

2020-117337 - PACE 15

CONFIDENTIAL

Steve Simmons
Account Representative
Tyler Technologies, Inc.

P: 800.772.2260 ext: 4751

www.tylertech.com



Empowering people who serve the public®



Remittance:
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Credit Memo

Invoice No	Date	Page
045-317207	09/30/2020	1 of 1

Questions:

Tyler Technologies - ERP & Schools
Phone: 1-800-772-2260 Press 2, then 1
Email: ar@tylertech.com



Bill To: CITY OF HAGERSTOWN
ATTN: SCOTT NICEWARNER
1 EAST FRANKLIN STREET
HAGERSTOWN, MD 21740

Ship To: CITY OF HAGERSTOWN
ATTN: SCOTT NICEWARNER
1 EAST FRANKLIN STREET
HAGERSTOWN, MD 21740

Cust No.-BillTo-ShipTo	Ord No	PO Number	Currency	Terms	Due Date
2712 - MAIN - MAIN			USD	RECEIPT	10/07/2020

Date	Description	Units	Rate	Extended Price
	PACE 10 - TRAINING	10	(630.00)	6,300.00
	PACE 10 - TYLER CONNECT REGISTRATION	3	(971.25)	2,913.75

Comments: Applied to invoice #045-310336

****ATTENTION****

Order your checks and forms from
Tyler Business Forms at 877-749-2090 or
tylerbusinessforms.com to guarantee
100% compliance with your software.

Subtotal	(9,213.75)
Sales Tax	0.00
Invoice Total	(9,213.75)

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

Topic:

Barracuda Essentials Security Software Renewal - System Source (Hunt Valley, MD) \$
12,986.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

IT_-_Barracuda_Essentials_Secuirty_Software_Renewal.pdf

Description

Signed Consent Form

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 11/24/20**

11/17/20

Do Not Complete This Section Approved Consent Agenda: _____ New Business: _____
--

Originating Department: Technology and Support Services By: James R Snyder – IT Manager
 Account Number: 0107200-537702 Account / Project Name: Barracuda Essentials Security Software renewal
 Budget Amount: \$12,986.00 Account Balance: 88,707.54 Year: FY20-FY21 CIP Control No. _____
 Unbudgeted \$: _____ Source of Funds: General Fund

Quantity	Description	Value
1	Barracuda Essentials Security Software Renewal	\$12,986.00

TOTAL VALUE OF PROJECT: \$12,986.00

ABOVE TO BE USED FOR:

This renewal is for the Barracuda Essentials security software package, which will cover the city's e-mail security gateway for 500 users. It is also an upgrade to cloud hosting (over the previous year's renewal of "on prem" software hosting). This is the first year of a new three-year software agreement, in which The city's e-mail archiver system and e-mail security gateway will both be included within the Barracuda Essentials software renewal, moving forward. This package also provides the city with additional features (advanced threat protection, emergency inbox, etc.) that is included in the software bundle.

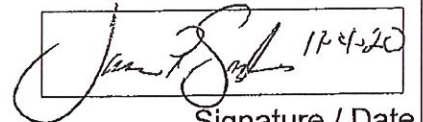
Recommended Vendor:

Business Name: System Source
 Address: 228 Clubhouse Road
 City, State: Hunt Valley, MD 21031
 Bid/Proposal/Quote No.: _____

OTHER VENDORS:		
Firm	City/State	Total Amount
SOLE SOURCE – PIGGYBACKING OFF OF EXISTING STATE CONTRACT		

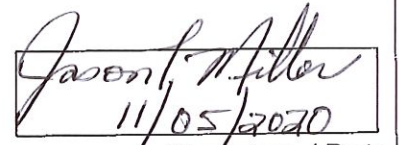
(1) Department Manager

Renewal and upgrade of the e-mail security gateway into the cloud will provide additional security for the application (hosted by the vendor instead of "on-prem"), provide enhanced security features (ability to encrypt and archive email sent outside the city network), and will take advantage of discount pricing (for both the e-mail archiver and security gateway) in years two and three of the agreement.


Signature / Date

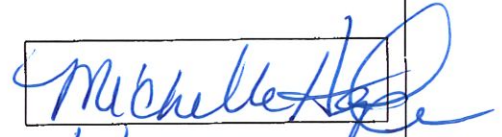
(2) Purchasing Agent:

Recommend approval.


Signature / Date

(3) Finance Manager:

Approve - this maintenance cost is necessary to maintain existing software in use across the city.


Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval


Signature / Date

Barracuda Licensing Payment Terms Agreement with System Source Revised October 30, 2020

Company Name: City of Hagerstown

Address: 1 East Franklin Street, Hagerstown, Maryland 21740

This Agreement is between System Source and the City of Hagerstown, Maryland.

Barracuda has extended special pricing and payment terms applicable to the purchase outlined below:

System Source Quote # 87938 rev 2 of 2 dated October 30, 2020 – attached to this Agreement

Barracuda licensing is for a period of 3 years and is payable in 3 annual payments to System Source as detailed below

Purchase must be made by close of business on Monday, November 30, 2020

This purchase requires a hard copy purchase order from the City of Hagerstown to System Source.

This Agreement must be referenced on the City of Hagerstown purchase order to System Source and takes precedence over any conflicting payment terms. This Agreement must be signed and returned along with the purchase order before the order can be executed.

Order is non-cancellable and non-returnable

Payments:

- First Payment \$12,986: Payment due for Barracuda licensing covering Year-1 of the 3-year period
- Second Payment \$20,494: Payment due for Year-2 of the 3-year period (will be invoiced 1 year after initial purchase date)
- Third Payment \$20,494: Payment due for Year-3 of the 3-year period (will be invoiced 2 years after initial purchase date)

Terms: Net 20

Plus any applicable taxes, fees or shipping

This purchase does not include professional services or support services, except for the 4 hours of remote consulting provided by Barracuda as noted on the attached quote.

System Source shall not be liable for special, incidental, or consequential damages in connection with the services provided, included but not limited to loss of profits or revenue, loss of use of equipment, costs of substitute equipment or other down time costs. In addition, liability with respect to property damages or injury (including death) to persons arising out of or connected with services performed under this agreement, is limited strictly to that imposed by law, and there is no contract imposing any greater degree of liability on System Source. System Source's entire liability for any claim concerning its performance or nonperformance in connection with this Agreement, including any negligence, shall be limited to the total amount paid to System Source under the applicable purchase order(s).

The Client is responsible for educating its staff to identify and react to phishing activity or fraudulent attempts to obtain sensitive information. The Client is responsible for obtaining insurance against cyber-attacks, cyber data loss, malware, privacy breaches because these incidents can occur under a best practices, best case scenario. Security recommendations, assessments, audits, software & device usage, implementation of best practices, remediation, staff training, and other security related practices and tools improve your security environment and decrease IT security breaches, fraud and related issues. However, no security practices or tools can ensure any IT system is not vulnerable especially given evolving threats. Security improvements are recommended and implemented at a snapshot in time and cannot provide for every possible threat. Even if no current vulnerabilities are detected, due diligence should be exercised to prevent new or persistence threats. Even if the recommended best practices are implemented, it may not prevent an attack or system penetration.

Excused Performance. System Source shall not be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting from non-payment, acts of God, civil or military catastrophes, transportation delays, any communication equipment failure beyond its control, inability to obtain materials or parts from suppliers, or other major force beyond its reasonable control. Client understands and acknowledges that computers and network equipment are manufactured by, and run software written by, third party vendors; in addition, Client understands and acknowledges its computers and network equipment are provided with Internet Services and/or other computer networks provided by third party network providers. Client understands and acknowledges third party vendors and network providers and their products and services are beyond the control of System Source and that Client's computers and network equipment may become inoperable due to factors



your one source for IT & AV

338 Clubhouse Rd. Hunt Valley, MD 21031 p. 410.771.5544 f. 410.771.9507 syssrc.com

beyond the control of System Source. System Source will take commercially reasonable efforts to avoid disruptions in services caused by factors beyond its control, but it cannot guarantee such events will not occur. Consequently, System Source shall not be liable for any downtime or other problems with the services that are due to factors beyond its reasonable control.

The Parties agree to waive trial by jury. This agreement is governed by the laws of the State of Maryland.

X *James R. Snyder* / 11-3-20
Signature for City of Hagerstown Date

JAMES R. SNYDER
Printed Name

IT MANAGER
Title

X _____ / _____
Signature for System Source Date

Printed Name

Title

Compliance Information for Purchasing Agents**CCR and Small Business Entity Status**

System Source is a registered "trading as" name for Logical Ventures, Inc., a Maryland Corporation. System Source's Federal Tax Identification Number is 52-1202799. For the purpose of bid responses under NAICS codes 541519, 541512, 423430 and 811212 System Source meets the qualifications of a Small Business Entity. Our CCR CAGE code is 1JKB0.

Affirmative Action and Equal Employment Opportunity

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.

E-Commerce and Credit Card

System Source accepts Visa, MC, and AMEX payments for training courses, ISP services, and field repair services. Quotes for professional service work, hardware, software and licenses are priced with an ACH/check payment discount and cannot be paid by credit card if the amount is greater than \$3,000.00. If you wish to receive your quotes without the discount included, please inform your sales person. Our secure credit card payment site www.syssrc.com/PayBill is PCI compliant.

E-invoicing and payment through ARIBA (ANID: AN01000197681) and TEXTURA is accepted. ACH payments may be sent to The Columbia Bank, routing# 055002338, acct: #1602183501. System Source's SWIFT ID is FLBKUS33.

Healthcare and Other Entities Involved in the Handling of Personal Health Information (PHI)

When System Source is notified by you that our employees may be dealing with PHI that is subject to HIPAA and/or HITECH regulations, we will provide you with a Business Associate Agreement that covers your regulatory responsibilities pertaining to the use of Business Associates in your IT environment. Contact your sales person or engagement manager to request a Business Associate Agreement.



System Source
338 Clubhouse Road
Hunt Valley, Maryland 21031
United States
www.syssrc.com
(P) 410-771-5544
(F) 410-771-9507

Order Status (Open)

Date

Oct 30, 2020 01:20 PM EDT

Modified Date

Oct 30, 2020 03:01 PM EDT

Doc #

87938 - rev 2 of 2

Description

Barracuda Essentials Compliance Edition

SalesRep

Rippey, Scott
(P) 410-771-5544 ext. 4383

Customer Contact

McCarty, Tim
(P) 301-797-4570
tmccarty@hagerstownmd.org

Customer

City of
Hagerstown (3017398577)
McCarty, Tim
1 E. Franklin St.
Hagerstown, MD 21740
United States
(P) 301-739-8577

Bill To

City of Hagerstown
Payable, Accounts
1 E. Franklin St.
Hagerstown, MD 21740
United States
(P) 301-739-8577

Ship To

City of Hagerstown
McCarty, Tim
1 E. Franklin St.
Hagerstown, MD 21740
United States
(P) 301-797-4570
tmccarty@hagerstownmd.org

Customer PO:**Terms:**

Net 20 Days

Ship Via:

FedEx Ground

Special Instructions:**Carrier Account #:****First Year (including Professional Services for setup)**

1	Barracuda Essentials Compliance Edition - 1st Year Subscription license (1 year) - 500 users - hosted - volume - 250-999 licenses	1
2	Barracuda Remote Consulting Services Remote consulting	1
		Subtotal \$12,986.00

Second Year

3	Barracuda Essentials Compliance Edition - 2nd Year Subscription license (1 year) - 500 users - hosted - volume - 250-999 licenses	1
		Subtotal \$20,494.00

Third Year

4	Barracuda Essentials Compliance Edition - 3rd Year Subscription license (1 year) - 500 users - hosted - volume - 250-999 licenses	1
		Subtotal \$20,494.00

Notes

Pricing compliant with MEEC contract

Subtotal: \$53,974.00
Tax (0.000%): \$0.00
Shipping: \$0.00
Total: \$53,974.00

Thank you for selecting System Source for your IT and audio visual needs. Logical Ventures, Inc. t/a System Source accepts Visa, MC and AMEX payments for training courses, cloud and field repair services only. Quotes for consulting, hardware and software are priced with an ACH/check payment discount and cannot be paid by credit card if the amount is greater than \$3,000. If you choose to receive your quotes without the discount included, please contact your salesperson. Prices are subject to change. You will be contact before we place your order

should prices change. FOB Destination, Freight Prepaid & Add. ♦♦ Seller pays freight and adds freight charges to the buyer's invoice. Seller reserves the right to invoice freight charges separately to appropriately bill freight.

For terms and conditions of sale, please visit: ♦

http://www.syssrc.com/html/company_info/purchaseagreement.shtml

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

Topic:

Mitchell Avenue at Railroad Overpass Traffic Signal - Milton Stamper Builders (Hagerstown, MD)
Not to Exceed \$ 199,754.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Engineering_-
_Mitchell_Avenue_at_RR_Overpass_Traffic_Signal.pdf

Description

Signed Consent Form

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 11/17/20**

Do Not Complete This Section

Approved Consent Agenda: _____

New Business: _____

Originating Department: Parks and Engineering By: Rodney Tissue
Account Number: 0150007-603528 Account / Project Name: Mitchell Avenue RR
Overpass Traffic Signal
Budget Amount: \$150,000 Account Balance: 138,514 Year: FY21 CIP Control No. C0243
Unbudgeted \$: See back Source of Funds: Community Development Block Grant/Stormwater Fund

Quantity	Description	Value
1	Installation of Traffic Signal at Railroad Overpass	\$168,514.00
1	Installation of stormdrain, curb and walls	\$31,240.00

TOTAL VALUE OF PROJECT: NTE \$199,754.00

ABOVE TO BE USED FOR:

As suggested by local Neighborhood 1st Group back in 2018, install traffic signal on both sides of the one-lane railroad overpass. Traffic/cyclists will activate green light. Eliminates the need to 'sound horn' when entering overpass. Project also includes lighting improvements outside overpass.

Recommended Vendor:

Business Name: Milton Stamper Builders
Address: 313 East Wilson Boulevard Ste 1
City, State: Hagerstown, MD 21740
Bid/Proposal/Quote No.: 20-TS-25

OTHER VENDORS:

Firm	City/State	Total Amount
Huntzberry Brothers	Smithsburg, MD	\$199,949.00
ALC Landscape & Construction, Inc.	Hagerstown, MD	\$211,594.47
McLean Contracting	Glen Burnie, MD	\$223,000.00

(1) Department Manager

Staff recommends the award of Contract 20-TS-25 to Milton Stamper Builders of Hagerstown, MD. Staff further recommends authorizing City Light staff to complete electric. Funding is as follows:

\$138,514.00 CDBG Fund Balance for Project

\$ 30,000.00 CDBG Fund Transfer ~~Handicap Ramp funding~~

\$ 31,240.00 Stormwater Protection Fund

\$199,754.00

→ (FY21 Bud Amended needed)

-Add'l allocation requested (separate work session discussion)

RAT 11/3/20

Signature / Date

(2) Purchasing Agent:

Recommend Approval.

Jason L. Miller
11/05/2020

Signature / Date

(3) Finance Manager:

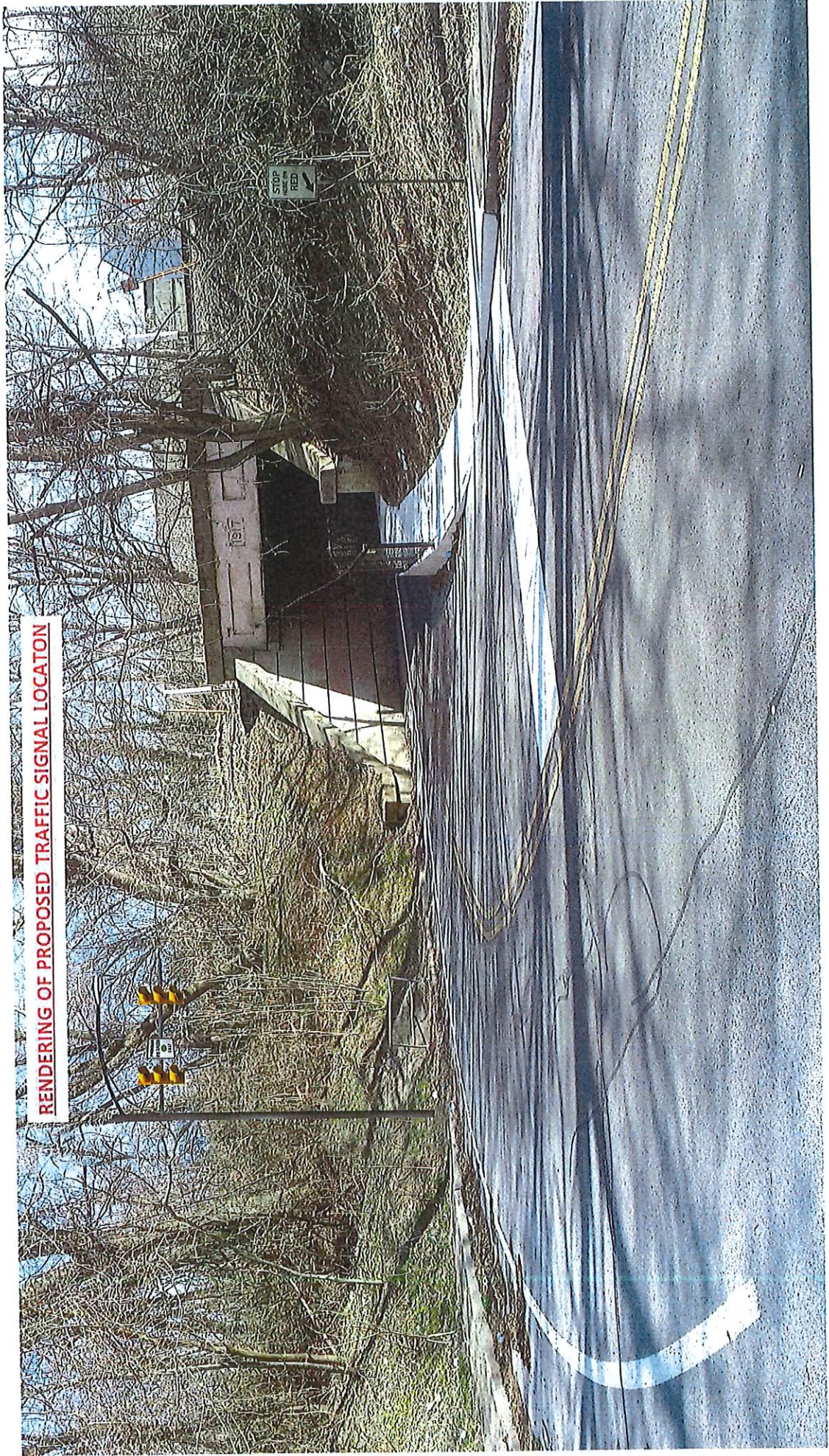
Approve - this project planning started prior to COVID as a priority ^{safety} improvement. It is not anticipated necessary FY21 budget reductions would be moved from this project. Majority of funding is CDBG funding and remaining from ~~new~~ SWM fund + program.

Michelle Miller
Signature / Date 11/5/20

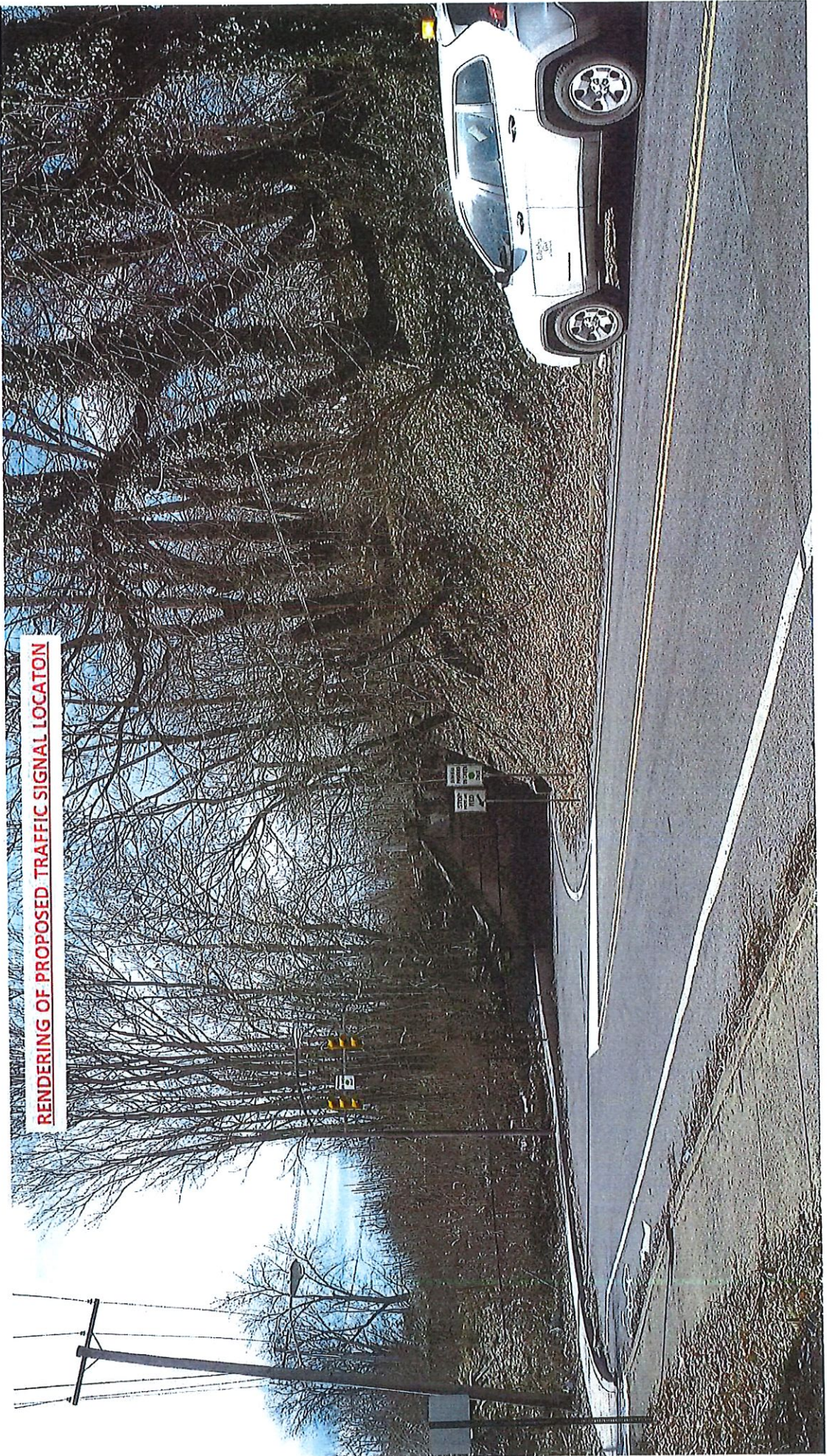
(4) City Administrator's Recommendation:

Needed safety upgrade to this underpass. Recommend approval.

Scott Newman 11/5/2020
Signature / Date



RENDERING OF PROPOSED TRAFFIC SIGNAL LOCATION



RENDERING OF PROPOSED TRAFFIC SIGNAL LOCATION

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

Topic:

Deck Replacement Hamilton Run Box Culvert - Jefferson Boulevard - Concrete General, Inc.
(Gaithersburg, MD) \$ 94,800.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Engineering_-_Deck_Replacement_at_Hamilton_Run_Box_Culvert.pdf

Description

Signed Consent Form

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 11/17/20**

Do Not Complete This Section Approved Consent Agenda: _____ New Business: _____

Originating Department: Parks & Engineering By: Rodney Tissue

Account Number: 4509004 5594 Account / Project Name: Bridge Repair Program

Budget Amount: \$100,000 Account Balance: \$88,680 Year: FY21 CIP Control No. C0400

Unbudgeted \$: -0- Source of Funds: ~~GIP Fund Balance~~ FY21 GF Transfers

Quantity	Description	Value
1	Deck Replacement Hamilton Run Box Culvert – Jefferson Boulevard	\$94,800.00

TOTAL VALUE OF PROJECT: \$94,800.00

ABOVE TO BE USED FOR:

Existing deck surface is spalling and cracked and at the end of useful life. Project would mill off and replace wearing surface. Includes maintenance of traffic, bridge seal, waterproofing, deck replacement, and paving approach road in both directions.

Recommended Vendor:

Business Name: Concrete General Inc.

Address: 8000 Beechcraft Avenue

City, State: Gaithersburg, MD 20879

Bid/Proposal/Quote No.: XX1635P80 (SHA Contract No.)

OTHER VENDORS:		
Firm	City/State	Total Amount
Piggyback on State Highway Maintenance Contract		

(1) Department Manager

Since it is difficult to find bridge contractors who will do small jobs like this, we recommend a piggyback on the Maryland State Highway Administration Bridge Maintenance Contract No. XX1635P80. Recommend award of contract to Concrete General in the amount of \$94,800. (Statewide minor Rehabilitation of Bridges & Culverts)

R. J. J. 11/3/2020

Signature/Date

(2) Purchasing Agent:

Recommend approval.

Jason T. Miller
11/05/2020

Signature / Date

(3) Finance Manager:

Approve - funding for this infrastructure upgrade/maintenance was included in FY21 budget. It is a priority infrastructure upkeep? is not anticipated to reduce budget for this specific project to offset current FY21 budget / estimated deficit.

Michelle H. [Signature]

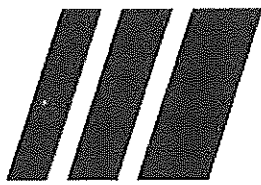
Signature / Date

(4) City Administrator's Recommendation:

Revised Approval

Scott Thewissen 11/5/2020

Signature / Date



CONCRETE GENERAL INCORPORATED

To: City Of Hagerstown	Contact: Rodney Tissue, PE
Address: Room 301, City Hall, 1 E. Franklin Street Hagerstown, MD 21740	Phone:
	Fax:
Project Name: Concrete And Bridge Work For Hagerstown	Bid Number: 14-14-BR-20
Project Location:	Bid Date: 10/30/2020
Addendum #: 0	

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
120500	MAINTENANCE OF TRAFFIC - JEFFERSON	1.00	LS	\$8,606.00	\$8,606.00
130850	MOBILIZATION - JEFFERSON	1.00	LS	\$4,316.00	\$4,316.00
435130	PARTIAL DECK REPAIR -JEFFERSON ST	1.00	LS	\$26,900.00	\$26,900.00
530160	MILL, WATERPROOF & HMA RESURFACE 2" JEFFERSON	231.00	SY	\$238.00	\$54,978.00

Total Bid Price: \$94,800.00

Notes:

- The above prices do include Performance and Payment Bond
- The above prices do not include Permits.

Payment Terms:

Payment due within 30 days of date of Final Invoice

ACCEPTED:

The above prices, specifications and conditions are satisfactory and are hereby accepted.

Buyer: _____

Signature: _____

Date of Acceptance: _____

CONFIRMED:

Concrete General, Inc.

Authorized Signature: _____

Estimator: Mark Miller
(301) 948-4450 mmiller@concretegeneral.com



JEFFERSON BLVD.



APPROX. AREA TO BE REPAIRED
AND OVERLAYED



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

Topic:

Electric - Reimbursement to Easton Utilities Commission for Lobbyist Service (Easton, MD) \$ 20,014.00

Mayor and City Council Action Required:

Approval to reimburse Easton Utilities Commission for Lobbyist Services.

Discussion:

Lobbyist services to assist with a cap on the solar requirements mandated for the Maryland Renewable Portfolio Standard.

The 2019 Maryland's Clean Energy Jobs Act increased the Renewable Portfolio Standard requirements for the State to reach a renewable energy source requirement of 50% by 2030. Additionally, the requirements for solar energy sources increased from 2.5% to 6% for 2020 and are on a path to increase annually until they reach 14.5% by 2028 and beyond. All Electric Utility Companies in Maryland must meet this requirement with the exception of Cooperative Electric Utilities, which were provided a 2.5% cap on their solar requirements. The five Municipal Electric Utilities in Maryland are collectively seeking assistance in the Maryland legislature to provide a cap on the required percentage for solar renewables while meeting the State's renewable energy resource goal of 50% by 2030.

Financial Impact:

Easton generously offered to be 100% responsible for the service fees totaling \$45,000, however, staff recommends assisting with these charges. Using a load sharing method, HLD contributed 44.5% of the total combined megawatt-hours purchased in 2019, which equates to a \$20,014 share.

To compare, the 2022 energy market projects the unit cost for Tier 1 renewable resources in Maryland to be approximately \$11.13 per REC (renewable energy credit) where a solar REC, or SREC, has a market rate of \$56.59. Assuming energy purchases are roughly 330,000 MWh, meeting the State requirements of 24.6% Tier 1 and 8.5% Solar, the total cost burden would equate to \$2,409,882.90. Should the municipalities be provided a 2.5% cap, similar to the Cooperatives, a savings of \$900,108 would be realized.

Recommendation:

Motion:

Action Dates:

Regular Session 11/17/2020

ATTACHMENTS:

File Name

Light_Reimbursement_to_Easton_Uilities_Commission.pdf
Lobbyist_Memorandum_202011117.pdf

Description

Signed Consent Form
Memorandum

MEETING OF 11/17/2020

CONSENT AGENDA X

***(See Department Manager Comments)**

QUANTITY	DESCRIPTION	AMOUNT
1	Reimbursement to Easton Utilities Commission for Lobbyist Service	\$ 20,014.00
	TOTAL AMOUNT	\$ 20,014.00

ABOVE TO BE USED FOR:

Lobbyist service in pursuit of obtaining municipal relief from solar renewable energy requirements at the 2021 Maryland General Assembly

BID/PROPOSAL/QUOTE NO.

RECOMMENDED VENDOR:

BUSINESS NAME: Easton Utilities Commission

ADDRESS: 201 N Washington St

CITY, STATE: Easton, MD 21601

OTHER VENDORS:

[illegible]

(1) DEPARTMENT MANAGER:
Recommend purchase from sole provider
Memorandum Attached

Nathan Lutzinger

11/4/2020

SIGNATURE/DATE

(2) PURCHASING AGENT:

Recommend approval.

Jason T. Miller 11/05/2020

SIGNATURE/DATE

(3) FINANCE MANAGER:

*Approve - important assistance with needed
legislation changes. Funding has been identified
and will be moved from Consulting & Admin
(5014506.5305) to cover the
\$19,514 needed*

Michelle Heffner 11/5/20

SIGNATURE/DATE

(4) CITY ADMINISTRATOR:

Recommend Approval

Scott Newbauer 11/5/2020

SIGNATURE/DATE



425 East Baltimore Street

Hagerstown, MD 21740-6105

November 4, 2020

To: Scott Nicewarner, City Administrator

From: Nathan Fridinger, Electric Operations Manager
Nancy Hausrath, Director of Utilities

Subject: Lobbyist Services for Maryland Renewable Portfolio Standard
Cap for Solar Requirements

The 2019 Maryland's Clean Energy Jobs Act increased the Renewable Portfolio Standard requirements for the State to reach a renewable energy source requirement of 50% by 2030. Additionally, the requirements for solar energy sources increased from 2.5% to 6% for 2020 and are on a path to increase annually until they reach 14.5% by 2028 and beyond. All Electric Utility Companies in Maryland must meet this requirement with the exception of Cooperative Electric Utilities, which were provided a 2.5% cap on their solar requirements.

The five Municipal Electric Utilities in Maryland are collectively seeking assistance in the Maryland legislature to provide a cap on the required percentage for solar renewables while meeting the State's renewable energy resource goal of 50% by 2030. The Town of Easton acquired lobbyist services from Old Line Government Affairs to assist all five Municipal Electric Companies through the general assembly. Easton generously offered to be 100% responsible for the service fees totaling \$45,000, however, staff recommends assisting with these charges. Using a load sharing method, HLD contributed 44.5% of the total combined megawatt-hours purchased in 2019, which equates to a \$20,014 share.

HLD purchases energy through a full requirements wholesale power contract and adhering to the requirements of the Renewable Energy Portfolio Standard (RPS) is a function of the wholesale power supplier. There is a true-up built into the contract beginning June 1, 2022 that will adjust the RPS component of our wholesale power rate to conform to the market and comply with the State requirements. Any savings to the wholesale power rate for renewable energy resources will then be calculated through the Purchase Power Cost Adjustment and reflected on customers' electric bills.

To compare, the 2022 energy market projects the unit cost for Tier 1 renewable resources in Maryland to be approximately \$11.13 per REC (renewable energy credit) where a solar REC, or SREC, has a market rate of \$56.59. Assuming energy purchases are roughly 330,000 MWh, meeting the State requirements of 24.6% Tier 1 and 8.5% Solar, the total cost burden would equate to \$2,409,882.90. Should the municipalities be provided a 2.5% cap, similar to the Cooperatives, a savings of \$900,108 would be realized.

	2022	2022 with Solar Cap
Tier 1 Requirements	33.1%	33.1%
Alternative Tier 1	24.6%	30.6%
Solar	8.5%	2.5%
Energy Purchases (MWh)	330,000	330,000
Tier 1 Purchases (MWh)	81,180	100,980
Solar Purchases (MWh)	28,050	8,250
REC	\$ 11.13	\$ 11.13
SREC	\$ 56.59	\$ 56.59
Total Tier 1	\$ 903,533.40	\$ 1,123,907.40
Total Solar	\$ 1,587,349.50	\$ 466,867.50
Total RPS	\$ 2,490,882.90	\$ 1,590,774.90

Difference	\$ 900,108.00
------------	---------------

Examples of Tier 1 renewable resources alternative to Solar are Wind, Qualifying Biomass, Methane from a landfill or wastewater treatment plant, Geothermal, Hydroelectric power plants of less than 30 MW capacity, Poultry litter-to-energy, Waste-to-energy, and Refuse-derived fuel.

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

Topic:

Wastewater: Sludge Holding Tank Cleaning Services - Synagro (Baltimore, MD) \$ 25,857.00

Mayor and City Council Action Required:

Discussion:

PASS THRU EXPENSE TO EXISTING CONTRACT WITH SYNAGRO TO CLEAN OUR SLUDGE HOLDING TANK.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Wastewater_-_Sludge_Holding_Tank_Cleaning_Services.pdf

WW_SLUDGE_STORAGE_TANK_CLEANING.pdf

Description

Signed Consent Agenda

WW SLUDGE STORAGE
TANK CLEANING

Approval For:	
Consent Agenda:	X
New Business:	

Above To Be Used For:

Recommended Vendor:

City, State: Baltimore, MD 21220

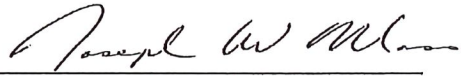
Other Vendors: Pass thru expense for routine maintenance under the existing contract with Synagro

Amount

Comments

Department Manager (required on all unbudgeted items):

The modifications to the Pelletizing Facility at the WWTP are now complete and Synagro will be demobilizing their mobile Belt Filter Press operation soon. Periodic cleaning of the sludge holding tank needs to be done as part of the routine maintenance for the pelletizing process to prevent the build up of material around the air distribution piping on the bottom of the tank. Having Synagro complete this task while the temporary dewatering systems are still operational is the most convenient time. Tipping fees at the landfill will be billed directly to the City.



Wastewater Operations Manager

November 17, 2020

Date

Finance Department:

Recommend Approval.



Signature

11/05/2020

Date

Finance Manager:

Transfer funding of \$25,857 from maintenance (6471501.5374) to cover this line item budget need.



Signature

11/5/20

Date

City Administrator's Recommendation:

Recommend Approval



Signature

11/5/2020

Date

November 3, 2020

RE: The City of Hagerstown Wastewater Treatment Plant Residuals-2020

Mr. Joseph Moss
Operation & Maintenance Manager
City of Hagerstown, WWTP
1 Clean Water Circle
Hagerstown, Md. 21740

Mr. Moss,

Synagro is pleased to submit this proposal to cleanout, dewater and dispose of residuals located at the City of Hagerstown Wastewater Treatment. We are prepared to provide the necessary resources and personnel upon acceptance of this proposal and execution of a mutually acceptable agreement.

Project Understanding;

Presently, The City of Hagerstown WWTP has a residuals storage tank that measures 50 feet in diameter. It is estimated that there are 30,000 gallons in place. Based on our assessment of the volumes we estimate that after removal and dewatering there are approximately 15-20 dry tons of material to be transported to the Washington County landfill (City to pay landfill tipping fees).

Scope;

Synagro will mobilize the resources and personnel to the project site. The mobilization and set up will take approximately 1-day to complete. The operations team will pump, dewater and load on days 2 and 3. It is estimated that we will produce 1 dry ton per hour and approximately 8 to 10 dry tons per day. This will be 2 loads per day for transportation and disposal at the Washington County landfill. Day 4 will be a wash down of the tanks and complete demobilization of the project. Synagro will operate on a 12-hour day with 10 hours of processing.

Project Pricing;

Synagro will invoice the project as follows:

Mobilization and Demobilization.....No Charge

A per day rate for the removal, dewatering and loading of the materials at\$6,221.25 per day
4 days estimated

Transportation of residuals to landfill.....\$24.30 per ton
City to pay tipping fees



Approval For: _____
 Consent Agenda: X
 New Business: _____

Quantity	Description	Value
Estimated	Sludge holding tank cleaning services:	
	\$6,221.25 per day X 4 days	\$24,885.00
	\$24.30 per ton X 2 loads X 20 tons per load	\$972.00
	TOTAL	\$ 25,857.00

Pump out sludge in bottom of Sludge Holding Tank No. 2 and process it through the temporary Belt Filter Press that Synagro brought in to dewater our sludge while the Pelletizing Facility was being rehabilitated. Power wash the inside of the tank, air distribution header and air diffusers.

Business Name: SYNAGRO

Address: 435 Williams Court, Suite 100

City, State: Baltimore, MD 21220

Proposal/Quote No.: (See Attached)

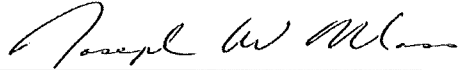
<u>Firm</u>	<u>City, State</u>	<u>Amount</u>
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[illegible]

Comments

Department Manager (required on all unbudgeted items):

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Wastewater Operations Manager

November 17, 2020

Date

Finance Department:

Signature

Date

Finance Manager:

Signature

Date

City Administrator's Recommendation:

Signature

Date

November 3, 2020

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4 days estimated

Transportation of residuals to landfill.....\$24.30 per ton
City to pay tipping fees



Our proposal is delivered in good faith. Please note that this proposal is based on Synagro's standard terms and conditions and shall be strictly non-binding upon Synagro until all parties negotiate and execute a binding contract. This proposal shall not obligate Synagro to negotiate an agreement and any of the terms of the contract shall be subject to Synagro's approval, at its discretion

We appreciate the opportunity to submit this proposal for your consideration and look forward to the opportunity to provide our services.

Should you have any questions, please contact me at 443-248-3827 or mtabisz@synagro.com

Warm regards,



Matthew Tabisz
Business Development Manager



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

Topic:

Approval of an Ordinance: Authorizing the Sale of Property Located at 170 West Washington Street

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

I hereby move for the Mayor and City Council to approve an Ordinance authorizing the sale of two City-owned parcels located at 170 West Washington Street to 170 West Washington Partners LLC for the sum of \$1,000. The sale will provide the opportunity for approximately \$1.1 million of private investment for mixed used property redevelopment. The sale will be in accordance with all terms and conditions outlined in the attached Purchase Agreement.

Action Dates:

DATE OF INTRODUCTION:	10/27/2020
DATE OF PASSAGE:	11/17/2020
EFFECTIVE DATE:	12/18/2020

ATTACHMENTS:

File Name

111720_Approval_170_W_Washington_St.pdf

Description

Approval 170 W
Washington Street

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: Approval of an Ordinance: Authorizing the Sale of Property Located at 170 West Washington Street

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

MOTION: I hereby move for the Mayor and City Council to approve an Ordinance authorizing the sale of two City-owned parcels located at 170 West Washington Street to 170 West Washington Partners LLC for the sum of \$1,000. The sale will provide the opportunity for approximately \$1.1 million of private investment for mixed used property redevelopment. The sale will be in accordance with all terms and conditions outlined in the attached Purchase Agreement.

DATE OF INTRODUCTION:	10/27/2020
DATE OF PASSAGE:	11/17/2020
EFFECTIVE DATE:	12/18/2020

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO APPROVE THE SALE
OF A PROPERTY KNOWN AS
12 NORTH PROSPECT STREET AND
170 WEST WASHINGTON STREET, HAGERSTOWN, MARYLAND
AND AUTHORIZING EXECUTION AND DELIVERY OF A
PURCHASE AGREEMENT BETWEEN THE CITY AND 170 WEST WASHINGTON
PARTNERS LLC**

RECITALS

WHEREAS, the City of Hagerstown, hereinafter called “the City,” owns a property located at Maryland known as 12 North Prospect Street (Tax Map 306; Parcel 0553) and 170 West Washington Street (Tax Map 306; Parcel 0554) and identified in a Deed to the City dated March 22, 2013, and recorded at Liber 4497, Folio 0187 (hereinafter the “Property”); and

WHEREAS, the Property is a vacant residential building, consisting of approximately fifteen (15) residential units, none of which has been occupied since the City purchased it; and

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

WHEREAS, 170 West Washington Partners LLC, a Maryland limited liability company, has submitted a proposal for purchase and redevelopment for the Property, which proposal has been approved and recommended by City staff; 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, including various Addenda and other attachments, for the purchase of the Property; and

WHEREAS, the Purchase Agreement requires 170 West Washington Partners LLC to rehabilitate, market and rent the Property within one (1) year of the date of purchase; 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 170 West Washington Partners 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

Robert E. Bruchey, II, Mayor

Date of Introduction: October 27, 2020
Date of Passage: November 17, 2020
Effective Date: December 18, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "**Agreement**") is made as of the ____ day of _____ 2020, by 170 West Washington Partners LLC ("**Buyer**") and the City of Hagerstown, a Maryland municipal corporation ("**Seller**").

RECITALS

A. Seller is the owner in fee simple of certain improved real property consisting of 2 parcels of land located in the City of Hagerstown, Maryland known as 12 North Prospect Street (Tax Map 306; Parcel 0553) and 170 West Washington Street (Tax Map 306; Parcel 0554) and identified in a Deed to Seller dated March 22, 2013 and recorded at Liber 4497, Folio 0187. The foregoing real property and improvements are collectively referred to herein as the "**Property**".

B. 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 aggregate purchase price for the Property ("**Purchase Price**") shall be ONE THOUSAND DOLLARS (\$1,000.00), subject to adjustments and prorations as set forth below and in Section 5.

3.2 Terms of Payment. The Purchase Price shall be paid by Buyer as follows:

3.2.1. Upon both parties signing this Agreement, a deposit of \$500.00 shall be paid to Seller available funds by cash, certified check or wire transfer.

3.2.2. Upon closing under this Agreement, the balance of the Purchase Price shall be paid to Seller in 100% available funds by cash, certified check or wire transfer.

4. Closing. The closing of the purchase and sale of the Property shall be **held on or before February 28, 2021**.

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 special warranty deed to the Property including a covenant of further assurances, duly executed and acknowledged by Seller and in proper form for

recording, conveying fee simple title to the Property to Buyer or its designee subject to all conditions, restrictions, rights of way and easements of record and any Permitted Exceptions. Buyer hereby acknowledges and agrees that the deed shall contain a covenant prohibiting use of the Property as a bail bond business, a store front church, Hookah Shop, pawn shop, check cashing shop, gun shop, adult bookstore/video store, massage parlor, tanning salon, or tattoo business for a period of 10 years.

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

4.1.6 such other information as Buyer 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 the balance of the Purchase Price as adjusted pursuant to the terms hereof;

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.

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 by Buyer. 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 within thirty (30) days of the date of this Agreement (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 thereof within twenty (20) days after the Effective Date (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, and (ii) neither Buyer nor Seller shall have any

further obligations to one another hereunder, except for those which expressly survive termination of this Agreement.

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 and beneficial 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 leases exist on the Property: none.

7.6 Other Agreements. Seller is not a party to, nor does Seller have knowledge of, any agreements relating to the Property.

7.7 Condemnation, Violation of Laws, Etc. Excepting City Code violations which have been noted but not yet cited, 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 Hazardous Conditions.

(i) During Seller's ownership of the Property there have been no, and there are no pending or, to Seller's knowledge, threatened: (A) claims, complaints, notices, or requests for information received by Seller with respect to any alleged violation of any Environmental Law with respect to the Property, or (B) claims, complaints, notices, or requests for information to Seller regarding potential or alleged liability under any Environmental Law with respect to the Property.

(ii) To Seller's knowledge, no conditions exist at, on, or under the Property that, with the passage of time or the giving of notice or both, would constitute a Hazardous Condition or give rise to liability under any Environmental Law.

(iii) Seller has not received notice of any violation of any orders, directives, requirements, permits, certificates, approvals, licenses, and other authorizations relating to Environmental Laws with respect to the Property.

(iv) To Seller's knowledge there are no aboveground tanks in excess of 275 gallon storage capacity or any underground storage tanks (collectively, "USTs") at the Property. Seller has not removed or abandoned any USTs at the Property and Seller has no knowledge of the existence, abandonment or removal of USTs at the Property.

(v) To Seller's knowledge there are no polychlorinated biphenyls ("PCBs") or friable or damaged asbestos at the Property, and Seller has not removed (or required or requested the removal of) any PCBs or damaged or friable asbestos from the Property, and Seller has no knowledge of the previous existence of any PCBs or damaged or friable asbestos at the Property.

For purposes of this Agreement, the following terms shall have the meaning as indicated:

"Environmental Law" shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 et seq.) as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.) as amended; (v) the Clean Water Act (33 U.S.C. §§ 1251 et seq.) as amended; (vi) the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.) as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.) as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (x) any state, county, municipal or local statutes, laws or ordinances similar or analogous to the Buyer statutes listed in parts (i) - (ix) of this definition; (xi) any amendments to the statutes, laws or ordinances listed in parts (i) - (x) of this definition, regardless of whether the same are in existence on the date hereof; (xii) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or to implement the statutes, laws, ordinances and amendments listed in parts (i) - (xi) of this definition; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline, directive, order or the like relating to environmental or other matters covered by the foregoing.

"Governmental Authorities" shall mean any board, bureau, commission, department or body of any municipal, township, county, city, state or federal governmental unit, or any subdivision thereof, having or acquiring jurisdiction over any of the Property or the ownership, management, operation, use or improvement thereof.

"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.

7.16 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.

8.1. Buyer hereby represents and warrants to Seller that: (i) Buyer is a limited liability company formed and existing under the laws of the State of Maryland and is 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.

8.2. The parties acknowledge that this property is being sold for less than fair market value in order to promote the City's efforts to revitalize its downtown core. In consideration thereof, Buyer agrees to the following: (1) Buyer shall perform all acts necessary to bring any and all residential rental units in the Property up to any and all applicable building and livability codes (including but not limited to the City of Hagerstown's Rental Facilities Ordinance at Chapter 197 of the City Code) within twelve (12) months of purchase. Thereafter, Buyer shall attempt to rent the rental units in the Property at market rate.

8.3. Buyer shall include following amenities in each residential unit:

- Central HVAC system.
 - Washer and dryer.
 - Dishwasher.
 - Wood veneer or solid wood kitchen and bathroom cabinets.
 - Approved solid surface counter tops in kitchen and bathrooms.
 - Refinished or new hardwood floors or wall-to-wall carpeting in areas other than kitchen and bathrooms.
 - Where possible, outdoor amenities should be provided for tenants (e.g., balconies, roof top decks, back porches, sunrooms, etc.).
- Each residential unit shall meet the following minimum square footages requirements:
- 400 square feet for an efficiency unit
 - 500 square feet for a one-bedroom unit
 - 650 square feet for a two-bedroom unit
 - 900 square feet for a three-bedroom unit

8.4. Buyer shall submit a detailed development plan and marketing plan on or before December 31, 2020 that shows how it plans to attract residential and commercial tenants to the project. The development plan and marketing plan shall be subject to Mayor and Council approval in its sole and absolute discretion, with said approval being a condition precedent to close on this Agreement.

8.5. Buyer shall apply for the following City Programs:

- Partners in Economic Progress (PEP) Program;
- Invest Hagerstown Grant Program;
- Life Safety Infrastructure Grant Program; and
- Student Housing RFP

8.6. Buyer's minimum investment in the renovations to the Property shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) and shall occur within one (1) year of closing. Any grants awarded to Buyer shall be counted toward the ONE MILLION DOLLAR threshold.

8.7 The obligations contained in Paragraph 8.2, 8.3, 8.5 and 8.6 shall survive closing.

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 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.

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.

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. 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 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. 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 broom-clean condition at Closing.

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

11. 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, 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.

12. Breach/Termination.

12.1 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 right, at its sole option, 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; or (ii) pursue any legal or equitable remedies to which Buyer may be entitled on account of the foregoing, including, without limitation, specific performance and recovery of actual third party costs and expenses incurred by Buyer with respect to this Agreement, the Property and the Inspections, up to a maximum of Ten Thousand Dollars (\$10,000.00).

12.2 Breach by Buyer.

12.2.a. ***Before closing.*** 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 sole and exclusive remedy shall be to terminate this Agreement, and retain all of Buyer's Deposit, all other claims for losses, damages, costs and expenses being waived.

12.2.b. ***After closing.*** 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 shall have the right to sue for all losses, damages, claims (including but not limited to claims for specific performance), costs and expenses (including but not limited to any incidental and/or consequential damages).

12.3 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 by Buyer as provided above, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.

13. 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.

14. Entire Agreement/Modification. This Agreement (including Addendum No. 1, Addendum No. 2 and EPA Pamphlet, 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.

15. Miscellaneous.

15.1 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.

15.2 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 may only be brought the Circuit Court for Washington County, Maryland or the District Court of Maryland for Washington County. All parties hereto consent to such jurisdiction.

15.3 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 (x) when delivered, with written receipt, if personally delivered or delivered by nationally recognized overnight courier, or (y) 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.

Seller's notice address:

Jonathan Kerns
Dept. of Community & Economic Development
N. Potomac Street
Hagerstown, MD 21740

With a copy to:

Jason Morton
82 West Washington St
Ste 100
Hagerstown, MD 21740

Buyer's notice address:

With a copy to:

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

15.5 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.

15.6 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. 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.

17. 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.

18. 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.

19. Time of the Essence. Time shall be of the essence under this Agreement.

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

21. 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.

22. Any approvals required under the provisions of this Agreement by City shall be as duly authorized by the Mayor and Council as its duly constituted legislative body.

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: _____
Robert E. Bruchey, II
Mayor

ATTEST:

BUYER:

Name:

By: _____

ABOUT US

Trademark Investments, LLC

Historic Rehabilitation
and Development



443.718.0803 | info@trademarkprops.com | www.trademarkprops.com

Trademark Investments

Historic Rehabilitation and Development

OVERVIEW

- Key Focus on Development, Construction, and property management in the prime high growth Baltimore & Washington, D.C. Metropolitan Area
- Add value to historic real estate assets through adaptive reuse, value engineering, and working with the local Chap authorities, Maryland Historical Trust, and the National Park Service to secure tax credit subsidies.
- Leveraging our outstanding relationships and brand recognition with our investor base.
- A deep understanding of the local rental markets from extensive property management experience in the Baltimore & Washington, D.C. Metropolitan area



INVESTMENT STRATEGY

MISSION

Trademark Investments aims to transform communities by acquiring vacant or underused properties and convert them into high-end, affordable workforce housing and commercial space.

TARGETED ACQUISITIONS:

Distressed and/ or underutilized historic properties in downtown areas near schools, hospitals, and central business districts.



The Totman Building located at 208 E. Redwood St. was vacant for several years prior to our purchase, and is now a 26 unit, fully occupied mixed use building in the heart of the business district.

Trademark Investments

Historic Rehabilitation and Development

WHAT WE DO



URBAN REVITALIZATION MASTER PLANNING

We provide urban revitalization planning services to our community and municipal partners, who often need expertise in understanding what it takes to kick-start healthy urban communities. We can offer this expertise on a broad or on a narrower scale, such as our work to renovate the historic communities throughout Mount Vernon and the greater Baltimore City area. Our clients depend on that knowledge, that insight, and that experience. We have market-leading experience in using the best financing tools available to turn vision and plans into reality. We routinely utilize and layer complex financing tools, such as historic tax credits, to successfully implement our best revitalization strategies.

HISTORIC REHABILITATION

Our historical rehabilitation services seek to complement the surrounding built environment and foster the best traits of a walkable, sustainable, urban lifestyle. We have successfully used historic renovation and new construction urban infill to contribute to high density communities. We are continually evolving and thinking innovatively as we use the best designs, city views, and modern amenities to make our next project the best home our residents can find.

Trademark Investments

Historic Rehabilitation and Development

OUR SERVICES

DEVELOPMENT
CONSTRUCTION
MANAGEMENT



DEVELOPMENT

Trademark Investments provides comprehensive real estate development services including deal structuring and financing, design, construction management, and property management. Because we provide development services that transform buildings, neighborhood blocks, and ultimately communities, our developments are the catalysts for, or the continued momentum of, broader neighborhood revitalization strategies. Trademark Investments provides a wide array of mixed-use and residential development services within two categories: Urban Revitalization Master Planning and Historic Rehabilitation.

CONSTRUCTION

As a respected contractor with our original roots in the Greater Baltimore region, Greater Baltimore Construction specializes in construction and general contracting services for Mixed-use and the multifamily residential market, both new construction, rehab and historic rehab.

Greater Baltimore Construction consistently drives terrific value to each project by integrating our talent throughout each step of the planning and construction phases of a project. From the execution of highly complex mid-rise buildings to single story structures located in historic communities, our extensive experience allows for each client's project to be tailored to their site and their project.

MANAGEMENT

We provide professional, knowledgeable and experienced representation for your leasing and property management needs. You control and retain ownership of your property, while we manage it to provide the greatest return on your investment. Our staff is equipped with the proper management software to be able to quickly interact with current tenants, market to prospective tenants, respond to maintenance requests, and manage various accounts:

- » Full leasing services, including tenant screening
- » Move in/move out reports
- » Maintenance
- » Rent collection
- » Eviction services/suit filings



Trademark Investments



TRADEMARK
PROPERTIES

Trademark Investments

Historic Rehabilitation and Development

WHO WE ARE

TEAM MEMBERS



PATRICK GRACE | PRINCIPAL

Patrick Grace has been involved in the real estate industry for 20+ years and has been the owner of Trademark Investments since 2005. Since that time he has founded Trademark's two complimentary businesses, Greater Baltimore Construction and Trademark Property Management. The companies provide a spectrum of real estate services including sourcing, analyzing, developing, constructing, and managing properties. Their primary focus has been the rehabilitation of historic properties into multifamily or mixed-use, while securing federal, state, and local tax credits and incentives. Their projects help to serve the company's long-term commitment to providing affordable luxury housing to the Mid-Atlantic region, while restoring the historic architecture that makes the area unique. Mr. Grace received his bachelor's degree from James Madison University and his MBA from Georgetown University.



SEAN SIGMON | ASSET MANAGER

Sean Sigmon joined Charm City Development, LLC in 2018 after graduating from the University of Maryland at College Park. Sean holds a bachelor's degree in Economics and minored in both Real Estate Development and Public Policy. While in college, Sean interned with Morgan Properties where he gained valuable experience in the Real Estate industry and as a Property Manager. As our Asset Manager, Sean takes pride in making sure each property maximizes in potential and return on investment. Sean takes the lead in directing all property marketing, leasing, maintenance up-keep, and resident relations to protect the Asset of the investor and to add value to that asset.

Trademark Investments

Historic Rehabilitation and Development

WHO WE ARE

TEAM MEMBERS



THOMAS JACOBI INVESTOR RELATIONS

Thomas Jacobi is the head of investor relations for Trademark Investments. He joined the company in 2017 after several years of private real estate development. Thomas is an experienced and successful entrepreneur and real estate investor who has an appreciation for the region's history, cultural offerings, and accessibility. Once an opportunity is identified, Thomas is able to leverage his track record and experience to reach back into his pool of investors to raise the equity capital needed to fund the projects.

A seasoned film professional, Thomas also runs Jacobi Films Inc., an international film production company that works with firms such as National Geographic, Discovery, and Netflix.

Trademark Investments

Historic Rehabilitation and Development

CURRENT & PAST PROJECTS

406 M Street, NW



Purchased in 2006 this historic property is located in the heart of Washington D.C.'s Mount Vernon neighborhood. The property was completely gutted and converted into apartments, and then ultimately developed and sold as individual condominium units, the last of which were sold in 2018.



7 WEST MULBERRY STREET

"The Old Cathedral School", this property was America's first Catholic School. Located directly across from the historic Basilica, it was vacant and neglected prior to our purchase in 2015. has been restored and the property now consists of historic architecture, 10 apartments and a ground floor office. The property was recently featured on several episodes of the Ellen DeGeneres Show.



"THE TOTMAN BUILDING" 208 E REDWOOD STREET

The original Baltimore Stock Exchange Building, the property was completely destroyed in the Great Baltimore Fire of 1904, and rebuilt in 1906. It was vacant for several years prior to our purchase and is now a 26 unit, fully occupied mixed use building in the heart of the business district. The property was delivered in late 2017 and features complete restoration of the original architecture.



1018 Florida Avenue, NE

A vacant property in NE Washington, D.C, this was converted into 16 new construction condominiums in 2009. 100% of the units were under contract prior to completion of the project, and sold out immediately.

Trademark Investments

Historic Rehabilitation and Development

CURRENT & PAST PROJECTS

1212-1214 EUTAW PLACE



Completed in 2020, this historic property had been vacant since 1992 when we purchased it. The building had no roof and severe damage, but was ultimately converted to 23 apartments and 3 retail spaces. It was fully leased within 45 days of completion.



411 N. CHARLES STREET

This former doctor's office had been vacant for over a decade when we purchased it in 2016. It had severe interior and exterior damage from a decade of neglect. Completed in 2018, the property is now a gorgeous 10 unit apartment building with 1 retail space. It has been 100% occupied since completion.



803 CATHEDRAL STREET

This historic property in the heart of Mount Vernon was vacant and in desperate need of repairs when we purchased it in 2015. It is now a 10 unit apartment building providing workforce housing.



19 EAST FAYETTE STREET

This property is located in the heart of downtown Baltimore and is slated to be complete Spring 2021. It was originally the Baltimore Savings and Loan Building and is registered on the list of national historic properties. It was a 75% vacant commercial building when we purchased it, and will be transformed into a 29 unit apartment building with garage parking.

PAST PROJECTS





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

Topic:

Approval of an Ordinance: 352 Summit Avenue Quit Claim

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_and_Ordinance_-_352_Summit_Ave_Quit_Claim.pdf

Description

Motion and Ordinance - 352
Summit Avenue Quit Claim

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: Approval of an Ordinance: 352 Summit Avenue Quit Claim

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

MOTION: I hereby move for the approval of an ordinance to quit claim a triangular piece of land and an unimproved alley right-of-way at the intersection of Surrey Avenue and West Memorial Blvd. This land and the alley right-of-way have been determined to no longer be needed for a public purpose.

DATE OF INTRODUCTION: 10/27/2020

DATE OF PASSAGE: 11/17/2020

EFFECTIVE DATE: 12/17/2020

CITY OF HAGERSTOWN, MARYLAND

AN ORDINANCE MAKING A DETERMINATION
THAT CERTAIN PROPERTY IS NO LONGER
NEEDED FOR A PUBLIC PURPOSE AND AUTHORIZING
CONVEYANCE TO ADJOINING PROPERTY OWNER

RECITALS

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

WHEREAS, the City has an interest in a triangular parcel of land lying north of Surrey Avenue and southwest of Memorial Boulevard in the City of Hagerstown and described more particularly in the attached Quit Claim Deed and drawing ("the Parcel"); and

WHEREAS, in accordance with the provisions of the Maryland Code and the Charter of the City of Hagerstown, the Mayor and Council, as the duly constituted legislative body for the City has determined that the Parcel is no longer needed for a public purpose; and

WHEREAS, Robert J. Bottger owns property adjoining the Parcel and has requested that the City execute a quit claim to its right, title and interest in the Parcel adjacent to and adjoining his property, and as depicted on the attached Quit Claim Deed and drawing, subject to the City's retention of a perpetual utility easement; and

WHEREAS, the City agrees to transfer the Parcel as depicted on the attached Quit Claim Deed and Drawing #75-153-02, subject to the aforementioned easement; and

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

WHEREAS, the Mayor and Council find that the Parcel may be quit claimed and conveyed to the adjoining property owner, Robert J. Bottger.

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED as follows:

1. That the foregoing recitals be and are incorporated herein as if fully set forth.

2. That the Mayor and Council find that the Parcel is no longer needed for a public purpose.

3. That the Mayor be and is hereby authorized to execute and deliver a Quit Claim Deed vesting all of its right, title and interest in the Parcel to the adjoining property owner, Robert J. Bottger. The description and extent of the property so conveyed is as depicted on the attached Quit Claim Deed.

4. That the Mayor be and is hereby authorized to execute the attached Quit Claim Deed, and such additional documentation and take all necessary steps to carry out the purpose of this Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that this Ordinance shall become effective upon the expiration of 30 days from the date of its passage.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

Robert E. Bruchey, II, Mayor

Date of Introduction: October 27, 2020
Date of Passage: November 17, 2020
Effective Date: December 17, 2020

PREPARED BY:
SALVATORE & MORTON
CITY ATTORNEYS

THIS QUIT-CLAIM DEED, made on this day of , 2020, by the **CITY OF HAGERSTOWN**, a municipal corporation existing under and by virtue of the Laws of the State of Maryland, hereinafter referred to as "Grantor".

RECITAL

The Grantor owns a certain triangular parcel of land lying north of Surrey Avenue and southwest of Memorial Boulevard, in the City of Hagerstown.

There is a parcel of land adjacent to the triangular parcel that has been designated as a private alley. It has been determined that said area in question has never been utilized by the City and no offer of dedication has ever been accepted to said alley. The Mayor and Council of the City of Hagerstown have determined to Quit Claim any interest that it may have in and to said alley to the Grantee herein in conjunction with the triangular parcel.

The Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, and pursuant to Section 5-204 of the Local Government Article of the Code of Maryland and the Charter of the City of Hagerstown, have determined the hereinafter described property no longer needed for a public purpose.

On November 17, 2020, the Mayor and Council enacted an Ordinance, with an effective date of December 17, 2020, to that effect and authorized abandonment of the hereinafter described property and transfer of the property by Quit Claim Deed to Robert J. Bottger, hereinafter referred to as "Grantee".

The purpose of this Quit Claim Deed is to transfer ownership of all that hereinafter described property to Robert J. Bottger.

Each and every paragraph of this Recital is incorporated in the remainder of this Quit Claim Deed and constitutes a part thereof. Each and every paragraph of the remainder of the Quit Claim Deed is included in this Recital and made a part thereof.

NOW, THEREFORE, That for **NO (\$0.00) MONETARY** consideration, the Grantor herein, does hereby grant, bargain, sell, convey, quit-claim, remise, release and forever discharge unto Grantee, any or all right, title or interest of whatsoever nature or kind, either in law or in equity, that it may have in and to all that real property situate and lying in Election District 2B, Hagerstown, Washington County, Maryland, and being more particularly described as follows:

All that lot or parcel of land, more particularly shown on Exhibit "A" entitled "Proposed

Quit Claim Memorial Blvd & Surrey Ave” as the marked area described as “Quit Claim Area” to be quit claimed which was prepared by the City of Hagerstown on September 30, 2020, revised on October 6, 2020, and designated as 75-153-02.

The above-described parcel is hereby conveyed subject to and together with any and all conditions, restrictions, limitations, easements and rights of way of record applicable thereto. **The City specifically reserves unto itself a perpetual and permanent easement over a 30 foot wide portion of said quitclaimed property depicted on Exhibit A as the cross-hatched area described as “Proposed Sanitary Sewer Easement” for access to the sanitary sewer system including all trenches, lines, pipes, and other facilities over, under, and upon said property, for the purpose of constructing, inspecting, maintaining, repairing, altering, replacing, operating and/or removing said utility lines, with the further right to install, maintain, operate and replace its facilities without responsibility for any damages caused thereby to trees, bushes and undergrowth, and other obstructions interfering with the safe and proper operation and maintenance thereof.** This easement is for the benefit of the City and shall be covenant running with said lands and binding upon Robert J. Bottger’s heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized representative, and its corporate seal to be hereunto duly affixed and attested by the City Clerk.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

CITY OF HAGERSTOWN

Donna K. Spickler, City Clerk

By: _____, Mayor

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY, that on this _____ day of _____, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Robert E. Bruchey, II, who acknowledged himself to be the Mayor of the City of Hagerstown, a Maryland municipal corporation, and that he as such Mayor being authorized so to do, executed the aforefoing Quit-Claim Deed for the purposes therein by signing, in my presence, the name of the City of Hagerstown, by himself as Mayor.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission Expires:

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Jennifer M. Keefer

DEED PREPARED WITHOUT THE BENEFIT OF A TITLE SEARCH

Mail to:
City of Hagerstown
1 East Franklin St.
Hagerstown, MD 21740

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

Topic:

Approval of an Ordinance: Amending Chapter 82, Discriminatory Practices, of the City Code - Updated Personal Protections

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Ordinance_-_Amending_Chapter_82__Discriminatory_Practices.pdf

Description

Motion and Ordinance -
Amending City Code
Chapter 82

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: Approval of an Ordinance: Amending Chapter 82, Discriminatory Practices, of the City Code

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

MOTION: I hereby move for Mayor and Council approval of an ordinance to amend Chapter 82, Discriminatory Practices, of the City Code. This amendment will repeal and replace Article V, Discrimination in Employment, in its entirety to revise the City Code as a result of updates regarding personal protections in federal and state legislation.

DATE OF INTRODUCTION: 10/27/2020
DATE OF PASSAGE: 11/17/2020
EFFECTIVE DATE: 12/17/2020

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF HAGERSTOWN,
BY DELETING AND REPEALING
ARTICLE 5 OF CHAPTER 82 *DISCRIMINATORY PRACTICES* AND
REPLACING THE ARTICLE REPEALED WITH A REVISED AND UPDATED
ARTICLE 5, WHICH PROVIDES FOR UPDATED PERSONAL PROTECTIONS**

RECITALS

WHEREAS, the City of Hagerstown has previously adopted standards to protect against discrimination in employment in Chapter 82, Article V of the Code of the City of Hagerstown (“Discrimination in Employment”); and

WHEREAS, as a result of changes in federal and state legislation and other factors, it becomes necessary from time to time to update the standards contained therein; and

WHEREAS, the Mayor and Council desire to revise and update said Chapter 82, Article V; and

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

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:

SECTION 1: The foregoing recitals be and are incorporated herein as if restated verbatim.

SECTION 2: The Code of the City of Hagerstown, Chapter 82, Article V, entitled “Discrimination in Employment” is hereby amended by repealing Article V thereof, and re-enacting Article V in its entirety to read as follows:

(See Attached)

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon the effective date of this Enacting Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT that this enacting 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

Robert E. Bruchey, II, Mayor

Date of Introduction: October 27, 2020
Date of Passage: November 17, 2020
Effective Date: December 17, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

Chapter 82. Discriminatory Practices

Article V. Discrimination in Employment

§ 82-12. Declaration of policy.

It is hereby declared to be the policy of the City of Hagerstown, in the exercise of its police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government and for the promotion of the City's trade, commerce and manufacturing, to assure all persons equal opportunity in receiving employment and in all labor management-union relations regardless of gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment and, to that end, to prohibit discrimination in employment by any person, group, labor organization, organization or any employer or his agents.

§82-13. Definitions.

For the purpose of this article, the following terms shall have the meanings indicated:

EMPLOYEE

An individual employed by an employer, except that "employee" does not include any person elected to public office or any person chosen by an officer to be on the officer's personal staff, an appointee in the policy-making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. The exception set forth in the preceding sentence does not include employees subject to the state or local civil service laws.

EMPLOYER

A person engaged in an industry or business who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person. Such term does not include the City to the extent as may be provided in this article, but such term does not include a bona fide private membership club, other than a labor organization, which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954.

EMPLOYMENT AGENCY

Any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person. Such term shall not include an agency of the United States or an agency of the State of Maryland or political subdivision thereof, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance.

LABOR ORGANIZATION

A labor organization engaged in an industry and any agent of such an organization, and includes any organization of any kind, any agency or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment and any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.

PERSON

Includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers or any other legal entity.

RELIGION

Includes all aspects of religious observances and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate to an employee's or prospective employee's religious observances or practice without undue hardship on the conduct of the employer's business.

§ 82-14. Prohibitions; exceptions.

A. It shall be an unlawful employment practice:

(1) For an employer:

(a) To fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions or privileges or employment because of such individual's gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(b) To limit, segregate or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of the individual's gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(2) For an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of his gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as

to reasonably preclude the performance of the employment or to classify or refer for employment any individual on the basis of his gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(3) For a labor organization:

- (a) To exclude or to expel from its membership or otherwise to discriminate against any individual because of his gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment.
- (b) To limit, segregate or classify its membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or an applicant for employment because of such individual's gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment.
- (c) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) For any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of his gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature or extent so as to reasonably preclude the performance of the employment in admission to or employment in any program established to provide apprenticeship or other training.

(5) For an employer, labor organization or employment agency to print or cause to be printed or published any notice or advertisement relating to employment by the employer or membership in or any classification or referral for employment by the labor organization, or relating to any classification or referral for employment by the agency, indicating any preference, limitation, specification or discrimination based on gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law. However, a notice or advertisement may indicate a preference, limitation, specification or discrimination based on gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law if such

preference, limitation, specification, or discrimination is a bona fide occupational qualification for employment.

- (6) For an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual or for a labor organization to discriminate against any member thereof or applicant for membership because he has opposed any practice made an unlawful employment practice by this article or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this article.

B. Notwithstanding any other provision of this article, it is not an unlawful employment practice:

- (1) For an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of his gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law in those instances where gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
- (2) For an employer to establish standards concerning an employee's dress and grooming if the standards are directly related to the nature of the employment of the employee.
- (3) For a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of the school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.
- (4) For an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement pension or insurance plan, which is not a subterfuge to evade the purposes of this article; however, no employee benefit plan shall excuse the failure to hire any individual.

C. Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization or joint labor-management committee subject to this article to grant preferential treatment to any individual or to any group because of the gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic

information, or any other protected characteristic protected by law of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law persons employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor agency or labor organization, or admitted to or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of such gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law persons in any community, state, section or other area or in the available work force in any community, state, section or other area.

§82-15. Applicability.

This article shall not apply to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

§ 82-16. Discrimination by City officer or employee.

- A. No officer or employee of the City or a City agency, department or board shall discriminate in the hiring or firing or discriminate in any other manner against any person because of gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment; provided, however, that no employment practice not unlawful under other provisions of this article or chapter shall be deemed as unlawful employment practice by the City.
- B. If the Commission has received reliable information from an individual or individuals and, after a proper investigation by the Commission, it shall be determined by the Commission that an officer or employee of the City agency, department or board has engaged in discrimination in hiring, firing or any other type of activity against any person because of gender, race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other protected characteristic protected by law unrelated in nature and extent so as to reasonably preclude the performance of the employment, and if the Commission is unsuccessful in resolving the complaint, then the Commission shall report such act or alleged act to the Mayor, and he shall review the case and the findings of the Commission. If the Mayor is satisfied that an act of discrimination has taken place, he shall take such action as he deems appropriate under the circumstances; provided, however, that any action taken shall not be in conflict with any Charter provisions of the City of Hagerstown, provisions of the Code of the City of Hagerstown or any union contracts or agreements that may be

applicable. The authority of the Commission relating to discrimination in City agencies, boards or departments is limited to investigation, conciliation, mediation and reporting to the Mayor as provided in this section.

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

Topic:

Approval of an Ordinance: Acquisition of Real Property for the Urban Improvement Project

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Ordinance_-_Acquistion_of_Property_for_UIP.pdf

Description

Motion - Ordinance -
Acquisition of Property for
UIP

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: Approval of an Ordinance for the Acquisition of Real Property for the Urban Improvement Project

Charter Amendment

Code Amendment

Ordinance

 X

Resolution

Other

MOTION: I hereby move to approve an Ordinance for approval of a “Property Acquisition Agreement” to acquire property known as:

- 43-53 West Washington Street
- A portion of 55-59 West Washington Street, and
- A portion of 50-58 West Antietam Street

Acquisition of these properties will allow for the completion of the Plaza and Cultural Trail from Antietam Street to Washington Street.

DATE OF INTRODUCTION: 10/27/2020

DATE OF PASSAGE: 11/17/2020

EFFECTIVE DATE: 12/18/2020

CITY OF HAGERSTOWN, MARYLAND

AN ORDINANCE TO APPROVE THE PURCHASE
OF CERTAIN PORTIONS OF REAL PROPERTY
LOCATED AT 43-53 WEST WASHINGTON STREET, HAGERSTOWN, MARYLAND
(TM 306, Parcel 2250; Tax Acct. No. 03-018180) (the "43 W. Washington Street
Property"); 55-59 WEST WASHINGTON STREET, HAGERSTOWN, MARYLAND
(TM 306, Parcel 2248; Tax Acct. No. 03-000826) (the "55 W. Washington Street
Property"); AND 50-58 WEST ANTIETAM STREET (TM 306; Parcel 2064; Tax Acct.
No. 03-022595 (the "50-58 W. Antietam Property")
AND AUTHORIZING EXECUTION AND DELIVERY OF A
PROPERTY ACQUISITION AGREEMENT BETWEEN THE CITY AND HAGER 5,
LLC

RECITALS

WHEREAS, Hager5, LLC, a limited liability company formed and existing under the laws of the State of Maryland ("Hager5"), is the owner of those certain parcels of real property located at 43-53 W. Washington Street, Hagerstown, Maryland (TM 306, Parcel 2250; Tax Acct. No. 03-018180) (the "**43 W. Washington Street Property**"); 55-59 W. Washington Street, Hagerstown, Maryland (TM 306, Parcel 2248; Tax Acct. No. 03-000826) (the "**55 W. Washington Street Property**"); and 50-58 W. Antietam Street (TM 306; Parcel 2064; Tax Acct. No. 03-022595 (the "**50-58 W. Antietam Property**") (collectively, the "**Hager5 Property**").

WHEREAS, the City of Hagerstown, Maryland, a Maryland Municipal Corporation ("the City") intends to construct an extension of its Cultural Trail from its present terminus at West Antietam Street northward to West Washington Street, as well as a Public Plaza behind 33- 35 West Washington Street (collectively, the "**Urban Improvement Project**") as more particularly shown and described on the Concept Plan attached as Exhibit A (collectively, the "**Improvement Plans**") to the Property Acquisition Agreement, a copy of which attached hereto and incorporated herein by reference.

WHEREAS, to facilitate the Urban Improvement Project, the City desires to acquire certain portions of the Hager5 Property in fee simple and to acquire certain easements over, across, under and through portions of the Hager5 Property (collectively, the "**Acquired Property**"), all for the purpose of constructing and maintaining the Urban Improvement Project. The particular portions of the Hager5 Property to be conveyed to the City in fee simple and the easement areas to be conveyed are shown and described on the Property Acquisition Agreement, attached hereto and incorporated herein as Exhibit B (the "**Acquisition Plan**").

WHEREAS, attached hereto and incorporated herein is a Property Acquisition Agreement, including Exhibits 1 and 2, for the purchase of the Acquired Property and the acquisition of certain easements over, across, under and through portions of Acquired Property, also; and

WHEREAS, the Property Acquisition Agreement has various conditions precedent to closing, including but not limited to the City's receipt of funds from State Bond Funding not utilized by the Barbara Ingram School for the Arts and redirected to the Urban Improvement Project, the formalization of a Deed of Easement and Maintenance Agreement between the City and the Board of County Commissioners of Washington County, and the acquisition of an easement or quitclaim from the State of Maryland Department of General Services; 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 Property Acquisition 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 purchase of the Acquired Property pursuant to the terms of the attached Property Acquisition Agreement, as well as the acquisition of certain easements over, across, under and through portions of Acquired Property, is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the Property Acquisition Agreement with Hager5 LLC, a copy of which (including Exhibits A and B) is attached hereto and incorporated herein by reference.
4. 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 Property Acquisition 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

Robert E. Bruchey, II, Mayor

Date of Introduction: October 27, 2020
Date of Passage: November 17, 2020
Effective Date: December 18, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

PROPERTY ACQUISITION AGREEMENT

THIS PROPERTY ACQUISITION AGREEMENT (this “**Agreement**”) is entered into this _____ day of _____ 2020 (the “**Effective Date**”), by and between the **CITY OF HAGERSTOWN**, a Maryland municipal corporation (the “**City**”) and **HAGER5, LLC**, a Maryland limited liability company (the “**Hager5**”).

RECITALS

A. Hager5 is the owner of those certain parcels of real property located at 43-53 W. Washington Street, Hagerstown, Maryland (TM 306, Parcel 2250; Tax Acct. No. 03-018180) (the “**43 W. Washington Street Property**”); 55-59 W. Washington Street, Hagerstown, Maryland (TM 306, Parcel 2248; Tax Acct. No. 03-000826) (the “**55 W. Washington Street Property**”); and 50-58 W. Antietam Street (TM 306; Parcel 2064; Tax Acct. No. 03-022595 (the “**50-58 W. Antietam Property**”) (collectively, the “**Hager5 Property**”).

B. The City intends to construct an extension of its Cultural Trail from its present terminus at West Antietam Street northward to West Washington Street, as well as a Public Plaza behind 33- 35 West Washington Street (collectively, the “**Urban Improvement Project**”) as more particularly shown and described on the Concept Plan attached hereto and incorporated herein as **Exhibit A** (collectively, the “**Improvement Plans**”).

C. To facilitate the Urban Improvement Project, the City desires to acquire certain portions of the Hager5 Property in fee simple and to acquire certain easements over, across, under and through portions of the Hager5 Property (collectively, the “**Acquired Property**”), all for the purpose of constructing and maintaining the Urban Improvement Project. The particular portions of the Hager5 Property to be conveyed to the City in fee simple and the easement areas to be conveyed are shown and described on the Property Acquisition exhibit dated October 15, 2020 and attached hereto and incorporated herein as **Exhibit B** (the “**Acquisition Plan**”).

D. In exchange for conveyance of the Acquired Property, the City agrees to (i) pay Hager5 the monetary consideration provided for herein; and (ii) not construct, install or maintain any public restroom facilities on any portion of the Acquired Property, all as more particularly set forth and described herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are made a part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Incorporation of Recitals and Defined Terms.** Hager5 and the City agree that the foregoing Recitals are true, complete, and hereby incorporated by reference.

2. **Monetary Consideration.** The City agrees to purchase and Hager5 agrees to sell the fee simple and easement areas specifically identified and described on the Acquisition Plan for the aggregate purchase price of THREE HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED NINETY AND 00/100 DOLLARS (\$399,000.00) (the “**Monetary Consideration**”) allocated as follows:

- \$125,000 appraised value 43/47/49 W. Washington Street (based on **\$15/sf**)
- \$18,000 appraised value portion of 51/53 W. Washington Street (based on **\$15/sf**). City shall also receive an easement (257 sf) for a portion of 51/53 West Washington;
- \$46,000 appraised value 10' strip of 50 – 58 W. Antietam Street parking adjacent paper alley (based on **\$15/sf** + compensation for lost parking spaces)
- \$149,600 reimbursement for building demolition and associated work
- \$37,717 reimbursement for legal, architect, and surveyor fees
- \$22,683 overhead and administration
- **\$399,000 TOTAL**

3. **Closing.** Closing on the transfer of the Acquired Property from Hager5 to the City (the "**Closing**") shall occur within FIFTEEN (15) days immediately following satisfaction of the Closing Conditions (defined below). No later than FIVE (5) days prior to Closing, the City shall provide to Hager5 for review and approval (not to be unreasonably withheld, conditioned or delayed), a draft Special Warranty Deed (the "**Deed**") for the conveyance of the Acquired Property, which contains special warranty and a covenant of further assurances and which also contains a reservation of rights entitling Hager5 to access and maintain the retained portion of the properties located at 51-53 W. Washington Street and 43-47 W. Washington Street, including all buildings and improvements located or later constructed thereon, as identified on Exhibit B. At Closing, Hager5 shall deliver *inter alia* the final, executed Deed, the form and substance of which shall be mutually agreeable to the City and Hager5, and the City shall deliver *inter alia* the Monetary Consideration. The City shall be responsible for paying all settlement/closing fees, title search and title insurance costs, and all other costs and expenses related to or arising from Closing. Hager5 shall be responsible for its own attorney's fees and any real property taxes or utility service charges due, but unpaid as of the date of Closing. It is the parties mutual understanding that, as an instrument of writing transferring property to a political subdivision of the State of Maryland, the Deed shall be exempt from recordation tax (MD Code, Tax-Property, §12-108(a)(1)); transfer tax (MD Code, Tax-Property, §13-207(a)(1)); and agricultural transfer tax (MD Code, Tax-Property, §13-305(h)).

4. **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 (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 thereof within twenty (20) days after the Effective Date (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, and (ii) neither Buyer nor Seller shall have any further obligations to one another hereunder, except for those which expressly survive termination of this Agreement.

5. **Representations and Warranties of Seller.** Seller hereby makes the following representations 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.

5.1 **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. Other than this Agreement, there are no other oral or written agreements relating to the use, occupancy or possession of the Acquired Property that would prohibit, interfere or in any way restrict Buyer's use thereof.

5.2 **Ownership of the Property.** Seller is the fee simple record and beneficial owner of the Acquired Property. No person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Acquired 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 Acquired Property.

5.3 **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.

5.4 **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.

5.5 **Condemnation, Violation of Laws, Etc.** Excepting City Code violations which have been noted but not yet cited, 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 Acquired 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 Acquired Property is located or any certificate(s) of occupancy issued for the Acquired Property.

5.6 No Flood Hazard Area. To the best of Seller's actual knowledge with no duty to investigate, no portion of the Acquired Property is located in an area designated by any governmental entity as a flood hazard area.

5.7 Hazardous Conditions.

(i) During Seller's ownership there have been no, and there are no pending or, to the best of Seller's actual knowledge, threatened: (A) claims, complaints, notices, or requests for information received by Seller with respect to any alleged violation of any Environmental Law with respect to the Acquired Property, or (B) claims, complaints, notices, or requests for information to Seller regarding potential or alleged liability under any Environmental Law with respect to the Acquired Property.

(ii) To the best of Seller's actual knowledge with no duty to investigate, no conditions exist at, on, or under the Acquired Property that, with the passage of time or the giving of notice or both, would constitute a Hazardous Condition or give rise to liability under any Environmental Law.

(iii) Seller has not received notice of any violation of any orders, directives, requirements, permits, certificates, approvals, licenses, and other authorizations relating to Environmental Laws with respect to the Acquired Property.

(iv) To the best of Seller's actual knowledge with no duty to investigate, there are no aboveground tanks in excess of 275 gallon storage capacity or any underground storage tanks (collectively, "USTs") located on or in the Acquired Property. Seller has not removed or abandoned any USTs on or in the Acquired Property and Seller has no knowledge of the existence, abandonment or removal of USTs from the Acquired Property.

(v) To the best of Seller's actual knowledge with no duty to investigate there are no polychlorinated biphenyls ("PCBs") or friable or damaged asbestos at the Acquired Property, and Seller has not removed (or required or requested the removal of) any PCBs or damaged or friable asbestos from the Acquired Property, and Seller has no knowledge of the previous existence of any PCBs or damaged or friable asbestos at the Acquired Property.

For purposes of this Agreement, the following terms shall have the meaning as indicated:

"Environmental Law" shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 et seq.) as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.) as amended; (v) the Clean Water Act (33 U.S.C. §§ 1251 et seq. as amended; (vi) the Toxic Substances Control Act (15 U.S.C. §§2601 et seq. as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.) as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (x) any state, county, municipal or local statutes, laws or ordinances similar or analogous to the statutes listed in parts (i) - (ix) of this definition; (xi) any amendments to the statutes, laws or ordinances listed in parts (i) - (x) of this definition, regardless of whether the same are in existence on the date hereof; (xii) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or to implement the statutes, laws, ordinances and amendments listed in parts (i) - (xi) of this definition; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline, directive, order or the like relating to environmental or other matters covered by the foregoing.

"Governmental Authorities" shall mean any board, bureau, commission, department or body of any municipal, township, county, city, state or federal governmental unit, or any subdivision thereof, having or acquiring jurisdiction over any of the Acquired Property or the ownership, management, operation, use or improvement thereof.

"Hazardous Conditions" shall mean the presence on, in or about the Acquired 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.

5.10 Litigation. No proceeding, suit or litigation relating to Seller or the Acquired Property or any part thereof is pending or, to the best of Seller's actual knowledge with no duty of investigation, 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.

5.8 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.

5.9 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 Acquired Property with respect to which liens may or could be filed against the Acquired Property, either pending or threatened.

5.10 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 Acquired Property that has not been paid, and there is no pending audit or inquiry from any Taxing Authority relating to Seller or the Acquired 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 Acquired Property.

5.11 Re-Zoning. Seller is not a party to, nor does Seller have any actual knowledge of, any threatened proceeding for the rezoning of the Acquired 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 Acquired Property or use thereof.

5.12 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 Acquired Property.

5.13 Except as otherwise provided herein, Seller is making no warranties as to the condition of the Acquired Property is being sold "AS IS, WHERE IS AND WITH ALL FAULTS."

6 No Public Restrooms. The City agrees that it shall not construct, install or maintain any public restroom facilities on any portion of the Acquired Property. This provision

shall survive Closing and recording of the Deed and, at the request of Hager5, the City shall memorialize this restriction by separate written agreement.

7 **Closing Conditions.**

A. *Subdivision.* A subdivision plat (the “**Subdivision Plat**”) for those portions of the Acquired Property to be transferred in fee simple shall have received final approval from all applicable State, County and City agencies and be in recordable form at or immediately prior to Closing. The City shall be responsible for preparing and securing all approvals of the Subdivision Plat, and Hager5 shall cooperate to the extent necessary to effect the Subdivision.

B. *State Conveyance.* Hager5 shall have secured from the State of Maryland Department of General Services (DGS) for the benefit of the City a perpetual easement or Quit Claim Deed (the “**State Conveyance**”) confirming the City’s exclusive right to use the western five and half foot (5’6”) portion of the eleven foot (11’) “private alley” located adjacent to the Washington County District Court property owned by DGS and the property owned by Hager5 and located at 50-58 W. Antietam Street.

C. *County Easement.* The City and Board of County Commissioners of Washington County shall have entered into a written Deed of Easement Agreement and Maintenance Agreement for the real property located directly behind 33 – 35 West Washington Street and depicted on Easement Plat dated 7/15/19. Those same parties shall have also entered into a written “Dumpster Easement” whereby the County’s dumpster shall be moved to a location on property to be purchased by the City pursuant to this Property Acquisition Agreement, including a dumpster enclosure to be constructed by the City.

D. *State Funding.* The City shall have received no less than SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) from State bond funding not utilized by the Barbara Ingram School for the Arts and redirected to the Urban Improvement Project.

E. City shall provide stormwater management for redevelopment of property located at 43 – 53 West Washington Street.

F. Seller shall have the right to review and comment on the development plats for Urban Improvement trail lights/camera/landscape items.

8 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees. This Agreement shall also be deemed to run with the land.

9 **Notice.** Notices and other communications required or permitted to be given hereunder shall be deemed to have been duly given if in writing and delivered by recognized overnight delivery service, or by fax (with a hard copy to be sent promptly thereafter by overnight delivery), as follows:

To Hager5

Hager5, LLC

Attn: Greg Snook, Managing Member

222 East Oakridge Drive, Suite 100
Hagerstown, Maryland 21740

With a copy to:
Jason Divelbiss, Esquire
JD Law Company, Inc.
11125 Bemisderfer Road
Greencastle, Pennsylvania 17225

To the City

Rodney A. Tissue, City Engineer
City of Hagerstown
1 East Franklin Street
Hagerstown, Maryland 21740

With a copy to:
Jason Morton
Salvatore & Morton, LLC
83 West Washington Street, Suite 100
Hagerstown, Maryland 21740

10 **Governing Law.** Regardless of its place of execution, this Agreement shall be governed by the laws of the State of Maryland as to interpretation, construction, and performance.

11 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed.

12 **Counterparts.** This Agreement (i) may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument; (ii) may be executed by copies of physically signed documents exchanged via email attachment in PDF format or equivalent.

13 **Exhibits Incorporated.** Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

14 **Amendments.** This Agreement may be amended, changed or modified only by written amendment executed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless in writing signed by the party charged.

15 **Further Agreements.** Hager5 and the City shall at any time and from time to time after Closing, upon request of the other, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, conveyances and assurances as may reasonably be required for the better conveying, transferring, assuring and confirming the terms and conditions contemplated herein.

16 **Time of the Essence.** Time shall be of the essence of this Agreement.

17 **Survival.** The obligations, agreements and covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable after the Closing or other *de jure* termination of this Agreement, the parties specifically acknowledging that the Closing and the execution and recordation of deeds contemplated herein shall not terminate the obligations of the parties that are intended and by their terms survive the Closing.

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

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

20 **Assignment.** This Agreement may not be assigned by either party without the express written consent of each party. However, Hager5 shall have the right to assign this Agreement without the consent of the City to (1) any entity resulting from a merger or consolidation with Hager5 or any organization purchasing substantially all of Hager5's assets, (2) any entity succeeding to substantially all the business and assets of Hager5, (3) any entity controlling, controlled by or under common control with Hager5, or (4) any entity resulting from the reorganization of Hager5 outside of bankruptcy organization.

21 **Headings.** Headings are intended only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Hager5 and the City have executed this Agreement as of the date set forth above.

ATTEST

CITY OF HAGERSTOWN

_____ By: _____

STATE OF MARYLAND, COUNTY OF WASHINGTON, to wit:

I HEREBY CERTIFY that on this _____ day of October 2020, before me, the Subscriber, Notary Public in and for the State and County aforesaid, personally appeared _____ and he acknowledged the foregoing instrument to be his act and deed on behalf of the City of Hagerstown and he did further certify that he is duly authorized to make this acknowledgement on its behalf and that he is duly authorized to execute this Agreement on its behalf.

WITNESS my hand and Notarial Seal this _____ day of _____ 2020.

Notary Public

My commission expires:

[SIGNATURES AND NOTARY CONTINUED ON NEXT PAGE]

WITNESS/ATTEST

HAGER5, LLC

Name:

Title:

STATE OF MARYLAND, COUNTY OF WASHINGTON, to wit:

I HEREBY CERTIFY that on this _____ day of _____ 2020, before me, the Subscriber, Notary Public in and for the State and County aforesaid, personally appeared and acknowledged the foregoing instrument to be his/her act and deed and he/she did further certify that he/she is duly authorized to execute this Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____ 2020.

Notary Public

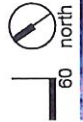
My commission expires:

PLAN A



LEGEND

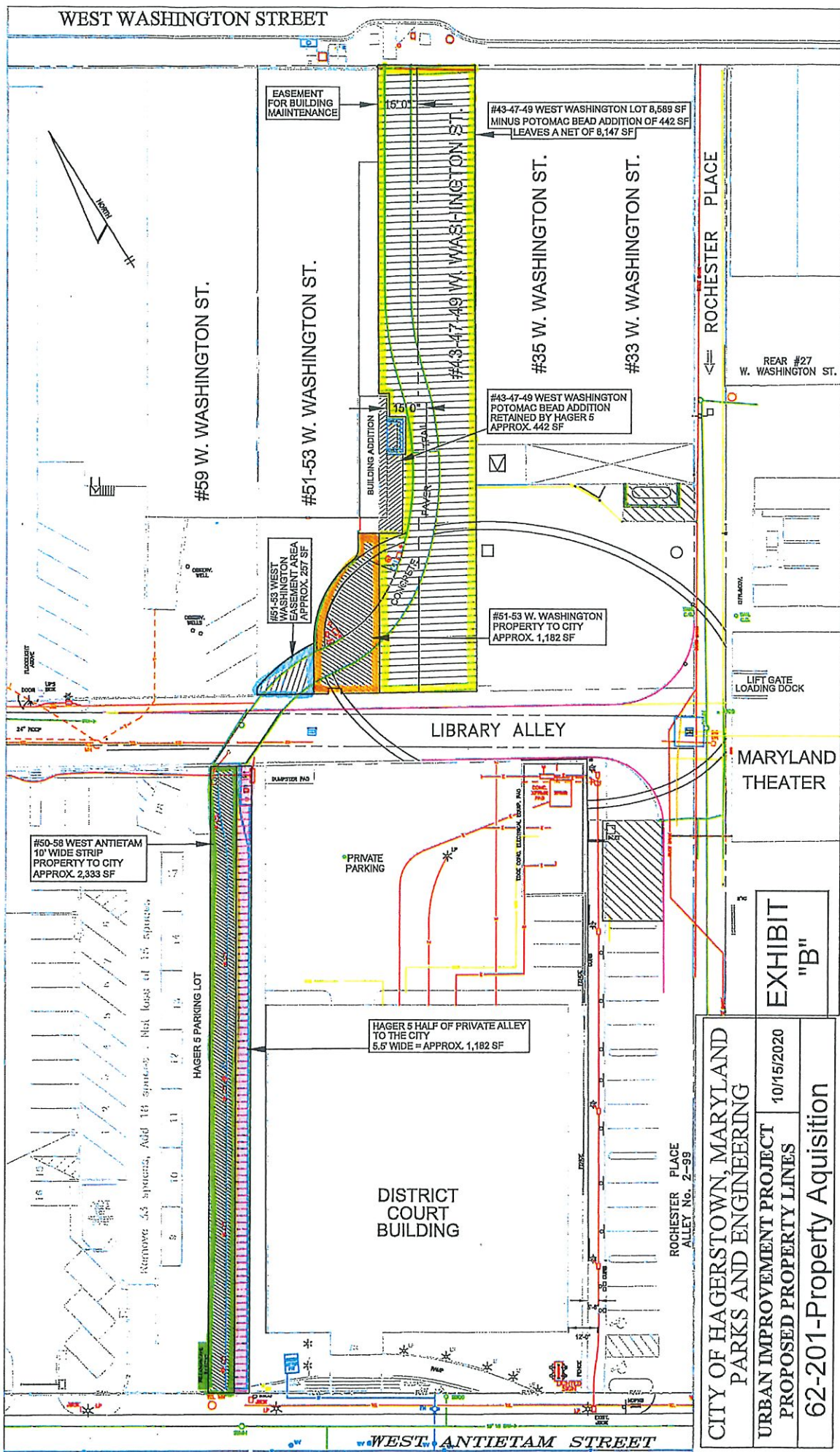
- n to Hagerstown Cultural Trail
- Washington Cultural Trail extension with
- seating and potential back-drop.
- seating area with movable tree
- plaza/event space with room for truck
- d service. Concrete surface with
- flors and scoring to create texture
- generators
- markers in pavement - medallions or
- element



DRAFT

Exhibit "A"

HAGERSTOWN, MARY



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

Topic:

Approval of a Resolution: Comprehensive Settlement Agreement and Mutual Release with Cascades Holding US, Inc.

Mayor and City Council Action Required:

Request approval of a Resolution for a Comprehensive Settlement Agreement and Mutual Release

Discussion:

Financial Impact:

Cascades to provide to the City a payment of \$860,615.89 for settlement of funds.

Recommendation:

Staff recommends approval

Motion:

Move that the Mayor and City Council approve the attached Resolution for a Comprehensive Settlement Agreement and Mutual Release with Cascades Holding US, Inc.

Action Dates:

Regular Session 11/17/2020

ATTACHMENTS:

File Name	Description
1_Motion_for_Settlement_Agreement_with_Cascades.pdf	Motion
2_Memorandum_Financial_Adjustment.pdf	Memo
3_Resolution_to_enter_into_Comprehensive_Settlement_Agreement_and_Release_with_Cascades_11.17.20.pdf	Resolution
4_Comprehensive_Settlement_Agreement.pdf	Settlement Agreement
5_Exhibit_A_-_Demolition_Specifications.pdf	Demo Specs
6_Demolition_Permit.pdf	Permit
7_Owners_Affidavit.pdf	Affidavit
8_E-6_Filter_Log.pdf	Filter Log Spec
9_B-1_Stabilized_Construction_Entrance.pdf	Const. Ent. Spec
10_Exhibit_B_-_Mutual_General_Release_Agreement.pdf	Release

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: **Approval of a Resolution for a Comprehensive Settlement Agreement and Mutual Release with Cascades Holding US, Inc.**

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

MOTION: I hereby move that the Mayor and City Council approve the attached Resolution for a Comprehensive Settlement Agreement and Mutual Release with Cascades Holding US, Inc.

DATE OF INTRODUCTION: 11/17/2020
DATE OF PASSAGE: 11/17/2020
EFFECTIVE DATE: 11/17/2020



425 East Baltimore Street

Hagerstown, MD 21740-6105

November 12, 2020

To: Scott Nicewarner, City Administrator

From: Nathan Fridinger, Electric Operations Manager
Nancy Hausrath, Director of Utilities

Subject: Change to Agreement Language with Cascades Tissue Group

Since the last update provided to Mayor and City Council on October 20, 2020, Cascades Tissue Group made the October 2020 debt payment to the City and the minimum net revenue requirement was recalculated using updated monthly electric invoice payments and wholesale power supply data.

The current financial obligations to the City is eight hundred sixty thousand six hundred fifteen dollars and eighty-nine cents (\$860,615.89). Section 2 of the Comprehensive Settlement Agreement has been altered from \$879,735.80 to reflect this change.

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE ENTRY INTO A COMPREHENSIVE
SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH CASCADES HOLDING
US INC., SUCCESSOR THROUGH MERGER TO CASCADES TISSUE GROUP –
MARYLAND, LLC**

RECITALS

WHEREAS, the City of Hagerstown is a Maryland Municipal Corporation. Cascades Holding US Inc., is a Delaware corporation and successor through merger to Cascades Tissue Group - Maryland, LLC, a Delaware limited liability company authorized to do business in the State of Maryland, (“Cascades”). The City and Cascades are sometimes hereinafter referred to as the “Parties;”

WHEREAS, the City and Hagerstown Fiber Limited Partnership, a Maryland limited partnership (“HFLP”) entered into an Electric Power Service Agreement, dated December 1, 1995 (the “EPSA”); and

WHEREAS, pursuant to the terms of an Assignment and Assumption Agreement, dated April 30, 2002, executed and delivered by and among David R. Kittay, Chapter 7 Trustee for HFLP, and Newstech MD, LP, a Delaware limited partnership (“Newstech”) and the City, (the “HFLP Assignment and Assumption Agreement”) all of the right, title and interest of HFLP in, to and under the EPSA was assigned unto Newstech upon the express terms and conditions therein contained; and

WHEREAS, pursuant to the provisions of Section 8.2(g) of said HFLP Assignment and Assumption Agreement, Newstech was authorized, with the consent of the City, to assign and transfer all of Newstech’s rights under the EPSA to a third party upon those express terms and conditions contained in the HFLP Assignment and Assumption Agreement; and

WHEREAS, Newstech sold and transferred unto Cascades as of August 31, 2006, through a purchase Agreement all of its right, title and interest in its deinking paper plant located at 273 East Memorial Boulevard and 551 Eastern Boulevard South, Hagerstown, Maryland (the “Mill”, and the Newstech sale thereof to Cascades, the “Mill Sale”); and

WHEREAS, the City, Newstech and Cascades entered into an Assignment and Assumption Agreement, dated December 27, 2006 (the “Newstech Assignment and Assumption Agreement”), whereby Newstech assigned and transferred unto Cascades all of its right, title and interest in the EPSA including the Substation then erected pursuant to the EPSA; and

WHEREAS, in connection with the Newstech Assignment and Assumption Agreement and the former Mill Sale, the City and Cascades entered into a 99-year Lease Agreement dated December 27, 2006 (the “Lease Agreement”) for that improved parcel of land consisting of approximately 22,580.6 square feet as depicted on Exhibit A to the Lease Agreement (the “City’s Parcel”), on which parcel an electrical substation was built by or on behalf of HFLP for the Mill’s needs (the “Substation”) as was provided for in the EPSA, which Substation remains in place on the City’s Parcel and remains owned by Cascades as of the time of this Comprehensive Settlement Agreement and Mutual Release;

WHEREAS, Cascades sold and transferred unto GB & J's, LLC, a Maryland limited liability company, all of its right, title and interest in the Mill on or about October 23, 2020;

WHEREAS, the City and Cascades intend, by the attached Comprehensive Settlement Agreement and Mutual Release to resolve any and all of their respective rights and obligations under (1) the EPSA; (2) the HFLP Assignment and Assumption Agreement; (3) the Newstech Assignment and Assumption Agreement; (4) the Lease Agreement; and (5) any and all other matters and things as provided in the Mutual Release attached as Exhibit B to said Agreement;

WHEREAS, pursuant to the Comprehensive Settlement Agreement and Mutual Release, Cascades shall, on or before November 20, 2020, pay to the City the sum of EIGHT HUNDRED SIXTY THOUSAND SIX HUNDRED FIFTEEN DOLLARS AND 89/100 CENTS (\$860,615.89). This figure represents the principal balance of the loan due from Cascades under the EPSA as well as the minimum net revenue payment due for calendar year 2020;

WHEREAS, pursuant to the Comprehensive Settlement Agreement and Mutual Release Cascades shall demolish the Substation on or before May 1, 2021;

WHEREAS, Simultaneously with the execution and delivery of the Comprehensive Settlement Agreement and Mutual Release, the Parties shall execute and deliver to each other the Mutual Release in form as annexed hereto as Exhibit B to said Agreement; and

WHEREAS, the Mayor and Council of the City of Hagerstown find it to be in the best interests of the citizens of the City to enter into the attached Comprehensive Settlement Agreement and Mutual Release.

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. The foregoing recitals be and are hereby incorporated herein by reference.
2. That the Mayor be and is hereby authorized to execute and deliver the Comprehensive Settlement Agreement and Mutual Release, a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver any further documentation that may be necessary to effectuate the purpose of this resolution.

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

ATTEST:

MAYOR AND COUNCIL

Donna K. Spickler, City Clerk

Robert E. Bruchey, II, Mayor

Date of Introduction: November 17, 2020
Date of Passage: November 17, 2020
Effective Date: November 17, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
City Attorneys

**COMPREHENSIVE SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

This Comprehensive Settlement Agreement and Mutual Release is made this _____ day of November, 2020, by and between the City of Hagerstown, Maryland, a municipal corporation (the “**City**”) and Cascades Holding US Inc., a Delaware corporation and successor through merger to Cascades Tissue Group - Maryland, LLC, a Delaware limited liability company authorized to do business in the State of Maryland, (“**Cascades**”). The City and Cascades are sometimes hereinafter referred to as the “**Parties.**”

WHEREAS, the City and Hagerstown Fiber Limited Partnership, a Maryland limited partnership (“**HFLP**”) entered into an Electric Power Service Agreement, dated December 1, 1995 (the “**EPSA**”); and

WHEREAS, pursuant to the terms of an Assignment and Assumption Agreement, dated April 30, 2002, executed and delivered by and among David R. Kittay, Chapter 7 Trustee for HFLP, and Newstech MD, LP, a Delaware limited partnership (“**Newstech**”) and the City, (the “**HFLP Assignment and Assumption Agreement**”) all of the right, title and interest of HFLP in, to and under the EPSA was assigned unto Newstech upon the express terms and conditions therein contained; and

WHEREAS, pursuant to the provisions of Section 8.2(g) of said HFLP Assignment and Assumption Agreement, Newstech was authorized, with the consent of the City, to assign and transfer all of Newstech’s rights under the EPSA to a third party upon those express terms and conditions contained in the HFLP Assignment and Assumption Agreement; and

WHEREAS, Newstech sold and transferred unto Cascades as of August 31, 2006, through a purchase Agreement all of its right, title and interest in its deinking paper plant located at 273 East Memorial Boulevard and 551 Eastern Boulevard South, Hagerstown, Maryland (the “**Mill**”, and the Newstech sale thereof to Cascades, the “**Mill Sale**”); and

WHEREAS, the City, Newstech and Cascades entered into an Assignment and Assumption Agreement, dated December 27, 2006 (the “**Newstech Assignment and Assumption Agreement**”), whereby Newstech assigned and transferred unto Cascades all of its right, title and interest in the EPSA including the Substation then erected pursuant to the EPSA; and

WHEREAS, in connection with the Newstech Assignment and Assumption Agreement and the former Mill Sale, the City and Cascades entered into a 99-year Lease Agreement dated December 27, 2006 (the “**Lease Agreement**”) for that improved parcel of land consisting of approximately 22,580.6 square feet as depicted on Exhibit A to the Lease Agreement (the “**City’s Parcel**”), on which parcel an electrical substation was built by or on behalf of HFLP for the Mill’s needs (the “**Substation**”) as was provided for in the EPSA, which Substation remains in place on the City’s Parcel and remains owned by Cascades as of the time of this Comprehensive Settlement Agreement and Mutual Release;

WHEREAS, Cascades sold and transferred unto GB & J’s, LLC, a Maryland limited liability company, all of its right, title and interest in the Mill on or about October 23, 2020;

WHEREAS, the City and Cascades intend, by this Comprehensive Settlement Agreement and

Mutual Release to resolve any and all of their respective rights and obligations under (1) the EPSA; (2) the HFLP Assignment and Assumption Agreement; (3) the Newstech Assignment and Assumption Agreement; (4) the Lease Agreement; and (5) any and all other matters and things as provided in the Mutual Release referenced in **Section 4** below; and

WHEREAS, this Comprehensive Settlement Agreement and Mutual Release has been presented to, and has been approved on November 17, 2020 by formal action of, the Mayor and Council by the passage of any ordinances or resolutions required.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereto agree as follows:

1. *Recitals.* The recitals hereinabove contained are hereby incorporated by reference as if fully set forth in the body of this Comprehensive Settlement Agreement and Mutual Release.

2. *Payment to the City.* On or before November 20, 2020, Cascades shall pay to the City the sum of EIGHT HUNDRED SIXTY THOUSAND SIX HUNDRED FIFTEEN DOLLARS AND 89/100 CENTS (\$860,615.89). This figure represents the principal balance of the loan due from Cascades under the EPSA as well as the minimum net revenue payment due for calendar year 2020. Payment shall be made by Cascades at the direction of the City either (i) by good check to the order of the City, or (ii) by direct bank-to-bank wire transfer to an account or accounts designated by the City.

3. *Demolition of Substation.* Cascades shall demolish the Substation on or before May 1, 2021. The entire Substation site must be restored to its condition as existed prior to the construction of the Substation, with all concrete bases removed, stone base disposed of, and the ground grid removed, provided that the restoration of the Substation site shall not extend to any portion of the City's Parcel outside the perimeter of the Substation and shall not include any remediation of any contaminated soil except to the extent of any contamination resulting from the operation of the Substation by Cascades. Cascades shall be entitled to all salvageable materials within the Substation. The City has provided specifications for such demolition, as set forth on **Exhibit A** as annexed hereto, with said demolition to be conducted in accordance with all applicable local, state, and federal law. Cascades will continue to pay rent in accordance with the Lease Agreement until demolition has been completed in accordance with this **Section 3**. Upon completion of the demolition, the Lease Agreement shall be terminated, and the City shall file an appropriate document among the Land Records of Washington County, Maryland indicating so, with Cascades to cooperate in the drafting and execution of said document, if requested.

4. *Release.* Simultaneously with the execution and delivery hereof, the Parties shall execute and deliver to each other the Mutual Release in form as annexed hereto as **Exhibit B**.

5. *Notices.* Notices and other communications required or permitted to be given hereunder shall be given in writing and delivered by recognized overnight delivery service, or by fax or email (with a hard copy to be sent promptly thereafter by overnight delivery), and shall be deemed delivered when actually received, or if received on a day which is not a business day then on the next succeeding business day, as follows:

If to the City:

City of Hagerstown
ATTN: City Administrator
City Hall
Hagerstown, MD 21740
Fax No.: (301) 790-3424
Email: snicewarner@hagerstownmd.org

And to:

City of Hagerstown
ATTN: Director of Utilities
Hagerstown Light Department
425 East Baltimore St.
Hagerstown, MD 21740
Fax No.: (301) 739-7958
Email: nhausrath@hagerstownmd.org

With Copy to:

Jason Morton, Esquire
SALVATORE & MORTON, LLC
82 West Washington Street, Suite 100
Hagerstown, Maryland 21740
Fax No.: (301) 797-6065
Email: jmorton@salvatoremorton.com

If to Cascades:

Cascades Holding US Inc.
ATTN: Jean-David Tardif,
President, Cascades Tissue Group
77 Marie-Victorin Boulevard
Candiac (Quebec), Canada J5R 1C3
Fax No.: (450) 444-6477
Email: jean-david_tardif@cascades.com

With Copy to:

Cascades Holding US Inc.
ATTN: Annie Buzzanga
Vice President Legal Affairs
77 Marie-Victorin Boulevard
Candiac (Quebec), Canada J5R 1C3
Fax No.: (450) 444-6477
Email: annie_buzzanga@cascades.com

6. *Further Assurances.* Each Party agrees to execute such other and further documents and assurances, and to do such other things, as may be reasonably requested by the other Party to effect the purposes and premises of this Comprehensive Settlement Agreement and Mutual Release.

7. *Governing Law.* Regardless of its place of execution, and regardless of Maryland's conflicts of laws principles, this Comprehensive Settlement Agreement and Mutual Release shall be governed by the laws of the State of Maryland as to interpretation, construction, and performance. The Parties agree to submit any dispute under this Comprehensive Settlement Agreement and Mutual Release to State Courts located in Washington County, Maryland. A prevailing party in a final and non-appealable judgment in any litigation under this Comprehensive Settlement Agreement and Mutual Release shall be entitled to an award of its reasonable attorney's fees.

8. *Entire Agreement.* This Comprehensive Settlement Agreement and Mutual Release, including the Exhibits hereto, constitutes the entire agreement between the Parties, there being no other terms, oral or written, except as herein expressed.

9. *Counterparts.* This Comprehensive Settlement Agreement and Mutual Release (i) may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument; (ii) may be executed by copies of physically signed documents exchanged via email attachment in PDF format or equivalent.

10. *Amendments.* This Comprehensive Settlement Agreement and Mutual Release may be amended, changed or modified only by written amendment executed by the Parties hereto. No waiver of any provision of this Comprehensive Settlement Agreement and Mutual Release shall be valid unless in writing signed by the Parties hereto.

11. *Severability.* If any provision of this Comprehensive Settlement Agreement and Mutual Release shall be determined to be invalid or unenforceable, the remaining provisions of this Comprehensive Settlement Agreement and Mutual Release shall not be affected thereby, and every provision of this Comprehensive Settlement Agreement and Mutual Release shall remain in full force and effect and enforceable to the fullest extent permitted by law, but only to the extent that the material portions of this Comprehensive Settlement Agreement and Mutual Release and the intent of the Parties as evidenced thereby are preserved as a binding agreement between the Parties.

12. *Assignment.* This Comprehensive Settlement Agreement and Mutual Release may not be assigned by either Party without the express written consent of the other Party.

13. *Headings.* Headings are intended only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Comprehensive Settlement Agreement and Mutual Release.

14. *Representations and Warranties.* Each of the Parties, by its signature below, represents and warrants to the other that it has all requisite power and authority to enter into this Comprehensive Settlement Agreement and Mutual Release and to perform all obligations hereunder.

15. *Force Majeure.*

- a. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Comprehensive Settlement Agreement and Mutual Release, for any failure or delay in fulfilling or performing any term of this Comprehensive Settlement Agreement and Mutual Release, when and to the extent such Party's (the "**Affected Party**") failure or delay is caused by or results from any one or more of the following events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, explosion, or pandemics (including the COVID-19 pandemic); (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Comprehensive Settlement Agreement and Mutual Release; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Affected Party.
- b. The Affected Party shall give notice within ten (10) days of any Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Affected Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Affected Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

[Signature Page Follows]

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

ATTEST:

CITY OF HAGERSTOWN

Donna K. Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

ATTEST:

CASCADES HOLDING US INC.

[Name and Title]

By: _____
[Name and Title]

Exhibit A

Demolition Specifications

(see attached)

Exhibit B

Mutual Release

(see attached)

EXHIBIT A

DEMOLITION SPECIFICATIONS

Permit Requirements

- A Demolition Permit application (*in the form attached hereto*) must be filed with the City of Hagerstown Department of Code and Permitting and include the following:
 - A Site Plan
 - Photographs of the site
 - Structural drawings
- An Owners Affidavit (*in the form attached hereto*) must be completed and provided to the Director of Utilities for signature. The Utilities Department will supply this document to the City of Hagerstown Department of Code and Permitting.
- The permits will be subject to review by other City Departments and further actions may be required for final approval. All demolition must be conducted in accordance with applicable local, state and federal law. No work can begin until all agencies having jurisdiction approve the required permits.
- The Permit Fee will be waived, however, the Contractor will be subject to a Licensing Fee.

Visit <https://www.hagerstownmd.org/1213/Building-Permit-Applications> for document download.

General Demolition Requirements

- Site stabilization shall occur before any surface or subsurface work can begin. At a minimum, a filter log or alternate approved erosion control must be placed along the East side of the disturbed area (between the fence line and Marsh Run) per detail E-6 (*attached hereto*).
- Concrete pads, slabs, and walls shall be removed to a depth not less than thirty inches (30") below final grade. If not removed, the concrete floor of the oil containment reservoir shall be broken so as not to accumulate water. These procedures are subject to inspection prior to backfilling.
- The stone base and ground grid shall be removed and hauled off-site to an approved location.
- All materials shall be hauled off-site to an approved location. A waste manifest must be maintained for oil-filled materials to include location, description, and quantity.
- The Contractor shall have complete salvage rights to all removed items.

- To prevent public entry the existing chain link fence must remain around the perimeter. The City will not be responsible for theft or public injury.
- If necessary, contact the Hagerstown Light Department should an additional staging area be needed; additional security fencing may be required.
- Care must be taken to prevent debris from tracking onto public streets with a stabilized construction entrance per detail B-1 (*attached hereto*).
- An approved fill material shall be added in 6" lifts and compacted with a vibratory roller or equivalent. Placing, grading, and compacting of fill shall be performed in such a way as to direct surface water run off to the ideal location for sediment control and to minimize saturation of completed fill.
- The fence shall be removed and post holes filled after final grade has been established.
- Topsoil shall be added at a minimum depth of 4". The topsoil shall be seeded with fescue and stabilized with an approved matting. Six months following completion, areas where settlement leaves the topsoil more than one-half (1/2) inch below finish grade or adjacent to pavement will need additional topsoil, reseeded, and re-stabilized at no additional cost to the City.



**CITY OF HAGERSTOWN
PLANNING & CODE ADMINISTRATION DEPARTMENT**

1 East Franklin Street
Third Floor
Hagerstown, MD 21740

Phone: 301-790-4163
Fax: 301-791-2650

**BUILDING PERMIT APPLICATION FOR DEMOLITION:
ENTIRE STRUCTURES, PARTIAL STRUCTURES, ACCESSORY STRUCTURES, INTERIOR ONLY**

Submittal Requirements

- ☐ If applicant is not the owner of the property, then an Affidavit from the owner authorizing the applicant to make an application for the permit is required.
- ☐ Building Permit Application
- ☐ Historic District Commission Approval, if applicable
- ☐ A photo of the front of the structure showing the premises identification number
- ☐ Three copies of plot plan. When at all possible, a legal survey should be used. If a survey is not being used, the plot plan can be drawn by hand. Plot plan must be on letter or legal size paper, and must include the following:
 - ☐ All property lines and property line dimensions.
 - ☐ Square footage or acreage of the property
 - ☐ Building Restriction Lines (BRL) and any utility easements (if known)
 - ☐ Scale of drawing
 - ☐ Property Owner name(s), if different than applicant
 - ☐ Street Address of Property
 - ☐ Show any existing dwellings and any other existing structures
 - ☐ Show existing or new driveway
- ☐ Stabilization Improvement Plan for site after demolition
- ☐ **Commercial : Construction drawings – see plan review checklist to determine what must be included. (A minimum of two paper copies and two electronic copies must be provided.)**
- ☐ **Residential : Three complete sets of construction drawings – see plan review checklist to determine what must be included. Or (A minimum of two paper copies and two electronic copies must be provided.)**
- ☐ All fees must be paid at time of application if the total fee is less than \$100.00 or if work was started prior to issuance of a building permit. If fee total is more than \$100.00, then a \$100.00 deposit must be made at the time of application.



CITY OF HAGERSTOWN
PLANNING & CODE ADMINISTRATION DEPARTMENT

1 East Franklin Street
Third Floor
Hagerstown, MD 21740

Phone: 301-790-4163
Fax: 301-791-2650

BUILDING PERMIT PLAN REVIEW CHECKLIST FOR DEMOLITION:
ENTIRE STRUCTURES, PARTIAL STRUCTURES, ACCESSORY STRUCTURES, INTERIOR ONLY

Complete sets of scaled plans minimum $\frac{3}{16}$ " to one foot, $\frac{1}{4}$ " to one foot scale is preferred
(Note: one set will be returned to you with the approved permit.)

☐ **For demolition of entire structure, partial demolition of a structure, and demolition of accessory structures, the following information is required:**

- ☐ Size of structure being demolished
- ☐ Number of stories
- ☐ Is structure on a full basement, crawlspace, or slab?
- ☐ Construction type (masonry, wood-frame, concrete)
- ☐ Foundation type (masonry, stone, concrete)
- ☐ Last known use of structure (apartments, SF dwelling, commercial, mixed use)
- ☐ Electrical service or plumbing services to be discontinued, trade permits are required
- ☐ Date structure will be vacated

☐ **For selective interior demolition only, the following information is required:**

- ☐ Floor plans must be submitted indicating all areas designated for demolition, including:
 - ☐ Walls, doors, hallways, stairs, etc.
 - ☐ Labeled use of all rooms
 - ☐ Any fire rated walls or other construction
- ☐ Locations of any systems to be removed or modified, including:
 - ☐ Electrical wiring & fixtures
 - ☐ Plumbing piping & fixtures
 - ☐ Heating & air-conditioning equipment, ductwork, or controls
- ☐ Type of fire alarm or fire sprinkler system (if any)
- ☐ Occupancy during demolition and method of providing safety to occupants during demolition

Please be advised that it is the owner's responsibility to arrange for the discontinuation and disconnection of all utility services.

CITY OF HAGERSTOWN
Planning & Code Administration Department
1 East Franklin Street
Hagerstown, Maryland 21740
(301) 790-4163



Type:	DEMOLITION
Process Date:	
Appl. #:	

BUILDING PERMIT APPLICATION FOR DEMOLITION:
ENTIRE STRUCTURES, PARTIAL STRUCTURES, ACCESSORY STRUCTURES, INTERIOR ONLY

FILL IN ALL APPROPRIATE SECTIONS – PLEASE PRINT – MUST BE LEGIBLE

SECTION I – PROJECT INFORMATION	
Estimated Cost of Construction \$ _____ <i>includes electrical, plumbing, hvac, labor & materials</i> TYPE OF DEMOLITION (select all that apply) Residential: Entire Building ☐ Partial ☐ Interior Only ☐ Commercial: Entire Building ☐ Partial ☐ Interior Only ☐ Accessory Structure ☐	Gross Floor Area List total gross square footage of area(s) to be demolished: _____
SECTION II – PROPERTY INFORMATION	
Address of Jobsite	Property Owner(s) Name(s)
Lot No. _____ Suite No. _____	Property Owner(s) Address
Subdivision Name: _____	_____
	Phone: _____ Cell Phone: _____
SECTION III – CONTACT INFORMATION	
Primary Contact	Contractor
Name	Company Name City License #
Current Mailing Address	Current Mailing Address
_____	_____
_____	_____
Phone No. _____ Cell No. _____	Phone No. _____ Cell No. _____
Email (required)	Email
SECTION IV – DESIGN PROFESSIONAL INFORMATION [Required for Commercial Projects]	
Architect	Engineer
Name	Name
Company Name	Company Name
Current Mailing Address	Current Mailing Address
_____	_____
_____	_____
Phone No. _____ Cell No. _____	Phone No. _____ Cell No. _____
Email	Email

SECTION V – PROJECT DETAILS**Description of Work** (describe in detail work to be performed, include floor level if multi-story structure):

_____**Building Planning Details****Code Analysis**

Please identify the Design Criteria used to design structure:

Building Code Edition	
Occupancy Classification	A B F H I M R S U
Construction Type	IA IB IIA IIB IIIA IIIB IV VA VB

MDE Notification Required? yes ☐ no ☐Any Electrical work involved? yes ☐ no ☐Any Plumbing work involved? yes ☐ no ☐

If yes to either question, then the appropriate trade permits must be obtained.

Building Height, Elevation, and Stories

Building Height _____

Number of Levels Including Basement: _____

Number of Stories Above Grade _____

Number of Stories Below Grade _____

Elevation _____

Dimensions of Building:

Front: _____	Rear: _____
Left Side: _____	Right Side: _____

Building Setbacks:

Front: _____	Rear: _____
Left Side: _____	Right Side: _____

Setbacks are measured to the shortest point

Construction Details: Type of structure being demolished**Residential – (check all that apply)**

- | | |
|---|---|
| ☐ Dwelling Single Family | ☐ Accessory structure attached |
| ☐ Dwelling Mobile Home | ☐ Accessory structure detached |
| ☐ Dwelling Townhouse | ☐ Other: _____ |
| ☐ Dwelling Duplex | |
| ☐ Dwelling Modular Home | |

Commercial – (check all that apply)

- | | |
|---|---|
| ☐ Mercantile | ☐ Multi Family/ Apartments |
| ☐ Business/ Office | ☐ Storage/ Utility |
| ☐ Factory | ☐ Other: _____ |
| ☐ Institutional | |
| ☐ Assembly | |

Applicant Information

Applicant's Name: _____

Current Mailing Address: _____

Phone No. _____

Cell No. _____

Email (required) _____

Building Permits and Applications for Building Permits are Non-transferrable and Non-assignable.**IMPORTANT – PLEASE READ CAREFULLY**

The Applicant hereby certifies and agrees as follows: 1) That he/she is authorized to make this application, 2) that the information is correct, 3) that he/she will comply with all provisions of City of Hagerstown Regulations and State Laws whether herein specified or not, 4) that no work requiring permits will be performed on the referenced property that is not specifically described in this application prior to obtaining said permits, 5) that he/she understands that any and all electrical, plumbing, or mechanical work requires separate permits. Any changes made without approval of the agencies involved shall constitute a suspension of the building permit until revised plans are approved. A revision fee may be charged.

*Signature of APPLICANT*_____
Please print name_____
Date Signed
Dec 12, 2016/pah_____
Association with project



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

OWNER'S AFFIDAVIT FOR BUILDING PERMIT APPLICATION

THIS IS TO CERTIFY THAT THE APPLICANT NAMED BELOW IS AUTHORIZED TO
MAKE APPLICATION FOR A PERMIT FOR THE WORK DESCRIBED AS:

AND LOCATED AT: _____

AND THAT SAID WORK IS AUTHORIZED BY THE PROPERTY OWNER AS REQUIRED BY
SECTION 105.1 OF THE BUILDING CODE.

Owner or Owner's Authorized Agent's Name (Print)

Owner/Agent's Address

Address

Owner/Agent's Signature

Date Signed

Applicant's Name (Print)

Applicant's Address

Address

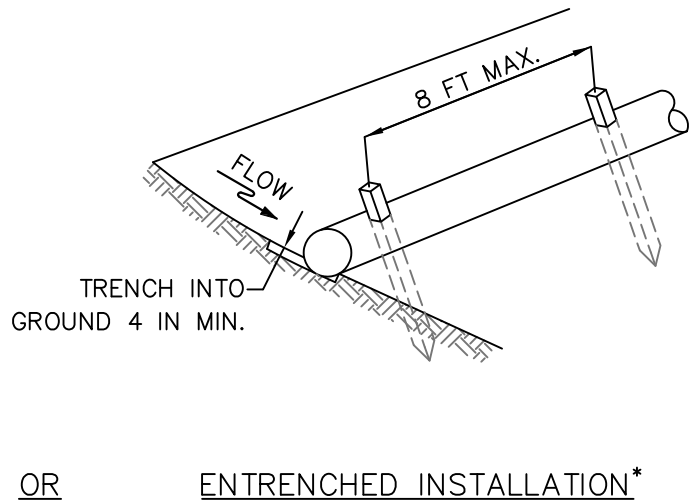
Applicant's Signature

Date Signed

STANDARD SYMBOL

FL-18

DESIGNATION FL-18 REFERS TO
18 INCH DIAMETER FILTER LOG.



ISOMETRIC VIEW

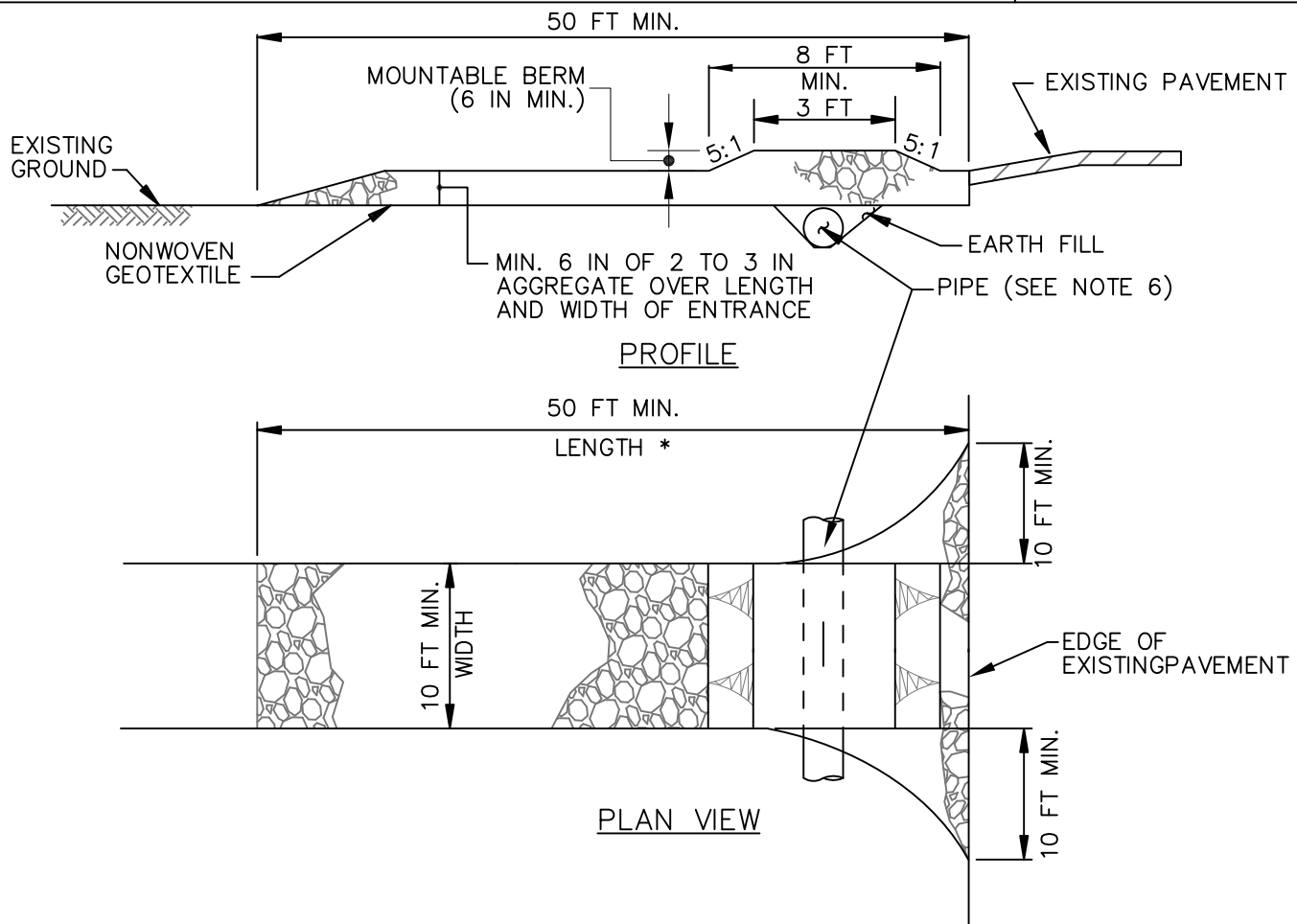


CONSTRUCTION SPECIFICATIONS

1. PRIOR TO INSTALLATION, CLEAR ALL OBSTRUCTIONS INCLUDING ROCKS, CLODS, AND DEBRIS GREATER THAN ONE INCH THAT MAY INTERFERE WITH PROPER FUNCTION OF FILTER LOG.
2. FILL LOG NETTING UNIFORMLY WITH COMPOST (IN ACCORDANCE WITH SECTION H-1 MATERIALS), OR OTHER APPROVED BIODEGRADABLE MATERIAL TO DESIRED LENGTH SUCH THAT LOGS DO NOT DEFORM.
3. INSTALL FILTER LOGS PERPENDICULAR TO THE FLOW DIRECTION AND PARALLEL TO THE SLOPE WITH THE BEGINNING AND END OF THE INSTALLATION POINTING SLIGHTLY UP THE SLOPE CREATING A "J" SHAPE AT EACH END TO PREVENT BYPASS.
4. FOR UNTRENCHED INSTALLATION BLOW OR HAND PLACE MULCH OR COMPOST ON UPHILL SIDE OF THE SLOPE ALONG LOG.
5. STAKE FILTER LOG EVERY 4 FEET OR CLOSER ALONG ENTIRE LENGTH OF LOG OR TRENCH LOG INTO GROUND A MINIMUM OF 4 INCHES AND STAKE LOG EVERY 8 FEET OR CLOSER.
6. USE STAKES WITH A MINIMUM NOMINAL CROSS SECTION OF 2X2 INCH AND OF SUFFICIENT LENGTH TO ATTAIN A MINIMUM OF 12 INCHES INTO THE GROUND AND 3 INCHES PROTRUDING ABOVE LOG.
7. WHEN MORE THAN ONE LOG IS NEEDED, OVERLAP ENDS 12 INCHES MINIMUM AND STAKE.
8. REMOVE SEDIMENT WHEN IT HAS ACCUMULATED TO A DEPTH OF $\frac{1}{2}$ THE EXPOSED HEIGHT OF LOG AND REPLACE MULCH. REPLACE FILTER LOG IF TORN. REINSTALL FILTER LOG IF UNDERMINING OR DISLODGING OCCURS. REPLACE CLOGGED FILTER LOGS. FOR PERMANENT APPLICATIONS, ESTABLISH AND CONTINUOUSLY MEET REQUIREMENTS FOR ADEQUATE VEGETATIVE ESTABLISHMENT IN ACCORDANCE WITH SECTION B-4 VEGETATIVE STABILIZATION.

NOTE:**ANCHORS/HOLD DOWN OPTIONS FOR FILTER LOG ON ASPHALT:****OPTION 1 -** USE TERRA-LOCK SOCK-LOK WITH DRILL TIE STAKE, (SEE DETAIL THIS SHEET)**OPTION 2 -** USE STANDARD FABRIC PIN W/WASHER 3/16" x 12" , (NO DETAIL SHOWN)**OPTION 3 -** USE STANDARD SAND BAG, (NO DETAIL SHOWN)

OR ANY METHOD APPROVED EQUAL BY CITY ENGINEER



CONSTRUCTION SPECIFICATIONS

1. PLACE STABILIZED CONSTRUCTION ENTRANCE IN ACCORDANCE WITH THE APPROVED PLAN. VEHICLES MUST TRAVEL OVER THE ENTIRE LENGTH OF THE SCE. USE MINIMUM LENGTH OF 50 FEET (*30 FEET FOR SINGLE RESIDENCE LOT). USE MINIMUM WIDTH OF 10 FEET. FLARE SCE 10 FEET MINIMUM AT THE EXISTING ROAD TO PROVIDE A TURNING RADIUS.
2. PIPE ALL SURFACE WATER FLOWING TO OR DIVERTED TOWARD THE SCE UNDER THE ENTRANCE, MAINTAINING POSITIVE DRAINAGE. PROTECT PIPE INSTALLED THROUGH THE SCE WITH A MOUNTABLE BERM WITH 5:1 SLOPES AND A MINIMUM OF 12 INCHES OF STONE OVER THE PIPE. PROVIDE PIPE AS SPECIFIED ON APPROVED PLAN. WHEN THE SCE IS LOCATED AT A HIGH SPOT AND HAS NO DRAINAGE TO CONVEY, A PIPE IS NOT NECESSARY. A MOUNTABLE BERM IS REQUIRED WHEN SCE IS NOT LOCATED AT A HIGH SPOT.
3. PREPARE SUBGRADE AND PLACE NONWOVEN GEOTEXTILE, AS SPECIFIED IN SECTION H-1 MATERIALS.
4. PLACE CRUSHED AGGREGATE (2 TO 3 INCHES IN SIZE) OR EQUIVALENT RECYCLED CONCRETE (WITHOUT REBAR) AT LEAST 6 INCHES DEEP OVER THE LENGTH AND WIDTH OF THE SCE.
5. MAINTAIN ENTRANCE IN A CONDITION THAT MINIMIZES TRACKING OF SEDIMENT. ADD STONE OR MAKE OTHER REPAIRS AS CONDITIONS DEMAND TO MAINTAIN CLEAN SURFACE, MOUNTABLE BERM, AND SPECIFIED DIMENSIONS. IMMEDIATELY REMOVE STONE AND/OR SEDIMENT SPILLED, DROPPED, OR TRACKED ONTO ADJACENT ROADWAY BY VACUUMING, SCRAPING, AND/OR SWEEPING. WASHING ROADWAY TO REMOVE MUD TRACKED ONTO PAVEMENT IS NOT ACCEPTABLE UNLESS WASH WATER IS DIRECTED TO AN APPROVED SEDIMENT CONTROL PRACTICE.

EXHIBIT B

MUTUAL GENERAL RELEASE AGREEMENT

This Mutual General Release Agreement, dated as of _____, 2020 (this “**Release Agreement**”), between the City of Hagerstown, Maryland, a municipal corporation, (the “**City**”), and Cascades Holding US Inc., a Delaware corporation and successor through merger to Cascades Tissue Group - Maryland, LLC, a Delaware limited liability company, (“**Cascades**”, and together with the City, the “**Parties**”, and each, a “**Party**”).

WHEREAS, the Parties are parties to that certain Comprehensive Settlement Agreement and Mutual Release, dated _____, 2020 (the “**Settlement Agreement**”); and

WHEREAS, under the terms of the Settlement Agreement, the Parties are required to execute and deliver this Release Agreement.

NOW, THEREFORE, in consideration of the premises set out above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Release Agreement have the respective meanings ascribed to them in the Settlement Agreement.

2. Mutual Release.

(a) In consideration of the covenants, agreements and undertakings of the Parties under the Settlement Agreement and this Release Agreement, effective upon the execution and delivery hereof, each Party, on behalf of itself and its respective present and former, direct and indirect, Affiliates, and each of their respective employees, officers, directors, shareholders, members, agents, representatives, successors, and assigns (collectively, “**Releasors**”) hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, Affiliates, and each of their respective employees, officers, directors, shareholders, members, agents, representatives, successors and assigns (collectively, “**Releasees**”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law or equity (collectively, “**Claims**”), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Release Agreement arising out of or relating to any matter, cause or thing whatsoever, including, without limitation, (1) the EPSA; (2) the HFLP Assignment and Assumption Agreement; (3) the Newstech Assignment and Assumption Agreement; (4) the Lease Agreement; and (5) the Substation, provided, however, that excluded from this Release Agreement are any Claims arising out of the Settlement Agreement, including, without limitation, the obligations of the Parties under Section 3 of

the Settlement Agreement, which, upon the fulfillment of such obligations, shall constitute Claims released herein .

(b) Each Releasor understands that it may later discover Claims or facts that may be different from, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this **Section 2**, and which, if known at the time of signing this Release Agreement, may have materially affected this Release Agreement, and such Party's decision to enter into it and grant the release contained in this **Section 2**. Nevertheless, the Releasors intend to fully, finally and forever settle and release all Claims that now exist, may exist, or previously existed, as set out in the release contained in this **Section 2**, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts.

3. Miscellaneous. Sections 5–10, 13 and 14 of the Settlement Agreement are incorporated herein as though fully set forth herein with references to “this Comprehensive Settlement Agreement and Mutual Release” being deemed to be references to this Release Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Release Agreement as of the date first written above.

ATTEST:

CITY OF HAGERSTOWN

Donna K. Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

ATTEST:

CASCADES HOLDING US INC.

[Name and Title]

By: _____
[Name and Title]

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

Topic:

Approval of a Resolution: Addendum to Residential Lease for 11850 Indian Lane

Mayor and City Council Action Required:

Staff request Mayor & City Council approval of an addendum to the residential lease agreement with Jarris and Jocelyn Crooks, the existing tenants located at 11850 Indian Lane.

Discussion:

11850 Indian Lane Lease Addendum Terms:

- New term to be effective through May 31, 2022 and will convert to a month-to-month agreement thereafter with tenancy terminable by either party requiring 30 days notice
- All other terms of existing lease will remain in full force and effect

A copy of the draft lease addendum is attached.

Staff have worked with the tenant and City Attorney Jen Keefer to review all aspects of the proposed lease addendum and a resolution authorizing the addendum is scheduled for approval during the November 17th Regular Session.

Attachments: Lease Addendum for Jarris and Jocelyn Crooks – 11850 Indian Lane
Resolution
Motion

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and City Council approve a resolution authorizing the amendment of a Lease Agreement at the City of Hagerstown owned property located at 11850 Indian Lane in Hagerstown, MD. The amendment will extend the term of the current lease until May 31, 2022 and all other lease conditions will remain unchanged.

Action Dates:

DATE OF INTRODUCTION:	11/17/2020
DATE OF PASSAGE:	11/17/2020
EFFECTIVE DATE:	11/17/2020

ATTACHMENTS:

File Name

111020_Indian_Lane_Lease_Extension.pdf

Description

Resolution: Indian Lane
Lease Extension



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager

Date: November 4th, 2020

RE: Lease Addendum for Jarris and Jocelyn Crooks – 11850 Indian Lane

Staff request Mayor & City Council approval of an addendum to the residential lease agreement with Jarris and Jocelyn Crooks, the existing tenants located at 11850 Indian Lane.

11850 Indian Lane Lease Addendum Terms:

- New term to be effective through May 31, 2022 and will convert to a month-to-month agreement thereafter with tenancy terminable by either party requiring 30 days notice
- All other terms of existing lease will remain in full force and effect

A copy of the draft lease addendum is attached.

Staff have worked with the tenant and City Attorney Jen Keefer to review all aspects of the proposed lease addendum and a resolution authorizing the addendum is scheduled for approval during the November 17th Regular Session.

Attachments: Lease Addendum for Jarris and Jocelyn Crooks – 11850 Indian Lane
Resolution
Motion

- c. Jill Thompson, Director of DCED
Eric Deike, Director of Public Works
Michelle Hepburn, Director of Finance

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Date: November 17, 2020

TOPIC: **Approval of a Resolution: Amendment to the Lease Agreement for the City of Hagerstown property located at 11850 Indian Lane, Hagerstown, Maryland.**

Charter Amendment

Code Amendment

Ordinance

Resolution X

Other

MOTION: I hereby move that the Mayor and City Council approve a resolution authorizing the amendment of a Lease Agreement at the City of Hagerstown owned property located at 11850 Indian Lane in Hagerstown, MD. The amendment will extend the term of the current lease until May 31, 2022 and all other lease conditions will remain unchanged.

DATE OF INTRODUCTION: 11/17/2020

DATE OF PASSAGE: 11/17/2020

EFFECTIVE DATE: 11/17/2020

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE CITY OF HAGERSTOWN
TO ENTER INTO AN ADDENDUM TO RESIDENTIAL LEASE AGREEMENT WITH
JARRIS CROOKS AND JOCELYN CROOKS
FOR LEASE OF THE PROPERTY KNOWN AS
11850 INDIAN LANE, HAGERSTOWN, MARYLAND**

RECITALS

WHEREAS, the City of Hagerstown owns real property known as 11850 Indian Lane, Hagerstown, Maryland 21742, which is improved with a residential dwelling (“the Premises”); and

WHEREAS, said property the Premises is currently leased by Jarris Crooks and Jocelyn Crooks (“the Tenants”), pursuant to a Lease Agreement dated June 1, 2018, a Lease Amendment dated March 15, 2019, a Lease Addendum dated February 5, 2020; and

WHEREAS, the City and the Tenants desire to extend the term of the Lease Agreement for an additional eighteen (18) months; and

WHEREAS, the Mayor and Council find it in the best interests of the citizens of the City of Hagerstown 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 the foregoing recitals are incorporated herein as if fully set forth.
2. That the City of Hagerstown be and is hereby authorized to enter into the Addendum to Lease Agreement with Jarris Crooks and Jocelyn Crooks, for the property located at 11850 Indian Lane, Hagerstown, Maryland, pursuant to the terms of the Addendum to Lease Agreement attached hereto and incorporated herein by reference.
3. That the City of Hagerstown be and is hereby authorized to execute and deliver the Amendment to Lease Agreement attached hereto, and to execute any additional documentation required to effectuate the purposes of this Resolution.

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

(SIGNATURES ON FOLLOWING PAGE)

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

Donna K. Spickler, City Clerk

By: _____
Robert E. Bruchey, II Mayor

Date of Introduction: N/A

Date of Passage: November 17, 2020

Effective Date: November 17, 2020

Addendum to Residential Lease

THIS ADDENDUM TO RESIDENTIAL LEASE made on the _____ day of _____, 202__, between City of Hagerstown, Landlord, and Jarris Crooks and Jocelyn Crooks, Tenants.

WITNESSETH, that pursuant to Residential Lease dated June 1, 2018 and an Amendment to Residential Lease dated March 15, 2019, and an Addendum dated February 5, 2020, the Landlord hereby leased to the Tenant and the Tenant hereby leased from the Landlord, premises known as 11850 Indian Lane, Hagerstown, Washington County, Maryland.

WITNESSETH, that the parties desire to amend the Residential Lease *in only the following regards*:

1. **TERM.** This Lease shall be for a term of eighteen (18) months, beginning on the 1st day of December, 2020 and ending on the 31st day of May, 2022. Thereafter, the Tenant shall be considered a month-to-month, periodic Tenant, with said tenancy terminable by either party upon thirty (30) days' written notice to the other.
2. **RENT.** Total rent amount of: EIGHTEEN THOUSAND AND 00/100 DOLLARS (\$18,000.00) payable in monthly installments of ONE THOUSAND and 00/100 DOLLARS (\$1,000.00) per month in advance of the first day of each and every month of said term.

IN ALL OTHER RESPECTS, the Residential Lease dated June 1, 2018, the Amendment to Residential Lease dated January 11, 2019, and the Addendum dated February 5, 2020 shall remain in full force and effect.

This Addendum to Residential Lease contains the entire understanding between the parties hereto. There are no representations, warranties or agreements concerning the subject matter of this Addendum to Residential Lease other than as expressly set forth herein.

It is recognized by and between the parties that it is necessary for the Landlord to pass a Resolution approving the execution of this Addendum to Residential Lease and the provisions hereof. In the event that said Resolution should not pass or should not become effective by virtue of referendum or some other methodology or by operation of law, then in said event, this Addendum to Residential Lease is null and void and of no effect.

(SIGNATURES ON FOLLOWING PAGE)

WITNESSETH our hands and seals the first day above written.

ATTEST:

LANDLORD
CITY OF HAGERSTOWN

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

WITNESS:

TENANT:

Jarris Crooks

WITNESS:

TENANT:

Jocelyn Crooks

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

Topic:

Approval of a Resolution: Amendment to Agreement with American Traffic Solutions, Inc. d/b/a Verra Mobility

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_and_Resolution_-_Fourth_Amendment_American_Traffic_Solutions.pdf

Description

Motion and Resolution - Amendment to Agreement with ATS

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: **Approval of a Resolution: Fourth Amendment to Agreement with American Traffic Solutions, Inc., d/b/a Verra Mobility for the Purposes of Providing a Digital Red Light Camera System and Related Office Services**

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

MOTION: I hereby move for Mayor and Council approval of a resolution to approve a fourth amendment to the agreement with American Traffic Solutions, Inc. d/b/a Verra Mobility for a digital red light camera system. The term of this amendment is January 1, 2021 through December 31, 2021.

DATE OF PASSAGE: 11/17/2020
EFFECTIVE DATE: 11/17/2020

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION TO APPROVE
THE EXECUTION AND DELIVERY
OF A FOURTH AMENDMENT TO AGREEMENT WITH
AMERICAN TRAFFIC SOLUTIONS, INC.
d/b/a VERRA MOBILITY
FOR THE PURPOSES OF
PROVIDING A DIGITAL RED LIGHT CAMERA SYSTEM
AND RELATED OFFICE SERVICES**

RECITALS

WHEREAS, Maryland Transportation Code Ann. §21-202.1 (“the Code”) authorizes the use of traffic control signal monitoring systems (“Red Light Camera Systems”); and

WHEREAS, the Mayor and City Council of the City of Hagerstown, hereinafter referred to as “the City,” believe it is in the best interest for the safety of its citizens that a Red Light Camera System be implemented within the City of Hagerstown, in accordance with the Code;

WHEREAS, American Traffic Solutions, Inc. d/b/a Verra Mobility (“ATS”), a corporation organized and existing under the laws of the State of Kansas, installs, operates, and provides technical and other support services for Red Light Camera Systems in the State of Maryland;

WHEREAS, Howard County, Maryland (“Howard County”) entered into a written agreement with ATS on or about January 5, 2016 for the provision of a Red Light Camera System in Howard County (the “Howard County Agreement”), after a competitive bid process;

WHEREAS, Howard County can provide assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City through the City’s membership and participation in the Regional Automated Enforcement Center (“RAEC”);

WHEREAS, the City entered into agreements with both ATS (“the ATS Agreement”) and Howard County which provide for the benefits of Howard County Agreement, as well as Howard County’s assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City, and the City’s use of the RAEC;

WHEREAS, the ATS Agreement expired on December 31, 2017, but was extended until December 31, 2018 by the parties by virtue of a First Amendment to Agreement between the City of Hagerstown, Maryland and American Traffic Solutions, Inc.;

WHEREAS, the First Amendment to Agreement expired on December 31, 2018, but was extended until December 31, 2019 by the parties by virtue of a Second Amendment to Agreement between the City of Hagerstown, Maryland and American Traffic Solutions, Inc.;

WHEREAS, the Second Amendment to Agreement expired on December 31, 2019, but was extended until December 31, 2020 by the parties by virtue of a Third Amendment to Agreement between the City of Hagerstown, Maryland and American Traffic Solutions, Inc.;

WHEREAS, the City and ATS wish to extend the terms of the ATS Agreement until December 31, 2021; and

WHEREAS, attached hereto and incorporated herein is a Fourth Amendment to Agreement between the City and ATS to secure ATS's assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City. The Fourth Amendment is effective for a one-year period beginning on January 1, 2021 and ending on December 31, 2021, subject to rights of termination by either party as set forth in Howard County Agreement.

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

1. That the foregoing recitals are incorporated herein as if fully set forth.
2. That the City of Hagerstown be and is hereby authorized to execute the Fourth Amendment to Agreement between the City and ATS, a copy of which is attached hereto, and to execute such other and further documents as are necessary to effectuate the same.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

Donna K. Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Introduction: November 17, 2020
Date of Passage: November 17, 2020
Effective Date: November 17, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

d/b/a VERRA MOBILITY

WHEREAS, VERRA MOBILITY entered into an agreement with Howard County, Maryland as of January 5, 2016 (hereinafter the “Howard County Agreement”); and

WHEREAS, the Municipality and VERRA MOBILITY wish to modify and amend certain terms and conditions of the Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, warranties, representations, and conditions contained in the Agreement, the parties hereto agree as follows:

- IN WITNESS WHEREOF, authorized representatives of the parties have set forth their signatures below, intending to be legally bound.

CITY OF HAGERSTOWN

By: Robert E. Bruchey, II Date _____

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

Topic:

Approval of Amendments to FY20 and FY21 Community Development Block Grant (CDBG)
Annual Action Plans – CIP Funding Reallocation

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

I hereby move for the Mayor and City Council to amend the FY20 and FY21 Community Development Block Grant Annual Action Plans in order to reallocate \$50,000 of available CDBG funding for capital improvement projects based on the attached Action Plan amendment details. Final allocation of this funding will result in \$30,000 of additional CDBG funding for the FY20 Mitchell Avenue Signal project and \$20,000 of additional CDBG funding for the FY21 Handicap Accessibility Ramps project.

Action Dates:

DATE OF INTRODUCTION:	11/17/2020
DATE OF PASSAGE:	11/17/2020
EFFECTIVE DATE:	11/17/2020

ATTACHMENTS:

File Name

111720_CDBG_Amendment_CIP_Reallocation.pdf

Description

CDBG Amendments - CIP
Funding Reallocation

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

November 17, 2020

TOPIC: Amendments to FY20 and FY21 Community Development Block Grant (CDBG) Annual Action Plans – CIP Funding Reallocation

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

MOTION: I hereby move for the Mayor and City Council to amend the FY20 and FY21 Community Development Block Grant Annual Action Plans in order to reallocate \$50,000 of available CDBG funding for capital improvement projects based on the attached Action Plan amendment details. Final allocation of this funding will result in \$30,000 of additional CDBG funding for the FY20 Mitchell Avenue Signal project and \$20,000 of additional CDBG funding for the FY21 Handicap Accessibility Ramps project.

DATE OF INTRODUCTION:	11/17/2020
DATE OF PASSAGE:	11/17/2020
EFFECTIVE DATE:	11/17/2020

**CITY OF HAGERSTOWN, MARYLAND
AMENDMENT TO FY20 AND FY21 ANNUAL ACTION PLANS FOR USE OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

Reprogramming CDBG Funding to Existing FY21 CDBG Activity:

In Fiscal Year 2021, the City of Hagerstown proposes to reprogram \$50,000 of CDBG funding to an existing FY21 CDBG Activity:

FY21 Handicap Accessibility Ramps

The original FY21 CDBG Action Plan included \$100,000 of CDBG funding for Handicap Accessibility Ramp activity. This proposed amendment will add an additional \$50,000 of CDBG funding to this activity for a total funding amount of \$150,000.

Reprogrammed funding will be sourced from the following activities:

- **\$30,000** from FY20 ADA Park Paths (**Activity to be cancelled in the CDBG Action Plan and project will continue with funding from non-CDBG sources**)
- **\$20,000** from FY19 ADA Compliant Bleachers for Parks (Initially funded at \$70,000 and project completed with \$20,000 remaining)

The Mayor & City Council are authorized to enact the above amendment plan and can further authorize \$30,000 of this CDBG funding to be reallocated to the Mitchell Avenue Signal Project. This is permissible based on the City's CDBG Citizen Participation Plan when CDBG funding transfer occurs between existing CDBG activities and less than 50% of the activity budgets are impacted.

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

Topic:

Approval of Purchase for Materials for NorthPoint and Former Cascades

Mayor and City Council Action Required:

Staff requests the City Administrator be provided authorization to approve procurement for equipment and materials, to include formal bid items exceeding \$25,000 and sole source items exceeding \$10,000 specifically for the Northpoint Development along Wesel Blvd and GB & J's, LLC at 273 E Memorial Blvd (former Cascades Tissue Group).

Discussion:

Hagerstown Light Department staff has been provided with cost and lead time estimates by distributors to procure the necessary electric distribution equipment we anticipate necessary to interconnect the customer's main breaker or metering point to the Hagerstown Light Department distribution system. The lead time for most items varies from 14 to 20 weeks, where others reach 35 weeks. Considering the project owners' aggressive schedules, it would be in the best interest of all parties to provide for an expedited procurement process so that items may be ordered immediately following the final electrical plans and the City's bidding process.

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and City Council grant permission to the City Administrator to approve purchases in excess of \$10,000 for any electric distribution materials and equipment necessary to provide service to Northpoint Development located along Wesel Blvd and GB & J's, LLC located at 273 East Memorial Blvd.

Action Dates:

Regular Session 11/17/2020

ATTACHMENTS:

File Name

Motion_for_Administrator_Purchasing_Approval.pdf
Purchasing_Memorandum_20201117.pdf

Description

Motion
Memorandum

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

**TOPIC: Permission for the City Administrator to Approve Purchasing
Materials and Equipment for Specific Projects**

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

MOTION: I hereby move that the Mayor and City Council grant permission to the City Administrator to approve purchases in excess of \$10,000 for any electric distribution materials and equipment necessary to provide service to Northpoint Development located along Wesel Blvd and GB & J's, LLC located at 273 East Memorial Blvd.

DATE OF INTRODUCTION: 11/17/2020
DATE OF PASSAGE: 11/17/2020
EFFECTIVE DATE: 11/17/2020



425 East Baltimore Street

Hagerstown, MD 21740-6105

November 4, 2020

To: Scott Nicewarner, City Administrator

From: Nathan Fridinger, Electric Operations Manager
Nancy Hausrath, Director of Utilities

Subject: Purchasing of electric distribution materials and equipment for specific projects

Hagerstown Light Department staff has been provided with cost and lead time estimates by distributors to procure the necessary electric distribution equipment we anticipate necessary to interconnect the customer's main breaker or metering point to the Hagerstown Light Department distribution system. The lead time for most items varies from 14 to 20 weeks, where others reach 35 weeks.

Considering the project owners' aggressive schedules, it would be in the best interest of all parties to provide for an expedited procurement process so that items may be ordered immediately following the final electrical plans and the City's bidding process.

Staff requests the City Administrator be provided authorization to approve procurement for equipment and materials, to include formal bid items exceeding \$25,000 and sole source items exceeding \$10,000 specifically for the Northpoint Development along Wesel Blvd and GB & J's, LLC at 273 E Memorial Blvd (former Cascades Tissue Group).

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

Topic:

Approval of a License Agreement: Barbara Ingram School for the Arts Foundation, Inc. for Engraved Pavers

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_License_Agreement_with_BISFA_-_Pavers.pdf

license_agreement.bisfa.2020.pdf

Description

Motion and License Agreement

License Agreement - Barbara Ingram School for the Arts Foundation, Inc.

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: Approval of License Agreement with Barbara Ingram School for the Arts Foundation, Inc.

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

MOTION: I hereby move to approve a License Agreement between the City of Hagerstown and Barbara Ingram School for the Arts Foundation, Inc. to install and maintain engraved brick pavers in the public sidewalk fronting 7-19 South Potomac Street.

DATE OF PASSAGE: 11/17/2020

LICENSE AGREEMENT

This Agreement entered into this 3 day of November, 2020, by and between the City of Hagerstown, a Maryland municipal corporation, hereinafter called City, and the **Barbara Ingram School for the Arts Foundation, Inc.**, Hereinafter called Licensee.

WHEREAS, the City is the owner of certain real estate located within the corporate boundaries of the City of Hagerstown and more particularly described on Exhibit B as the public sidewalk area fronting 7 – 19 South Potomac Street and

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

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

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

1. The City of Hagerstown does hereby grant a license to the Licensee covering the property described on Exhibit B for the purposes set forth on the attached Exhibit A but subject to the terms of this Agreement.
2. The Licensee shall be responsible for all costs of construction, permits and any other cost associated with the intended use of the Licensee and said use shall be in conformance with all of the requirements of the City and State Building Codes or any other applicable laws.
3. The Licensee shall be responsible for the repair and maintenance of any construction which it undertakes on the property of the City as described in Exhibit A.
4. The Licensee will indemnify and hold harmless the City from any actions, causes of actions, claims, damages, taxes, permit fees, or any other claims including but not limited to, attorney's fees and costs of suit arising from any action brought against the

City by anyone, including the Licensee, as a result of the Licensee's use or occupancy of City property as described herein not resulting from the affirmative negligence of the City or its employees or agents.

5. The Licensee shall install engraved paver bricks in the existing brick sidewalk in front of 7 – 19 S. Potomac Street. The Licensee shall pay to acquire and install the paver bricks, and shall be solely responsible for cost to replace any of the engraved bricks if they are damaged. The paver bricks shall be installed in a workman like manner, and the finished surface of the sidewalk in this area shall be smooth and uniform.

6. In the event of termination of this Agreement, and at the request of the City, the Licensee shall remove the paver bricks and replace them with plain paver bricks matching the surrounding paver bricks. Any damage to pavement, curb, paver bricks, etc. in the public right-of-way shall be repaired or replace by the Licensee. The Licensee shall be responsible for repairing any damage to private property resulting from the installation or removal of the engraved paver bricks.

7. This license shall terminate Ninety (90) days after notice to the Licensee from the City that it desires to terminate this license.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

Robert E. Bruchey II, Mayor

WITNESS:

Barbara Ingram

Barbara Ingram School for the Arts Function
By Karen M. Sipe

Licensee

Attachments: Exhibits A, B

EXHIBIT A

LICENSE AGREEMENT FOR THE

**BARBARA INGRAM SCHOOL FOR THE ARTS FOUNDATION, INC
PUBLIC SIDEWALK FRONTING 7 – 19 S. POTOMAC STREET**

. The Licensee shall install engraved paver bricks in the existing brick sidewalk in front of 7 – 19 S. Potomac Street. The Licensee shall pay to acquire and install the paver bricks, and shall be solely responsible for cost to replace any of the engraved bricks if they are damaged. The paver bricks shall be installed in a workman like manner, and the finished surface of the sidewalk in this area shall be smooth and uniform.



BARBARA INGRAM SCHOOL FOR THE ARTS FOUNDATION, INC.
7 - 19 S. POTOMAC STREET

LICENSE AGREEMENT

This Agreement entered into this 3 day of November, 2020, by and between the City of Hagerstown, a Maryland municipal corporation, hereinafter called City, and the **Barbara Ingram School for the Arts Foundation, Inc.**, Hereinafter called Licensee.

WHEREAS, the City is the owner of certain real estate located within the corporate boundaries of the City of Hagerstown and more particularly described on Exhibit B as the public sidewalk area fronting 7 – 19 South Potomac Street and

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

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

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

1. The City of Hagerstown does hereby grant a license to the Licensee covering the property described on Exhibit B for the purposes set forth on the attached Exhibit A but subject to the terms of this Agreement.
2. The Licensee shall be responsible for all costs of construction, permits and any other cost associated with the intended use of the Licensee and said use shall be in conformance with all of the requirements of the City and State Building Codes or any other applicable laws.
3. The Licensee shall be responsible for the repair and maintenance of any construction which it undertakes on the property of the City as described in Exhibit A.
4. The Licensee will indemnify and hold harmless the City from any actions, causes of actions, claims, damages, taxes, permit fees, or any other claims including but not limited to, attorney's fees and costs of suit arising from any action brought against the

City by anyone, including the Licensee, as a result of the Licensee's use or occupancy of City property as described herein not resulting from the affirmative negligence of the City or its employees or agents.

5. The Licensee shall install engraved paver bricks in the existing brick sidewalk in front of 7 – 19 S. Potomac Street. The Licensee shall pay to acquire and install the paver bricks, and shall be solely responsible for cost to replace any of the engraved bricks if they are damaged. The paver bricks shall be installed in a workman like manner, and the finished surface of the sidewalk in this area shall be smooth and uniform.

6. In the event of termination of this Agreement, and at the request of the City, the Licensee shall remove the paver bricks and replace them with plain paver bricks matching the surrounding paver bricks. Any damage to pavement, curb, paver bricks, etc. in the public right-of-way shall be repaired or replace by the Licensee. The Licensee shall be responsible for repairing any damage to private property resulting from the installation or removal of the engraved paver bricks.

7. This license shall terminate Ninety (90) days after notice to the Licensee from the City that it desires to terminate this license.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

Robert E. Bruchey II, Mayor

WITNESS:

Muriel M. Miller

Barbara Ingram School for the Arts Foundation
By Karen M. Lipp

Licensee

Attachments: Exhibits A, B

EXHIBIT A

LICENSE AGREEMENT

FOR THE

**BARBARA INGRAM SCHOOL FOR THE ARTS FOUNDATION, INC
PUBLIC SIDEWALK FRONTING 7 – 19 S. POTOMAC STREET**

. The Licensee shall install engraved paver bricks in the existing brick sidewalk in front of 7 – 19 S. Potomac Street. The Licensee shall pay to acquire and install the paver bricks, and shall be solely responsible for cost to replace any of the engraved bricks if they are damaged. The paver bricks shall be installed in a workman like manner, and the finished surface of the sidewalk in this area shall be smooth and uniform.

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

Topic:

Approval of Change Order for the 2020 Pavement Preservation Program

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Description

Change_Order_for_the_2020_Pavement_Preservation_Program.pdf

Approval of a Change
Order for the 2020
Pavement Preservation
Program

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: Approval of a Change Order for the 2020 Pavement Preservation Program

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

MOTION: I hereby move to approve Change Order No. 01 for the 2020 Pavement Preservation Program between the City of Hagerstown and Craig Paving Inc. This Change Order is for additional paving work on South Cannon Avenue from Mill Street to near Cleveland Avenue in the amount of \$76,000.00. This amount will be refunded in full by Columbia Gas and repaves areas recently damaged by gas line installations.

DATE OF PASSAGE: 11/17/2020



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 18, 2020

CHANGE ORDER NO. 01
2020 PAVEMENT PRESERVATION PROGRAM
CONTRACT 20-PP-14

CONTRACTOR: CRAIG PAVING INC
118 Hump Road
Hagerstown, MD 21740

A. CHANGE TO CONTRACT

	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>COST</u>	<u>TOTAL</u>
1.	South Cannon Avenue – mill and overlay curb-to-curb per the attached diagram.			\$76,000.00
	REQUESTED BY: COLUMBIA GAS			
	REASON: Restore street after gas main work			

NET COST: \$76,000.00

B. COST ESTIMATE:

The original Contract Maximum Amount:	\$815,564.50
Net cost change to Contract from previous Change Orders:	0.00
The Contract Maximum Amount prior to this Change Order:	\$815,564.50
Net cost change to Contract from this Change Order:	\$76,000.00
The new Contract Maximum Amount including this Change Order:	\$891,564.50
Reimbursement from Columbia Gas	*76,000.00
Amount funded with City General Fund after Columbia Gas reimbursement	\$815,564.50

* Columbia Gas will reimburse City of Hagerstown \$76,000.00

The “maximum amount” indicated in this Contract does not constitute an obligation by the City to pay the Contractor this amount. The City shall pay the Contractor for only that quantity of work actually executed to the satisfaction of the City Engineer complete in place.

C. TIME IMPACT:

The length of contract will be increased by five (5) working days.

D. ATTACHMENTS:

* Map of work area

E. APPROVAL:

OWNER: CITY OF HAGERSTOWN, MD
 1 EAST FRANKLIN STREET
 HAGERSTOWN, MD 21740

APPROVED BY:

Rodney A. Tissue, P.E.
City Engineer

CONTRACTOR:

APPROVED BY:

Contractor's authorized representative

Date

Funding Note : The Mayor & Council approved expenditure of \$815,564.50 on June 23, 2020.
Columbia Gas Company will reimburse the City of Hagerstown an additional \$76,000.00 for their
portion of work for a total contract amount of \$891,564.50.

REIMBURSEMENT AND RELEASE AGREEMENT

THIS REIMBURSEMENT AND RELEASE AGREEMENT ("Agreement") is made and entered into as of the twenty-seventh day of October, 2020, by and between Columbia Gas of Maryland, Inc., a Delaware corporation ("Columbia"), and The City of Hagerstown, a Maryland political subdivision ("Municipality").

- A. The Municipality and Columbia are entering into this Agreement to achieve economic and operational efficiencies;
- B. Columbia has undertaken certain renovations and/or upgrades to its pipeline system located within the Municipality's public rights-of-way (the "Project"), and Municipality agrees to perform the restoration and paving of the public rights-of-way disturbed by the Project;
- C. as a one-time benefit, Columbia agrees to reimburse Municipality for the actual and reasonable expenses incurred by the Municipality for such restoration and paving work under the terms of this Agreement;
- D. Municipality agrees to use the full amount of the Payment solely for the Work as defined in this Agreement: and
- E. Municipality agrees to be solely responsible for the Work and is willing to release and indemnify Columbia for any and all claims and costs associated with such Work.

In exchange the promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. **Recitals.** The above recitals are made a part of this Agreement.

2. **Work:** Municipality agrees to be solely responsible for and perform the work described below: (i) through its own employees and/or its contractors, and (ii) in accordance with all applicable rules and regulations including, but not limited to, Municipality's paving and restoration standards (the "Work"):

[(a) Mill and overlay paving described in attached exhibit.

3. **Payment:** Within thirty (30) days of receipt of invoices and supporting evidence of the cost incurred by the Municipality for the Work, Columbia shall make a payment of \$76,000 ("Payment") in the form of a check made payable to the Municipality. The receipt and sufficiency of the Payment as compensation in full for any and all costs and damages associated with the Project, is acknowledged by the Municipality. Municipality waives all permit fees, street opening fees, or right of way costs associated with the Project and Columbia shall not be responsible to pay for or reimburse Municipality for any costs associated with any restoration of roads that were not disturbed by Columbia during the Project

4. **Release and Waiver:** Municipality represents and covenants that Columbia shall not be held liable or responsible for any costs, damages, defects, defaults or failures, including but not limited to any type of pavement failure (e.g., settlement, development of potholes, fatiguing cracks, reflection cracks, seam cracks, etc.) or failure to comply with any federal, state or local laws, rules or regulations, arising from or related to the Work.

To the extent allowed by law, Municipality releases and forever discharges Columbia and its parent company, affiliates and/or subsidiaries, and all of their respective employees, officers, directors, agents and shareholders (collectively, "Released Parties"), from all claims, suits or actions related to or arising from Municipality's performance of the Work and or the granting of waivers contained in this Agreement which Municipality or any third party has or may hereafter have for loss, damage, expenses or injuries of any kind including, but not limited to, damage or injury to any Municipality roadway, property, employee, agent, representative or contractor. To the extent allowed by law, Municipality shall indemnify and defend the Released Parties from all such claims, demands, suits or causes of action at its own costs and expense without reimbursement from Columbia or any other of the Released Parties.

5. **Governing Law:** This document is subject to and governed by the substantive law of the Commonwealth of Maryland. This document shall be construed to provide the broadest possible protection to the Released Parties. All provisions of this Agreement are severable. In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, then it shall be construed as reformed to the extent necessary to render such provision valid, and this Agreement shall remain fully enforceable and in effect as reformed.

6. **Miscellaneous:** This Agreement is unique and applies to this Project only and shall have no effect on any future work done by Columbia within the Municipality. This Agreement shall be construed to provide the broadest possible protection to the Released Parties. In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, then it shall be construed as reformed to the extent necessary to render such provision valid, and this Agreement shall remain fully enforceable and in effect as reformed. This Agreement contains the entire agreement between the Municipality and Columbia, and all of the terms of this Agreement are contractual and not mere recital. The captions and heading used in this Agreement are convenience only and shall not affect the interpretation or meaning of the Agreement. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which shall be deemed one and the same instrument. A facsimile or pdf signature to this Agreement shall be legally binding and considered in all manner and respects as an original signature. This Agreement may only be modified by a written instrument signed by authorized representatives of the Borough and Columbia.

[Signature pages to follow.]

The parties have executed this Agreement as of the date first written above.

BY SIGNING BELOW, I REPRESENT THAT I HAVE FULL AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF _____, Maryland.

[_____]

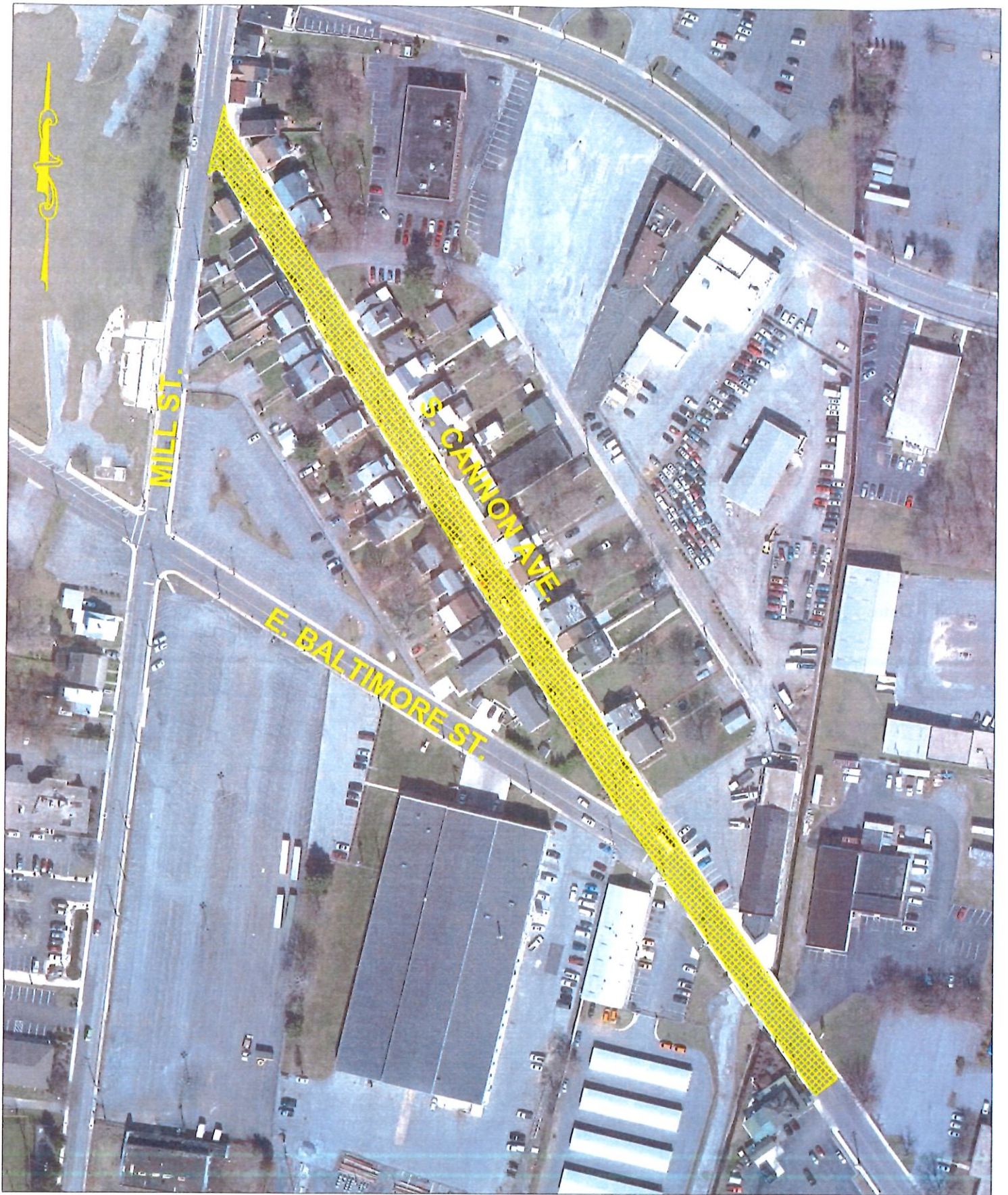
Title: _____

Date: _____

COLUMBIA GAS OF Maryland, INC.

Title: _____

Date: _____



S. CANNON AVENUE RESTORATION AREA

SCALE: 1" = 150'

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

Topic:

Approval of Management Services for Potterfield Pool

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Pool_Services_Agreement.pdf

Potterfield_Pool_Management_Services.2020.pdf

Description

Motion - Pool Services
Agreement

Potterfield Pool
Management Services

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 17, 2020

TOPIC: Approval of Management Services for Potterfield Pool

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

MOTION: I hereby move to approve a three (3) year contract for pool management services at Potterfield Pool with the YMCA of Hagerstown beginning with the 2021 pool season. The contract provides all lifeguards, cleaning, and assisting City staff with aquatic programs.

I further authorize staff to purchase the necessary chemicals, chemical storage container, and complete future emergency repairs as they arise at the pool.

DATE OF PASSAGE: 11/17/2020



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 10, 2020

TO: Bruce Zimmerman, City Administrator
FROM: Rodney Tissue, Director 
RE: Potterfield Pool Management Services

1. **Mayor & Council Action Requested**

We request that Mayor & Council approve a three (3) year contract with the recommended vendor to manage the Potterfield Pool starting with the 2021 season. The draft contract is attached.

2. **Discussion**

In September, staff issued a detailed Request for Proposal (RFP) for management of the Potterfield Pool. We obtained five (5) proposals and after reviewing them, the committee (consisting of Mark Haddock, Amy Riley, and I) is recommending the YMCA of Hagerstown to manage pool. This is a three year contract with option to renew two additional years.

The YMCA is not the lowest price (although we feel if we buy the pool chemicals instead of the YMCA, we can realize a savings of over \$20,000 making them the lowest cost). For all the reasons stated below, we recommend YMCA because we **are buying a service**. Specific reasons we recommend them include:

- a. They manage several local pools including their own indoor facility and Fountainhead Country Club.
- b. This **local** pool management experience gives them relationships with potential candidates to be the managers at the pool, a critical position in the success of the pool. The YMCA plans to hire local lifeguards. Because they are local, their management team can meet with us regularly at the pool and address issues.
- c. The YMCA would provide all lifeguards, management, water quality assurance and cleaning of the pool house.
- d. The YMCA will operate the pool seven (7) days a week and the pool will be open from Memorial Day to Labor Day (although we can close weekdays in late August for additional cost savings).
- e. The City keeps all public swim revenue. We will hire our own cashiers to handle all the gate proceeds. HASS provides lessons and swim team activities.
- f. Their proposal is within our \$120,000 budget.

Staff will be available at the next work session to discuss.

Attachment: * Analysis of firms
* Draft Potterfield Pool Agreement

Cc: Mark Haddock, Amy Riley, Cathy Beach, Kevin DeHaven

Parks and Recreation Division

351 North Cleveland Avenue • Hagerstown, MD 21740
Ph: 301.739.8577 Ext. 169 • Fax: 301.790.0171

Engineering Division

1 East Franklin Street • Hagerstown, MD 21740-4817
Ph: 301.739.8577 Ext. 125 • Fax: 301.733.2214

2020 POOL MANAGEMENT PROPOSAL COMPARISON

CONTRACT RFP-20-PPM-29

Last Revised 11/3/2020

COMPANY	LOCATION	OPERATING SERVICE CHARGE	Per hour cost for lifeguards above base contract	INSURANCE	Mark Haddock weighted score**	Amy Riley weighted score**	Rodney Tissue weighted score**
American Pool (Formerly CPSI our current vendor)	Columbia, MD	\$129,100	\$18	Not Included	131	125	214
Champion Pool	Hagerstown, MD	\$110,650	\$12.75	\$1,000,000 GL	188	237	280
Pool Management, Inc.	Cummings, GA	\$118,996	\$24.95	\$1,000,000 GL	177	122	134
USA Pool Management, Inc	Rockville, MD	\$108,880	\$26.50	\$1,000,000 GL	177	197	263
YMCA of Hagerstown	Hagerstown, MD	*\$116,816	\$13.80 \$14.28 CPO	\$1,000,000 GL	231	247	295

NOTES:

- * This Fee includes \$30,514 for chemicals. If the City acquires the chemicals, this cost can be reduced by at least \$20,000.
- **Factors in this score including: municipal pool experience, staff qualifications, complete response to RFP, and cost.
- FY21 Budget is \$120,000

Potterfield Pool Management Agreement Appendix 'A'

This Agreement between _____ (the Company) and the **CITY OF HAGERSTOWN** (City) is to provide for the operation and management by the Company of the Potterfield Pool located at 730 Frederick Street in Hagerstown, MD, in accordance with the specifications, conditions, and terms set forth herein.

1. **TERM:** This Agreement, when executed by both parties, shall be in effect from January 1, 2021 through December 31, 2022 and shall automatically renew for three successive one (1) year terms beginning January 1, 2023 unless either party gives written notice 90 days prior to the conclusion of the then current term.
2. **SCHEDULE:** The Company shall meet the following milestones throughout the pool season:
 - February 15th – Preseason meeting with City
 - April 30th – Preseason meeting with City and finalize pool preseason preparation (Section 6) And deadline to apply for Health Department permits (Section 8),
 - May 10th – Deadline for Health Department inspection, submitting to the City the managers' names (and contact information, pool status report due, and initial lifeguard schedule),
 - May 20th --Deadline for pool being fully ready for the public and submitting to the City the checklists, Emergency Action Plans and other operational documents
 - Saturday prior to Memorial Day – first day of swimming
 - Labor Day – Last day of swimming
 - October 1st – Pool closing (Section 22)

Pool and sprayground (AKA splashpad) shall be permitted, open, and "swim ready" no later than **May 20th** of each year of the contract, and continuing through Labor Day weekend. Lifeguards shall be on duty beginning Memorial Day weekend, and continuing through Labor Day. Lifeguard hours and pool operating schedule shall be approved by the City of Hagerstown and shall be provided to the City for review prior to May 10th (Lifeguard Schedule).

3. **ACCESS:** The City will provide three sets of keys and access to the pool site no later than February 1. The Company shall keep and safeguard keys and release keys only to authorized personnel. If the City chooses to change locks at the pool during the term of this contract, three new sets of keys shall be provided to the City of Hagerstown.
4. **ITEMS PROVIDED BY CITY:** The City agrees to furnish, at no cost to the Company, all of the following:
 - Water
 - Electricity
 - Receptacles for trash, garbage pick-up service
 - Telephone and internet
 - Pool operating equipment
 - Digital copy of past pool rules, checklists, and employee conduct expectations.
 - Safety equipment – backboard, ring buoy(s), rescue tube(s), Shepherd's hook(s), first aid kit, and rope with buoys
 - Paper products, pool house cleaning supplies, two (2) first aid kits and extra band-aids.
 - One set of walkie-talkies (per season)
 - Automated external defibrillator.
5. **TELEPHONE:** The City shall be responsible for providing an operational telephone at least thirty (30) days prior to pool opening. The phone shall be readily accessible to lifeguards and other personnel.

6. **OPENING:** Company agrees to complete all services required to make pool "swim ready" by **May 12th** each year of the contract, including without limitation, the following where applicable:
- By May 10th, provide the City a pre-opening "Pool Status" report including condition of pool, equipment status, pump type(s) and status, general condition of pool structure, issues that may prevent opening of the facility to the public and complete the following:
 - Clean pool (bottom must be visible)
 - Clean pool decking
 - Inspect chemical feed pumps
 - Inspect all filtration equipment
 - Inspect flow meters, pressure gauges, and valves
 - Start up and inspect sprayground
 - Install guard chairs and ladders if applicable
 - Clean bathhouse
 - Inspect water testing supplies
 - Fill pool
 - Order, store, and inject all necessary chemicals to establish proper levels to meet all state, County, City, and other applicable requirements
 - Set out and clean pool deck furniture
 - Perform repair work as need and in compliance with Section 18 of this contract
 - Inspect all skimmers
 - Inspect vacuum system
 - Inspect return inlets
 - Inspect pump room valve system
 - Inspect all slides
7. **VANDALISM:** The Company agrees to respond to all after-hours alarms, and address issue promptly. The City agrees to pay reasonable additional charges to the Company for cleanup required as a result of vandalism.
8. **PERMITS:** The Company shall apply for and obtain from the local Health Department or other regulatory agency a swimming pool operation permit, sprayground and slide permits prior to **May 1st** of each year. These permits **MUST** be in the name of the City. The Company shall pay for, in advance, all fees associated with obtaining the permits. Cost of the permits should then be invoiced to the City along with a copy of the permits. The Company shall advise and assist the City regarding the permits and will make any necessary repairs required to satisfy Health Department requirements. These repairs shall be made in accordance with Section 18 of this contract. A copy of the permits **MUST BE DELIVERED TO THE CITY** no later than **May 10th**.
9. **MINIMUM SAFETY STANDARDS:** The Company shall bring the City's pool into compliance with all applicable laws, codes, and regulations, including but not limited to, compliance with minimum standards. Payment for work and equipment to bring City's pool within minimum standards on the above items shall be the responsibility of the City.
10. **WARRANTY:** Company represents and warrants that it has specific knowledge of all applicable laws, codes, and regulations, whether State, County, Municipality, or otherwise, regarding the pool(s) operation and maintenance, including, without limitations, providing the required number of properly trained lifeguards, and will ensure that its employees, agents, and other parties follow all applicable laws, codes, and regulations.

11. PERSONNEL: All the Company's obligations under this agreement shall be carried out or satisfied by employees of the Company as follows:

- The Company agrees to pay for all Company's employee wages, income tax withholdings, social security withholdings, State unemployment insurance, Federal unemployment insurance, and Workman's Compensation insurance.
- The Company shall train all employees. Employees not performing up to the standards of the City will be replaced by the Company upon request of the City.
- Lifeguards employed by the Company shall have a Basic Life Guarding Certificate, a Lifeguard Training Certificate, or the equivalent, as well as CPR and First Aid.
- Company employees shall go through the Company's orientation training, onsite training, and preseason meeting with the City.
- Personnel will be trained in the area of blood borne pathogens and provided a blood borne pathogen exposure control kit.
- The Company will provide a Certified Pool Operators (CPO) and experienced Pool Managers to supervise the staff and manage all pool operations. Certified Pool Operators (CPO) shall be on-site when pool is open.
- Lifeguards shall have the authority to discipline swimmers and any and all other persons within the pool facility, using their best judgment and sole discretion, consistent with the published and posted rules of the City and minimum safety standards as established herein. Company shall notify the City if a patron receives disciplinary action or is permanently removed from the pool for the season.
- Company's full time management staff will supervise personnel. Company supervisors shall inspect the City's facilities no less than two (2) times each week to check performance of personnel.
- Company will typically invest substantial resources to train and convey information concerning operational techniques and management procedures to its employees at City's facility and the City acknowledges that such information and investment is a valuable asset of Company's business.
- Pool staff shall wear professional uniforms, and be easily identifiable.

The following chart provides an estimate of man-hours required during the season:

Program	Hours per Day	# Staff Required	Frequency	Annual Hours
Public Swim	Six hours	Manager and five guards	Every week of season	3528
Camps	Two and a half hours	Manager and five guards	Approximately 10 weeks	750
Aquaholics	Two hours	One guard	Every week of season, three days a week	84
Zumba	One and a half hours	One guard	12 weeks, two days a week	36
Aquabands/Yoga	One and a half hours	One guard	Eight weeks, two days a week	24
Pooch Plunge	Three hours	Manager and two guards	One day event	9
Extra hours for busy weekends, crowd control, cleaning, etc.				169
TOTAL estimated hours of on-site manager and lifeguard time during the season				4, 600

No guards will be provided for Monocacy Aquatic Club (MAC) or Hagerstown Area Summer Swimming (HASS) events. The number of guards for private parties to be determined on a case-by-case basis are not included in above estimate.

The Company must provide adequate staffing to meet minimum lifeguard staffing requirements as established by the County and State Health Department requirements. Based on the configuration of the Potterfield Pool, we require the following minimum staffing levels:

Patrons in Pool	Guards in chairs	Guard on Slidewinder
0 - 75	2	1
76 - 200	3	1
200 - 300	4	1
Over 300	5	1

In addition, staff will need to monitor activities at the sprayground and enforce established rules.

12. DAILY SCHEDULE:

The following are the typical daily schedules:

Weekday hours shall be as follows unless both parties agree in writing to adjustments:

Hours	Program
5:30 - 7:00 AM	Aquaholics (three days a week)
7:00 - 10:00 AM	Swim Team and lessons by HASS & MAC
10:00 - Noon	Camp swims
12:30 - 6:00 PM	Public swim
7:00 - 9:00 PM	Reserved for pool rental

Weekend hours shall be as follows unless both parties agree in writing to adjustments:

11:30 - 5:00 PM	Public swim
6:00 - 9:00 PM	Reserved for pool rental

- 13. POOL PARTIES:** The Company shall develop a method for the public to efficiently schedule pool parties. The company shall charge the City-approved "user fee" and forward the payments to the City for the reservations in the month prior. The City will pay the lifeguard and manager time on a per hour basis when included in the itemized monthly invoice.

- 14. OPERATIONAL RESPONSIBILITIES:** Company employees shall be responsible for performing the following acts in accordance with all applicable laws, codes and regulations:

- Life guarding, including but not limited to the main pool, sprayground, slides, climbing wall and future pool amenities.
- Checking water chemistry and recording readings a minimum of three (3) times per day.
- Maintaining chemical balance of pool(s) water.
- Back washing filtration system as needed.
- Cleaning pump system strainer baskets.
- Cleaning bathhouse and bathrooms daily and inspecting the same on an hourly basis.
- Cleaning swimming pool(s) deck daily.
- Vacuuming pool as needed. In general, this should result in an overall vacuuming of the pool about two (2) times per week or more often if needed to keep the pool(s) clean.
- Hourly picking up trash and litter. Emptying trash and recyclable receptacles daily and placing containers in the proper location for collection on the appropriate day(s).
- Straightening and cleaning deck furniture.
- Company shall be on standby for alarms and promptly answer all alarm calls and address issue.
- Maintain mechanical equipment.
- At the end of the day, lock and secure all gates and doors. Activate alarm system.

- Implementation of approved Emergency Action Plan.
- Implementation of approved COVID-19 plan.
- Inspect slides, sprayground, rock wall and other features daily.
- Company shall notify the City in writing within 24 hours if an injury or safety violation is reported to the Company by patrons.
- Provide City any Health Department inspections during the pool season within 24 hours of inspection.
- Report and document all action that may jeopardize the spirit and content of this Agreement.
- Enforce pool rules, staff code of conduct and checklists. Copies of prior documents are attached as Attachment 2, as a reference and that Company shall develop its own rules, staff code of conduct, and checklists and provide them to the City on or before May 20th of each year.

- 15. INCLEMENT WEATHER/TEMPORARY CLOSINGS:** The Company and City shall develop and agree to criteria for closing the pool, and methods to notify the public via various forms. On days when there is inclement weather, the Company shall keep one (1) lifeguard on duty throughout the scheduled lifeguard hours to handle public inquiries. Weather related closings of the pool shall be at the discretion of the City. Temporary shut-down due to fecal, vomit or thunder/lighting should be handled by Company in accordance with Health Department and Center for Disease Control guidelines.

NO CHANGE IN DATES OF OPERATION OR HOURS OF OPERATION CAN BE ACCEPTED UNLESS WRITTEN AUTHORIZATION IS RECEIVED FROM THE CITY OF HAGERSTOWN

- 16. WATER QUALITY:** At no time shall the water chemistry cause a failure of permission to operate the pool as granted by the State, County, City, or other applicable regulatory body. In the event permission is revoked to operate the pool due to poor water quality, the City will assess penalties as listed in Section 25 below. All of the foregoing notwithstanding however, the Company shall be excused from maintaining water quality established herein and the City shall not be entitled to a refund in the event of any Act of God, interference by City or other circumstances beyond the control of the Company make such maintenance impossible. Any work performed by the Company shall be subject to the conditions of this Agreement.
- 17. CHEMICALS AND SUPPLIES:** The Company agrees to supply at its own expense all chemicals for safe and clean pool water throughout the term of this contract including, but not limited to: sodium hydrochloride, cyanuric acid, muriatic acid, sodium bicarbonate, soda ash, and calcium chloride. The Company shall monitor the chemicals and maintain acceptable water quality. The Company agrees to supply water test kits and first aid kits.
- 18. REPAIR WORK:** The Company shall stand ready to perform any repair work necessary during the term of this Agreement. However, the City shall have the option of using another contractor for repair work or complete the work with City staff. When a repair issue presents itself:
- Company shall provide detailed estimate of costs separating materials and labor
 - After approval in writing by the City, the Company shall perform the necessary actions and invoice the City.
 - Any repairs required as the result of error on the part of the Company, shall be paid for by the Company at no cost to the City.
 - All invoices for repair work must be completely itemized and received within ninety (90) days of the completion of the repair.
 - If any repair work involves draining and refilling of the pool, the Company must refill the pool using a water hydrant and a hydrant meter, or use a water line that does not have sewer charges attached to it. Failure to do so shall result in the Company being billed for the sewer charges through a deduction on the next payment.
- 19. INSURANCE/LIABILITY:** The Company shall maintain and keep in full force from an insurance company licensed to do business in the State of Maryland the following coverages:

- Worker's Compensation insurance covering all persons engaged on behalf of the Company in the performance of the terms of this Agreement.
- Commercial General Liability insurance in the amount of \$1,000,000 for each accident and \$1,000,000 for each person. This may be included in the umbrella portion of the policy.
- Professional Liability insurance on the lifeguards in the amount of \$1,000,000.
- Company agrees to supply copies of certificates of insurance to the City verifying the above-mentioned insurance coverage. Company agrees to list City on Company's policies as an "Additional Insured" of the Company's General Liability insurance. A copy of the current policy showing the above limits and listing the City as additional insured must be delivered to the City or City's Agent at the time this Agreement is executed.

20. MISCELLANEOUS:

- The Company shall display a sign on the pool premises designating the responsibility to the Company for the pool staff with contact information.
- City agrees to communicate any comments, suggestions, or complaints concerning the pool, pool staff, or management service directly to the Company Management as well as the Pool Manager.
- During the term of the contract, applicable minimum wage increases will occur. As of September, 2020, the following are planned in Maryland (for employers with 15 or more employees):

Current	\$11.00/hour
Effective 1/1/2021	\$11.75/hour
Effective 1/1/2022	\$12.50/hour
Effective 1/1/2023	\$13.25/hour
Effective 1/1/2024	\$14.00/hour
Effective 1/1/2025	\$15.00/hour

If the increases go into effect, as planned, the Company may present to the City an Amendment to this Agreement with the additional charges for the PER HOUR lifeguard rate (item "B" of the proposal). City will have thirty (30) days in which to accept or reject the Amendment. If the City does not accept the Amendment, the existing Agreement is voidable at the Company's option.

21. **PRE/POST WALK THROUGH:** The Company shall invite the City to join them in a complete inspection of the City's facility prior to opening and after the completion of all closing tasks. It shall be the obligation of the Company to provide the City with a detailed and specific account of the current condition as well as potential short term and long term needs of the pool. Upon inspection, the Company shall provide a written report to the City. At the City's request, the Company will perform any repairs listed in the report, in accordance with Section 18 of this Agreement.
22. **CLOSING:** Unless the City elects otherwise, the pool shall be considered closed to swimmers at the end of Labor Day each year. The Company shall perform all the following duties as soon after Labor Day as may be feasible, but in no case any later than **October 1st**.
- Lower water level below skimmers.
 - Drain all pumps and lint strainers.
 - Back wash and drain filter tanks.
 - Open all valves to appropriate settings.
 - Winterize sprayground
 - Clean and store City's deck furniture.
 - Remove and store skimmer parts.
 - Cover all skimmers with gizmos to prevent a buildup of rain water.
 - Remove and store all moveable ladders and lifeguard chairs.
 - Drain and store hoses.

- Lubricate filter system valves and grease motor bearings.
- Add winterization chemicals to pool to retard algae growth.
- Prepare pool and pool plumbing lines for freeze protection. Company agrees to use common and accepted winterization techniques, but assumes no responsibility for freeze damage if all the proper procedures are followed. Company will inject anti-freeze in skimmers and related fixtures.
- Request a walk-through inspection with City's staff.

City will complete all "fresh water winterizing" in the pool house

23. PRICE PROPOSAL: The Company hereby proposes to perform the work and services as set forth above by this Agreement, specifications, conditions, and terms as set forth herein as follows:

- A. LUMP SUM annual fee for contract management, opening, closing, profit and overhead
- B. PER HOUR rate for lifeguards
- C. LUMP SUM annual fee for chemicals and supplies provided by Company

24. PAYMENTS:

Based upon the proposal above and upon receipt of a monthly invoice with adequate documentation, the City will make monthly payments to Company as follows:

- A. 1/8th of annual contract management fee (months of March-October inclusive)
- B. Lifeguard hours *actually used and documented* from the previous month, including pool rentals (provide weekly listing)
- C. 1/4th of annual chemical and supplies fee (months of May, June, July and August only)
- D. Less pool rental user fees (Section 13) and/or liquidated damages (Section 25) from the previous month

City will process issue payment within 30 days of receipt of satisfactory invoices and documentation

25. FAILURE TO PERFORM/LIQUIDATED DAMAGES:

- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 10 that the pool is not ready for Health Department inspection. This will be null and void if the delay is directly caused by the City or our contractors.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 10 that the pool manager is not hired and trained.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 20 that the pool is not ready for public opening as determined by the City. This will be null and void if the delay is directly caused by the City or our contractors.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day throughout the season that there is inadequate number of guards that the pool cannot be opened or pool amenities cannot be safely operated.

26. CANCELLATION: The City shall have the right to cancel this Agreement with cause immediately upon the commission of an egregious act by the Company, and with or without cause upon thirty (30) days written notice to the Company. Upon termination, the City shall be entitled to a refund of any monies paid in advance, computed as follows:

A daily portion of the contract price shall be computed by dividing the total contract price by the number of days the pool was to be open as determined by this Agreement. This daily price shall be multiplied by the number of days the pool was operated under this Agreement. That amount shall be subtracted from the total amount of the contract price paid to Company by City as of termination date. The resulting

figures shall be the refund to which the City is entitled. Refund shall be paid to City within fourteen (14) days of termination.

27. CITY CONTACT: Please direct all Company communications to the following:

City of Hagerstown
Attn: Director, Department of Parks and Engineering
1 East Franklin Street
Hagerstown, MD 21740
301-739-8577 Ext 128

28. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Maryland.

29. ENTIRE AGREEMENT, MODIFICATION, AND BINDING EFFECT: This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings, or negotiations, written or oral. This Agreement may not be modified or amended except in writing, executed by both parties hereto. This Agreement shall be binding upon and inure to the benefit of the City and the Company and so their respective heirs, successors, and assigns.

30. ASSIGNMENT: Neither party shall assign this agreement without the express written consent of the other party.

31. SEVERABILITY: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of any such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

32. NONWAIVER: The City and the Company agree that no failure to exercise and no delay in exercising any right, power, or privilege under this Agreement on the part of either party shall operate as a waiver of any right, power, or privilege under this Agreement.

33. NO DISCRIMINATION: No action shall be taken by the City, or the Company which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, or disability.

34. INDEMNIFICATION: Company hereby covenants and agrees to indemnify and hold harmless the City from and against any and all losses, damages, costs, and expenses, including, without limitation, attorney's fees and court costs, that may be incurred or suffered by the City as a result of any claim, including, without limitation, a claim for negligence being asserted against the City by any party which arises from, results from, relates directly or indirectly to, or is in any way whatsoever connected with the Company's operation and management of the pool and its obligation and duties under this Agreement.

For the Company:

Signed and dated the 29 day of October, 2020

Company:

Tax ID#: 520591701

Printed Name: Maria Rubeling

Title: CEO

Signature: 

Address: 1100 Eastern Blvd. N.

City, State, Zip: Hagerstown, MD 21742

Cell Phone: 301-748-4384

Office Phone: 301-739-3990

E-mail: maria.rubeling@ymcahagerstown.org

For the City of Hagerstown:

Signed and dated the _____ day of _____, 2020

Donna Spickler, City Clerk

Robert E Bruchey, Mayor

Attachments:

#1 Pool Management Cost Proposal

#2 Pool Rules, Sample Checklists

Attachment #1

POOL MANAGEMENT COST PROPOSAL

Company: Hagerstown Ymca

The Company hereby proposes to perform the work and services as set forth above by this Agreement, specifications, conditions, and terms as set forth herein as follows:

- A. \$ 116,816 LUMP SUM annual fee for contract management, opening, closing, profit and overhead
- B. \$ 12.32 PER HOUR rate for lifeguards**
- C. \$ 30,514 LUMP SUM annual fee for chemicals and supplies provided by Company

TELECON NOTES w/ CFO:

- 1) "A" INCLUDES MANAGEMENT, GUARD HOURS, AND CHEMICALS
2) "B" DOES NOT INCLUDE TAXES + OVERHEAD. ACTUAL COST IS \$13.80 + \$14.28(w/cpo)

RT 11/4/2020

NOTES:

- **Annual contract award and Purchase Order value will be based on 4,600 hours of on-site manager and lifeguard time as computed in Section 1.1 above. This includes management of all public swims, camp swims, fitness swims, exercise programs and pooch plunge.
- An annual increase of 2% is allowable and anticipated by the City for all the above rates and fees for the 2022, 2023, 2024, and 2025 seasons effective January 1 of that year. Minimum wage adjustments for Item "B" lifeguard rates will also be considered by the City (See Section 20).
- City shall receive all revenues from public swim, camps, exercise classes, events, and fitness swims, including all membership fees.

Attachment E

Operations:

The YMCA's Chief Executive Officer, Maria Rubeling, and one of our management team members Teddy Newman, or David Smith and/or April Miles will meet with the City of Hagerstown at least twice a month. The YMCA will always provide a CPO during all times that it is responsible for pool operations. According to the RFP this includes the following: Public Swim, Aquaholics, Camps, Zumba, Aqua Bands/Yoga, and Pooch Plunge. As per the RFP, provision of lifeguards/CPO will be expected for after hours Pool Parties that the YMCA will conduct during the week and weekends and will be handled separately from the rest of the request, for an additional fee.

The Certified Pool Operator will be responsible for the overall maintenance and compliance with Health Department guideline for operating the pool and splash pad maintaining water quality equal to or above state standards. Our CPO's are required to perform chemical checks every two hours during their shift, perform any necessary maintenance of equipment and ensure the overall cleanliness of the pool areas.

The Manager, and Assistant Managers will be required to hold a current CPO, Lifeguarding, First Aid/CPR/AED certifications, and be current with the YMCA's Bloodborne Pathogen training and certification. The Manager (henceforth used interchangeably with Assistant Manager) will manage and supervise guards to ensure safe swimming conditions in the pool, at the splashpad, on the deck, and in the locker rooms/bathrooms. They will maintain accurate records and administer the proper pool chemicals necessary to maintain the quality standards required by the Health Department. The manager will create a positive atmosphere that promotes safety and healthy engagement in accordance to the YMCA policies and procedures. The Manager is responsible for ensuring that the pool and aquatic areas are clean from potential hazards and trash and is responsible for managing the YMCA lifeguards and slide attendant as outlined in their job description. All YMCA staff are required to know and review all Emergency Action Plans and perform their function in accordance to the rules and regulations of American Red Cross and the YMCA. The ability to respond to emergency situations immediately and report as required is a key component of the managers' duties. The manager knows, understands, and consistently both implements and enforces safety rules, policies, and guidelines for the pool and aquatic area.

The Lifeguard (henceforth used interchangeably with the Senior Lifeguard positions) will be required to have a current Lifeguarding, First Aid/CPR/AED certifications, and be current with the YMCA's Bloodborne Pathogen training and certification. They will maintain safe swimming conditions in the pool, on the deck and surrounding areas. When on duty maintain active surveillance of the pool area, slide, diving board, rock wall and surrounding areas. Lifeguards will know and reviews all emergency procedures and respond to emergency situations immediately in accordance with YMCA policies and procedures. Lifeguards know, understand, and consistently apply safety rules, policies and guidelines for the pool and aquatic area. The lifeguard will scan all sections and observe assigned zone or area of responsibility.



YMCAO-1

OP ID: MB

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER J. Edward Cochran & Co. Division of Keller Stonebraker 1120 C Professional Court Hagerstown, MD 21740 John A. Latimer, IV	CONTACT NAME: John A. Latimer, IV		
	PHONE (A/C, No, Ext): 301-739-6400	FAX (A/C, No): 301-791-1478	
INSURED YMCA of Hagerstown, MD P.O. Box 1857 1100 N. Eastern Blvd. Hagerstown, MD 21742	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: United States Fire Company		
	INSURER B: Crum & Forster Insurance Co.		
	INSURER C: United States Fire Company		
	INSURER D: The Redwoods Group		
	INSURER E:		
	INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X	506-896665-3	06/13/2019	01/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS		506-896665-3	06/13/2019	01/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10000		582-112324-8	06/13/2019	01/01/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	408-736875-6	06/13/2019	06/30/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	D&O / EPL		556-010631-9	06/13/2019	01/01/2021	D&O/EPL 2,000,000
B	Equip Breakdown		506-896665-3	06/13/2019	01/01/2021	Equip Bre 10,082,539

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Hagerstown is included as an additional insured for all activities held on City owned properties including, but not limited to, summer play camps at Pangborn Park, Hellane Park and Hager Park as well as soccer activities at Fairgrounds Park and camp swims at Potterfield Pool.

CERTIFICATE HOLDER**CANCELLATION**

HAGER-1 CITY OF HAGERSTOWN PARKS & RECREATION DIVISION 351 N CLEVELAND AVE HAGERSTOWN, MD 21740	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 10, 2020

TO: Bruce Zimmerman, City Administrator
FROM: Rodney Tissue, Director *R.T.*
RE: Potterfield Pool Management Services

1. **Mayor & Council Action Requested**

We request that Mayor & Council approve a three (3) year contract with the recommended vendor to manage the Potterfield Pool starting with the 2021 season. The draft contract is attached.

2. **Discussion**

In September, staff issued a detailed Request for Proposal (RFP) for management of the Potterfield Pool. We obtained five (5) proposals and after reviewing them, the committee (consisting of Mark Haddock, Amy Riley, and I) is recommending the YMCA of Hagerstown to manage pool. This is a three year contract with option to renew two additional years.

The YMCA is not the lowest price (although we feel if we buy the pool chemicals instead of the YMCA, we can realize a savings of over \$20,000 making them the lowest cost). For all the reasons stated below, we recommend YMCA because we **are buying a service**. Specific reasons we recommend them include:

- a. They manage several local pools including their own indoor facility and Fountainhead Country Club.
- b. This **local** pool management experience gives them relationships with potential candidates to be the managers at the pool, a critical position in the success of the pool. The YMCA plans to hire local lifeguards. Because they are local, their management team can meet with us regularly at the pool and address issues.
- c. The YMCA would provide all lifeguards, management, water quality assurance and cleaning of the pool house.
- d. The YMCA will operate the pool seven (7) days a week and the pool will be open from Memorial Day to Labor Day (although we can close weekdays in late August for additional cost savings).
- e. The City keeps all public swim revenue. We will hire our own cashiers to handle all the gate proceeds. HASS provides lessons and swim team activities.
- f. Their proposal is within our \$120,000 budget.

Staff will be available at the next work session to discuss.

Attachment: * Analysis of firms
* Draft Potterfield Pool Agreement

Cc: Mark Haddock, Amy Riley, Cathy Beach, Kevin DeHaven

Parks and Recreation Division

351 North Cleveland Avenue • Hagerstown, MD 21740
Ph: 301.739.8577 Ext. 169 • Fax: 301.790.0171

Engineering Division

1 East Franklin Street • Hagerstown, MD 21740-4817
Ph: 301.739.8577 Ext. 125 • Fax: 301.733.2214

2020 POOL MANAGEMENT PROPOSAL COMPARISON

CONTRACT RFP-20-PPM-29

Last Revised 11/3/2020

COMPANY	LOCATION	OPERATING SERVICE CHARGE	Per hour cost for lifeguards above base contract	INSURANCE	Mark Haddock weighted score**	Amy Riley weighted score**	Rodney Tissue weighted score**
American Pool (Formerly CPSI our current vendor)	Columbia, MD	\$129,100	\$18	Not Included	131	125	214
Champion Pool	Hagerstown, MD	\$110,650	\$12.75	\$1,000,000 GL	188	237	280
Pool Management, Inc.	Cummings, GA	\$118,996	\$24.95	\$1,000,000 GL	177	122	134
USA Pool Management, Inc	Rockville, MD	\$108,880	\$26.50	\$1,000,000 GL	177	197	263
YMCA of Hagerstown	Hagerstown, MD	*\$116,816	\$13.80 \$14.28 CPO	\$1,000,000 GL	231	247	295

NOTES:

1. * This Fee includes \$30,514 for chemicals. If the City acquires the chemicals, this cost can be reduced by at least \$20,000.
2. **Factors in this score including: municipal pool experience, staff qualifications, complete response to RFP, and cost.
3. FY21 Budget is \$120,000

Potterfield Pool Management Agreement Appendix 'A'

This Agreement between _____ (the Company) and the **CITY OF HAGERSTOWN** (City) is to provide for the operation and management by the Company of the Potterfield Pool located at 730 Frederick Street in Hagerstown, MD, in accordance with the specifications, conditions, and terms set forth herein.

1. **TERM:** This Agreement, when executed by both parties, shall be in effect from January 1, 2021 through December 31, 2022 and shall automatically renew for three successive one (1) year terms beginning January 1, 2023 unless either party gives written notice 90 days prior to the conclusion of the then current term.
2. **SCHEDULE:** The Company shall meet the following milestones throughout the pool season:
 - February 15th – Preseason meeting with City
 - April 30th – Preseason meeting with City and finalize pool preseason preparation (Section 6) And deadline to apply for Health Department permits (Section 8),
 - May 10th – Deadline for Health Department inspection, submitting to the City the managers' names (and contact information, pool status report due, and initial lifeguard schedule),
 - May 20th --Deadline for pool being fully ready for the public and submitting to the City the checklists, Emergency Action Plans and other operational documents
 - Saturday prior to Memorial Day – first day of swimming
 - Labor Day – Last day of swimming
 - October 1st – Pool closing (Section 22)

Pool and sprayground (AKA splashpad) shall be permitted, open, and "swim ready" no later than **May 20th** of each year of the contract, and continuing through Labor Day weekend. Lifeguards shall be on duty beginning Memorial Day weekend, and continuing through Labor Day. Lifeguard hours and pool operating schedule shall be approved by the City of Hagerstown and shall be provided to the City for review prior to May 10th (Lifeguard Schedule).

3. **ACCESS:** The City will provide three sets of keys and access to the pool site no later than February 1. The Company shall keep and safeguard keys and release keys only to authorized personnel. If the City chooses to change locks at the pool during the term of this contract, three new sets of keys shall be provided to the City of Hagerstown.
4. **ITEMS PROVIDED BY CITY:** The City agrees to furnish, at no cost to the Company, all of the following:
 - Water
 - Electricity
 - Receptacles for trash, garbage pick-up service
 - Telephone and internet
 - Pool operating equipment
 - Digital copy of past pool rules, checklists, and employee conduct expectations.
 - Safety equipment – backboard, ring buoy(s), rescue tube(s), Shepherd's hook(s), first aid kit, and rope with buoys
 - Paper products, pool house cleaning supplies, two (2) first aid kits and extra band-aids.
 - One set of walkie-talkies (per season)
 - Automated external defibrillator.
5. **TELEPHONE:** The City shall be responsible for providing an operational telephone at least thirty (30) days prior to pool opening. The phone shall be readily accessible to lifeguards and other personnel.

6. **OPENING:** Company agrees to complete all services required to make pool "swim ready" by **May 12th** each year of the contract, including without limitation, the following where applicable:
- By May 10th, provide the City a pre-opening "Pool Status" report including condition of pool, equipment status, pump type(s) and status, general condition of pool structure, issues that may prevent opening of the facility to the public and complete the following:
 - Clean pool (bottom must be visible)
 - Clean pool decking
 - Inspect chemical feed pumps
 - Inspect all filtration equipment
 - Inspect flow meters, pressure gauges, and valves
 - Start up and inspect sprayground
 - Install guard chairs and ladders if applicable
 - Clean bathhouse
 - Inspect water testing supplies
 - Fill pool
 - Order, store, and inject all necessary chemicals to establish proper levels to meet all state, County, City, and other applicable requirements
 - Set out and clean pool deck furniture
 - Perform repair work as need and in compliance with Section 18 of this contract
 - Inspect all skimmers
 - Inspect vacuum system
 - Inspect return inlets
 - Inspect pump room valve system
 - Inspect all slides
7. **VANDALISM:** The Company agrees to respond to all after-hours alarms, and address issue promptly. The City agrees to pay reasonable additional charges to the Company for cleanup required as a result of vandalism.
8. **PERMITS:** The Company shall apply for and obtain from the local Health Department or other regulatory agency a swimming pool operation permit, sprayground and slide permits prior to **May 1st** of each year. These permits **MUST** be in the name of the City. The Company shall pay for, in advance, all fees associated with obtaining the permits. Cost of the permits should then be invoiced to the City along with a copy of the permits. The Company shall advise and assist the City regarding the permits and will make any necessary repairs required to satisfy Health Department requirements. These repairs shall be made in accordance with Section 18 of this contract. A copy of the permits **MUST BE DELIVERED TO THE CITY** no later than **May 10th**.
9. **MINIMUM SAFETY STANDARDS:** The Company shall bring the City's pool into compliance with all applicable laws, codes, and regulations, including but not limited to, compliance with minimum standards. Payment for work and equipment to bring City's pool within minimum standards on the above items shall be the responsibility of the City.
10. **WARRANTY:** Company represents and warrants that it has specific knowledge of all applicable laws, codes, and regulations, whether State, County, Municipality, or otherwise, regarding the pool(s) operation and maintenance, including, without limitations, providing the required number of properly trained lifeguards, and will ensure that its employees, agents, and other parties follow all applicable laws, codes, and regulations.

11. PERSONNEL: All the Company's obligations under this agreement shall be carried out or satisfied by employees of the Company as follows:

- The Company agrees to pay for all Company's employee wages, income tax withholdings, social security withholdings, State unemployment insurance, Federal unemployment insurance, and Workman's Compensation insurance.
- The Company shall train all employees. Employees not performing up to the standards of the City will be replaced by the Company upon request of the City.
- Lifeguards employed by the Company shall have a Basic Life Guarding Certificate, a Lifeguard Training Certificate, or the equivalent, as well as CPR and First Aid.
- Company employees shall go through the Company's orientation training, onsite training, and preseason meeting with the City.
- Personnel will be trained in the area of blood borne pathogens and provided a blood borne pathogen exposure control kit.
- The Company will provide a Certified Pool Operators (CPO) and experienced Pool Managers to supervise the staff and manage all pool operations. Certified Pool Operators (CPO) shall be on-site when pool is open.
- Lifeguards shall have the authority to discipline swimmers and any and all other persons within the pool facility, using their best judgment and sole discretion, consistent with the published and posted rules of the City and minimum safety standards as established herein. Company shall notify the City if a patron receives disciplinary action or is permanently removed from the pool for the season.
- Company's full time management staff will supervise personnel. Company supervisors shall inspect the City's facilities no less than two (2) times each week to check performance of personnel.
- Company will typically invest substantial resources to train and convey information concerning operational techniques and management procedures to its employees at City's facility and the City acknowledges that such information and investment is a valuable asset of Company's business.
- Pool staff shall wear professional uniforms, and be easily identifiable.

The following chart provides an estimate of man-hours required during the season:

Program	Hours per Day	# Staff Required	Frequency	Annual Hours
Public Swim	Six hours	Manager and five guards	Every week of season	3528
Camps	Two and a half hours	Manager and five guards	Approximately 10 weeks	750
Aquaholics	Two hours	One guard	Every week of season, three days a week	84
Zumba	One and a half hours	One guard	12 weeks, two days a week	36
Aquabands/Yoga	One and a half hours	One guard	Eight weeks, two days a week	24
Pooch Plunge	Three hours	Manager and two guards	One day event	9
Extra hours for busy weekends, crowd control, cleaning, etc.				169
TOTAL estimated hours of on-site manager and lifeguard time during the season				4, 600

No guards will be provided for Monocacy Aquatic Club (MAC) or Hagerstown Area Summer Swimming (HASS) events. The number of guards for private parties to be determined on a case-by-case basis are not included in above estimate.

The Company must provide adequate staffing to meet minimum lifeguard staffing requirements as established by the County and State Health Department requirements. Based on the configuration of the Potterfield Pool, we require the following minimum staffing levels:

Patrons in Pool	Guards in chairs	Guard on Slidewinder
0 - 75	2	1
76 - 200	3	1
200 - 300	4	1
Over 300	5	1

In addition, staff will need to monitor activities at the sprayground and enforce established rules.

12. DAILY SCHEDULE:

The following are the typical daily schedules:

Weekday hours shall be as follows unless both parties agree in writing to adjustments:

Hours	Program
5:30 - 7:00 AM	Aquaholics (three days a week)
7:00 - 10:00 AM	Swim Team and lessons by HASS & MAC
10:00 - Noon	Camp swims
12:30 - 6:00 PM	Public swim
7:00 - 9:00 PM	Reserved for pool rental

Weekend hours shall be as follows unless both parties agree in writing to adjustments:

11:30 - 5:00 PM	Public swim
6:00 - 9:00 PM	Reserved for pool rental

- 13. POOL PARTIES:** The Company shall develop a method for the public to efficiently schedule pool parties. The company shall charge the City-approved "user fee" and forward the payments to the City for the reservations in the month prior. The City will pay the lifeguard and manager time on a per hour basis when included in the itemized monthly invoice.

- 14. OPERATIONAL RESPONSIBILITIES:** Company employees shall be responsible for performing the following acts in accordance with all applicable laws, codes and regulations:

- Life guarding, including but not limited to the main pool, sprayground, slides, climbing wall and future pool amenities.
- Checking water chemistry and recording readings a minimum of three (3) times per day.
- Maintaining chemical balance of pool(s) water.
- Back washing filtration system as needed.
- Cleaning pump system strainer baskets.
- Cleaning bathhouse and bathrooms daily and inspecting the same on an hourly basis.
- Cleaning swimming pool(s) deck daily.
- Vacuuming pool as needed. In general, this should result in an overall vacuuming of the pool about two (2) times per week or more often if needed to keep the pool(s) clean.
- Hourly picking up trash and litter. Emptying trash and recyclable receptacles daily and placing containers in the proper location for collection on the appropriate day(s).
- Straightening and cleaning deck furniture.
- Company shall be on standby for alarms and promptly answer all alarm calls and address issue.
- Maintain mechanical equipment.
- At the end of the day, lock and secure all gates and doors. Activate alarm system.

- Implementation of approved Emergency Action Plan.
- Implementation of approved COVID-19 plan.
- Inspect slides, sprayground, rock wall and other features daily.
- Company shall notify the City in writing within 24 hours if an injury or safety violation is reported to the Company by patrons.
- Provide City any Health Department inspections during the pool season within 24 hours of inspection.
- Report and document all action that may jeopardize the spirit and content of this Agreement.
- Enforce pool rules, staff code of conduct and checklists. Copies of prior documents are attached as Attachment 2, as a reference and that Company shall develop its own rules, staff code of conduct, and checklists and provide them to the City on or before May 20th of each year.

- 15. INCLEMENT WEATHER/TEMPORARY CLOSINGS:** The Company and City shall develop and agree to criteria for closing the pool, and methods to notify the public via various forms. On days when there is inclement weather, the Company shall keep one (1) lifeguard on duty throughout the scheduled lifeguard hours to handle public inquiries. Weather related closings of the pool shall be at the discretion of the City. Temporary shut-down due to fecal, vomit or thunder/lighting should be handled by Company in accordance with Health Department and Center for Disease Control guidelines.

NO CHANGE IN DATES OF OPERATION OR HOURS OF OPERATION CAN BE ACCEPTED UNLESS WRITTEN AUTHORIZATION IS RECEIVED FROM THE CITY OF HAGERSTOWN

- 16. WATER QUALITY:** At no time shall the water chemistry cause a failure of permission to operate the pool as granted by the State, County, City, or other applicable regulatory body. In the event permission is revoked to operate the pool due to poor water quality, the City will assess penalties as listed in Section 25 below. All of the foregoing notwithstanding however, the Company shall be excused from maintaining water quality established herein and the City shall not be entitled to a refund in the event of any Act of God, interference by City or other circumstances beyond the control of the Company make such maintenance impossible. Any work performed by the Company shall be subject to the conditions of this Agreement.
- 17. CHEMICALS AND SUPPLIES:** The Company agrees to supply at its own expense all chemicals for safe and clean pool water throughout the term of this contract including, but not limited to: sodium hydrochloride, cyanuric acid, muriatic acid, sodium bicarbonate, soda ash, and calcium chloride. The Company shall monitor the chemicals and maintain acceptable water quality. The Company agrees to supply water test kits and first aid kits.
- 18. REPAIR WORK:** The Company shall stand ready to perform any repair work necessary during the term of this Agreement. However, the City shall have the option of using another contractor for repair work or complete the work with City staff. When a repair issue presents itself:
- Company shall provide detailed estimate of costs separating materials and labor
 - After approval in writing by the City, the Company shall perform the necessary actions and invoice the City.
 - Any repairs required as the result of error on the part of the Company, shall be paid for by the Company at no cost to the City.
 - All invoices for repair work must be completely itemized and received within ninety (90) days of the completion of the repair.
 - If any repair work involves draining and refilling of the pool, the Company must refill the pool using a water hydrant and a hydrant meter, or use a water line that does not have sewer charges attached to it. Failure to do so shall result in the Company being billed for the sewer charges through a deduction on the next payment.
- 19. INSURANCE/LIABILITY:** The Company shall maintain and keep in full force from an insurance company licensed to do business in the State of Maryland the following coverages:

- Worker's Compensation insurance covering all persons engaged on behalf of the Company in the performance of the terms of this Agreement.
- Commercial General Liability insurance in the amount of \$1,000,000 for each accident and \$1,000,000 for each person. This may be included in the umbrella portion of the policy.
- Professional Liability insurance on the lifeguards in the amount of \$1,000,000.
- Company agrees to supply copies of certificates of insurance to the City verifying the above-mentioned insurance coverage. Company agrees to list City on Company's policies as an "Additional Insured" of the Company's General Liability insurance. A copy of the current policy showing the above limits and listing the City as additional insured must be delivered to the City or City's Agent at the time this Agreement is executed.

20. MISCELLANEOUS:

- The Company shall display a sign on the pool premises designating the responsibility to the Company for the pool staff with contact information.
- City agrees to communicate any comments, suggestions, or complaints concerning the pool, pool staff, or management service directly to the Company Management as well as the Pool Manager.
- During the term of the contract, applicable minimum wage increases will occur. As of September, 2020, the following are planned in Maryland (for employers with 15 or more employees):

Current	\$11.00/hour
Effective 1/1/2021	\$11.75/hour
Effective 1/1/2022	\$12.50/hour
Effective 1/1/2023	\$13.25/hour
Effective 1/1/2024	\$14.00/hour
Effective 1/1/2025	\$15.00/hour

If the increases go into effect, as planned, the Company may present to the City an Amendment to this Agreement with the additional charges for the PER HOUR lifeguard rate (item "B" of the proposal). City will have thirty (30) days in which to accept or reject the Amendment. If the City does not accept the Amendment, the existing Agreement is voidable at the Company's option.

21. **PRE/POST WALK THROUGH:** The Company shall invite the City to join them in a complete inspection of the City's facility prior to opening and after the completion of all closing tasks. It shall be the obligation of the Company to provide the City with a detailed and specific account of the current condition as well as potential short term and long term needs of the pool. Upon inspection, the Company shall provide a written report to the City. At the City's request, the Company will perform any repairs listed in the report, in accordance with Section 18 of this Agreement.
22. **CLOSING:** Unless the City elects otherwise, the pool shall be considered closed to swimmers at the end of Labor Day each year. The Company shall perform all the following duties as soon after Labor Day as may be feasible, but in no case any later than **October 1st**.
- Lower water level below skimmers.
 - Drain all pumps and lint strainers.
 - Back wash and drain filter tanks.
 - Open all valves to appropriate settings.
 - Winterize sprayground
 - Clean and store City's deck furniture.
 - Remove and store skimmer parts.
 - Cover all skimmers with gizmos to prevent a buildup of rain water.
 - Remove and store all moveable ladders and lifeguard chairs.
 - Drain and store hoses.

- Lubricate filter system valves and grease motor bearings.
- Add winterization chemicals to pool to retard algae growth.
- Prepare pool and pool plumbing lines for freeze protection. Company agrees to use common and accepted winterization techniques, but assumes no responsibility for freeze damage if all the proper procedures are followed. Company will inject anti-freeze in skimmers and related fixtures.
- Request a walk-through inspection with City's staff.

City will complete all "fresh water winterizing" in the pool house

23. PRICE PROPOSAL: The Company hereby proposes to perform the work and services as set forth above by this Agreement, specifications, conditions, and terms as set forth herein as follows:

- A. LUMP SUM annual fee for contract management, opening, closing, profit and overhead
- B. PER HOUR rate for lifeguards
- C. LUMP SUM annual fee for chemicals and supplies provided by Company

24. PAYMENTS:

Based upon the proposal above and upon receipt of a monthly invoice with adequate documentation, the City will make monthly payments to Company as follows:

- A. 1/8th of annual contract management fee (months of March-October inclusive)
- B. Lifeguard hours *actually used and documented* from the previous month, including pool rentals (provide weekly listing)
- C. 1/4th of annual chemical and supplies fee (months of May, June, July and August only)
- D. Less pool rental user fees (Section 13) and/or liquidated damages (Section 25) from the previous month

City will process issue payment within 30 days of receipt of satisfactory invoices and documentation

25. FAILURE TO PERFORM/LIQUIDATED DAMAGES:

- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 10 that the pool is not ready for Health Department inspection. This will be null and void if the delay is directly caused by the City or our contractors.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 10 that the pool manager is not hired and trained.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day after May 20 that the pool is not ready for public opening as determined by the City. This will be null and void if the delay is directly caused by the City or our contractors.
- The City will deduct from funds owed Company the amount of \$500 per day for each calendar day throughout the season that there is inadequate number of guards that the pool cannot be opened or pool amenities cannot be safely operated.

26. CANCELLATION: The City shall have the right to cancel this Agreement with cause immediately upon the commission of an egregious act by the Company, and with or without cause upon thirty (30) days written notice to the Company. Upon termination, the City shall be entitled to a refund of any monies paid in advance, computed as follows:

A daily portion of the contract price shall be computed by dividing the total contract price by the number of days the pool was to be open as determined by this Agreement. This daily price shall be multiplied by the number of days the pool was operated under this Agreement. That amount shall be subtracted from the total amount of the contract price paid to Company by City as of termination date. The resulting

figures shall be the refund to which the City is entitled. Refund shall be paid to City within fourteen (14) days of termination.

27. CITY CONTACT: Please direct all Company communications to the following:

City of Hagerstown
Attn: Director, Department of Parks and Engineering
1 East Franklin Street
Hagerstown, MD 21740
301-739-8577 Ext 128

28. GOVERNING LAW: This Agreement shall be governed by the laws of the State of Maryland.

29. ENTIRE AGREEMENT, MODIFICATION, AND BINDING EFFECT: This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings, or negotiations, written or oral. This Agreement may not be modified or amended except in writing, executed by both parties hereto. This Agreement shall be binding upon and inure to the benefit of the City and the Company and so their respective heirs, successors, and assigns.

30. ASSIGNMENT: Neither party shall assign this agreement without the express written consent of the other party.

31. SEVERABILITY: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of any such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

32. NONWAIVER: The City and the Company agree that no failure to exercise and no delay in exercising any right, power, or privilege under this Agreement on the part of either party shall operate as a waiver of any right, power, or privilege under this Agreement.

33. NO DISCRIMINATION: No action shall be taken by the City, or the Company which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status, or disability.

34. INDEMNIFICATION: Company hereby covenants and agrees to indemnify and hold harmless the City from and against any and all losses, damages, costs, and expenses, including, without limitation, attorney's fees and court costs, that may be incurred or suffered by the City as a result of any claim, including, without limitation, a claim for negligence being asserted against the City by any party which arises from, results from, relates directly or indirectly to, or is in any way whatsoever connected with the Company's operation and management of the pool and its obligation and duties under this Agreement.

For the Company:

Signed and dated the 29 day of October, 2020

Company:

Address: 1100 Eastern Blvd. N.

Tax ID#: 520591701

City, State, Zip: Hagerstown, MD 21742

Printed Name: Maria Rubeling

Cell Phone: 301-748-4384

Title: CEO

Office Phone: 301-739-3990

Signature: 

E-mail: maria.rubeling@ymcahagerstown.org

For the City of Hagerstown:

Signed and dated the _____ day of _____, 2020

Donna Spickler, City Clerk

Robert E Bruchey, Mayor

Attachments:

#1 Pool Management Cost Proposal

#2 Pool Rules, Sample Checklists

Attachment #1

POOL MANAGEMENT COST PROPOSAL

Company: Hagerstown Ymca

The Company hereby proposes to perform the work and services as set forth above by this Agreement, specifications, conditions, and terms as set forth herein as follows:

- A. \$ 116,816 LUMP SUM annual fee for contract management, opening, closing, profit and overhead
- B. \$ 12.32 PER HOUR rate for lifeguards**
- C. \$ 30,514 LUMP SUM annual fee for chemicals and supplies provided by Company

TELECON NOTES w/ CFO:

- 1) "A" INCLUDES MANAGEMENT, GUARD HOURS, AND CHEMICALS
2) "B" DOES NOT INCLUDE TAXES + OVERHEAD. ACTUAL COST IS \$13.80 + \$14.28(w/cpo)

RT 11/4/2020

NOTES:

- **Annual contract award and Purchase Order value will be based on 4,600 hours of on-site manager and lifeguard time as computed in Section 11 above. This includes management of all public swims, camp swims, fitness swims, exercise programs and pooch plunge.
- An annual increase of 2% is allowable and anticipated by the City for all the above rates and fees for the 2022, 2023, 2024, and 2025 seasons effective January 1 of that year. Minimum wage adjustments for Item "B" lifeguard rates will also be considered by the City (See Section 20).
- City shall receive all revenues from public swim, camps, exercise classes, events, and fitness swims, including all membership fees.

Attachment E

Operations:

The YMCA's Chief Executive Officer, Maria Rubeling, and one of our management team members Teddy Newman, or David Smith and/or April Miles will meet with the City of Hagerstown at least twice a month. The YMCA will always provide a CPO during all times that it is responsible for pool operations. According to the RFP this includes the following: Public Swim, Aquaholics, Camps, Zumba, Aqua Bands/Yoga, and Pooch Plunge. As per the RFP, provision of lifeguards/CPO will be expected for after hours Pool Parties that the YMCA will conduct during the week and weekends and will be handled separately from the rest of the request, for an additional fee.

The Certified Pool Operator will be responsible for the overall maintenance and compliance with Health Department guideline for operating the pool and splash pad maintaining water quality equal to or above state standards. Our CPO's are required to perform chemical checks every two hours during their shift, perform any necessary maintenance of equipment and ensure the overall cleanliness of the pool areas.

The Manager, and Assistant Managers will be required to hold a current CPO, Lifeguarding, First Aid/CPR/AED certifications, and be current with the YMCA's Bloodborne Pathogen training and certification. The Manager (henceforth used interchangeably with Assistant Manager) will manage and supervise guards to ensure safe swimming conditions in the pool, at the splashpad, on the deck, and in the locker rooms/bathrooms. They will maintain accurate records and administer the proper pool chemicals necessary to maintain the quality standards required by the Health Department. The manager will create a positive atmosphere that promotes safety and healthy engagement in accordance to the YMCA policies and procedures. The Manager is responsible for ensuring that the pool and aquatic areas are clean from potential hazards and trash and is responsible for managing the YMCA lifeguards and slide attendant as outlined in their job description. All YMCA staff are required to know and review all Emergency Action Plans and perform their function in accordance to the rules and regulations of American Red Cross and the YMCA. The ability to respond to emergency situations immediately and report as required is a key component of the managers' duties. The manager knows, understands, and consistently both implements and enforces safety rules, policies, and guidelines for the pool and aquatic area.

The Lifeguard (henceforth used interchangeably with the Senior Lifeguard positions) will be required to have a current Lifeguarding, First Aid/CPR/AED certifications, and be current with the YMCA's Bloodborne Pathogen training and certification. They will maintain safe swimming conditions in the pool, on the deck and surrounding areas. When on duty maintain active surveillance of the pool area, slide, diving board, rock wall and surrounding areas. Lifeguards will know and reviews all emergency procedures and respond to emergency situations immediately in accordance with YMCA policies and procedures. Lifeguards know, understand, and consistently apply safety rules, policies and guidelines for the pool and aquatic area. The lifeguard will scan all sections and observe assigned zone or area of responsibility.



CERTIFICATE OF LIABILITY INSURANCE

YMCAO-1

OP ID: MB

DATE (MM/DD/YYYY)

06/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER J. Edward Cochran & Co. Division of Keller Stonebraker 1120 C Professional Court Hagerstown, MD 21740 John A. Latimer, IV		CONTACT NAME: John A. Latimer, IV PHONE (A/C, No, Ext): 301-739-6400 FAX (A/C, No): 301-791-1478 E-MAIL ADDRESS:		
INSURED YMCA of Hagerstown, MD P.O. Box 1857 1100 N. Eastern Blvd. Hagerstown, MD 21742		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : United States Fire Company		
		INSURER B : Crum & Forster Insurance Co.		
		INSURER C : United States Fire Company		
		INSURER D : The Redwoods Group		
		INSURER E :		
INSURER F :				

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X		506-896665-3	06/13/2019	01/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
B	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			506-896665-3	06/13/2019	01/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10000			582-112324-8	06/13/2019	01/01/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A	408-736875-6	06/13/2019	06/30/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	D&O / EPL			556-010631-9	06/13/2019	01/01/2021	D&O/EPL 2,000,000
B	Equip Breakdown			506-896665-3	06/13/2019	01/01/2021	Equip Bre 10,082,539

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Hagerstown is included as an additional insured for all activities held on City owned properties including, but not limited to, summer play camps at Pangborn Park, Hellane Park and Hager Park as well as soccer activities at Fairgrounds Park and camp swims at Potterfield Pool.

CERTIFICATE HOLDER

HAGER-1

CITY OF HAGERSTOWN
PARKS & RECREATION DIVISION
351 N CLEVELAND AVE
HAGERSTOWN, MD 21740

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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

Topic:

Approval of Temporary Overfill of Fire Department Position

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Approval_of_Temporary_Overfill_of_Fire_Positions.pdf

Description

Motion - Fire Department
Position Overfill

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: **Approval of Temporary Overfill of Fire Positions**

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

MOTION: I hereby move for Mayor and Council approval of one (1) full-time firefighter position to be hired to backfill the retirement of fire marshal Doug DeHaven who has announced his retirement. FM DeHaven's last day will be December 31, 2020. This will allow for all new hires to begin training classes January 4th, 2021. Approval of this request will ensure that all will be available to be moved to shiftwork, minimum staffing positions in the shortest amount of time possible for trained firefighters.

DATE OF PASSAGE: 11/17/2020
EFFECTIVE DATE: 11/17/2020

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

Topic:

Approval of Temporary Banner - Maryland Theatre - Donut Drive-by

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Approval_of_Temporary_Banner_-_Donut_Drive-by.pdf

Description

Motion - Temporary Banner
Approval

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: **Approval of Temporary Banner – Maryland Theatre’s Donut Drive-by**

Charter Amendment

Code Amendment

Ordinance

Resolution

Other X

MOTION: I hereby move that Mayor and Council approve the installation and display of a temporary banner over South Potomac Street, as required by Section 216-17 of the Code of the City of Hagerstown for the Maryland Theatre’s Donut Drive-by event on December 31, 2020.

DATE OF PASSAGE: 11/17/2020

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

Topic:

Approval of Noise Ordinance Exemption - Mulberry Lofts Jingle Mingle

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Approval_of_Noise_Ordinance_Exemption_-_
_Mulberry_Lofts_Jingle_Mingle.pdf

Description

Motion - Noise Ordinance
Exemption

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 17, 2020

TOPIC: Approval of Noise Ordinance Exemption – Mulberry Lofts Jingle Mingle

Charter Amendment

Code Amendment

Ordinance

Resolution

Other X

MOTION: I hereby move that Mayor and Council approve an exemption from the City of Hagerstown's Noise Ordinance under section 155-5 of the Code of the City of Hagerstown for the Mulberry Lofts' Jingle Mingle on December 12 and 13, 2020.

DATE OF PASSAGE: 11/17/2020