

**112th Regular Session
Mayor and City Council
October 27, 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 - October 27, 2020 - REGULAR SESSION -Council Chamber, 2nd Floor, City Hall

I. CALL TO ORDER

Mayor Robert E. Bruchey, II

II. INVOCATION

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. Tuesday, November 3, 2020 - Election Day - No Meeting Scheduled
 - 2. Tuesday, November 10, 2020 - Meet with Washington County Delegation-TBD
 - 3. Tuesday, November 10, 2020 - Work Session at 4:00 p.m.
 - 4. Thursday, November 12, 2020 - Informal Orientation Session - BuroBox-Time TBD
 - 5. Tuesday, November 17, 2020 - Regular Session at 7:00 p.m.
 - 6. Monday, November 23, 2020 - Oath of Office to New Administration - Location and Time TBD
 - 7. Tuesday, November 24, 2020 - First Work Session of New Administration - Time TBD

V. 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, October 27, 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.

VI. MINUTES

September 1, 2020, September 15, 2020, September 17, 2020, September 22, 2020, and September 29, 2020

VII. CONSENT

A. Finance

1. Utility Billing - Postage and Bill Processing - Arista Information Systems (Duluth, GA) \$ 144,000.00

B. Information Technology

1. Building Blocks Software Renewal - OpportunitySpace, Inc. (d.b.a. "Tolemi") (Boston, MA) \$ 12,000.00

C. Planning and Code Administration

1. Snow and Ice Abatement Contract - Servtec Custodial, Inc. (Hagerstown, MD) \$ 30,000.00

D. Parks and Engineering

1. 2021 Annual Independence Day Fireworks Display - Zambelli Fireworks (Warrendale, PA) Not to Exceed \$ 25,000.00

E. Police

1. AVCC Annual Subscription Fee - LexisNexis (Chicago, IL) \$ 17,199.00

F. Public Works

1. Bulk Road Salt - Cargill, Inc. (North Olmstead, OH) \$ 58.94 per ton

G. Utilities

1. RCW Water Treatment Plant HMI Upgrade - ABB, Inc. (Cleveland, OH) \$ 304,487.00

VIII. UNFINISHED BUSINESS

- A. Approval of an Ordinance: Saylor House Landmark Overlay (ZM-2020-02)
- B. Approval of an Ordinance: NP Hagerstown Industrial, LLC - Easement for Sanitary Sewer Lateral
- C. Approval of an Ordinance: Acceptance of Donation of Real Property - Stormwater Pond on Professional Boulevard

IX. NEW BUSINESS

- A. Introduction of an Ordinance: Authorizing the Sale of Property Located at 170 West Washington Street
- B. Introduction of an Ordinance: 352 Summit Avenue Quit Claim
- C. Introduction of an Ordinance: Amending Chapter 82, Discriminatory Practices, of the City Code - Updated Personal Protections
- D. Introduction of an Ordinance for the Acquisition of Real Property for the Urban Improvement Project
- E. Approval of a Resolution: Renewal of User Agreement with Hagerstown Fairgrounds Softball Association
- F. Approval of a Resolution: Renewal of User Agreement Hagerstown Area Police Athletic League
- G. Approval of a Resolution: Alter Traffic Flow in Alley 1-76 and Alley 1-77

- H. Approval of a Resolution: FY 2021 Community Legacy Grant Application
- I. Approval of a Resolution: FY 2021 Strategic Demolition Grant Application
- J. Approval of a Resolution: Salt Utilization Agreement with Maryland State Highway Administration
- K. Approval of Addition of Farmers' Market Property (25 W. Church St.) to the Competitive Negotiated Sale (CNS) Process
- L. Approval of Acceptance of 2020-2021 Recruitment and Retention Grant for Hagerstown Police Department
- M. Approval of After School Program - BTJ Dance Class (After School Program) - Hagerstown Housing Authority - \$ 3,500.00
- N. Approval of After School Program at the Parkside Community Center - Hagerstown Housing Authority - \$ 18,881.00
- O. Approval of Contractor Selection Process for Community Legacy Grant Funded Project for First Hose Company (33 S. Potomac Street)
- P. Approval of Funding for a Community Coalition Lobbyist
- Q. Approval of Property Abatement Fund Expenditure for Demolition of 341 Jonathan Street

X. GENERAL CITIZEN COMMENTS

XI. CITY ADMINISTRATOR'S COMMENTS

XII. MAYOR AND COUNCIL COMMENTS

XIII. 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:

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

Topic:

- A. Rules of Procedure - *Effective January 21, 2020*
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TBD
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 - 6. Monday, November 23, 2020 - Oath of Office to New Administration -
Location and Time TBD
 - 7. Tuesday, November 24, 2020 - First Work Session of New Administration - Time
TBD

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

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, October 27, 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.

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

September 1, 2020, September 15, 2020, September 17, 2020, September 22, 2020, and September 29, 2020

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Minutes.pdf

Description

Motion - Minutes

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: **Approval of Minutes**

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

MOTION: I hereby move for the approval of minutes, as presented, for the Mayor and Council meetings held on September 1, 2020, September 15, 2020, September 17, 2020, September 22, 2020, and September 29, 2020.

DATE OF PASSAGE: October 27, 2020

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

Topic:

Utility Billing - Postage and Bill Processing - Arista Information Systems (Duluth, GA) \$
144,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Consent_Agenda.pdf

Finance_-_Signed_Consent_Form_-_Utility_Billing.pdf

Description

Motion - Consent Agenda

Consent Agenda - Billing -
Postage and Bill Processing

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Consent Agenda

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

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

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

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

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/2020**

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

Originating Department: Billing By: Michelle Hepburn
Account Number: 0107203.5324 - Postage Account / Project Name: Utility Bill Processing & Mailing
0107203.5329 - Bill Processing
Budget Amount: _____ Account Balance: _____ Year: FY20/21 CIP Control No. _____
Unbudgeted \$: _____ Source of Funds: Billing Operating Budget then allocated
(G&F)

Quantity	Description	Value
9 mos	Postage from Sept 2020 through May 2021 – \$12,000 per month	\$108,000.00
9 mos	Bill Processing from Sept 2020 through May 2021 – \$4,000 per month	\$36,000.00

TOTAL VALUE OF PROJECT: \$144,000.00

ABOVE TO BE USED FOR:

Current Purchase order – 20200323 was approved by M&C on 12/19/2017 with 2 1-year renewals. Our current contract with Arista runs through 6/5/2021. Arista charges us approximately \$16,000.00 per month, which includes postage and bill processing for all utility bills. Since our current Purchase order is good through August 2020, we are requesting \$16,000.00 per month for Utility Billing expenses from September 2020 through May 2021.

Arista bills us separately for Postage and Bill Processing. See breakdown of fees above. The City had originally piggybacked on a contract with Arista through City of Martinsville, VA. However, we currently hold our own contract with Arista, which expires 6/5/2021.

Pricing is being estimated at \$16,000.00 per month based on past invoices; however, actual pricing may be higher or lower based on actual volume of billing transactions processed and mailings sent.

Recommended Vendor:

Business Name: Arista Information Systems
Address: 2220 Northmont Parkway – Suite 100
City, State: Duluth, GA 30096
Bid/Proposal/Quote No.: NA – Postage Only Expense

OTHER VENDORS:		
Firm	City/State	Total Amount

(1) Department Manager

This contract will be charged to Billing which was transitioned ~~to~~ under Finance in late cal. 2019. Subsequently to payment of the invoices, the costs will be allocated to each area that generated the billing revenue. ~~and be~~ 10/15/20

Michelle H
Signature / Date

(2) Purchasing Agent:

Recommend Approval.

Joon T. Milla
10/15/2020
Signature / Date

(3) Finance Manager:

Recommend approval to continue to utilize this service contractor/provider for our billing needs. The funding was not originally included in the GRF as a line item but will be offset ~~by~~ to other funds when allocated not based on % of bills generated? sent. 10/15/20

Michelle H
Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval. This process ~~has~~ has allowed for department efficiencies and reallotment of resources.

Scott Newman 10/15/2020
Signature / Date

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

Topic:

Building Blocks Software Renewal - OpportunitySpace, Inc. (d.b.a. "Tolemi") (Boston, MA) \$
12,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

IT_-_Signed_Consent_Form_-_Software_Renewal.pdf

Description

Building Blocks Software
Renewal

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/2020**

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

Originating Department: IT & Support Services By: Jim Snyder, IT Manager
Account Number: 0107200-537702 Account / Project Name: Info Tech – PC Software Support & Maintenance
Budget Amount: \$12,000 Account Balance: \$338,540 Year: FY21 CIP Control No. N/A
Unbudgeted \$: \$0.00 Source of Funds: General Fund – Operating Budget

Quantity	Description	Value
1	Building Blocks – software renewal. Includes five (5) end user licenses.	\$12,000.00

TOTAL VALUE OF PROJECT: \$12,000.00

ABOVE TO BE USED FOR:

Covers annual maintenance and support from Tolemi (vendor) and five (5) end-user licenses.

Recommended Vendor:

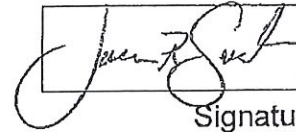
Business Name: OpportunitySpace, Inc. (d.b.a. "Tolemi")
Address: 76 Summer Street
City, State: Boston, MA 02110
Bid/Proposal/Quote No.: _____

OTHER VENDORS:

Firm	City/State	Total Amount
Tolemi is the Sole Source for this software.		

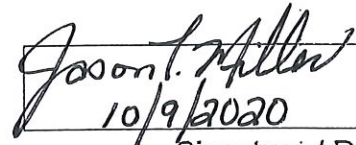
(1) Department Manager

Price includes annual support and maintenance software plus five (5) end-user licenses.
This software is extensively used by the PCAD team since its installation in 2019.

 9-24-20
Signature / Date

(2) Purchasing Agent:

Recommend approval.

 10/9/2020
Signature / Date

(3) Finance Manager:

Approve - there should be sufficient funding in FY21 budget to cover necessary maintenance costs for current software applications utilized

 10/9/20
Signature / Date

(4) City Administrator's Recommendation:

This software has proven valuable in PCAD operations and recommend approval

 10/15/2020
Signature / Date

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

Topic:

Snow and Ice Abatement Contract - Servtec Custodial, Inc. (Hagerstown, MD) \$ 30,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

PCAD_-_Snow_and_Ice_Abatement_Contract.pdf

Description

Snow and Ice Abatement
Contract

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/20**

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

Originating Department: Planning & Code Admin. By: Kathleen Maher & Paul Fulk
Account Number: 0114001-5344 Account / Project Name: Project Abatement Work
Budget Amount: \$150,000 Account Balance: \$119,800 Year: FY21 CIP Control No. _____
Unbudgeted \$: — Source of Funds: Code Admin (GF) operating Budget

Quantity	Description	Value
	Snow & Ice Abatement Contract	\$30,000

TOTAL VALUE OF PROJECT: Variable

ABOVE TO BE USED FOR:

The amount of funds expended by the City on Snow and Ice Abatement is extremely variable depending upon the number of storms, how much snow falls, how quickly snow melts, etc. The purpose of this contract is to provide abatement services for the removal of snow and ice from public sidewalks in the City that remain uncleared after a snow event. The reserved amount for each year within the property abatement work fund is \$30,000 for snow and ice removal from public sidewalks. but may vary dependent on the weather.

Recommended Vendor:

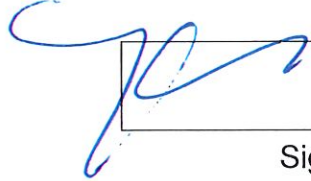
Business Name: Servtec Custodial Inc.
Address: PO Box 1005
City, State: Hagerstown, MD 21741
Bid/Proposal/Quote No.: RFP-20-M-28

OTHER VENDORS:

Firm	City/State	Total Amount
Servtec Custodial Inc.	Hagerstown, MD	\$176.60 per low bid terms
Ultimate Outdoor Living LLC	Hagerstown, MD	\$196.00 per low bid terms

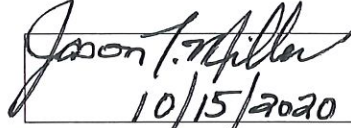
(1) Department Manager

Contractor is low bid and we are familiar w/ their service capabilities.

 10/14/2020
Signature / Date

(2) Purchasing Agent:

Recommend Approval.

 10/15/2020
Signature / Date

(3) Finance Manager:

Recommend approval for needed service. While the initial cost is a GR operating item, the value is placed as a lien on ^{applicable} property owner in an effort to be reimbursed.

 10/15/20 Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval for essential City service

 10/15/2020
Signature / Date



1 E. Franklin St. Ste. 300

Hagerstown, MD 21740

MEMORANDUM

TO: Scott Nicewarner, City Administrator

FROM: Kathleen A. Maher, Planning Director
Paul W. Fulk, Neighborhood Services Manager 

SUBJECT: Snow & Ice Abatement Contract

DATE: October 14, 2020

MAYOR AND CITY COUNCIL ACTION REQUESTED

Planning and Code Administration Department staff recommend that the Mayor and City Council award the contract for Snow & Ice Abatement services to Servtec Custodial Inc., Hagerstown, MD

PURPOSE OF THE CONTRACT

The purpose of this contract is to provide abatement services for the removal of snow and ice from public sidewalks in the city that remain uncleared after a snow event.

IMPACT ON GENERAL FUND

The City has budgeted \$150,000 in our department's Property Abatement account for this fiscal year and to date we have expended \$30,200 on abatement activities (such as tree removal and demolition). The amount of funds expended by the City on Snow and Ice Abatement is extremely variable depending upon the number of storms, how much snow falls, how quickly snow melts, etc. In the last four fiscal years, the City had no billings for this type of abatement activity. In FY 2016, the City billed property owners for \$1,780.00 for Snow and Ice Abatement.

BID SELECTION

The City sought bids for Snow & Ice Abatement services and received two bids. Per the bid documents, the official low bid is determined by total costs for one hour of labor, one gallon of materials, one hour of equipment, and service call rate. The low bid submitted is Servtec Custodial, Inc. The other bid submitted was from Ultimate Outdoor Living in Hagerstown, MD.

c: Emily McFarland, Neighborhood Services Programs Coordinator
Blaine Mowen, Chief Code Official
Michelle Hepburn, Finance Director
Jennifer Keefer, City Attorney

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

Topic:

2021 Annual Independence Day Fireworks Display - Zambelli Fireworks (Warrendale, PA) Not to Exceed \$ 25,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Parks_and_Engineering_-_Fireworks.pdf

Description

2021 Fireworks Display

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/20**

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

Originating Department: Parks and Engineering By: Rodney Tissue
Account Number: 0140001 5944 P0844 Account / Project Name: Independence Day
Fireworks Display
Budget Amount: T.B.D. Account Balance: T.B.D. Year: FY22 CIP Control No. N/A
Unbudgeted \$: \$0 Source of Funds: General Fund

Quantity	Description	Value
1	Annual Independence Day Fireworks Display (July 4 th , Rain Dates July 5 th)	NTE \$25,000.00

TOTAL VALUE OF PROJECT: NTE \$25,000.00

ABOVE TO BE USED FOR:

Produce an annual Independence Day celebration display in Fairgrounds Park that is creative, impactful, and entertaining for the community while staying within our allocated budget.

Recommended Vendor:

Business Name: Zambelli Fireworks
Address: 120 Marshall Drive
City, State: Warrendale, PA 15086
Bid/Proposal/Quote No.: RFP-20-FW-26

OTHER VENDORS:

Firm	City/State	Total Amount
NO other proposals received		

(1) Department Manager

Staff recommends the award of the contract to Zambelli Fireworks in the amount of NOT-TO-EXCEED \$25,000 annually. Contractor will be retained for the 2021, 2022, and 2023 shows with the option for 2024 and 2025 at the option of the City.

Annual funding will be determined in approved City Administrator's budget starting with the upcoming FY22 budget. Twenty Five Thousand Dollars (\$25,000) is recommended for funding the attached show.

Display can be set to music, shell colors can change if scripted to music.

R. H. In 10/12/2020

Signature / Date

(2) Purchasing Agent:

Recommend approval.

Jason T. Miller
10/15/2020

Signature / Date

(3) Finance Manager:

continued
Approve - contingent upon inclusion in future GF budget and a cancellation stipulation in the event of major unforeseen events (pandemic, etc.)

Michelle Hefner
10/15/20

Signature / Date

(4) City Administrator's Recommendation:

Recommend Approval per Finance Director's comments.

Robert Newman 10/15/2020

Signature / Date



September 16, 2020

Rodney Tissue, P.E.
Director of Parks & Engineering
1 East Franklin Street
Hagerstown, MD 21740

RE: Independence Day Fireworks Display
RFP-20-FW-26

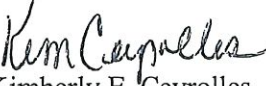
Dear Mr. Tissue:

I am very grateful to once again have the opportunity to provide you with this bid proposal for the City of Hagerstown. Please know that I have made every effort to prepare this in accordance with the specifications outlined in the Request for Proposal.

As a world class provider of fireworks entertainment, Zambelli Fireworks is committed to providing the City of Hagerstown with the products, knowledge, support, and customer service needed to ensure your total satisfaction, year after year.

After reviewing our proposal, if you have any questions, comments or concerns, certainly please contact me. I would be more than happy to assist you. Once again thank you for considering Zambelli Fireworks. I am hoping to have the opportunity to make your 2021 event a memorable one.

Yours very truly,


Kimberly E. Ceyrolles
Zambelli Fireworks

KEC/br

Hagerstown, Maryland
Department of Parks and Engineering
Independence Day Fireworks Display
Contract RFP 20-FW-26
Budget: \$25,000

SHELL DESCRIPTION	Quantity	# of Shots
OPENING FINALE		
Three Inch Assorted Finale Shells		
Multi-Shell of Shell Effect Shells	20	20
Rising Tail Effect Shells	20	20
Strobing Effect Shells	10	10
BODY OF PROGRAM		
Three Inch Aerial Display Shells		
Duration/Lingering Effect Shells	150	150
Pattern Shells	100	100
Palm Tree Effect Shells	100	100
Pattern Shells	100	100
Noise Shells	50	50
Four Inch Aerial Display Shells		
Multi-Shell of Shell Effect Shells	100	100
Half and Half Effect Shells	100	100
Rising Tail Effect Shells	100	100
Strobing Effect Shells	40	40
Novelty Shells	20	20
INTRO TO FINALE		
100 Shot Silver Crackling Flower	32	3,200
408 Shot Z-Shape Pink Comet Stars	6	2,448
GRAND FINALE		
Three Inch Aerial Display Shells		
Multi-Shell of Shell Effect Shells	200	200
Half and Half Effect Shells	100	100
Rising Tail Effect Shells	200	200
Strobing Effect Shells	50	50
Palm Tree Effect Shells	50	50

Four Inch Aerial Display Shells

Duration Lingering Effect Shells
Strobing Effect Shells

16
8

16
8

Total Pyrotechnic Effects:**1,572****7,182**

- *The show will be the same for all three years of the contract. Quality will not change over the course of the three year contract, however low level effects will be changed based upon on the latest inventory and musical selection.*
- *The show will include music based upon input from the City of Hagerstown.*
- *Color effects will be selected based upon the music selection.*

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

Topic:

AVCC Annual Subscription Fee - LexisNexis (Chicago, IL) \$ 17,199.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

HPD - Signed Consent Form -
_AVCC_Annual_Subscription.pdf

CONSENT_AGENDA_AVCC.pdf

20200831_LexisNexis_Invoice_1686057-20200831_-
_Accurint_AVCC_Annual_Subscription_Fee.pdf

Hagerstown_PD_-_Accurint_Sole_Source.pdf

Description

AVCC Signed Consent
Form

Consent Agenda - Crime
Analysis Tool

Quote - Lexis Nexis

Sole Source Letter - Lexis
Nexis

Do Not Complete This Section:
APPROVED FOR:
CONSENT AGENDA _____
NEW BUSINESS

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
<u>Sole Source</u>		

COMMENTS

(1) DEPARTMENT MANAGER:

THIS IS A TOOL THAT IS VALUABLE
TO HELPING US WITH SOLVING CRIMES
UTILIZING COMPUTERIZED ANALYSIS

Cheryl Pawley 9/29/2020
Signature/Date

(2) PURCHASING AGENT:

Recommend approval.

Jason Miller 10/9/2020
Signature/Date

(3) FINANCE MANAGER:

Approve - there should be sufficient funding maintained
in H21 budget to cover necessary maintenance costs
for current software
applications utilized

Michelle Hepler
Signature/Date 10/9/20

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Recommend Approval

Scott McEwan 10/15/2020
Signature/Date



CITY OF HAGERSTOWN MARYLAND

DEPARTMENT OF POLICE
50 N. Burhans Blvd.

Non-Emergency 301-790-3700
Emergency 240-313-4345
Fax 301-733-5513

September 24, 2020

To: Scott Nicewarner,
City Administrator

From: Paul J. Kifer, *PJK*
Chief of Police

Ref: Lexis Nexis Computerized Crime Analysis Tool
Licensing update

The Hagerstown Police Department is seeking Mayor and Council approval to renew our licensing agreement with Lexis Nexis, a computer application predictive analysis company. The annual licensing, which includes all maintenance and software updates, is \$17,199 and is part of the Police Department's annual operating budget.

Lexis Nexis is a computerized crime analysis tool that utilizes patent-pending technology to forecast the highest risk times and places for future crimes. It is a tool to increase the odds of stopping crime and is a technology that can be utilized by jurisdictions of any size.

In contrast to technology that simply maps past crime data, Lexis Nexis applies advanced mathematics and adaptive computer learning to predict future crime. It complements officers' intuition by identifying target areas as small as 500' by 500'.





28330 Network Place
Chicago, IL 60673-1283
866-528-0570

LexisNexis, a division of RELX Inc
For itself or its affiliates

Hagerstown Police Department
Attn : Wayne Dunkin
50 North Burhans Boulevard
Hagerstown, MD 21740 USA

Payments, Credits & Adjustments

Total	\$0.00
-------	--------

New Activity Summary

Date	Description	Amount
8/31/2020	AVCC Annual Subscription Fee, 2020/08/01-2021/07/31	\$17,199.00
Total Charges		\$17,199.00
Total Tax		\$0.00
1686057-20200831	Due Date 9/30/2020	Total \$17,199.00

Please include your full invoice number on all remittance to ensure proper credit.

Invoice

Current Amount Due	USD \$17,199.00
Outstanding Balance	USD \$0.00
Total Balance	USD \$17,199.00
Invoice Number	1686057-20200831
Invoice Date	Aug 31, 2020
Billing ID	1686057
Terms	Net 30
Representative	Casey Engelhardt
Billing Period	8/1/2020 8/31/2020

Questions about your bill?
866-528-0570

LNBilling@lexisnexis.com

To view account activity and pay online:
Log on to <https://invoice.risk.lexisnexis.com>
Become a registered user of EPIC 360 to
begin viewing invoices, printing invoices,
accessing account activity details and
paying invoices online.

Please Remit Payment To:
LexisNexis Risk Data Management Inc.
Billing ID 1686057
28330 Network Place
Chicago, IL 60673-1283

In order to ensure our customers are not
impacted by fraudulent phishing attempts
we advise you to never accept remittance
information change requests from
unsolicited emails or phone calls. All
LexisNexis Risk Solutions changes will be
communicated via messages attached to
your invoice. Please report any suspicious
activity to security@relx.com.



09/18/2019

Wayne Dunkin
Hagerstown Police Department
301-791-2376

Dear Wayne,

LexisNexis is the sole source provider of Accurint. It is the most robust online investigative tool available and anticipates your intelligence needs with next-generation features and real-time access. Accurint offers more than 45 billion public records from more than 10,000 sources. No other commercially available service will provide more public records.

Accurint provides an in-depth range of information that is critical to investigation. The associative links, historical residential information, and related data are more comprehensive than other commercially available database systems presently on the market. Our product platform offers many diverse applications and functionalities.

Using proprietary algorithms, compilation techniques and retrieval technology to access data stores containing billions of records, Accurint's ability to deliver high-quality matches and find-rates are unparalleled. Accurint's cutting-edge technology allows searches to be performed much more cost effectively than alternatives. Given a few pieces of information (e.g. a phonetically spelled name, the city of a previous address), Accurint can rapidly retrieve a complete and accurate identification of an individual, including current and historical addresses as well as associative links (relatives, associates, and neighbors).

Accurint allows the user to choose the type of report he/she requires by offering a screen denoting several options that can be selected or de-selected, thus customizing a specific report. This report customization eliminates superfluous data that could waste a user's time during the investigation process.

Accurint's service will enable your users to access our website 24 hours a day, 7 days a week, to perform instantaneous searches on virtually any individual in the U.S., providing detailed information such as current addresses and phone numbers, historical addresses and phone numbers, relatives, bankruptcies, property assessments, property deeds, corporate filings, Patriot Act and much more. In addition to the exceptional functionalities described above, Accurint has the following unique characteristics, setting it apart from other services:

- **Advanced Linking Technology** – Our proprietary linking technology securely and intelligently analyzes billions of partial and complete records, and then filters and links that information based on relevance to provide a more complete picture of an individual. No other system can provide you this functionality.
- **Response Time** – Accurint query responses come back virtually instantly (less than 1,000 milliseconds) and Accurint reports are generated in under four seconds.



- **Timeliness of Data** – Data is updated as often as daily, depending upon the data source. Queries and reports are always run against the most current data, so there is no need to wait until the end of the month or the end of the quarter to obtain current information.
- **Configurability** – The user can control the results included in reports, and preferences can be saved as a default setting.
- **User-Friendliness** – Based upon customer testimonials, Accurint is the easiest system on the market to use.

Sincerely,

Casey Engelhardt

Customer Administration Specialist

LexisNexis | Risk Solutions

937.865.1986 Direct

937.559.8176 Mobile

866.277.8407 Customer Service

Casey.Engelhardt@lexisnexisrisk.com

CITY OF HAGERSTOWN
MAYOR AND COUNCIL
PURCHASE/CONTRACT INFORMATION
MEETING OF _____

Do Not Complete This Section:
APPROVED FOR: _____
CONSENT AGENDA _____
NEW BUSINESS _____

Originating Department Police By Chief Paul J. Kifer

Account No. 0110003 5378 Account/Project Name AVCC Annual Fee

Budget Amount \$ _____ Account Balance \$ _____ Year 18 C.I.P. Control No. _____

Unbudgeted * \$ _____ Source of Funds General Funds

*(See Department Manager's Comments)

QUANTITY	DESCRIPTION	VALUE
<u>1</u>	<u>AVCC Annual Subscription Fee</u>	<u>\$17,199.00</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL VALUE		<u>\$ 17,199.00</u>

ABOVE TO BE USED FOR:

Computerized crime analysis tool that increases the odds of stopping crime.

RECOMMENDED VENDOR:

BUSINESS NAME: LexisNexis

ADDRESS: 28330 Network Place

CITY, STATE: Chicago, Illinois 60673-1283

BID/PROPOSAL/QUOTE NO.: _____ (Circle one)

OTHER VENDORS:

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
<u>Sole Source</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

COMMENTS

(1) DEPARTMENT MANAGER:

This is a tool that is valuable
to helping us with solving crimes
utilizing computerized analysis

Cher Pawley 9/29/2020
Signature/Date

(2) PURCHASING AGENT:

Signature/Date

(3) FINANCE MANAGER:

Signature/Date

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Signature/Date



28330 Network Place
Chicago, IL 60673-1283
866-528-0570

LexisNexis, a division of RELX Inc
For itself or its affiliates

Hagerstown Police Department
Attn : Wayne Dunkin
50 North Burhans Boulevard
Hagerstown, MD 21740 USA

Payments, Credits & Adjustments

Total		\$0.00
--------------	--	--------

New Activity Summary

Date	Description	Amount
8/31/2020	AVCC Annual Subscription Fee, 2020/08/01-2021/07/31	\$17,199.00
Total Charges		\$17,199.00
Total Tax		\$0.00
1686057-20200831	Due Date 9/30/2020	Total \$17,199.00

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Sincerely,

Casey Engelhardt
Customer Administration Specialist

LexisNexis | Risk Solutions

937.865.1986 Direct

937.559.8176 Mobile

866.277.8407 Customer Service

Casey.Engelhardt@lexisnexisrisk.com

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

Topic:

Bulk Road Salt - Cargill, Inc. (North Olmstead, OH) \$ 58.94 per ton

Mayor and City Council Action Required:

Discussion:

Purchase of Bulk Road Salt for winter operations. See the attached.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Description

Public_Works_-_Bulk_Road_Salt_Signed_Consent_Form.pdf

Signed Consent
Form - Bulk Road
Salt

Bulk_Road_Salt_2020.2021_consent_form.pdf

Consent Form
Bulk Road Salt

Bulk_Road_Salt_2020.2021_WashCo_Agenda_Vendor_Recommendation.pdf

WashCo Vendor
Recommendation

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/20**

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

Originating Department: Public Works By: Eric B. Deike, Director
Account Number: 0121001-5591 Account / Project Name: Snow Removal-Chemicals
Budget Amount: \$124,000 Account Balance: \$124,000 Year: 20/21 CIP Control No. N/A
Unbudgeted \$: _____ Source of Funds: General Fund

Quantity	Description	Value
1	Bulk Road Salt	\$58.94 per ton

TOTAL VALUE OF PROJECT: \$58.94 per ton

ABOVE TO BE USED FOR:

Used to melt snow and ice from city streets and alleys.

Recommended Vendor:

Business Name: Cargill, Inc.
Address: 24950 Country Club Blvd., Suite 450
City, State: North Olmstead, OH
Bid/Proposal/Quote No.: Washington County PUR-1477

OTHER VENDORS:		
Firm	City/State	Total Amount
Morton Salt, Inc.	Chicago, IL	\$59.48/ton
Mid-Atlantic Salt, LLC	Gladwyne, PA	\$63.30/ton
Government MLO Supplies	Bethesda, MD	\$70.00/ton

(1) Department Manager: This is a Washington County Government bid that includes the City of Hagerstown. Morton Salt, Inc. was the supplier of bulk road salt in FY20 at the contract price of \$61.80 per ton.

EBP 9/29/2020

Signature / Date

(2) Purchasing Agent:

Recommend approval.

Jason T. Miller 9/30/2020

Signature / Date

(3) Finance Manager:

Recommend approval of this necessary supply to maintain streets in the winter. Funding was included in the FY21 budget; it is anticipated that any necessary reductions

Michelle 9/30/20

Signature / Date

(4) City Administrator's Recommendation:

Would occur in other items.

Signature / Date

**City of Hagerstown
Mayor and Council
Purchase / Contract Information
Meeting of 10/27/20**

Do Not Complete This Section

Approved Consent Agenda: _____

New Business: _____

Originating Department: Public Works By: Eric B. Deike, Director
Account Number: 0121001-5591 Account / Project Name: Snow Removal-Chemicals
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(1) Department Manager: This is a Washington County Government bid that includes the City of Hagerstown. Morton Salt, Inc. was the supplier of bulk road salt in FY20 at the contract price of \$61.80 per ton.

Signature / Date

(2) Purchasing Agent:

Signature / Date

(3) Finance Manager:

Signature / Date

(4) City Administrator's Recommendation:

Signature / Date



Agenda Report Form

Open Session Item

SUBJECT: Bid Award (PUR-1477) – Bulk Delivery of Road Salt

PRESENTATION DATE: September 29, 2020

PRESENTATION BY: Brandi Naugle, CPPB, Buyer, Purchasing Department and Zane Rowe, Deputy Director, Washington County Highway Department.

RECOMMENDED MOTION: Move to award the contract for the purchase/delivery of Bulk Road Salt to the responsible, responsive bidder, Cargill, Incorporated. of North Olmsted, OH who submitted the price of \$58.94 per ton.

REPORT-IN-BRIEF: On August 7, 2020 the County issued an Invitation to Bid (ITB) for Bulk Road Salt. The salt will be purchased on an as-needed basis to be used on County maintained roads for snow and ice control. The County uses an average of fifteen thousand (15,000) tons of road salt annually. The contract period is to tentatively begin October 1, 2020 and end April 30, 2021. The above recommendations are for the County's requirements only; the City of Hagerstown shall make its award independently from the County. The County guarantees neither a minimum/maximum quantity of bulk road salt to be purchased under this contract.

The Invitation to Bid was published in the local newspaper, on the County web site, and on the State of Maryland's eMMA "eMaryland Marketplace Advantage" web site. Twenty-Two (22) persons/companies registered/downloaded the bid document on-line. On September 9, 2020 a total of six (6) bids were received; two (2) being a "No Bid" as indicated on the attached bid tabulation matrix.

DISCUSSION: N/A

FISCAL IMPACT: Funding is available in the department's FY'21 operating budget account.

CONCURRENCES: N/A

ALTERNATIVES: N/A

ATTACHMENTS: The complete Bid Tabulation may be viewed on-line at:
<https://www.washco-md.net/wp-content/uploads/purch-pur-1477-bidtab.pdf>

AUDIO/VISUAL NEEDS: N/A

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

Topic:

RCW Water Treatment Plant HMI Upgrade - ABB, Inc. (Cleveland, OH) \$ 304,487.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Water_-_Plant_Upgrades_Signed_Consent_Form.pdf

Consent_Agenda_ABB_Upgrade_091420.pdf

ABB_Inc_Proposal_No_CAW-200122-1_Rev_05_(09-14-2020).pdf

Description

Signed Consent Form -
Plant Upgrades

RCW Water Treatment
Plant HMI Upgrade

RCW Water Treatment
Plant HMI Upgrade

Approval For:	
Consent Agenda:	X
New Business:	

Quantity	Description	Value
1	RCW Water Treatment Plant HMI Upgrade	\$ 245,799.00
1	Cyber Security	\$ 50,138.00
1	Monitors and Ergotron Arms	\$ 8,550.00
	TOTAL	\$ 304,487.00

This is sole-source, proprietary equipment. The additional cost will be covered by trimming non-essential FY 21 CIPs. The SCADA upgrade is required to maintain functionality of the SCADA system used for operations at the R. C. Willson WTP. This upgrade will ensure continued compliance with SDWA requirements. Upgrade is required because of compatibility issues with the Microsoft 10 operating system.

[illegible][illegible]

Comments

Department Manager (required on all unbudgeted items):

This is sole-source, proprietary equipment. The additional cost will be covered by trimming non-essential FY 21 CIPs. The SCADA upgrade is required to maintain functionality of the SCADA system used for operations at the R. C. Willson WTP. This upgrade will ensure continued compliance with SDWA requirements. Upgrade is required because of compatibility issues with the Microsoft 10 operating system.

William Lee

Water Operations Manager

10/1/2020

Date

Finance Department:

Recommend approval.

Jason T. Miller

Signature

10/14/2020

Date

Finance Manager:

Recommend approval of this essential upgrade to maintain compliance & software issues. 100% of the funding will be covered by water operations. Other projects will be deferred if necessary due to reductions.

C0820- 225,000 (SCADA)

C0322- 50,000 (Risk/Resil. Security)

** Reallocate*

29,487

from C0167 Transmission Mains proj per

Signature

Michelle J. Miller

Date

City Administrator's Recommendation:

\$304,487

Director of Utilities.

Recommend Approval of Essential Operation item.

Scott Threanow

Signature

10/15/2020

Date

Approval For:	
Consent Agenda:	X
New Business:	

Originating Department: Water Department		By: William Luhn	
Account Number: 5285001-5892-C0820	Account/Project Name: Water System SCADA Improvements		
Account Number: 5285001-5892-C0322	Account/Project Name: Risk and Resilience/Security: Pumping and Filter Plant		
Budget Amount: FY21 \$ 225,000	Account Balance: \$ 225,000	Year: FY21	CIP Control No.: C0820
Budget Amount: FY21 \$ 50,000	Account Balance: \$ 50,000	Year: FY21	CIP Control No.: C0322
Unbudgeted:	Source Of Funds: Water Fund		

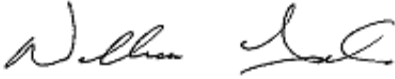
Quantity	Description	Value
1	RCW Water Treatment Plant HMI Upgrade	\$ 245,799.00
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Comments

Department Manager (required on all unbudgeted items):

This is sole-source, proprietary equipment. The additoinal cost will be covered by trimming non-essential FY 21 CIPs. The SCADA upgrade is required to maintain functionality of the SCADA system used for operations at the R. C. Willson WTP. This upgrade will ensure continued compliance with SDWA requirements. Upgrade is required because of compatibility issues with the Microsoft 10 operating system.



Water Operations Manager

10/1/2020

Date

Finance Department:

Signature

Date

Finance Manager:

Signature

Date

City Administrator's Recommendation:

Signature

Date

CITY OF HAGERSTOWN

RCW Water Treatment Plant HMI Upgrade



Issue Date:	09/14/2020
Reference Number:	CAW-200122-1 Rev 05

Contact Information

Sales Contacts

Wayne Stefancin
Account Manager
Phone: (440) 668-5301
E-mail: wayne.stefancin@us.abb.com

Rick Gayo
Independent Sales Representative
Phone: (410) 666-3200
Email: rgayo@flowtechonline.com

Proposal Contact

Chris Wojnar
Proposal Engineer
Phone: (440) 527-1254
E-mail: chris.wojnar@us.abb.com

Revision History

Revision History Table

Revision Number	Issue Date	Comments
Revision 00	02/04/2020	Revised ABB Inc. Proposal No 20335728 Rev 02 as follows: • Changed to a Virtualized High Availability solution and included two (2) new Ethernet Switches. • Changed on-site kick-off meeting to a teleconference kick-off meeting. • Added Primary and Redundant Domain Servers. • Deleted Spare rackmount server and desktop workstation. • Updated option to remove KVM Extenders.
Revision 01	02/14/2020	Revised as follows: • Removed one (1) Virtual Server and included an option price. • Removed ThinClients. • Removed S+ Operations Client expansion.
Revision 02	02/27/2020	Revised as follows: • Added three (3) new rackmount servers (S+ Operations Primary and Redundant Servers and Primary OPC Server) to be shipped to site and installed by Field Service as Phase 1. • Phase 2 will be the Scope of Supply originally quoted in Rev 00 of this proposal.
Revision 03	03/26/2020	Revised as follows: • Modified scope of supply to reflect the Revision 00 Proposal and added S+ Historian Redundancy. • Modified pricing
Revision 04	07/22/2020	Revised as follows: • Removed statement regarding merged data taking place on-site • Removed the word taxes in notes under pricing • Removed Optional Field Service Pricing • Removed Covid-19 Clause

Revision Number	Issue Date	Comments
Revision 05	09/14/2020	Revised as follows: • Changed Terms and Conditions • Added two (2) VM Switches • Modified option price for monitors and monitor mounting arms

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1 Introduction

ABB is pleased to submit this proposal for an S+ Operations Console Upgrade (from v2.0 to v2.1) and S+ Engineering Upgrade (Composer v6.1 to S+ Engineering v2.1) on the RCW Water Treatment Plant Distributed Control System. Our proposal covers the furnishing of the hardware, software, and services as described in the attached proposal, based on the request.

ABB is a leading provider of integrated controls solutions for water plants. Our offering is supported by a comprehensive service portfolio to optimize performance, reliability, and efficiency while minimizing environmental impact. For additional information on ABB Water, visit <https://new.abb.com/water>.

ABB Power Generation and Water in Cleveland, OH combines deep knowledge of the water processes with extensive engineering know-how to provide the best solution for your plant. We will execute the project using a holistic approach, not only to meet the requirements of the specification, but also to meet the operational needs of your plant and company. We have developed tools for project execution, like ABB's Teamwork Suite, to promote efficient review and collaboration with interested stakeholders to cover important areas of system development like graphic layout and design, and alarm management.

This proposal is based on the following:

- Upgrade of the existing S+ Operations v2.0 consoles to S+ Operations v2.1.
- Upgrade of the existing Composer v6.1 to S+ Engineering v2.1.
- New rackmount virtual servers, SANs, and thin clients.
- Baseline Security.
- Loading all computers with software included in this proposal.
- Loading Customer supplied database and graphics.
- ABB Field Service.
- Optional Cyber Security Workplace.
- Option to provide new LCD Monitors and Ergotron Mounting Arms.

2 Hardware & Software Scope of Supply

2.1 Water Care and Software Scope of Supply

This proposal is based on RCW Water Treatment Plant having an active and valid Water Care Agreement that includes software maintenance coverage for the software identified in the table below at the Upgrade Software Support Level. As such, ABB's proposal includes upgraded versions of S+ Operations v2.1, S+ Engineering v2.1, and Harmony Gateway v7.0 per the software outlined below at no cost. Additional S+ Operations features or capacity expansions (tags, operator clients, OPC client, etc.) can be quoted upon your request.

Site Name		System Name		
City of Hagerstown		RCW WTP		
System ID	Software Support Level	System Type	# of Concurrent Users	System Functionality Included:
SID40853	Upgrade Level	Type III	7 Users	☐ Batch ☐ Safety ☒ History ☒ Harm. Gateway
Licenses Included in System Identification				
License #	Product Description			Machine ID
SL121001809032093	S+ Operations, Primary, v2.0 Local Client - No Local Client Remote Clients Support - 7 clients Real Time Data Server Tag Capacity – 10,000 realtime tags Harmony/INFI Driver - Yes Harmony Connect - Yes Office ThinWebClient - (Total of 2ThinClients) History Server - Yes Report Package (required with History Server) – Yes 2 Historical Logs x1000 - Packs of 1000 Alarm Portal – Yes Central Diagnostic – Yes OPC Client – Yes SNMP Scanner - Yes			01C9
SL668001809032093	S+ Operations, Redundant, v2.0 Local Client - No Local Client Remote Clients Support - 7 clients Real Time Data Server Tag Capacity – 10,000 realtime tags Harmony/INFI - Yes Harmony Connect - Yes Office ThinWebClient - (Total of 2ThinClients) History Server - Yes Report Package (required with History Server) - Yes 2 Historical Logs x1000 - Packs of 1000 Alarm Portal – Yes Central Diagnostic – Yes OPC Client – Yes			01BB
SL43517281165054	S+ Operations, Frontend, v2.0 OPC Client			000AF729D7C4
SL277021809032093	Composer Harmony Server, v6.1 Client Support – 1 Client View & Monitor Client – 1 Client Field Configurations – Field Configuration for 1 Client Profibus/Hard Device Instances - 100 Instances			10880
SL652021809032093	Composer System, v1.0			
SL168011809032093	Harmony Gateway, v6.0			

The specified S+ Operations architecture requires eight (8) client support therefore, the following expansion licenses are included:

- One (1) S+ Operations Primary Server Expansion license to increase client support from 7 to 8.
- One (1) S+ Operations Redundant Server Expansion license to increase client support from 7 to 8.
- Documentation and Keys
 - o Four (4) USB Keys for Licensing
 - o Symphony Plus Product Package – No cost under Sentinel software maintenance

2.2 Hardware Scope of Supply

ABB will supply all necessary Dell computer hardware per ABB's specifications, third party software, and all third-party equipment as follows:

NOTE: City of Hagerstown will reuse an existing server cabinet for the below rackmount servers and workstations. Any modifications to existing Server Cabinet that are not described herein are not included in this proposal.

- o One (1) Shared Array Network Storage
- o Three (3) Virtual Servers to host the following:
 - S+ Operations Primary Server
 - S+ Operations Redundant Server
 - S+ Primary Historian Server
 - S+ Redundant S+ Historian
 - S+ Primary Frontend Server
 - S+ Engineering Server/S+ Engineering Client
 - Primary Domain Server
 - Redundant Domain Server
 - S+ Operations Clients
- o The following third-party software will be loaded:
 - Microsoft Windows Server 2016 Operating Systems as required
 - Microsoft Windows 10 2016 Operating Systems as required
 - Microsoft Excel - Not on Domain Servers and S+ Operations Clients
 - VMWare - ABB will be purchasing VMWARE on behalf of the end-customer. If Customer does not have a VMWARE EA#, then ABB will request its supplier to generate EA# for customer.
- o Four (4) FS – S5850-24T16S 24-Port Ethernet Switches for the S+ Operations Network and Ethernet cables internal to Server cabinet
- Eight (8) Dell Wyse 5070 Thin Clients each with one (1) fifty-foot Ethernet Cable
NOTE: ThinClients can support up to four monitors.

NOTE: Equipment not identified above will not be provided. Proposal assumes Customer will reuse existing monitors, keyboards, mice, Ethernet Networks, PNI's, etc. Monitors and Dual Ergotron Arms for Thin Clients are offered optionally. Please see the Attachments section of this proposal and refer to the Detailed Bill of Material and System Overview Drawing.

3 Security Scope of Supply

ABB will provide the following cyber security services on this Symphony Plus System:

- Antivirus Software
- Server and Workstation Hardening
 - o Security Incident & Event Management
 - o User Management (Domain)

Optional Cyber Security Workplace to include the following:

- Centralized Security Patch Management
- Centralized Endpoint Protection
- Centralized Disaster Recovery

3.1 NERC-CIP Compliance

Per Section 215 of the Federal Power Act, compliance with NERC's CIP Standards are mandatory for Registered Entities. These Standards describe requirements and procedures related to physical and cyber infrastructure protection, some of which are out of the DCS vendor's sphere of control. As a result, ABB cannot guarantee compliance – it is up to the end-user to develop their own procedures to ensure such.

Although full compliance rests with the owner of the assets, ABB's Cyber Security group is proud to provide solutions and services which assist our Customers in achieving the required NERC-CIP compliance via its Cyber Security group.

ABB's Cyber Security group is committed to assisting our Customers achieve compliance. The Security Workplace applications and services described in the following proposal sections identify which CIP standards are applicable.

3.2 Patch Support

ABB tests and validates Microsoft patches and McAfee DAT files for each ABB control system platform on a monthly basis. For the ABB systems identified to be hardened, ABB shall apply the latest approved Microsoft patches and McAfee DAT files.

To receive the monthly patch bulletins, Water Care subscribers must log into MyABB / MyControl System Portal and download the latest security patch validation documents which contain:

- Microsoft Patch Validation Status
- Approved Virus Scan Definitions
- Approved 3rd Party Software Versions

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R2 – Security Patch Management

3.3 Security Patch Delivery Service Subscription

In addition to providing a validation document of Microsoft security updates test results and virus definitions, ABB creates a security patch DVD which includes the approved monthly Microsoft patches organized into folders for easier deployment to the system. Each month, subscribers to the Security Patch Delivery Service will receive a DVD with all the approved Microsoft patches, McAfee AV signatures, and product validation bulletins.

Security Patch Delivery Service requires a subscription in the Water Care Agreement. These costs are not included in this proposal.

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R2 – Security Patch Management

3.4 Antivirus Software

ABB provides and loads all machines with McAfee VirusScan Enterprise software. This antivirus software provides real-time antivirus scanning on each host machine. ABB will configure specific exceptions to allow for a high level of protection while maintaining the high performance of the DCS.

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R3 – Malicious Code Prevention

3.5 Machine Hardening

Server and Workstation hardening is the process of securing a system by reducing its surface of vulnerability. A system has a larger vulnerability surface the more functions it fulfills. Therefore, ABB shall limit the amount of functions and communications, as much as practical, for the control system to operate as intended. ABB will apply basic server and workstation hardening profiles based on the operating system, DCS system, and third-party software of the machines. ABB's standard server and workstation hardening is defined below:

- Disable unnecessary Operating System services
- Configure Windows Firewall to block unnecessary TCP/UDP ports
 - o Rules for ABB Inc. DCS software
 - o Rules for approved 3rd party software
 - o Customer must provide rules for any non-standard software requested
- Define Local Security or Group Policies (see section 3.2.1 for more information)
 - o Implement Operator protected login profile as applicable
 - o Account Policies/Password Policy
 - o Enable and define audit policy
 - o Disable and rename local guest machine accounts

The computers supplied in this proposal will be hardened to ABB's Standards.

Applicable NERC-CIP Regulation(s):

- CIP-005 – Electronic Security Perimeter(s) – R1 – Electronic Security Perimeter
- CIP-007 – Systems Security Management – R1 – Ports and Services

3.5.1 Symphony Plus User Management - Domain

Also included in ABB's server and workstation hardening is User Account Management via a Domain. To provide all necessary users and security "out of the box," ABB provides the following Domain user groups and Symphony Plus Operations user roles for the security configuration for the system. Five (5) standard users will be placed into domain Organizational Units and Security Groups and associated with User Roles. ABB's standard Group Policies shall be loaded onto the system and can be provided upon request for review.

Default Symphony Plus User Roles / Domain Security Groups:

Role	<u>S+ Operations Security Privileges (details in User Role DB details)</u>						<u>Windows Desktop Privileges</u>		<u>S+ Engineering Privileges</u>		
	Read	Control	Configure tags, displays, trends	Tune	Acknowledge Alarms	Off Scan / Out of Service	Locked in Full Screen Mode	Access desktop and taskbar	Open/View Engineering Configurations	Create Projects, Backup/Restore Projects	Manage Users and Projects
DCSGuests	Yes	No	No	No	No	No	Yes	No	No	No	No
DCSOperators	Yes	Yes	No	No	Yes	No	Yes	No	No	No	No
DCSEngineers	Yes	No	Yes	Yes	No	No	No	Yes	Yes	Yes	No
DCSSupervisors	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes*	No	No
DCSAdmins	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
DCSBuiltin	Yes	No	No	No	No	No	No	Yes	No	No	No

Note: DCSBuiltin is a guest role for the built in Administration Account.

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R5 – System Access Control

3.6 Optional Cyber Security Workplace

ABB Ability Cyber Security Workplace solutions are designed to meet the unique needs of the electric power and water industry to achieve and maintain reliability, security, and compliance. As your trusted partner, ABB provides the validated services and solutions to protect, monitor, and manage your most valuable assets from one simplified security platform: ABB Ability Cyber Security Workplace.

ABB Ability Cyber Security Workplace is a suite of applications and services designed to enhance and maintain the security of your distributed control system. Cyber Security Workplace is a scalable solution which can be catered to the customer's demand. This proposal includes the following solutions:

- Centralized Security Patch Management
- Centralized Endpoint Protection
- Centralized Disaster Recovery

3.6.1 Centralized Security Patch Management

ABB shall supply centrally managed Microsoft security patch deployment using the ABB Patch Management Utility (PMU) for the Symphony Plus system.

The Patch Management Utility has the following features:

- Isolated, offline utility for centrally managing Microsoft patches
- Single, simplified overview of system patching status report
- Intuitive UI and workflows to scan, copy and install patches from a single right click
- Reduce the time required to deploy Microsoft patches by up to 75%
- Import ABB validation status and Microsoft patches directly from the Water Care Agreement Security Patch Delivery Service (required) but not included in this proposal.

Patch remediation is not included in the base scope of work. ABB will not be updating the systems with the latest approved Microsoft patches.

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R2 – Security Patch Management
- CIP-010 – Configuration Change Management and Vulnerability Assessment – R1 – Configuration Change Management

3.6.2 Centralized Endpoint Protection

ABB shall provide centrally managed endpoint protection console. This includes:

- Endpoint protection with VirusScan Enterprise + AntiSpyware Enterprise
- Configurable On-Access System and Device Scans
- Central management via ePolicy Orchestrator (ePO)

McAfee ePolicy Orchestrator (McAfee ePO) is the most advanced, extensible, and scalable centralized security management software in the industry. Unifying security management through an open platform, McAfee ePO makes risk and compliance management simpler and more successful for organizations of all sizes. As the foundation of McAfee Security Management Platform, McAfee ePO enables customers to connect industry-leading security solutions to their enterprise infrastructure to increase visibility, gain efficiencies, and strengthen protection.

Applicable NERC-CIP Regulation(s):

- CIP-007 – Systems Security Management – R3 – Malicious Code Prevention

3.6.3 Centralized Disaster Recovery

ABB shall provide an automated software backup and recovery solution in the form of a Disaster Recovery appliance. It enables central management of Backup and Recovery software as well as provide hard disk storage for the repository where the backups are stored. VMware Workstation shall be loaded for testing of created images. The disaster recovery package allows for the following advantages:

- Reduced loss time from down machine(s) – from multiple weeks of reloading and configuring to as little as an hour of restoring from backup
- Reduced loss time from waiting for replacement hardware, using conversion to VM

- Improved troubleshooting capabilities with the ability to convert running machines to VMs for diagnosing remotely or in a lab environment

The disaster recovery software includes the following key features:

- Daily Backup Images
- Individual File Recovery from any backup
- Online rollback from a backup
- Full Bare-Metal Recovery
- Conversion of backups to Virtual Machines

Applicable NERC-CIP Regulation(s):

- CIP-009 – Recovery Plans for BES Cyber Systems – R1 – Recovery Plan Specifications
- CIP-009 – Recovery Plans for BES Cyber Systems – R1 – Recovery Plan Implementation and Testing

3.6.4 Hardware and Software Scope of Supply

ABB will provide the hardware and software described in the below table.

Part Number	Qty.	Description
8VUS000226R0001	1	Cyber Security Workplace Tower Server
EVNSL64X-0050	2	50ft. CAT6 Cables
2VAA004988	1	Cyber Security Workplace Product Package
2VAA004990	1	Patch Management Software License
EPSCDE-AA-ROYL	1	Management Console License
8VUS000227R0001	3	Disaster Recovery License – 1TB
OPE-OTHER	1	VMware Workstation Software License
8VUS000225R0001	1	24" LCD Monitor

3.6.5 Customer Familiarization

ABB will set up one (1) half-day web-based familiarization with City of Hagerstown to demonstrate the Security Workplace solutions after the system is delivered.

4 Project Organization

4.1 Project Management

The success of every project is based upon the effective coordination and communication between the Client and ABB. In order to achieve this goal, ABB assigns a qualified Project Manager to each project that is awarded. The Project Manager acts as the single point of contact for the City for all matters related to project scope, schedule, and commercial items.

The Project Manager develops the project implementation plan in conjunction with the Project Team and is responsible for its execution in accordance with the City's contractual requirements and expectations. Review of those requirements and expectations is made during project kick-off, to ensure all parties have a common understanding.

The implementation strategy developed by the Project Manager will ensure optimum schedule adherence, contract delivery, and system performance through effective and efficient resource utilization with a focus on maximum quality and reliability through internal design reviews and through industry-wide, sustainable quality procedures including but not limited to ISO9001.

The Project Manager is supported by the Primary System Engineer (PSE), the Lead Field Service Engineer, and by Technical Specialists.

4.2 Meetings

All project required meetings, unless specifically stated as an on-site meeting included, will be conducted via telephone or web-based conference call.

5 Project Engineering Services

5.1 In-House Engineering

ABB will perform the below in-house engineering:

- Procure hardware and software.
- Setup and load all machines with the standard image.
- Configure all S+ Operations system specific base configuration settings.
- Verify all S+ Operations configuration settings per internal guidelines.
- Load Customer provided S+ Operations database and graphics.
- ABB will load and restore the upgraded configuration files in the new S+ Engineering Server
- Verify system is working properly.

5.2 Deliverables

5.2.1 Customer Deliverables

- Console information as follows*:
 - o Error free Harmony Tag Database
 - o All graphic files
 - o All symbol files
 - o Trend database/definition
 - o Alarm Comments defined
 - o Engineering Units Descriptors defined
 - o Logic States Descriptors defined
 - o Text Select strings defined
 - * ABB will provide a document that depicts the procedures on how to obtain the required information. It is very important that the Customer provided files be error free prior to submittal to ABB for upgrade. Further, the EWS and Console files associated with the above information must be consistent. Otherwise the Customer must clearly define which file (either from EWS or Console) should be used as the master. If Configurations are inconsistent the ABB project team may be required to perform additional cleanup activities which could result in a change order.
 - Composer information as follows:
 - o A complete and properly structured existing project including all drawings and libraries associated with the project
 - o If the project has a tag database it should be included
 - o Configuration files saved from all controller modules in the field including files for interfaces (C, VB, Batch, etc.) where applicable
 - o Error free verification between controller, .CFG files, and .CAD logic drawings
- NOTE: If the above requirements are not met, ABB can assist Customer with modifying the project files for the upgrade process. This would be done on a time and material basis and is not included in this estimate.

5.2.2 ABB Deliverables

- Formal documentation of testing results using ABB TeamCheck.
- Standard Product Manuals
- ABB will provide two (2) sets of As-Shipped S+ Operations Full Back-up files.
- Client/Server and Network Guidelines: Includes ABB's standard server, workstation and networking specification; including computer naming and IP addressing.

6 Field Service

6.1 Introduction to Field Service

When it comes to service, ABB's target is the same as yours – more uptime, greater safety, and increased profitability. Providing world-class support to ensure maximum performance of your Power and Automation equipment investment is important to us. Our complete portfolio of services and service products can help you maximize your investment by improving equipment productivity and minimizing costs through extending the useful equipment life.

At ABB, we give you one of the largest staffs of control system specialists in the industry. They are thoroughly capable of diagnosing and solving any instrumentation and control challenges. We offer the flexibility and know-how to expertly service ABB products, as well as the instrumentation and controls of other manufacturers.

6.2 Start-up, Testing & Commissioning Services

ABB has included time for a Field Service Engineer to travel to site to support setup and startup of the new system. A detailed summary of the service support hours can be found below.

Field Service Proposal Summary

ABB Personnel	Trips	Duration	ABB Personnel Shifts
Field Service Engineer	1	10 Working Days	8hr Days (Monday - Friday)

Notes:

- 1. Field Service is offered as an allotment of working days as described above. Travel time will be deducted from the allotment of working days.*
- 2. Any adjustment of hours (increase or decrease) will result in a responding change order. Please note, a per diem rate for Field Service is provided in the Commercial Section of this proposal for your information.*
- 3. The field service engineer shall be granted unencumbered access to the equipment upon which work is to be conducted. Standby time, resulting from any issue, will be charged against the stipulated hours.*
- 4. Travel & Living expenses have been included.*

7 Assumptions and Clarifications

7.1 Assumptions and Clarifications

- Equipment/Services not identified in this proposal will not be provided.
- This proposal assumes customer is under a valid Water Care Agreement which contains the Security Patch Delivery subscription, which is required and not included in this proposal.

7.2 PC Equipment Standards

This proposal is based upon ABB supplying standard servers, workstations, and networking hardware, and following standard system loading procedures, including computer naming and IP addressing. Software loading and network/computer hardware configuration information will be provided during system design and engineering for information purposes. This standardization allows ABB to load the computers based on system images and reduces cost to the customer.

If the customer would like to use a different computer model or make, purchase the computers, use existing computers, wants other software packages, or wants the option to select user account names, then ABB will adjust the price to account for the extra engineering time to individually implement the customer selections and load the software.

8 System Pricing

8.1 System Pricing

The System as Described in this Proposal:\$245,799.00

Notes:

1. *This price assumes customer is under a valid Water Care Agreement which contains the Security Patch Delivery subscription, which is required.*
2. *This price includes a software savings of \$132,193 under the customer's existing Water Care Agreement (presented in Proposal Number ERG-180615-1C).*
3. *This price does not include any duties or tariffs that may be charged by any governmental authority. ABB Inc. shall be reimbursed for any such duties, etc. that it may pay on the work or equipment covered by any order resulting from this proposal.*

9 Optional Pricing

NOTE: The following option price do not include any duties or tariffs that may be charged by any governmental authority. ABB Inc. shall be reimbursed for any such duties, etc. that it may pay on the work or equipment covered by any order resulting from this proposal.

9.1 Cyber Security Workplace

The adder to supply the scope as described in Section 3.6 of this proposal:..\$50,138.00

9.2 Monitors and Ergotron Arms for Workstations

The adder for ABB to supply the following equipment:\$8,550.00

- o Nineteen (19) 24" LCD Monitors
- o Five (5) Dual Monitor Mounting Arms
- o Two (2) Quad Monitor Mounting Arms

10 Purchase Order Instructions

If this proposal meets with your approval, please send your purchase order referencing the Proposal Number and Date information to US-PSPG-OE@abb.com.

11 Commercial

11.1 Terms and Conditions of Sale

The attached City of Hagerstown Terms and Conditions and Additional Terms and Conditions for City of Hagerstown will apply to any order resulting from this proposal unless mutually agreed in writing between ABB Inc. and the City of Hagerstown.

11.2 Validity

This proposal is subject to acceptance within ninety days (90) days. All prices, schedules, and technical descriptions are valid throughout this period.

11.3 Payment Terms

ABB's standard payment terms are Net 30.

11.4 Payment Milestones

- 25% Upon Receipt of Order
- 35% Upon Release of Equipment Procurement Orders
- 35% Upon Staging & Loading of Software
- 5% Upon Shipment

11.5 Delivery

This proposal is based on delivery FOB Destination.

11.6 Schedule

Shipment can be made approximately twenty (20) to twenty-four (24) weeks after receipt of customer design data. This schedule is approximate and may be improved pending further commercial discussions.

11.7 Language

The prices and job schedules indicated within this proposal are based upon all contract documentation being in the English language unless otherwise noted.

12 Attachments

1. City of Hagerstown Terms and Conditions and Additional Terms and Conditions for City of Hagerstown
2. ABB Field Service Rate Sheet
3. Detailed Bill of Material
4. System Overview Drawing



Attachment 1

City of Hagerstown Terms and Conditions

and

Additional Terms and Conditions for City of Hagerstown

CITY OF HAGERSTOWN

TERMS AND CONDITIONS

The following terms and conditions are applicable to this order entered into by and between the City of Hagerstown, Maryland (referred to as Buyer) and Vendor (referred to as Seller).

MODIFICATIONS No modifications of this order shall be binding upon Buyer unless approved in writing by Buyer or authorized representative of Buyer. Quantities specified in the order cannot be changed without Buyer approval. Goods shipped in excess of quantity designated may be returned at Seller's expense.

ASSIGNMENT Any assignment of this order, performance of work hereunder, in whole or in part, or monies due, or monies to become due hereunder, shall be void unless consented to by Buyer in writing and Buyer shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Buyer.

TERMINATION Buyer reserves the right to terminate this order in whole or in part for default if Seller fails to perform in accordance with any of the requirements of this order. Any such termination will be without liability to Buyer except for completed items delivered and accepted by the Buyer.

F.O.B. In those cases where prices stated are not F.O.B. destination, Seller is required to prepay charges and list on invoice.

TERMS By accepting this order, the Seller agrees that payment terms shall be Net 30 days unless otherwise stated. Payment will be made in accordance with Buyer's policies and procedures.

INVOICING Seller must render an original invoice in duplicate to the Bill to Department stated on the front of this order.

TAX Buyer is exempt from Federal and State taxes for tangible personal property. Sellers doing business with the Buyer may not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the Buyer, nor shall any Seller be authorized to use the Buyer's Tax Exemption number in acquiring such materials.

PURCHASE ORDER NUMBER Purchase Order number must appear on all invoices, packing slips, shipping notices, freight bills and correspondence concerning this order.

COMPLIANCE

- A. The Contractor shall observe and comply with all Federal, State, local and municipal laws, ordinance rules and regulations that would apply to this order/contract.
- B. Seller shall comply, when applicable, with the provisions set forth by the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by U.S. Department of Labor (29CFR Part 5).
- C. Seller shall provide access to pertinent records relative to contract/order for a period of three (3) years after the last receipt of payment is made under this contract/order.

INSPECTION All Commodities delivered on this order are subject to inspection upon receipt by a representative of the Buyer. All rejected commodities shall remain the property of the Seller and will be returned at Seller's expense.

LITIGATION VENUE The parties agreed that venue and jurisdiction of all litigation arising from this contract/order shall be in the State Courts located in Washington County, Maryland. This contract/order shall be construed pursuant to Maryland Law.

PAYMENT CHANGES Payments will only be made to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company and approved by an authorized City official.

ANTI-DISCRIMINATION Sellers doing business with Buyer are prohibited from discriminating against any employee, applicant or client because of race, creed, color, national origin, sex or age, with regard to, but not limited to, the following: employee practices, rates of pay or other compensation methods and training selection.

LEGAL RESPONSIBILITY By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and local laws, statutes, ordinances, rules and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.

LIABILITY-COPYRIGHT/PATENT/TRADEMARK Seller shall save and hold harmless Buyer, its employees and agents from liability for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order.

INSURANCE If the Seller is required to go on City property to perform work or services, the Seller shall assume full responsibility and expense to obtain all necessary insurance as required by the City.

INDEMNIFICATION - To the extent authorized by law, Seller shall indemnify, save and hold harmless Buyer, its employees and agents against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by the Seller, or its employees, agents, subcontracts or assignees pursuant to the terms of this order.

REPRESENTATIVES All parties to this order agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind said parties.

OFFER/ACCEPTANCE If the Purchase Order refers to your bid then the purchase order is an ACCEPTANCE of your OFFER TO SELL, as stated in your bid. If no bid is referenced, the Purchase Order is an OFFER TO BUY, subject to your acceptance, which can be demonstrated by your performance of the Order or by a formal acknowledgment. Any COUNTER-OFFER TO SELL is automatically construed as CANCELLATION of the Purchase Order unless a change order is issued accepting a counter offer.

NEW GOODS All equipment delivered against the Purchase Order shall be newly manufactured and of the manufacturer's current model unless otherwise specified.

QUALITY The Buyer, City of Hagerstown, will be the sole judge in determining acceptability and satisfaction in regard to quality, price and performance.

O.S.H.A. All chemicals, equipment and materials proposed and/or used in the performance of the Purchase Order must conform to the standards required by O.S.H.A.

MATERIAL SAFETY DATA SHEETS (MSDS's) are to accompany each shipment when applicable.

ADDITIONAL TERMS AND CONDITIONS FOR CITY OF HAGERSTOWN

In the event of inconsistency between the CITY OF HAGERSTOWN TERMS AND CONDITIONS ("City Terms") and these ADDITIONAL TERMS AND CONDITIONS, the City Terms shall prevail

1. Payment.

Payment terms are net cash, payable without offset, in United States Dollars, 30 days from date of invoice by City of Hagerstown check.

2. Delivery.

All Equipment manufactured, assembled or warehoused in the continental United States is delivered FOB destination.

3. Risk of Loss.

Except with respect to Software (for which title shall not pass, use being licensed) title and risk of loss to Equipment shall transfer to Buyer upon completion of delivery as set forth in Paragraph 2.

4. Warranty.

(a) Equipment and Services Warranty. Seller warrants that Equipment (excluding Software, which is warranted as specified in paragraph (d) below) shall be delivered free of defects in material and workmanship and that Services shall be free of defects in workmanship. The Warranty Remedy Period for Equipment (excluding Software and Spare Parts) shall end twelve (12) months after acceptance or eighteen (18) months after date of shipment, whichever first occurs. The Warranty Remedy Period for new spare parts shall end twelve (12) months after date of shipment. If the purchase order includes the sale of refurbished or repaired parts, the Warranty Remedy Period for such parts shall end ninety (90) days after date of shipment. The Warranty Remedy Period for Services shall end ninety (90) days after the date of completion of Services.

(b) Equipment and Services Remedy. If a nonconformity to the foregoing warranty is discovered in the Equipment or Services during the applicable Warranty Remedy Period, as specified above, under normal and proper use and provided the Equipment has been properly stored, installed, operated and maintained and written notice of such nonconformity is provided to Seller promptly after such discovery and within the applicable Warranty Remedy Period, Seller shall, at its option, either (i) repair or replace the nonconforming portion of the Equipment or re-perform the nonconforming Services or (ii) refund the portion of the price applicable to the nonconforming portion of Equipment or Services. If any portion of the Equipment or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Seller promptly after discovery and within the original Warranty Remedy Period applicable to such Equipment or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Seller will repair or replace such nonconforming Equipment or re-perform the nonconforming Services. The original Warranty Remedy Period shall not otherwise be extended.

(c) Exceptions. Seller shall not be responsible for providing temporary power, removal, installation, reimbursement for labor costs or working access to the nonconforming Equipment, including disassembly and re assembly of non-Seller supplied equipment, or for providing transportation to or from any repair facility, or for any other expenses incurred in connection

with the repair or replacement, all of which shall be at Buyer's risk and expense. Seller shall have no obligation hereunder with respect to any Equipment which (i) has been improperly repaired or altered; (ii) has been subjected to misuse, negligence or accident; (iii) has been used in a manner contrary to Seller's instructions; (iv) is comprised of materials provided by or a design specified by Buyer; or (v) has failed as a result of ordinary wear and tear. Equipment supplied by Seller but manufactured by others will be purchased new at the time of the project and will be warranted to the extent of the manufacturer's warranty, and the remedies, provided by the manufacturer will be allowed

(d) Software Warranty and Remedies. Seller warrants that, except as specified below, the Software will, when properly installed, execute in accordance with Seller's published specification. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date immediately following thirty (30) consecutive days of successful operation (with no functionality issues with the software or the programming) following start-up, and written notice of such nonconformity is provided to Seller promptly after such discovery and within that period, including a description of the nonconformity and complete information about the manner of its discovery, Seller shall correct the nonconformity by, at its option, either (i) modifying or making available to the Buyer instructions for modifying the Software; or (ii) making available at Seller's facility necessary corrected or replacement programs. Seller shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software or (ii) Buyer-supplied software or interfacing. Seller does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Buyer, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs".

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED.

5. Limitation of Liability

In no event shall Seller, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of data, loss of use, loss of use of any of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages.

Seller's aggregate liability for all claims whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Purchase Order or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Purchase Order, or from any services rendered in connection therewith, shall in no case exceed the purchase order price.

6. Force Majeure

Seller shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control

including but not limited to acts of war (declared or undeclared), delays attributable to outbreaks, epidemics and pandemics, Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production.

7. Termination

No termination by Buyer for material default shall be effective unless, within fifteen (15) days after receipt by Seller of Buyer's written notice specifying such default, ABB shall have failed to initiate and pursue with due diligence correction of such specified default.

8. Intellectual Property Indemnification

(a) Seller shall defend at its own expense any action brought against Buyer alleging that the Equipment or the use of the Equipment to practice any process for which such Equipment is specified by Seller (a "Process") directly infringes a patent in effect in the United States, an European Union member state or the country of the Site (provided there is a corresponding patent issued by the U.S., UK or an EU member state), or any copyright or trademark registered in the country of the Site and to pay all damages and costs finally awarded in any such action, provided that Buyer has given Seller prompt written notice of such action, all necessary assistance in the defense thereof and the right to control all aspects of the defense thereof including the right to settle or otherwise terminate such action in behalf of Buyer.

(b) Seller shall have no obligation hereunder and this provision shall not apply to: (i) any other equipment or processes, including Equipment or Processes which have been modified or combined with other equipment or process not supplied by Seller; (ii) any Equipment or Process supplied according to a design, other than a Seller design, required by Buyer; (iii) any products manufactured by the Equipment or Process; (iv) any patent issued after the date hereof; or (v) any action settled or otherwise terminated without the prior written consent of Seller.

(c) If, in any such action, the Equipment is held to constitute an infringement, or the practice of any Process using the Equipment is finally enjoined, Seller shall, at its option and its own expense, procure for Buyer the right to continue using said Equipment; or modify or replace it with non infringing equipment or, with Buyer's assistance, modify the Process so that it becomes non infringing; or remove it and refund the portion of the price allocable to the infringing Equipment. THE FOREGOING PARAGRAPHS STATE THE EXCLUSIVE LIABILITY OF SELLER AND EQUIPMENT MANUFACTURER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT.



Attachment 2

ABB Field Service Rate Sheet

ABB US Service Standard Rate Sheet – 2020

Primary Work Hours

The following labor rates are applicable during Primary Working Hours (PWH) defined as an 8-hour period beginning between 7:00 A.M. and 10: 00 A.M. Monday through Friday, excluding national and ABB recognized holidays. The primary work hours include a one half-hour non-paid lunch period and two 15-minute breaks during the day.

Base Service Labor Rates

Technology	Service Type	Hourly Rate
Drives and Motors	Field Services	\$315
Open Control systems (OCS)	Field Services	\$306
	Process Application Engineering Services	\$345
Paper Quality Control Systems & Web Imaging Systems (QCS &WIS)	Field Services	\$306
	Sensor Specialist Services	\$342
	Systems Engineering Services	\$342
	Process Application Engineering Services	\$345
	Lorentzen & Wettre Engineering Services	\$326
	Lorentzen & Wettre Specialist Service	\$370
Power Generation Specialist	Turbine Control Systems Services	\$335
	Flame Scanner Services	\$335
	Power Plant Tuning	\$335
All	Project Management Services	\$331
	Process Control Tuning Services	\$339
	Regional Technical Advisor, Network & Security Services	\$345
	Process Optimization Services	\$367

Overtime Hours

For billing purposes ABB Inc. defines overtime as those hours worked outside the Primary Working Hours or in excess of eight (8) hours in one day. The standard charges for overtime are defined as follows:

- All work performed outside the PWH or over 8 hours in one day is charged at one and one half times the labor rate (Base Service Labor Rate X 1.5).
- All work performed on Saturday is charged at one and one half times the labor rate (Base Service Labor Rate X 1.5).
- All work performed on Sunday is charged at two times the labor rate (Base Service Labor Rate X 2).
- All work performed on national or an ABB holiday is charged at three times the labor rate (Base Service Labor Rate X 3).

Field Engineer Stand-By

- Engineer Stand-By support occurs when a customer requests an engineer to perform “stand-by” duty where that engineer is specifically reserved for that Customer and cannot be dispatched to another Customer job site. The customer reserving the engineer in stand-by readiness mode shall be charged for Stand-By service.
- Field Engineer Stand-By Service is charged at 4 PWH per day. If the “reserved” Field Engineer is called to this site, then 2 PWH will be credited to the customer. Overtime hours, travel expenses, travel time and other conditions of service per this rate sheet shall apply.

Telephone Support..... \$400.00 per hour

- A minimum of one (1) hour is charged per request.
- Additional charges are in one-hour increments beyond the first one (1) hour period.

Travel Costs

- Travel expenses are charged at 58 cents / mile or actual public transportation costs plus 10%.
- Living expenses are charged at actual costs incurred plus 10%.
- Completed Travel Time, to and from the Customer Site, will be charged at rates listed under this rate sheet.

Conditions of Service

- Service provided per this rate sheet is approved by the customer in the form of a purchase order or written authorization for additional hours prior to dispatching field personal to site.
- Other chargeable time will be invoiced which may include additional PWH and/or overtime spent at the customer's facility, round trip travel to and from site, time spent preparing written service reports, and time for other customer requested activities.
- A minimum of four (4) hours is charged for any service call to a client's facility.
- The attached City of Hagerstown Terms and Conditions and Additional Terms and Conditions for City of Hagerstown will apply.
- All orders are subject to credit approval by ABB.
- The standard delivery lead-time for parts and materials is eight weeks from acceptance of order.
- All information contained herein is proprietary data of ABB Inc. and that no disclosure, reproduction or use by third parties may be made without written permission of ABB.
- Customer approves the use of their company names in ABB newsletters, press releases, proposals, experience lists, and resumes (for proposal purposes) of our employees.

2020 Holiday Schedule

Wednesday, Jan. 1 - New Year's Day	Wednesday, Nov. 11 – Veterans Day
Monday, Jan. 20 – Martin Luther King Jr. Day	Thursday, Nov. 26 –Thanksgiving Day
Monday, Feb. 17 – Presidents Day	Friday, Nov. 27 – Day After Thanksgiving
Monday, May 25 - Memorial Day	Thursday, Dec. 24 – Day Before Christmas
Friday, July 3 – Independence Day observed	Friday, Dec. 25 – Christmas Day
Monday Sept. 7 - Labor Day	



Attachment 3

Detailed Bill of Material



City of Hagerstown		
RCW WTP - HMI Upgrade		
Detailed Bill of Material		
QTY	PART NUMBER	DESCRIPTION
S+ ENGINEERING SOFTWARE		
S+ ENGINEERING BASE LICENSE		
1	8VZZ000493S0100	S+ ENGINEERING V2.1 BASE
1	8VZZ000493L0190	VIEW AND MONITOR CLIENT
S+ ENGINEERING FIELD CONFIGURATIONS		
1	8VZZ000493L0240	FIELD CONFIGURATIONS CLIENT
1	8VZZ000493L0260	100 PROFIBUS/HART DEVICE INSTANCES
S+ SYSTEM MEDIA		
1	8VZZ000052Z0005	SYMPHONY PLUS PRODUCT PACKAGE 10/2018
1	2VAA006772R1	USB KEY FOR WIN 8.1/2012 AND LATER
HARMONY GATEWAY 7.0		
1	8VZZ000105S0100	HARMONY GATEWAY SOFTWARE V7.0 BASE
1	8VZZ000105L0064	3000 MODBUS TCP POINTS
1	8VZZ000105L0122	HPC800
S+ OPERATIONS SOFTWARE		
BASE SYSTEM - SERVER CONFIGURATION		
1	8VZZ000031S010	SERVER BASE LICENSE
BASE SYSTEM - REMOTE CLIENTS		
1	8VZZ000031L106	7 ADDITIONAL CLIENTS
BASE SYSTEM - TAGS		
1	8VZZ000031L160	10000 REALTIME TAGS
BASE SYSTEM - CONNECTIVITY		
1	8VZZ000031L270	HARMONY CONNECT
BASE SYSTEM - SCANNER CONFIGURATION		
1	8VZZ000031L340	OPC CLIENT
BASE SYSTEM - HISTORY SERVER		
1	8VZZ000031L700	HISTORY SERVER
BASE SYSTEM - HISTORY LOGS		
2	8VZZ000031L720	1000 HISTORY LOGS PACK
BASE SYSTEM - OFFICE EXTENSIONS - OFFICE THINWEBCLIENT		
1	8VZZ000031L850	PACKAGE WITH 2 THINWEBCLIENT
REDUNDANT SYSTEM - SERVER CONFIGURATION		
1	8VZZ000033S010	SERVER BASE LICENSE - REDUNDANT
REDUNDANT SYSTEM - REMOTE CLIENTS		
1	8VZZ000033L106	7 ADDITIONAL CLIENTS
REDUNDANT SYSTEM - TAGS		
1	8VZZ000033L160	10000 REALTIME TAGS
REDUNDANT SYSTEM - CONNECTIVITY		
1	8VZZ000033L270	HARMONY CONNECT
REDUNDANT SYSTEM - SCANNER CONFIGURATION		
1	8VZZ000033L340	OPC CLIENT
REDUNDANT SYSTEM - HISTORY SERVER		
1	8VZZ000033L700	HISTORY SERVER - REDUNDANT
REDUNDANT SYSTEM - HISTORY LOGS		
2	8VZZ000033L720	1000 HISTORY LOGS PACK
REDUNDANT SYSTEM - OFFICE EXTENSIONS - OFFICE THINWEBCLIENT		
1	8VZZ000033L850	PACKAGE WITH 2 THINWEBCLIENT
DOCUMENTATION AND KEYS		
2	2VAA000694R1050	USB KEY FOR LICENSING, S+ OPERATIONS
1	8VZZ000052Z0001	SYMPHONY PLUS PRODUCT PACKAGE 8/2017
S+ OPERATIONS EXPANSION LICENSES		
ADDITIONAL OPERATOR CLIENTS - NON-REDUNDANT		
1	8VZZ000032L107	FROM 7 TO 8 ADDITIONAL CLIENTS
ADDITIONAL OPERATOR CLIENTS - REDUNDANT		
1	8VZZ000034L107	FROM 7 TO 8 ADDITIONAL CLIENTS

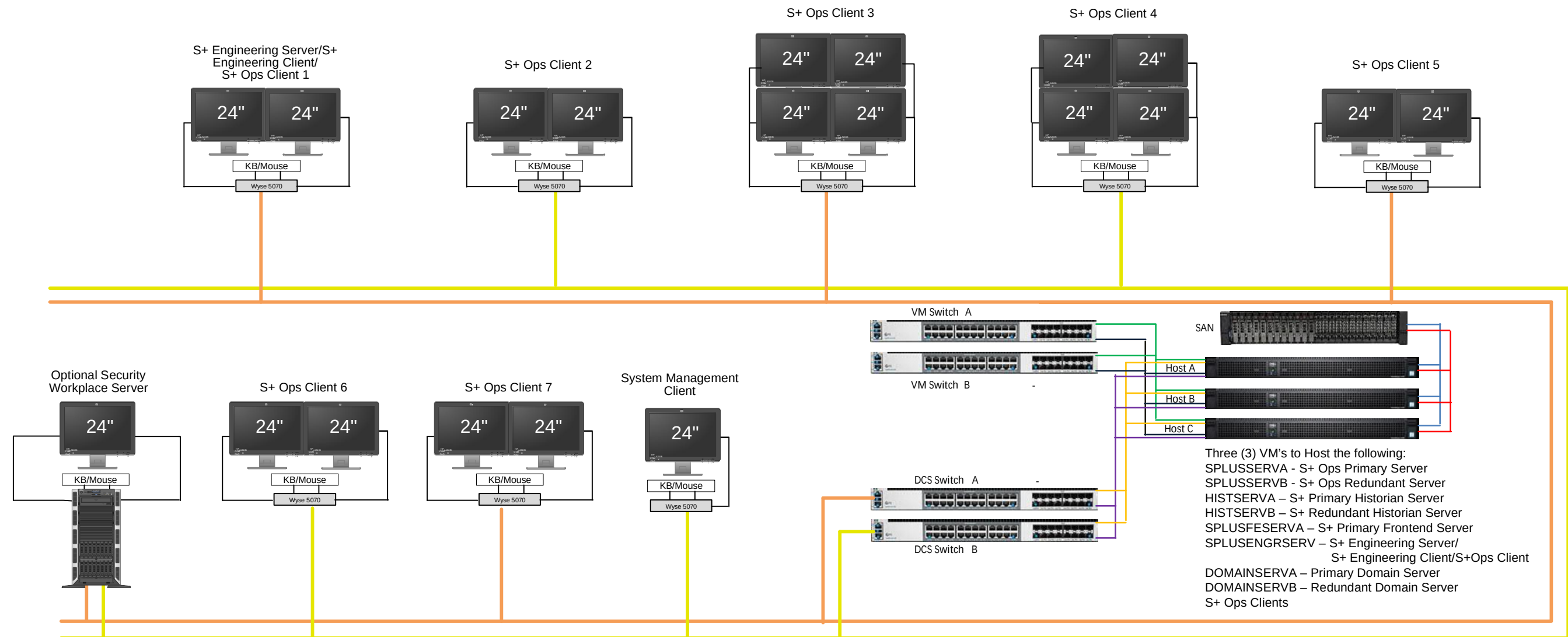


City of Hagerstown		
RCW WTP - HMI Upgrade		
Detailed Bill of Material		
QTY	PART NUMBER	DESCRIPTION
S+ FRONTEND SERVER SOFTWARE		
BASE SYSTEM - SERVER CONFIGURATION		
1	8VZZ000035S070	FRONTEND SERVER
BASE SYSTEM - SCANNER CONFIGURATION		
1	8VZZ000035L340	OPC CLIENT
DOCUMENTATION AND KEYS		
1	2VAA000694R1050	USB KEY FOR LICENSING, S+ OPERATIONS
CLIENT/SERVER EQUIPMENT		
OPERATOR WORKSTATION - THIN CLIENTS		
8	THIN-CLIENT	THIN CLIENT
8	EVNSL64X-0050	CAT 6 CABLE EVNSL64X 0050 (50FT)
VIRTUAL SYSTEM		
1	OPP-DELL	STORAGE ARRAY NETWORK STORAGE
3	OPP-DELL	VIRTUAL SERVERS
13	EVNSL64X-0010	CAT 6 CABLE EVNSL64X 0010 (10FT)
5	OP-OTHER	WINDOWS SERVER 2016
6	OP-OTHER	WINDOWS 10 2016
6	OP-OTHER	EXCEL
ANTIVIRUS SOFTWARE		
13	EPSCDE-AA-ROYL	VSE - MCAFEE ENDPOINT PROTECTION SUITE VIRUS SCAN ENTERPRISE 8.8I + ANTISPYWA
CLIENT/SERVER NETWORK SWITCHES		
4	OP-OTHER	FS - S5850-24T16S 24 PORT ETHERNET SWITCH
OPTIONAL SECURITY WORKPLACE SERVER		
1	8VUS000226R0001	TOWER SERVER
1	2VAA004988	PMU PRODUCT PACKAGE
1	2VAA004990	PMU PATCH MGMT UTIL LICENSE
3	8VUS000227R0001	RAPIDRECOVERY SW PER 1TB UP TO 5TB
1	OPE-OTHER	VMWARE WORKSTATION V11
1	EPSCDE-AA-ROYL	VSE - MCAFEE ENDPOINT PROTECTION SUITE VIRUS SCAN ENTERPRISE 8.8I + ANTISPYWA
2	EVNSL64X-0050	CAT 6 CABLE EVNSL64X 0050 (50FT)
1	8VUS000225R0001	24" ULTRASHARP MONITOR W/ SOUNDBAR



Attachment 4

System Overview Drawing



NOTES:

1. Proposal assumes the following existing equipment will be reused: PNI's, Monitors, Keyboards, Mice, and all Ethernet cabling (unless specifically identified as included).
2. Virtual Servers to be installed in an existing Server Cabinet by Customer.
3. All cabling, not specifically stated as included, is to be provided by Customer.
4. All cabling to be installed by Customer.
5. New Monitors and Dual Ergotron Arms (not shown) are offered optionally.

HMI Upgrade System Overview Drawing

CUSTOMER: City of Hagerstown

PLANT: RCW WTP

CONTRACTING ENG:



ABB INC.
POWER SYSTEMS
POWER GENERATION NORTH AMERICA

ABB Inc. Proposal No
CAW-200122-1 Rev 05

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

Topic:

Approval of an Ordinance: Saylor House Landmark Overlay (ZM-2020-02)

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Approve_Ordinance_Saylor_House_Packet.pdf

Description

Approve Ordinance Saylor
House

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: **Approval of an Ordinance: Landmark Overlay at Saylor House
(ZM-2020-02)**

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

MOTION: I hereby move that the Mayor and City Council approve an Ordinance for a Landmark Overlay on the Saylor House located at 371 Dynasty Drive in Kiwanis Park.

DATE OF INTRODUCTION: 09/29/2020
DATE OF PASSAGE: 10/27/2020
EFFECTIVE DATE: 11/27/2020

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
AND ZONING MAP OF THE CITY OF HAGERSTOWN**

WHEREAS; pursuant to the provisions of Article 4, Zoning, of the Land Management Code of the City of Hagerstown, Maryland, an application for rezoning and zoning map reclassification was made by **the City of Hagerstown**;

WHEREAS; said application for zoning classification and amendment to the Zoning Map and Zoning Ordinance is known and designated as Case No. ZM-2020-02;

WHEREAS; the Mayor and City Council, as the duly constituted legislative body for the City held a Public Hearing in compliance with said Ordinance on August 25, 2020, wherein the Applicants and the general public were given an opportunity to fully present evidence and information pertinent to the request for zoning classification amendment and amendment to the Zoning Ordinance;

WHEREAS; the Mayor and City Council, prior to and subsequent thereto, have complied with all of the provisions of the General Laws of the State of Maryland and the Zoning Ordinance for the City of Hagerstown;

WHEREAS; said Mayor and City Council do find and determine in this case, based on said Public Hearing and the evidence presented therein, and having considered all of the criteria as set forth by the laws of the State of Maryland and the Zoning Ordinance, did on October 27, 2020, take formal action to approve the Landmark Overlay for the property designated as **Saylor House**, Hagerstown, Maryland.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council for Hagerstown, Maryland, that the Zoning Reclassification and Zoning Map Amendment requesting Case No. ZM-2020-02 for a Landmark Overlay and is hereby granted is hereby granted pursuant to the conditions and requirements set forth in the Opinion and Findings of Fact, attached hereto as **Exhibit A** and incorporated herein by reference.

WITNESS:

MAYOR AND CITY COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler, City Clerk

By: _____
Robert E Bruchey II, Mayor

PUBLIC HEARING: 08/25/2020
DATE OF INTRODUCTION: 09/29/2020
DATE OF PASSAGE: 10/27/2020
EFFECTIVE DATE: 11/27/2020

**EXHIBIT “A” ZONING
RECLASSIFICATION APPLICATION NO. ZM-2020-02**

Applicant: City of Hagerstown
Location: Kiwanis Park, 371 Dynasty Drive
Hagerstown, Maryland 21740

OPINION AND FINDINGS OF FACTS

The foregoing matter was heard at Public Hearing by the Mayor and City Council on August 25, 2020, in accordance with the provisions of the Zoning Ordinance for the City of Hagerstown, Maryland.

FINDINGS OF FACT

The property which is the subject of the proposed map amendment is located at 371 Dynasty Drive in Kiwanis Park. The property currently contains a vacant stone dwelling which was constructed between 1790 and 1810. The site is also associated with one of the first fish nurseries in the United States, as well as the Loose family, which was prominent in the Hagerstown community in the 19th Century. The City is the owner and represented to the Mayor and City Council that it is the owner’s intent to reuse the building for educational purposes.

The Landmark Overlay was designed to enable the preservation of significant historic properties in the City.

The proposal is in accordance with the provisions for a Landmark Overlay District as set forth in the Land Management Code, Article 4, Zoning, including the following, per Section J.4:

b. Criteria.

Should a site, structure, or district meet any of the following criteria, it may be eligible for designation as an historic district or landmark:

(1) Historical significance:

- (a) Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, county, state, or nation;
 - (b) Is the site of an historic event;
 - (c) Is identified with a person or a group of persons who influenced society; or
 - (d) Exemplifies the cultural, economic, social, political, or historic heritage of the city.
- (2) Archaeological significance: A site that yields, or scholarly research suggests it may be likely to yield, information important in prehistory or history, as the location of a significant event, occupation or activity, or structure, whether standing, ruined, or vanished.
- (3) Architectural significance:
- (a) Embodies the distinctive characteristics or a type, period, or method of construction;
 - (b) Represents the work of a master craftsman, architect or builder;
 - (c) Possesses high artistic value;
 - (d) Represents a significant and distinguishable entity whose components may lack individual distinction; or
 - (e) Represents an established and familiar visual feature of the neighborhood, community, or city, due to its singular physical characteristics or landscape.

As applies to the applicable criteria,

1. A Landmark Overlay is permitted in the underlying zoning district of POM (Professional Office Mixed Use) per Article 4 (Zoning), Section J.4.a; and

2. The building has significant character, interest, and value as part of the development, heritage, and cultural characteristics of the City, per Section J.4.b(1) due to its association with the Loose family (a prominent family in 19th Century Hagerstown) and nearby Antietam Creek fish nurseries which were among the first in the United States); and
3. The building is a generally well preserved example of circa 1800 vernacular stone dwelling construction found in the Cumberland Valley, per Section J.4.b(3), and surviving examples of this architecture are few within the current corporate boundaries of the City.

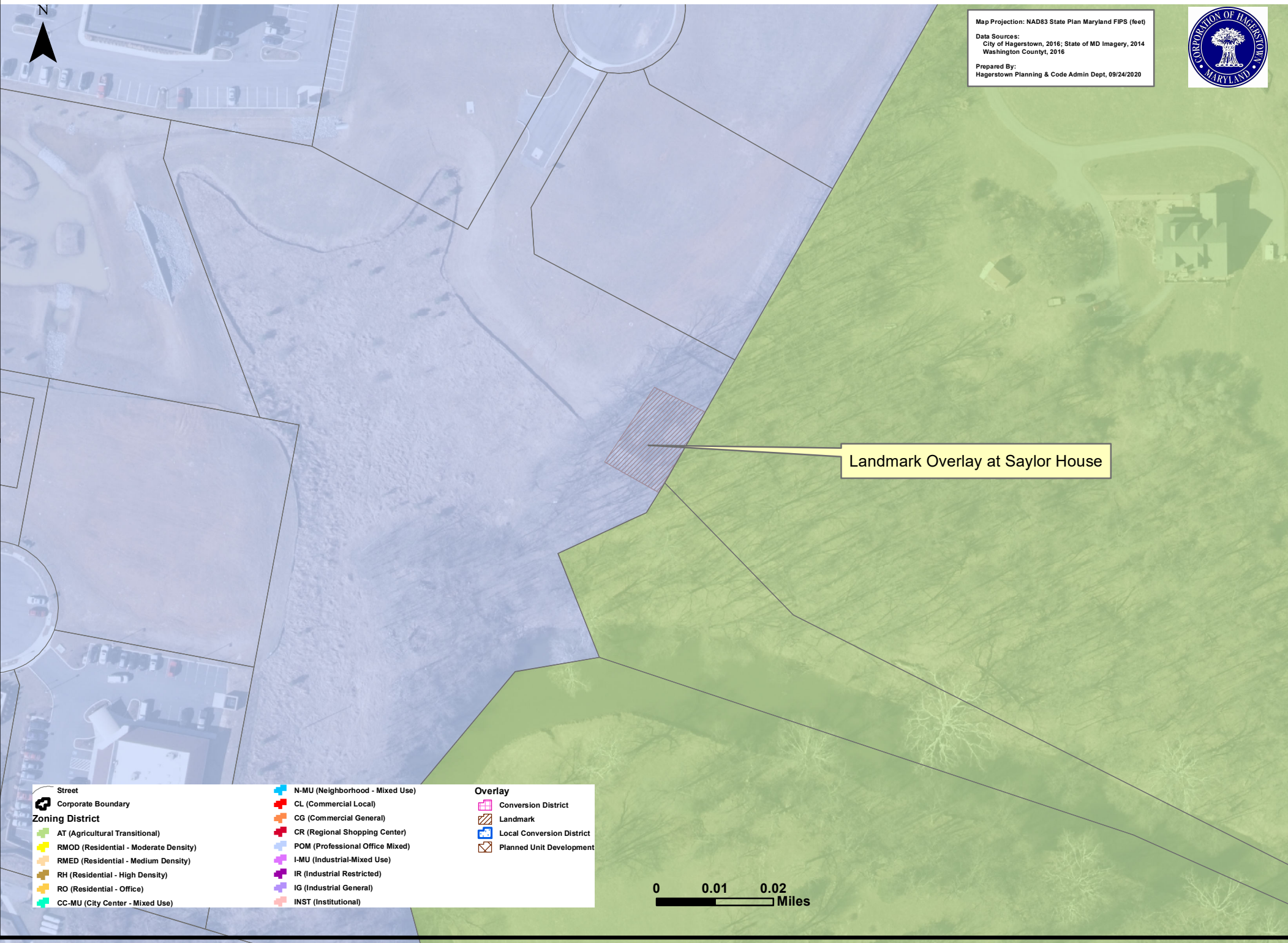
CONCLUSION

Therefore, the Mayor and City Council find that those matters contained in the staff analysis and presented by the applicants at the Public Hearing on August 25, 2020, to be true and accurate, and that all procedural requirements prerequisite to approval of the Local Conversion District Overlay by this Body have been met as summarized above. The Mayor and City Council find as a matter of fact that the proposal generally implements the spirit and intent of the Zoning Ordinance. We further find that the approval of the proposed Landmark Overlay modification will not materially or adversely affect adjoining properties.

MAYOR AND COUNCIL FOR THE
CITY OF HAGERSTOWN, MARYLAND

By: _____
Robert E. Bruchey II, Mayor

ZM-2020-02: Landmark Overlay at Saylor House



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

Topic:

Approval of an Ordinance: NP Hagerstown Industrial, LLC - Easement for Sanitary Sewer Lateral

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Approval_of_Ordinance_-_NP_Hagerstown_Industrial__LLC.pdf

Description

Approval of Ordinance - NP
Hagerstown Industrial, LLC

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of an Ordinance: NP Hagerstown Industrial, LLC

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

MOTION: I hereby move for the approval of an ordinance to grant an easement to NP Hagerstown Industrial, LLC for the installation of a private sanitary sewer lateral through the right-of-way of Wesel Boulevard.

DATE OF INTRODUCTION: 9/29/2020

DATE OF PASSAGE: 10/27/2020

EFFECTIVE DATE: 11/26/2020

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO
A DEED OF EASEMENT FOR THE CONSTRUCTION OF
A PRIVATE SANITARY SEWER LINE UNDER WESEL BOULEVARD
IN THE CITY OF HAGERSTOWN**

RECITALS

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

WHEREAS, the City owns and maintains Wesel Boulevard in the City of Hagerstown; and

WHEREAS, NP Hagerstown Industrial, LLC owns land adjacent to Wesel Boulevard and desires to construct a private sanitary sewer line running under a certain portion Wesel Boulevard ("Property"); and

WHEREAS, in order to construct and maintain the private sanitary sewer line it is necessary for the City of Hagerstown to grant to NP Hagerstown Industrial, LLC certain rights with respect to the proposed Property, which rights are further described in the attached Deed of Easement and further depicted on Exhibit "A"; and

WHEREAS, the City is willing to grant to NP Hagerstown Industrial an easement across and under the Property for the construction and maintenance of the private sanitary sewer line; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City to enter into and grant this Deed of Easement;

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 Mayor be and is hereby authorized to execute and deliver the Deed of Easement between the City and NP Hagerstown Industrial, LLC, a copy of which is attached hereto and incorporated herein by reference and to act as signatory on behalf of the City on any documentation necessary to effectuate the purpose of this ordinance.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

Robert E. Bruchey, II, Mayor

Date of Introduction: September 29, 2020
Date of Passage: October 27, 2020
Effective Date: November 26, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEY

DEED OF EASEMENT
AND
MAINTENANCE AGREEMENT

THIS DEED OF EASEMENT AND MAINTENANCE AGREEMENT is made this _____ day of _____, 2020, by **THE CITY OF HAGERSTOWN**, a Maryland municipal corporation (hereinafter sometimes referred as "Grantor" or "City") and **NP HAGERSTOWN INDUSTRIAL, LLC**, a Maryland Corporation (hereinafter sometimes referred to as "Grantee").

WITNESSETH: That for NO MONETARY CONSIDERATION, but for the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the said Grantor does hereby grant and convey unto Grantee, its successors and assigns, a non-exclusive, perpetual easement (the "Easement") under and across a parcel of land described as Proposed Sanitary Sewer Easement ("Easement Area") situate in Hagerstown, Washington County, Maryland, being shown on that certain Sanitary Sewer Easement drawing prepared by Frederick Seibert and Associates, Inc. dated September 8, 2020, said Easement drawing being attached hereto and incorporated herein as Exhibit A.

BEING a portion of the property described in a Plat dated December 31, 1987 and recorded among the Land Records of Washington County at Plat folio 2751 dedicated from CSX Minerals, Inc. to the Grantor herein.

The Easement is granted for purposes of the construction and maintenance of a private sanitary sewer line by the Grantee. Grantee shall have full and free use of the easement for the purposes herein named, subject to the conditions hereof.

TO HAVE AND TO HOLD the right and privilege of the Easement hereby granted to the use and benefit of the within Grantee forever.

And Grantors do hereby covenant that they will warrant specially the property hereby conveyed and that they will execute such other and further assurances as may be requisite.

It is understood and agreed that the Easement is granted under and subject to the following terms and conditions:

1. The Easement is non-exclusive, it being specifically acknowledged that Grantor owns and maintains other property that abuts the Easement Area and that Grantor shall retain access to and use of the Easement Area so long as not in conflict with Grantee's use of said Easement for the construction and maintenance of a private sanitary sewer line as contemplated herein.
2. Except as otherwise provided in this Agreement, Grantee shall not directly or through others make a fill or excavation of earth so as to cause a change in contour or inundate the land with water within the Easement Area. However, it is understood that:
 - (a) Grantee shall be permitted to construct and maintain a private sanitary sewer line substantially in accordance with the attached Exhibit A and may control access to the Easement Area as necessary to achieve the purpose of construction and maintenance of the private sanitary sewer line;

- (b) Grantee shall be permitted to construct the private sanitary sewer line under the portion shown as Proposed Sanitary Sewer Easement on the attached Exhibit A, at Grantee's sole cost and discretion.
- (c) Grantee, upon completion of construction and any subsequent maintenance of said private sanitary sewer line, shall return the surface of the Easement Area to the same or better condition as the Easement Area existed at the time of entering into this Easement.

In the event Grantor corrects any condition constituting a violation of this paragraph, Grantee shall promptly reimburse Grantor's reasonable costs of doing so.

3. Grantee shall be solely responsible for the construction, repair and maintenance of the private sanitary sewer line, and may utilize the full extent of Easement Area for such purpose including, but not limited to, excavation, installation, repair, or replacement of private sanitary sewer line, any signage, fixtures, and improvements related to said private sanitary sewer line located within Easement Area.

4. Grantee shall indemnify and hold Grantor harmless from and against any claim, loss, damage or suit arising as a result of the construction, maintenance and operation of the private sanitary sewer line hereunder contemplated, except if such claim, loss, damage or suit arises as a result of the negligence of the Grantor, its agents servants or employees.

5. This Deed of Easement and Maintenance Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties herein have set their hands and seals as of the date first written above.

ATTEST:

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

City Clerk

_____(SEAL)

ATTEST:

NP HAGERSTOWN INDUSTRIAL, LLC

_____(SEAL)

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY, that on this _____ day of _____, 2020, before me, a

Notary Public in and for the State and County aforesaid, personally appeared Robert E. Bruchey, II, Mayor of the City of Hagerstown, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be his act and deed on behalf of the Mayor and Council of the City of Hagerstown, Maryland, and did certify that he is authorized to execute this Agreement on its behalf, and that the consideration indicated is true and correct.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission expires: _____

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY, that on this _____ day of _____, 2020, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged the foregoing instrument to be his act and deed on behalf of NP Hagerstown Industrial, LLC and did further certify that he is authorized to execute this Agreement on its behalf, and that the consideration indicated is true and correct.

WITNESS my hand and Official Notarial Seal.

Notary Public

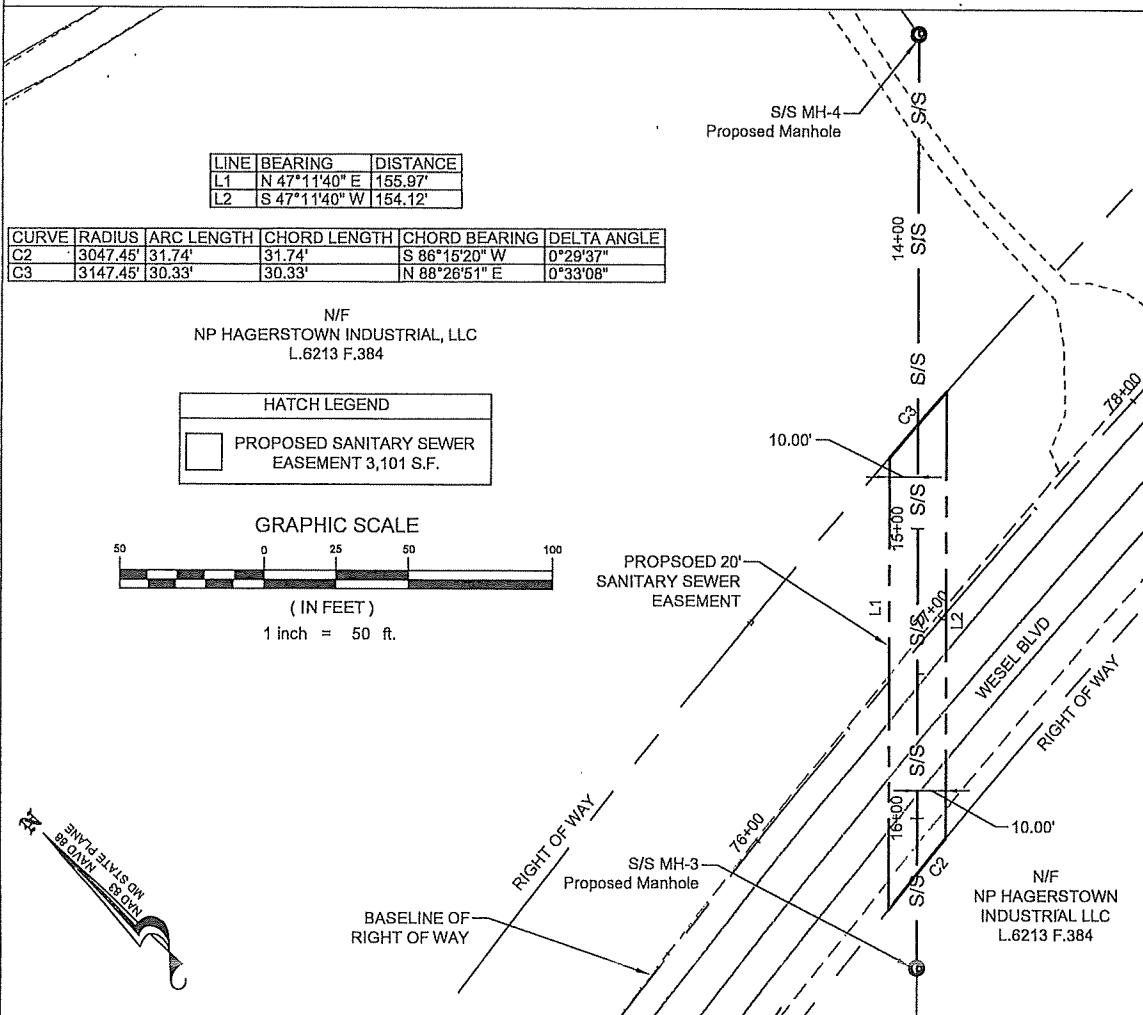
My Commission expires: _____

I 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, but that the undersigned did not perform a title search, title examination or make any certification as to title.

Jennifer M. Keefer

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

SANITARY SEWER EASEMENT
TO BE GRANTED TO
NP HAGERSTOWN INDUSTRIAL, LLC



Professional Certification: I hereby certify that these documents were prepared by me or under my responsible charge, and that I am a duly licensed professional land surveyor under the laws of the State of Maryland, Licence No. 21640, Expiration Date, December 22, 2020

Anthony Taylor
Anthony Taylor
(Agent of Frederick, Seibert, & Associates, Inc.)

9/24/2020
Date



TAX MAP: 309-09-2222	DISTRICT: 03
DRAWING NUMBER 1 OF 1	
DRAWN BY: MTJ	DATE: 09-08-2020
CHECKED BY: ALT	DATE: 09-08-2020
SCALE: 1" = 50'	

**FREDERICK
SEIBERT &
ASSOCIATES, INC.**



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CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS

128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
20 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
505 SOUTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013
5201 SPRING ROAD, SUITE 3, SHERMANSDALE, PENNSYLVANIA 17090

(301) 791-3050

(301) 410-7478

www.fsa-md.com

(717) 507-1007

(717) 701-8111

JOB NUMBER: 7719

September 15, 2020

Description for the sanitary sewer easement conveyed by the City of Hagerstown.

Situate in the right of way of Wesel Boulevard approximately 0.2 miles westward from its intersection with Burhans Boulevard in Election District No. 3, Washington County, Maryland and being more particularly described in accordance with a survey by Frederick, Seibert and Associates, Inc. as follows:

Beginning at a point on the southern right of way line of Wesel Boulevard, said point being offset 50.00' right of Wesel Boulevard Centerline Station 76+09.94 as shown on the Preliminary/Final Plat Lands of CSX Minerals, Inc. for the Dedication of Right-Of-Way of Wesel Blvd. recorded at Plat folio 2751 among the Land Records of Washington County, Maryland, thence leaving the southern right of way line and running N47°11'40"E 155.97 feet to a point on the northern right of way line of Wesel Boulevard, thence running with said northern right of way line with a curve to the right having a radius of 3,147.45 feet, an arc length of 30.33 feet and a chord bearing and distance of N88°26'51"E 30.33 feet to a point, thence leaving said northern right of way S47°11'40"W 154.12 feet to a point on the southern right of way of Wesel Boulevard, thence running with said southern right of way with a curve to the left having a radius of 3047.45 feet, an arc length of 31.74 feet and a chord bearing and distance of S86°15'20"W 31.74 feet to the place of beginning;

Containing 0.071 acres of land more or less;

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

Topic:

Approval of an Ordinance: Acceptance of Donation of Real Property - Stormwater Pond on Professional Boulevard

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Approval_of_Ordinance_-_Donation_of_Property_-_
_Professional_Blvd.pdf

Description

Approval of Ordinance -
Acceptance of Donation of
Property

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of an Ordinance: Acceptance of Donation of Real Property

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

MOTION: I hereby move for the approval of an Ordinance accepting the donation of approximately 10.7787 acres of land from the Washington County Commissioners of Washington County, Maryland to the City of Hagerstown. Consistent with the "Agreement as to Professional Boulevard" approved by Mayor & Council on April 28, 2020, the City will assume ownership and maintenance responsibilities of the regional stormwater facility on or about July 1, 2027.

Date of Introduction: 9/29/2020

Date of Approval: 10/27/2020

Effective Date: 11/27/2020

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO APPROVE THE
ACCEPTANCE OF A
DONATION OF REAL PROPERTY
FROM THE BOARD OF COUNTY COMMISSIONERS OF
WASHINGTON COUNTY, MARYLAND AND CURRENTLY
COMPRISING A STORMWATER MANAGEMENT FACILITY
IN HAGERSTOWN, MARYLAND
AND CONTAINING 10.7787 ACRES, MORE OR LESS**

RECITALS

WHEREAS, the Board of County Commissioners of Washington County, Maryland, a body corporate of the State of Maryland (hereinafter "the Board"), owns real property located within the limits of the City of Hagerstown, Maryland and being part of the same property conveyed to Grantor by Meritus Medical Center, Inc., a Maryland corporation and a legal resident entity of the State of Maryland, by a deed dated March 23, 2015, and recorded in Liber 4936, folio 472, of the land records of Washington County (hereinafter the "Property"); and

WHEREAS, the Property is approximately 10.7787 acres and currently comprises a stormwater management facility ("SWM"); and

WHEREAS, pursuant to an Agreement as to Professional Boulevard and Facility executed by the parties on June 1, 2020, the Property to the City, ownership of the SWM is to be conveyed to the City for no monetary consideration; and

WHEREAS, the Mayor and Council believe that the acquisition of the Property would benefit the citizens; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to accept the County's conveyance of the Property;

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 acceptance of the donation of the Property be and is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the deed conveying the Property from the Board of County Commissioners of Washington

County, Maryland to the City, a copy of which 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 conveyance.

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: September 29, 2020
Date of Passage: October 27, 2020
Effective Date: November 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

THIS DEED, made this ____ day of _____, 2020, by the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland, hereinafter called "Grantor," and the City of Hagerstown, a municipal corporation existing under and by virtue of the laws of the State of Maryland, hereinafter called "Grantee." Grantor and Grantee are sometimes herein after referred to as "the Parties."

WHEREAS, pursuant to the Agreement as to Professional Boulevard and Vicinity, executed by the Parties on June 1, 2020, the Grantor agreed to transfer the hereinafter described property to the Grantee for no consideration, and further authorized its designated agents and legal counsel to take all action necessary to transfer said property to the Grantee;

WITNESSETH: That for NO MONETARY CONSIDERATION, but for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the said Grantor herein does hereby grant and convey unto the said Grantee, its successors and/or assigns, all that portion of the Grantor's parcel of land situated in Election District Nos. 10 and 18 of Washington County, Maryland and more particularly described as follows:

All that portion of the Grantor's parcel of land located approximately seventeen hundred (1,700) feet northerly from the intersection of Yale Drive (Existing) with Medical Campus Road, designated as "REGIONAL STORM WATER MANAGEMENT POND PARCEL - FEE SIMPLE AREA 2" on the Washington County Division of Engineering and Construction Management Right-of-Way Plat No. 100-10-554, entitled "YALE DRIVE REGIONAL STORMWATER MANAGEMENT POND, dated January 4, 2013, revised June 19, 2014, a copy of which is attached hereto as Exhibit A and incorporated herein, more particularly described as follows:

BEGINNING for the outline hereof at a point North 75 degrees 11 minutes 49 seconds East 100.00 feet from a point for the end of the North 14 degrees 38 minutes 05 seconds West 634.89 foot line of Meritus Medical Center Inc.'s Parcel 'A' as shown on the said Subdivision Plat No. 6083; thence crossing Meritus Medical Center Inc.'s Parcel 'A' on bearings to agree with Maryland Grid NAD 83 (1991) by thirty-nine (39) lines of division now established

1. North 14 degrees 48 minutes 11 seconds West 86.10 feet to a point;
2. North 56 degrees 13 minutes 26 seconds East 87.23 feet to a point;
3. North 41 degrees 21 minutes 12 seconds East 248.87 feet to a point;
4. South 89 degrees 40 minutes 47 seconds East 393.84 feet to a point;

5. South 21 degrees 09 minutes 22 seconds East 55.35 feet to a point;
6. South 09 degrees 15 minutes 10 seconds West 35.46 feet to a point;
7. South 22 degrees 13 minutes 55 seconds East 62.43 feet to a point;
8. South 79 degrees 31 minutes 59 seconds East 98.56 feet to a point;
9. South 70 degrees 33 minutes 24 seconds East 49.11 feet to a point;
10. North 73 degrees 01 minutes 39 seconds East 83.53 feet to a point on the proposed southwesterly right-of-way line of Professional Boulevard; and with a portion thereof
11. by a curve to the left having a radius of 650 feet, an arc length of 25.34 feet, and subtended by a chord with a bearing and length of South 26 degrees 19 minutes 40 seconds East 25.34 feet to a point;
12. South 73 degrees 01 minute 39 seconds West 39.62 feet to a point;
13. South 03 degrees 05 minutes 02 seconds East 29.67 feet to a point;
14. South 35 degrees 27 minutes 08 seconds West 51.96 feet to a point;
15. South 12 degrees 41 minutes 21 seconds West 33.37 feet to a point;
16. South 01 degrees 06 minutes 09 seconds East 84.66 feet to a point;
17. South 28 degrees 30 minutes 46 seconds West 129.67 feet to a point;
18. South 03 degrees 43 minutes 42 seconds West 94.70 feet to a point;
19. South 39 degrees 11 minutes 36 seconds West 45.35 feet to a point;
20. South 18 degrees 40 minutes 13 seconds West 105.81 feet to a point;
21. South 23 degrees 48 minutes 17 seconds West 132.39 feet to a point;
22. South 43 degrees 04 minutes 04 seconds West 107.53 feet to a point;
23. South 23 degrees 15 minutes 03 seconds West 55.64 feet to a point;
24. South 78 degrees 00 minutes 06 seconds West 151.02 feet to a point;

25. North 42 degrees 03 minutes 55 seconds West 60.98 feet to a point;
26. North 05 degrees 35 minutes 10 seconds East 108.62 feet to a point;
27. North 32 degrees 11 minutes 21 seconds East 128.54 feet to a point;
28. North 17 degrees 8 minutes 52 seconds East 198.92 feet to a point;
29. North 06 degrees 03 minutes 46 seconds West 86.68 feet to a point;
30. North 73 degrees 30 minutes 40 seconds West 70.97 feet to a point;
31. South 19 degrees 43 minutes 02 seconds West 190.63 feet to a point;
32. South 33 degrees 32 minutes 46 seconds West 140.45 feet to a point;
33. North 89 degrees 46 minutes 55 seconds West 62.79 feet to a point;
34. North 33 degrees 31 minutes 38 seconds West 81.85 feet to a point;
35. North 80 degrees 48 minutes 16 seconds East 81.69 feet to a point;
36. North 12 degrees 51 minutes 02 seconds East 58.71 feet to a point;
37. North 15 degrees 46 minutes 45 seconds West 148.73 feet to a point;
38. North 31 degrees 02 minutes 47 seconds West 68.25 feet to a point;
39. North 63 degrees 12 minutes 14 seconds West 189.44 feet to the point of beginning, containing 469,520 square feet or 10.7787 acres of land, more or less.

SUBJECT to all easements, rights of way, covenants, conditions and restrictions of record applicable thereto.

TO HAVE AND TO HOLD unto the City of Hagerstown, a municipal corporation existing under and by virtue of the laws of the State of Maryland, its successors and assigns, in fee simple, forever.

Being part of the same property conveyed to Grantor by Meritus Medical Center, Inc., a Maryland corporation and a legal resident entity of the State of Maryland, by a deed dated March 23, 2015, and recorded in Liber 4936, folio 472, of the land records of Washington County, Maryland.

And the said Grantor does hereby covenant that it will warrant specially, except as to the aforementioned covenants, conditions, restrictions, easements, limitations, and offers of dedication, if any, the property hereby conveyed and that it will execute such other and further assurances thereof as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the Board of County Commissioners of Washington County, Maryland, has caused this instrument to be executed by Jeffrey A. Cline, its President, and its seal to be hereunto affixed and duly attested by Krista L. Hart, its Clerk.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

Krista L. Hart, Clerk

By: _____
Jeffrey A. Cline, President

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 Jeffrey A. Cline, President of the Board of County Commissioners of Washington County, Maryland, who acknowledged the foregoing deed to be the act and deed of the Board of County Commissioners of Washington County, Maryland; that he is authorized to make this acknowledgment; that the within deed is not a transaction in which there is a sale, lease, exchange, or other transfer of all or substantially all of the property and assets of the Board of County Commissioners of Washington County, Maryland; and that the Board of County Commissioners of Washington County, Maryland, is *locus rei sitae* in Maryland.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission expires: _____

I 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, but the undersigned did not perform a title search, title examination, or make any certification as to title.

Jason Morton

Approved as to form and
legal sufficiency for execution
by the County:

Kirk C. Downey
County Attorney

Approved for recording this _____
day of _____, 2020:

Krista L. Hart, Clerk
Board of County Commissioners of
Washington County, Maryland

Approved for recording
this _____ day of _____, 2020:

Todd J. Moser
Real Property Administrator

After Recording Mail to:

City of Hagerstown
1 E. Franklin Street
Hagerstown, Maryland 21740
Attn: Donna K. Spickler, City Clerk

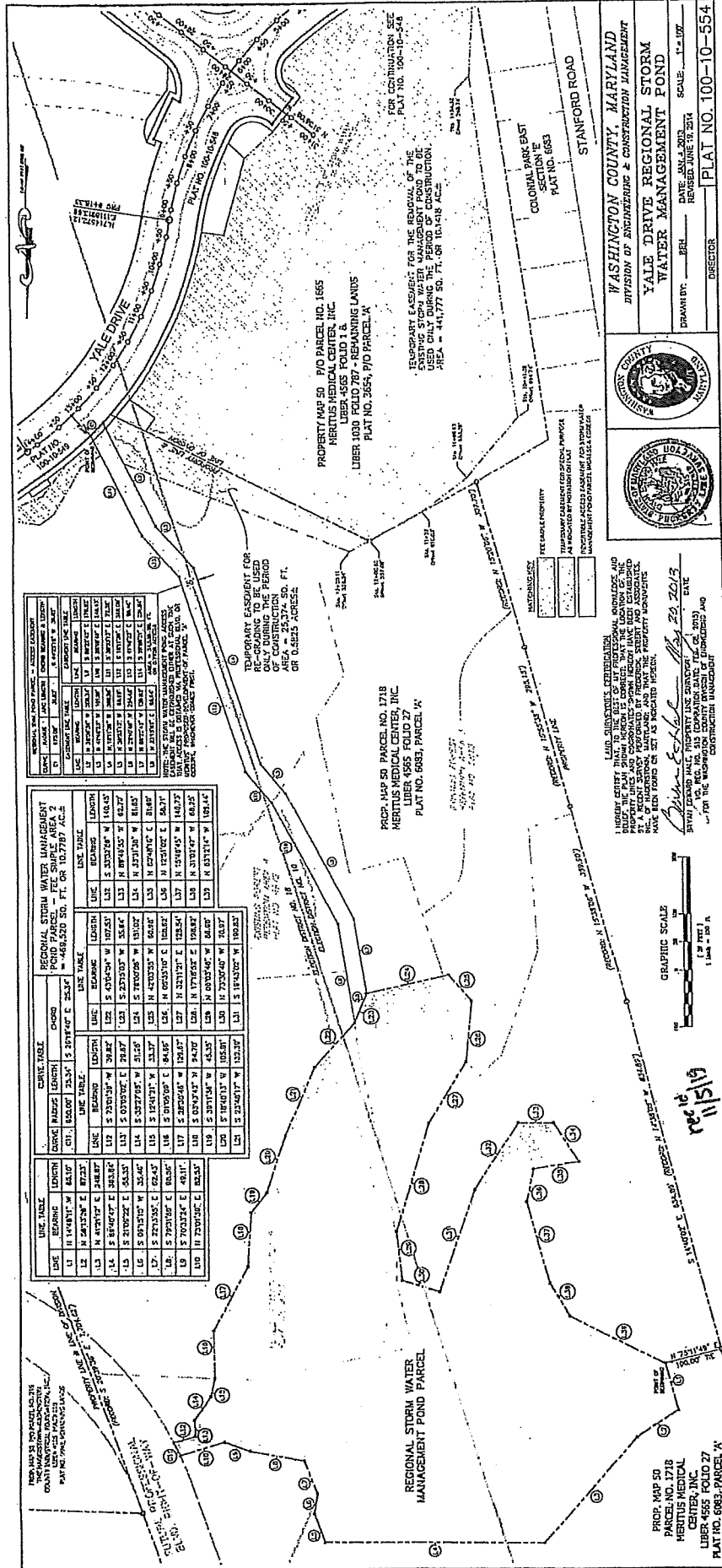


EXHIBIT
A

REQUIRED MOTION MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Topic:

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

Mayor and City Council Action Required:

Staff request Mayor & City Council approval to move forward with the sale of the City-owned property at 170 West Washington Street. This property has been advertised for sale as part of the City's Competitive Negotiated Sale (CNS) program. Mr. Pat Grace of Trademark Investments, LLC, has submitted an application and purchase price as well as required documents and examples of his past projects consisting of historic redevelopments.

Discussion:

Details of Purchase

Nicodemus House: 170 West Washington Street

Mr. Grace's purchase offer currently stands as follows:

- Purchase price for 170 W. Washington Street- \$1,000
- Realtor Commissions - \$0
- \$500.00 deposit required
- Planned investment of \$1,143,095.00 for property renovations to then maintain as a mixed-use building including a commercial space and Downtown Student Housing at market rate rents
- Developer to submit final development plan for City Council approval by December 31, 2020 as requirement for settlement.
- Settlement to occur before February 28, 2020
- Mr. Patrick Grace will be DBA 170 West Washington Partners LLC for this property acquisition

Mr. Grace is an experienced developer in the Baltimore, Maryland and Washington, DC area. He has founded two complementary businesses, Greater Baltimore Construction and Trademark Property Management. With his involvement in real estate for 20 + years and the success of his two businesses, he is able to provide a spectrum of real estate services such as sourcing, analyzing, developing, constructing and managing properties. Most notably, is Pat's primary focus and dedication to the rehabilitation of historic properties.

Background of 170 W. Washington Street:

The Nicodemus Building is a c.1890's Romanesque Revival urban dwelling that has been used commercially for many years. The building was built as a residence for John L. Nicodemus, president of the bank located at 101 W. Washington Street (now the Discovery Station museum). After taking shape into a hotel/motel, the property was condemned in 2005 due to numerous property violations. After the property became bank owned, the city purchased the property in 2013 for \$27,500 with the intention of transferring it into private ownership again. This property has been vacant since 2005 and substantial renovations are required to make the property habitable. The building is prominently located on a hill along a heavily traveled arterial (US40)

through Downtown Hagerstown, at a traffic light.

Financial Impact:

Recommendation:

Staff recommends moving forward with the sale of 170 W. Washington Street with the terms described above. These terms are reflected in the draft purchase agreement (attached).

Motion:

I hereby move for the Mayor and City Council to introduce 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

Intro_CNS_170_W_Wash_St.pdf
102020_Intro_CNS_170_W_Wash_St.pdf

Description

Motion - Ordinance for Sale
of 170 W Washington St
Ordinance - Sale of 170 W
Washington Street CNS

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: **October 27, 2020**

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

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

MOTION: I hereby move for the Mayor and City Council to introduce 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.

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WHO WE ARE

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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





Trademark Investments



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator

FROM: Jonathan Kerns, Community Development Manager
Kaitlin Bell, Economic Development Specialist

DATE: October 15, 2020

RE: Request to purchase CNS Building: 170 W. Washington Street

Mayor and Council Action Requested

Staff request Mayor & City Council approval to move forward with the sale of the City-owned property at 170 West Washington Street. This property has been advertised for sale as part of the City's Competitive Negotiated Sale (CNS) program. Mr. Pat Grace of Trademark Investments, LLC, has submitted an application and purchase price as well as required documents and examples of his past projects consisting of historic redevelopments.

Details of Purchase

Nicodemus House: 170 West Washington Street

Mr. Grace's purchase offer currently stands as follows:

- Purchase price for 170 W. Washington Street- \$1,000
- Realtor Commissions - \$0
- \$500.00 deposit required
- Planned investment of \$1,143,095.00 for property renovations to then maintain as a mixed-use building including a commercial space and Downtown Student Housing at market rate rents
- Developer to submit final development plan for City Council approval by December 31, 2020 as requirement for settlement.
- Settlement to occur before February 28, 2020
- Mr. Patrick Grace will be DBA 170 West Washington Partners LLC for this property acquisition

Mr. Grace is an experienced developer in the Baltimore, Maryland and Washington, DC area. He has founded two complementary businesses, Greater Baltimore Construction and Trademark Property Management. With his involvement in real estate for 20 + years and the success of his two businesses, he is able to provide a spectrum of real estate services such as sourcing, analyzing, developing, constructing and managing properties. Most notably, is Pat's primary focus and dedication to the rehabilitation of historic properties. Staff recommends moving forward with the sale of 170 W. Washington Street with the terms described above. These terms are reflected in the draft purchase agreement (attached).

Background of 170 W. Washington Street:

The Nicodemus Building is a c.1890's Romanesque Revival urban dwelling that has been used commercially for many years. The building was built as a residence for John L. Nicodemus, president of the bank located at 101 W. Washington Street (now the Discovery Station museum). After taking shape into a hotel/motel, the property was condemned in 2005 due to numerous property violations. After the property became bank owned, the city purchased the property in 2013 for \$27,500 with the intention of transferring it into private ownership again. This property has been vacant since 2005 and substantial renovations are required to make the property habitable. The building is prominently located on a hill along a heavily traveled arterial (US40) through Downtown Hagerstown, at a traffic light.

Staff will be available during the work session to answer any questions on the proposed property sale.

Attached: Trademark Flier
 Draft Purchase Agreement

c: Jason Morton, City Attorney
 Jill Thompson, Director DCED
 Review Committee

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Introduction 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 introduce 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

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:

Introduction of an Ordinance: 352 Summit Avenue Quit Claim

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Introduction_of_Ordinance_-
_352_Summit_Avenue_Quit_Claim.pdf

quit_claim.352_Summit_Ave.2020.pdf

Description

Introduction of Ordinance -
Quit Claim for 352 Summit
Avenue

Quit Claim - 352 Summit
Avenue

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

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

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

MOTION: I hereby move for the introduction 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



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

October 15, 2020

TO: Scott Nicewarner, City Administrator

FROM: Jim Bender, Assistant City Engineer JIM

RE: Quit Claim – 352 Summit Avenue

1. Background:

The City received a request from the Robert Bottger, the owner of 352 Summit Avenue, to quit claim a triangular portion of land and an unimproved public alley behind his property. As shown on the attached exhibit, this triangle is formed by the intersection of W. Memorial Blvd. and Surrey Avenue. The City owns the triangle, and is responsible for mowing/maintaining this area. Mr. Bottger feels that he will be able to maintain this area in a timelier manner than the City's forces. The deeds for these parcels also indicate that there is a private alley between the City-owned property and Mr. Bottger's parcel; while the City does not claim ownership of the private alley, the quit claim would formally abandon any rights of the City to the private alley.

2. Mayor and Council Action Requested:

Review this request, and determine whether or not to approve the quit claim. If the Council agrees to approve, staff will work with the City Attorney to prepare and introduce an ordinance at the Regular Session meeting on October 27th. Staff will be present to discuss this request at the work session meeting.

3. Discussion:

Staff contacted the various City Departments to determine if there were any concerns with the proposed quit claim. The only comment came from the Wastewater Division; there is an existing sanitary sewer that runs through Alley 2-092, and an easement will need to be provided to access and maintain this line if the quit claim is approved.

The City's Planning Commission reviewed this request at their meeting on October 14th, and voted to recommend to the Council that the quit claim be approved.

Staff recommends approval of the quit claim; it is very unlikely that the public alley would ever be constructed, and it would eliminate the need for City forces to mow/maintain the triangle.

Attachments: Request letter from Mr. Bottger
Quit Claim exhibit
Survey exhibit

c: Rodney Tissue
Eric Deike

Robert J Bottger
352 Summit Avenue
Apt 2
Hagerstown, MD 21740

712 870 3644
rbottger@wiatel.net

10/3/2020

Rodney Tissue
City Engineer
Department of Parks and Engineering
Hagerstown, MD

To whom it may concern:

I am interested in acquiring the title to the parcel of land surrounding and including alley 2-092. This is marked in blue on the map provided to me by your department. It is bordered on the North by Memorial Boulevard, on the south by Surrey avenue, and on the west by a "private alley". My understanding is that this land is no longer needed by the city for any public purpose. If possible, I would also like for the city of convey to me any claim that it may have to the "private alley" located to the west of the parcels in question, and mostly bordering on my property at 352 Summit Avenue.

I am aware that the ownership of said "private alley" is unknown. To my knowledge, no record has been found at this time to identify any possible other claim to it.

Sincerely,

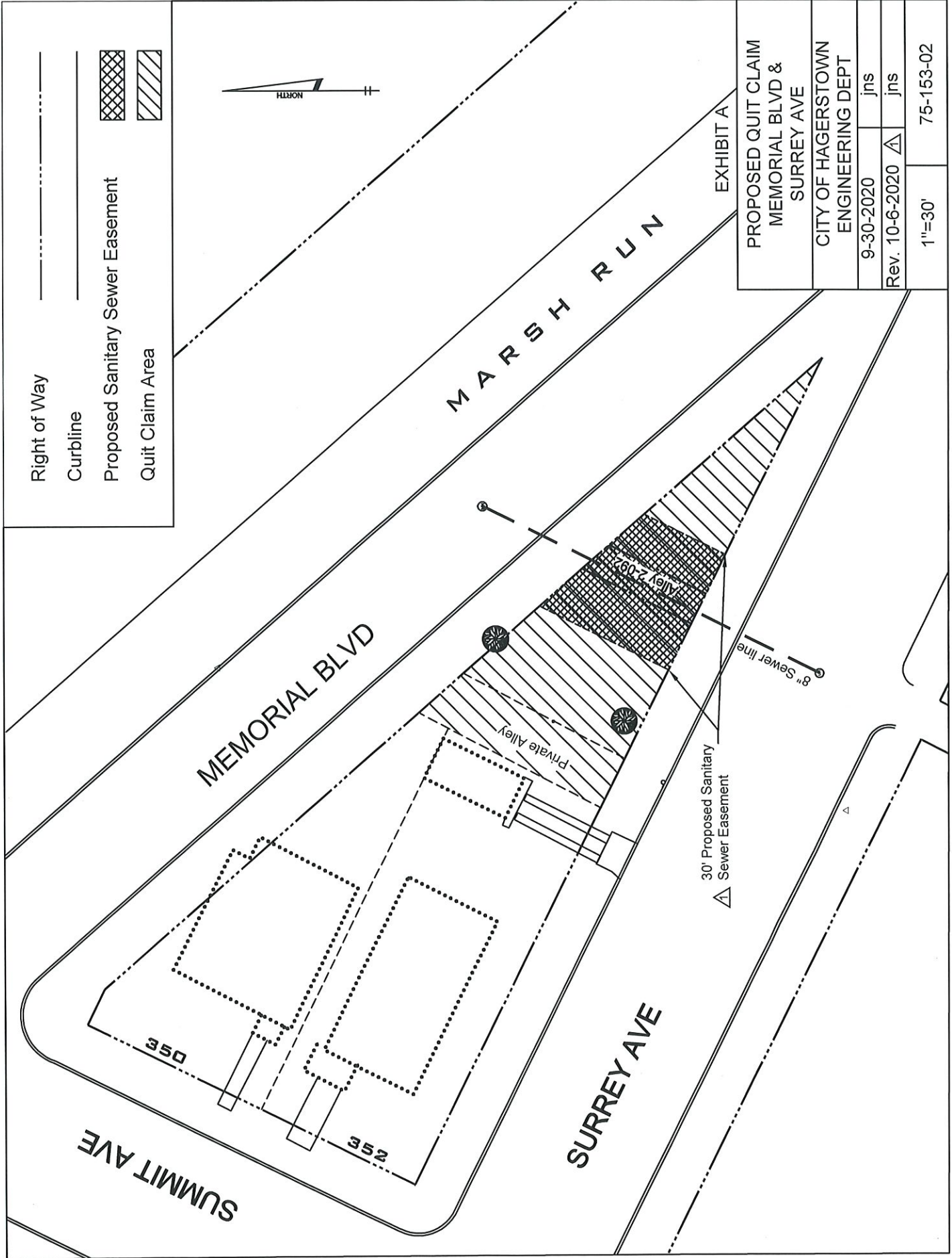
Robert J Bottger

Robert J Bottger



QUIT CLAIM REQUEST - 352 SUMMIT AVENUE

SCALE: 1"= 50'



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

Topic:

Introduction 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

Motion - Ordinance -
_Amending_Chapter_82_of_the_City_Code.pdf

Description

Motion - Introduction of
Ordinance - Amending
Chapter 82

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Introduction 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 introduction 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

Donna K. Spickler

City Clerk

One East Franklin Street • Hagerstown, MD 21740

E-mail: dspickler@hagerstownmd.org

Telephone: 301.766.4183 • TDD: 301.797.6617

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

FROM: Donna K. Spickler, City Clerk 

SUBJECT: Ordinance to Amend Chapter 82, Discriminatory Practices, of the City Code

DATE: October 23, 2020

Introduction of an Ordinance to amend Chapter 82, Article V, Discrimination in Employment, of the City Code is on the agenda for October 27, 2020. This ordinance will repeal and replace Article V in its entirety in order to update the City Code as a result of updates regarding personal protections in federal and state legislation.

Please let me know if you have any questions.

Thank you.



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:

Introduction of an Ordinance for the 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

Acquisition_of_Real_Property_UIP.pdf

Description

Introduction of an Ordinance for the Acquisition of Real Property for the Urban Improvement Project

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: **October 27, 2020**

TOPIC: Introduction 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 introduce 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



HAGERSTOWN, MARYLAND

Exhibit "A"

DRAFT

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

Topic:

Approval of a Resolution: Renewal of User Agreement with Hagerstown Fairgrounds Softball Association

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name	Description
Resolution_-_User_Agreement_with_Hagerstown_Fairgrounds_Softball_Association.pdf	Motion and Resolution - User Agreement with Fairgrounds Softball Association
Resolution_-_User_Agreement_with_Hagerstown_Fairgrounds_Softball_Association.pdf	Resolution - User Agreement Hagerstown Fairgrounds Softball Association

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of a Resolution to Renew the User Agreement with the Hagerstown Fairgrounds Softball Association

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

MOTION: I hereby move for approval of a Resolution authorizing the renewal of the User Agreement between the City of Hagerstown and the Hagerstown Fairgrounds Softball Association effective January 1, 2021 through December 31, 2023. This Agreement shall automatically renew for two additional one (1) year periods unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

DATE OF PASSAGE: 10/27/2020

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE RENEWAL
OF THE USER AGREEMENT BETWEEN THE CITY OF HAGERSTOWN
AND HAGERSTOWN FAIRGROUNDS SOFTBALL ASSOCIATION**

RECITALS

WHEREAS, the City of Hagerstown owns certain property within its corporate boundaries known as Fairgrounds Park; and

WHEREAS, the City has developed said property for recreational use; and

WHEREAS, Hagerstown Fairgrounds Softball Association ("User") has previously used a portion of said property under a valid User Agreement; and

WHEREAS, User has requested that the City allow User to renew its User Agreement at Fairgrounds Park effective January 1, 2021 pursuant to the terms of the attached User Agreement; and

WHEREAS, the Mayor and Council find it to be 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 above recitals are incorporated herein by reference; and
2. That the Mayor be and is hereby authorized to execute and deliver the User Agreement, a copy of which is attached hereto and incorporated herein; and
3. That the Mayor be and is hereby authorized to execute any other documentation necessary to effectuate the purpose of this Resolution.

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

WITNESS AND ATTEST AS
TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Introduction: N/A
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

**City of Hagerstown
Fairgrounds Park
Softball Long-Term User Agreement**

Date: _____

City of Hagerstown, Maryland, a municipal corporation, referred to in this agreement as "City", and Hagerstown Fairgrounds Softball Association, a non-profit organization, referred to in this agreement as "HFSA" or "User", in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do agree as follows:

1. **Description of Premises.** City agrees to allow User the *non-exclusive use* of a portion of the Hagerstown Fairgrounds constructed as Softball fields and central plaza concession stands which are located in the central part of the Fairgrounds property, illustrated in attached Exhibit A.

Non-exclusive use means that the User has sole and exclusive use of two (2) of the fields hereby leased, and priority scheduling status with the City but not sole use of the third field (the "joint use field" shown as field number 3 on Exhibit A) located on the Premises. Prior to March 1 of each year during the term of this Agreement, User may schedule with the City all dates and times necessary to offer its recreational program and to maintain the Premises as required by this Agreement, with respect to the joint use field. The City may then schedule all remaining times on a first come, first served basis on the joint use field. On dates and times not reserved for use by a specific group, the City may permit the general public access to, and use of, the joint use field. The City reserves the right to schedule special events on the entirety of the Premises.

2. **Term of agreement.** The term of this agreement shall be from January 1, 2021 to December 31, 2023.
3. **Renewal.** This agreement shall automatically renew for up to two (2) additional one (1) year terms beginning January 1, 2024 unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

Notwithstanding the foregoing, the City may terminate this agreement at any time upon giving User ninety (90) days written notice, only if the Mayor and Council are required by law, or have determined that it is in the best interests of the Citizens of the City, to utilize the Premises for purposes other than recreation or park uses. Said termination shall not take effect until the conclusion of the User's annual schedule and post-season play for the year in which the notice is given, unless otherwise required by law.

4. **Rent.** City shall charge no monetary rent for the use of the Premises.
5. **Use of Premises.** User agrees that the Premises shall be used exclusively for User's recreational programs. User must obtain City approval for any other events or activities including but not limited to carnivals and the use of outside vendors.
6. **Program responsibility.** User has sole responsibility for the recreational program anticipated by this Agreement including any equipment required. The recreational program offered by the User may not discriminate based on race, color, creed, national origin, or gender. The City shall have no obligation to assist in the provision of services that the User intends to provide by virtue of this Agreement or to provide the services if the User terminates this Agreement.
7. **Concessions, vendors and other users.** The City will supply central plaza and press box with restrooms and storage located on Exhibit A. User may operate a food and merchandise concession at the Premises to raise funds for operating expenses of the Premises and the recreational program offered by the User. User must obtain prior approval of City staff and pay for any necessary permits and licenses and comply with all regulations pertaining to concession sales.

User may allow private vendors to operate food concessions and soccer related concessions at the Premises, with prior approval of City staff. User shall ensure that any private vendor has general liability coverage in the amount of \$1,000,000 and User shall obtain a Certificate of Insurance from any private food vendors and softball related concessions, naming both the User and the City as additional named insured. It is the User's responsibility to ensure that the private food vendors are also in compliance with all terms and conditions regulating food sales and/or soccer related concessions.

The User may permit other users ("sub-users") to conduct events on the exclusive use fields at the Premises subject to advance written approval of the City, said approval not to be unreasonably withheld and subject to any restrictions placed thereon by City. All such sub-user events shall be scheduled and coordinated by User. User shall require all sub-users to provide insurance coverage for said event according to the same requirements set forth in Paragraph 16(B) of this agreement, list the City as an additional insured, provide a copy of the certificate of insurance to the City, and to execute the standard City User Agreement. User may charge all other users the then-current user fee established by City for such use. City reserves the right to charge for services requested or deemed necessary by the City, including but not limited to trash services and/or park attendants.

8. **Fees charged by User.**
 - A. User may not charge any fee to members of the public to watch events on the Premises.
 - B. User may charge entrance fees to participants in regular and special events sponsored by the User.
 - C. User may charge a user fee, not to exceed the then current City user fee for comparable facilities, when scheduling use of the Premises by other groups, pursuant to paragraph 7.
 - D. Revenues generated by fees shall be used for the operation and maintenance of the Premises, construction of facilities on the Premises, or providing recreational programs at the Premises.

- E. If requested by the City, User shall provide an annual accounting of revenues and expenses related to the use and operation of the Premises and the recreational program offered by the User.
9. **Ownership of improvements.** All permanent improvements to the Premises including, but not limited to, restrooms, concession buildings, dugouts, fencing, backstops, lighting, scoreboards, signs, irrigation systems and parking facilities are the property of the City. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that it may wish to remove from the Premises. The decision to transfer title and permit removal is within the sole discretion of the City.

Non-permanent improvement including, but not limited to, refrigeration and cooking equipment and field maintenance equipment purchased by or given to the User shall remain the property of the User unless the User transfers title to the City.

10. **Maintenance of Premises.**

- A. **GROUNDS.** For purposes of this paragraph, the "Grounds" shall be defined as the playing fields located inside the fences. User shall maintain the Grounds including mowing, seeding, fertilizing, sweeping and cleanup of trash, debris, leaves, and downed branches. User is responsible for the normal maintenance of the Premises including, but not restricted to, the playing field surface, all turf, field lines, etc. User shall clean up trash and debris from the premises except for the periods from November 1 through March 31, or the start of the playing season, whichever is sooner. If a future irrigation system is installed, User will irrigate the playing fields as it deems necessary. City will maintain all trees including planting, trimming, and removal of dead trees and downed branches. City shall maintain and repair all paved trails, walkways, and roadways constructed for general public use. City agrees to assist the User with cleaning up fireworks debris from the fields following the City's annual Fourth of July fireworks.
- B. **RESTROOMS.** City shall clean and maintain any restrooms on the Premises that are open for general public use whenever the Fairground Park is open to the public. User shall clean and maintain restrooms, on or off the Premises, that the City and User agree will be open to the public only when User is using the Premises. In either case, City will be responsible for providing supplies, winterizing the restroom facilities, and maintaining plumbing and electrical systems. Restrooms will be provided and open in accordance with City Parks and Recreation season.
- C. **STORAGE AREA, CONCESSION STANDS, OTHER BUILDINGS AND STRUCTURES.** User shall clean and provide general janitorial maintenance of all facilities on the Premises except as noted in Paragraph B above. User shall be responsible for any damage by the User to buildings and structures that exceeds normal wear and tear. Storage needs in excess of central plaza concessions and press located on Exhibit A is to be provided by User. Should User require additional storage the User may request the City to identify a location that the User at their expense may construct storage facilities. Said storage facilities must be approved by the City and built to City specifications.

- D. BLEACHERS. If bleachers are constructed, User is responsible for all maintenance, repairs, and replacements of permanent bleachers. Any bleacher repair requires a City building permit and must be inspected by the City. Maintenance, repairs, and replacements of temporary bleachers are the responsibility of the owner of the temporary bleachers. User shall monitor all bleachers for safe conditions and shut down and prohibit use of any bleacher section which is not safe until repairs are made.
 - E. FIELD LIGHTING. User is responsible for all maintenance, repairs, and replacements for field lighting.
 - F. SCOREBOARDS AND SIGNS. User is responsible for all maintenance, repairs, replacements for scoreboards and signs.
 - G. PARKING. User is responsible for cleanup of trash, general debris, in parking areas on the Premises.
 - H. IRRIGATION SYSTEM. If an irrigation system is installed, User shall be responsible for the operation, maintenance, repair and replacement of such system. Any such repairs or replacement will require City application and inspection. User shall be responsible for paying all water bills associated with irrigation.
 - I. SAFETY. User assumes full responsibility for inspecting and maintaining all structures and facilities and grounds for which User is responsible in a safe condition to minimize the risk of personal injury. The City reserves the right to inspect any structure or facility on City property and may issue a notice to the User for any structural or maintenance deficiencies. Upon receipt of such notice, User shall make the necessary improvements within 7 calendar days unless additional time is agreed to by the City. Upon written request of the User, the City will inspect the Premises to verify conformance with applicable City codes and regulations.
 - J. EXTERIOR COLORS. User must obtain approval from City when altering the exterior color or appearance of any existing structure or facility.
11. **Construction of improvements.** User must obtain approval from the City for all permanent improvements to the Premises and obtain all necessary permits for the approved construction. No temporary structures including, but not limited to, concession trailers, storage trailers and sheds shall be installed or parked on the Premises without approval of the City. User is solely responsible for their own equipment. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that is may wish to remove from the premises. The decision to transfer title and permit removal is within the sole discretion of the City. Non-permanent improvements purchased by or given to the User shall remain the property of the User unless the User transfers title to the City.
12. **Utilities and services.** Utilities and services shall be provided and paid for by the parties as indicated below:

<u>Utility/Service</u>	<u>City</u>	<u>User</u>
Electricity-except field lights	X	Initial \$1,000 contribution
Electricity-field lights	—	X
Water/sewer*	X	Initial \$500 contribution
Gas	—	X
Telephone	—	X
Trash Hauling	X	—

*Restroom facilities will be provided by the City and maybe either permanent restroom facilities or portable facilities. The City will be responsible for water charges associated with the bathroom and concession facilities. The User is responsible for any additional portable restrooms which may be required for special events, including tournaments, scheduled by the User. User will be responsible for all water charges associated with a future irrigation system.

13. **Signs and advertisements.** All signs or advertisements installed or displayed on the Premises must be approved by the City and conform to existing laws and ordinances. Approval will be based on size, materials, design, method of construction, content, location, visibility, and compatibility with sponsorships obtained by the City. No alcohol or tobacco advertising will be permitted. The City reserves the right to remove any signs or advertisements from the Premises that it has not approved and User agrees to pay the cost of any such removals. User shall be permitted to place approved advertising around the perimeter of the fields and structures on the Premises to generate income for the operation and maintenance of the Premises. City reserves the right to install signs on the Premises.
14. **Sponsorship coordination and approval.** All sponsorships to be advertised, posted or otherwise acknowledged on the Premises must be approved by the City. Sponsorships obtained by User and sales of merchandise and/or concessions by the User must conform to any applicable sponsorship agreements obtained by the City. No alcohol or tobacco sponsorships will be permitted. To allow for coordination of sponsorships for the Fairgrounds, including exclusive sponsorships sought by the City, the City requests potential regional and national sponsorships sought by the User, including but not limited to restaurant franchises, beverages, athletic companies, utilities, and financial institutions, be reviewed by the City prior to solicitation by the User. The requirements of this Section 14 do not extend to the sponsorship of individual teams.
15. **Hold harmless.** User will indemnify and hold the City harmless from all loss, liability, cost, or damages that may occur or be claimed with respect to any person or property, as a result of the User's negligence in connection with its use or maintenance of the Premises, including any act or omission by the User, its agents, servants, volunteers, participants, or employees. User will additionally indemnify and hold the City harmless from all loss, liability, cost or damages occurring to the Premises as a result of User's use or maintenance of the Premises, or the use of the Premises by any sub-user of User.

16. **Insurance.**

- A. **BUILDING AND STRUCTURES.** The City shall provide building and structure insurance in the same manner and amount that it would for any City-owned park structure. Providing this insurance does not obligate the City to incur any cost in repair or replacement beyond the insurance coverage provided. Such insurance will exclude coverage for a future irrigation system. User may carry additional insurance at User's cost if such insurance is available.
- B. **GENERAL LIABILITY.** User shall maintain general liability insurance in the amount of \$1,000,000 covering liability arising directly or indirectly from the User's use and maintenance of the Premises. This insurance must also extend to the preparation and sale of any food on the Premises. User shall provide to the City a certificate of insurance for the coverage and amount specified above with the City listed as an additional named insured.

User agrees to immediately cease all use of the Premises if its general liability insurance is canceled or expired or if it has reason to believe the insurance is canceled or expired. The User must notify the City immediately in this case.

City agrees that during periods of "open time", times not scheduled by the User or sub-users, the City's general liability insurance will provide coverage for any person using the facility who is not covered by the User's insurance.

- C. **CONTENTS.** User is solely responsible for insurance for personal property on the Premises if the User elects such coverage. The City will not provide insurance for any personal property not owned by the City.
17. **Damage to City owned property.** All damages to City of Hagerstown property caused by the User and/or User's guest will be the responsibility of the User. User shall keep in a state of repair, maintenance and cleanliness the interior of the premises, including equipment therein, including but not limited to light bulbs, leaky faucets, sewer blockages caused by the User, air filters, and water filters, and shall promptly report any defects to the City.
18. **Damage to personal property.** User is responsible for all personal property kept, stored, or placed on the property in conjunction with the User's use of the Premises. City shall not be responsible for any loss or damage to personal property for any reason.
19. **Public requirements.** User shall comply with all laws, orders, ordinances, park rules and regulations, permit regulations, and other public requirements in effect now or in the future affecting the Premises or the use of the Premises, and hold the City harmless from expense or damages resulting from failure to do so. Pop-up tents are permitted but must be weighted down by the User and/or the owner of the tent. User is responsible for enforcement. The Premises are not exempted from compliance with zoning or other municipal codes or ordinances nor from any other requirements of law due to title being in the name of the City.
20. **Assignment or sublease.** Except as otherwise permitted herein, User may not assign this agreement or sublease the Premises.

21. **Liens and encumbrances.** User may not encumber the Premises, property, fixtures, or any improvements. User shall promptly pay when due all obligations or indebtedness incurred by virtue of this Agreement. This Agreement is subject to provisions of the City Charter, ordinances, and state statutes prohibiting alienation of title.
22. **City assistance.** Nothing in this Agreement shall prohibit the User from requesting the City provide additional services or support nor prohibit the City from providing additional services or support at the sole discretion of the City.
23. **Board Membership.** *[This paragraph is applicable only if the User is a single non-profit formed to manage use and maintenance of facilities at Fairgrounds Park.]* The City may, in the City's sole discretion, appoint one non-voting member to the User's board of directors or management team.
24. **Notices.** Any notice sent to the parties shall be to the following addresses:

City: City of Hagerstown City Engineer 1 East Franklin St. Hagerstown, Maryland 21740 <i>and</i> City Hall Mayor's Office 1 E. Franklin St. Hagerstown, MD 21740	User: Hagerstown Fairgrounds Softball Assoc. Mike Shifler, Vice President 981 Mt. Aetna Road Hagerstown, MD 21742 <i>and</i> Mike Kelbaugh 16902 Hastings Dr. Williamsport, MD 21795
---	---
25. **Current User information.** User will provide the City with a current list of all officers including name, title, home address, and telephone number. User shall indicate the individual who has primary responsibility for scheduling the Premises. User will provide an updated list within 30 days of any changes and with each Agreement renewal request.
26. **Default.** It shall constitute default if the User a) fails to use the premises for its intended purpose, or b) fails to abide by the terms of this Agreement, or c) fails to represent at least 2 independent recreational leagues or organizations, or d) fails to abide by its legally adopted bylaws, or e) fails to provide equitable and fair coordination of the fields for its member leagues. Upon receiving written notice from the City of default, the User shall have thirty (30) days to come into compliance with this Agreement, unless a longer period is agreed to by the parties. If the User fails to cure the default after receiving notice, the City may terminate this Agreement immediately.
27. **Keys.** Keys must be provided to the City of Hagerstown Department of Parks and Engineering of all doors that have keyed lock and combinations. This is to assist in security, maintenance, and pesticide spraying n property.
28. **Parking.** Vehicles may not be driven or parked in undesignated areas.

The parties agree and represent to each other that the undersigned have the authority to accept and sign this Agreement.

WITNESS

CITY OF HAGERSTOWN, MARYLAND

Mayor

Date

WITNESS

HAGERSTOWN FAIRGROUND
SOFTBALL ASSOCIATION

Officer Signature

Date

Officer Name (Printed)

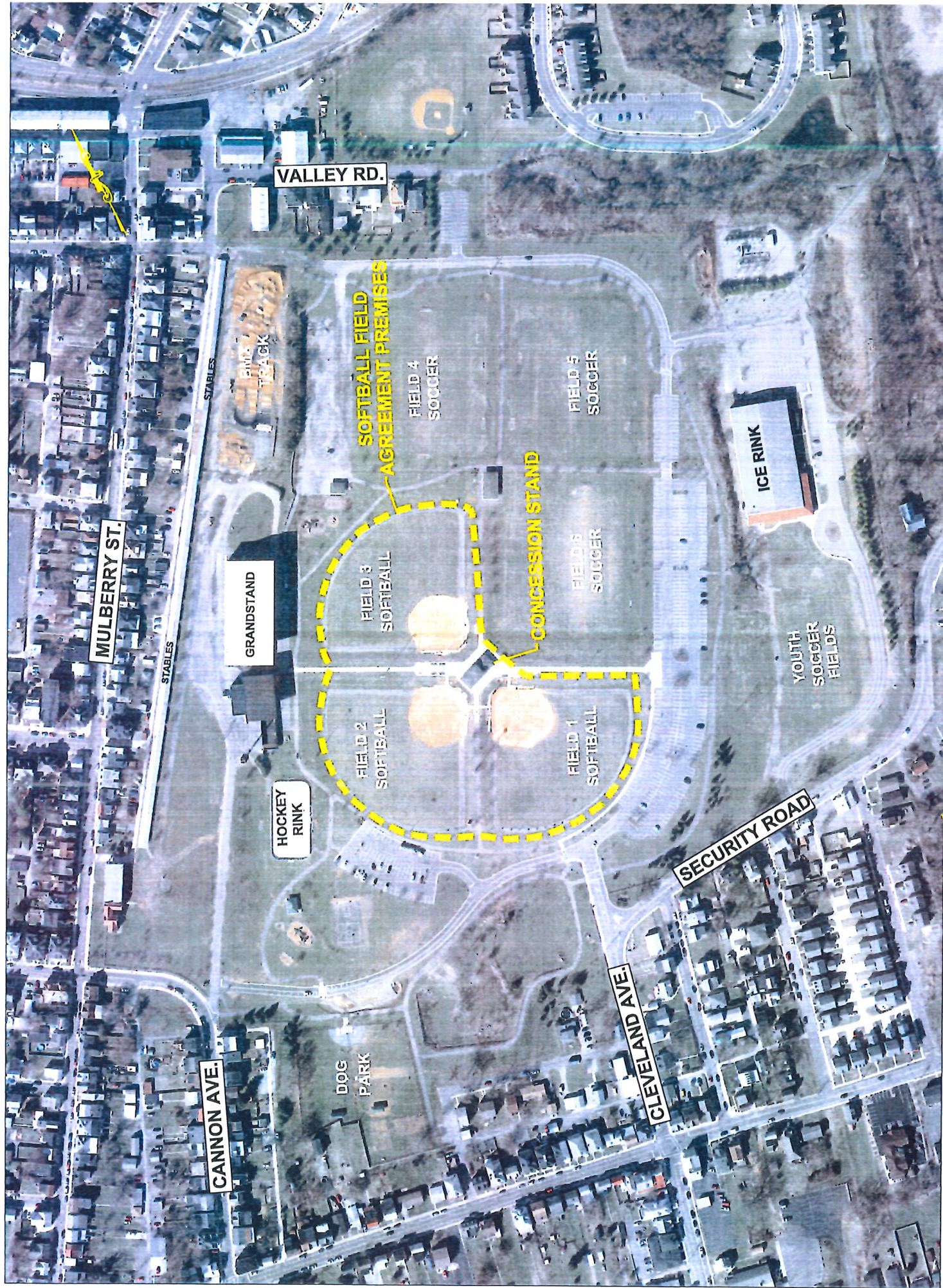
Date

Officer Signature

Date

Officer Name (Printed)

Date



FAIRGROUNDS PARK - SOFTBALL FIELD USER AGREEMENT - EXHIBIT A

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE RENEWAL
OF THE USER AGREEMENT BETWEEN THE CITY OF HAGERSTOWN
AND HAGERSTOWN FAIRGROUNDS SOFTBALL ASSOCIATION**

RECITALS

WHEREAS, the City of Hagerstown owns certain property within its corporate boundaries known as Fairgrounds Park; and

WHEREAS, the City has developed said property for recreational use; and

WHEREAS, Hagerstown Fairgrounds Softball Association ("User") has previously used a portion of said property under a valid User Agreement; and

WHEREAS, User has requested that the City allow User to renew its User Agreement at Fairgrounds Park effective January 1, 2021 pursuant to the terms of the attached User Agreement; and

WHEREAS, the Mayor and Council find it to be 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 above recitals are incorporated herein by reference; and
2. That the Mayor be and is hereby authorized to execute and deliver the User Agreement, a copy of which is attached hereto and incorporated herein; and
3. That the Mayor be and is hereby authorized to execute any other documentation necessary to effectuate the purpose of this Resolution.

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

WITNESS AND ATTEST AS
TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Introduction: N/A
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

**City of Hagerstown
Fairgrounds Park
Softball Long-Term User Agreement**

Date: _____

City of Hagerstown, Maryland, a municipal corporation, referred to in this agreement as "City", and Hagerstown Fairgrounds Softball Association, a non-profit organization, referred to in this agreement as "HFSA" or "User", in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do agree as follows:

1. **Description of Premises.** City agrees to allow User the *non-exclusive use* of a portion of the Hagerstown Fairgrounds constructed as Softball fields and central plaza concession stands which are located in the central part of the Fairgrounds property, illustrated in attached Exhibit A.

Non-exclusive use means that the User has sole and exclusive use of two (2) of the fields hereby leased, and priority scheduling status with the City but not sole use of the third field (the "joint use field" shown as field number 3 on Exhibit A) located on the Premises. Prior to March 1 of each year during the term of this Agreement, User may schedule with the City all dates and times necessary to offer its recreational program and to maintain the Premises as required by this Agreement, with respect to the joint use field. The City may then schedule all remaining times on a first come, first served basis on the joint use field. On dates and times not reserved for use by a specific group, the City may permit the general public access to, and use of, the joint use field. The City reserves the right to schedule special events on the entirety of the Premises.

2. **Term of agreement.** The term of this agreement shall be from January 1, 2021 to December 31, 2023.
3. **Renewal.** This agreement shall automatically renew for up to two (2) additional one (1) year terms beginning January 1, 2024 unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

Notwithstanding the foregoing, the City may terminate this agreement at any time upon giving User ninety (90) days written notice, only if the Mayor and Council are required by law, or have determined that it is in the best interests of the Citizens of the City, to utilize the Premises for purposes other than recreation or park uses. Said termination shall not take effect until the conclusion of the User's annual schedule and post-season play for the year in which the notice is given, unless otherwise required by law.

4. **Rent.** City shall charge no monetary rent for the use of the Premises.
5. **Use of Premises.** User agrees that the Premises shall be used exclusively for User's recreational programs. User must obtain City approval for any other events or activities including but not limited to carnivals and the use of outside vendors.
6. **Program responsibility.** User has sole responsibility for the recreational program anticipated by this Agreement including any equipment required. The recreational program offered by the User may not discriminate based on race, color, creed, national origin, or gender. The City shall have no obligation to assist in the provision of services that the User intends to provide by virtue of this Agreement or to provide the services if the User terminates this Agreement.
7. **Concessions, vendors and other users.** The City will supply central plaza and press box with restrooms and storage located on Exhibit A. User may operate a food and merchandise concession at the Premises to raise funds for operating expenses of the Premises and the recreational program offered by the User. User must obtain prior approval of City staff and pay for any necessary permits and licenses and comply with all regulations pertaining to concession sales.

User may allow private vendors to operate food concessions and soccer related concessions at the Premises, with prior approval of City staff. User shall ensure that any private vendor has general liability coverage in the amount of \$1,000,000 and User shall obtain a Certificate of Insurance from any private food vendors and softball related concessions, naming both the User and the City as additional named insured. It is the User's responsibility to ensure that the private food vendors are also in compliance with all terms and conditions regulating food sales and/or soccer related concessions.

The User may permit other users ("sub-users") to conduct events on the exclusive use fields at the Premises subject to advance written approval of the City, said approval not to be unreasonably withheld and subject to any restrictions placed thereon by City. All such sub-user events shall be scheduled and coordinated by User. User shall require all sub-users to provide insurance coverage for said event according to the same requirements set forth in Paragraph 16(B) of this agreement, list the City as an additional insured, provide a copy of the certificate of insurance to the City, and to execute the standard City User Agreement. User may charge all other users the then-current user fee established by City for such use. City reserves the right to charge for services requested or deemed necessary by the City, including but not limited to trash services and/or park attendants.

8. **Fees charged by User.**
 - A. User may not charge any fee to members of the public to watch events on the Premises.
 - B. User may charge entrance fees to participants in regular and special events sponsored by the User.
 - C. User may charge a user fee, not to exceed the then current City user fee for comparable facilities, when scheduling use of the Premises by other groups, pursuant to paragraph 7.
 - D. Revenues generated by fees shall be used for the operation and maintenance of the Premises, construction of facilities on the Premises, or providing recreational programs at the Premises.

- E. If requested by the City, User shall provide an annual accounting of revenues and expenses related to the use and operation of the Premises and the recreational program offered by the User.
9. **Ownership of improvements.** All permanent improvements to the Premises including, but not limited to, restrooms, concession buildings, dugouts, fencing, backstops, lighting, scoreboards, signs, irrigation systems and parking facilities are the property of the City. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that it may wish to remove from the Premises. The decision to transfer title and permit removal is within the sole discretion of the City.

Non-permanent improvement including, but not limited to, refrigeration and cooking equipment and field maintenance equipment purchased by or given to the User shall remain the property of the User unless the User transfers title to the City.

10. **Maintenance of Premises.**

- A. **GROUNDS.** For purposes of this paragraph, the "Grounds" shall be defined as the playing fields located inside the fences. User shall maintain the Grounds including mowing, seeding, fertilizing, sweeping and cleanup of trash, debris, leaves, and downed branches. User is responsible for the normal maintenance of the Premises including, but not restricted to, the playing field surface, all turf, field lines, etc. User shall clean up trash and debris from the premises except for the periods from November 1 through March 31, or the start of the playing season, whichever is sooner. If a future irrigation system is installed, User will irrigate the playing fields as it deems necessary. City will maintain all trees including planting, trimming, and removal of dead trees and downed branches. City shall maintain and repair all paved trails, walkways, and roadways constructed for general public use. City agrees to assist the User with cleaning up fireworks debris from the fields following the City's annual Fourth of July fireworks.
- B. **RESTROOMS.** City shall clean and maintain any restrooms on the Premises that are open for general public use whenever the Fairground Park is open to the public. User shall clean and maintain restrooms, on or off the Premises, that the City and User agree will be open to the public only when User is using the Premises. In either case, City will be responsible for providing supplies, winterizing the restroom facilities, and maintaining plumbing and electrical systems. Restrooms will be provided and open in accordance with City Parks and Recreation season.
- C. **STORAGE AREA, CONCESSION STANDS, OTHER BUILDINGS AND STRUCTURES.** User shall clean and provide general janitorial maintenance of all facilities on the Premises except as noted in Paragraph B above. User shall be responsible for any damage by the User to buildings and structures that exceeds normal wear and tear. Storage needs in excess of central plaza concessions and press located on Exhibit A is to be provided by User. Should User require additional storage the User may request the City to identify a location that the User at their expense may construct storage facilities. Said storage facilities must be approved by the City and built to City specifications.

- D. BLEACHERS. If bleachers are constructed, User is responsible for all maintenance, repairs, and replacements of permanent bleachers. Any bleacher repair requires a City building permit and must be inspected by the City. Maintenance, repairs, and replacements of temporary bleachers are the responsibility of the owner of the temporary bleachers. User shall monitor all bleachers for safe conditions and shut down and prohibit use of any bleacher section which is not safe until repairs are made.
 - E. FIELD LIGHTING. User is responsible for all maintenance, repairs, and replacements for field lighting.
 - F. SCOREBOARDS AND SIGNS. User is responsible for all maintenance, repairs, replacements for scoreboards and signs.
 - G. PARKING. User is responsible for cleanup of trash, general debris, in parking areas on the Premises.
 - H. IRRIGATION SYSTEM. If an irrigation system is installed, User shall be responsible for the operation, maintenance, repair and replacement of such system. Any such repairs or replacement will require City application and inspection. User shall be responsible for paying all water bills associated with irrigation.
 - I. SAFETY. User assumes full responsibility for inspecting and maintaining all structures and facilities and grounds for which User is responsible in a safe condition to minimize the risk of personal injury. The City reserves the right to inspect any structure or facility on City property and may issue a notice to the User for any structural or maintenance deficiencies. Upon receipt of such notice, User shall make the necessary improvements within 7 calendar days unless additional time is agreed to by the City. Upon written request of the User, the City will inspect the Premises to verify conformance with applicable City codes and regulations.
 - J. EXTERIOR COLORS. User must obtain approval from City when altering the exterior color or appearance of any existing structure or facility.
11. **Construction of improvements.** User must obtain approval from the City for all permanent improvements to the Premises and obtain all necessary permits for the approved construction. No temporary structures including, but not limited to, concession trailers, storage trailers and sheds shall be installed or parked on the Premises without approval of the City. User is solely responsible for their own equipment. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that is may wish to remove from the premises. The decision to transfer title and permit removal is within the sole discretion of the City. Non-permanent improvements purchased by or given to the User shall remain the property of the User unless the User transfers title to the City.
12. **Utilities and services.** Utilities and services shall be provided and paid for by the parties as indicated below:

<u>Utility/Service</u>	<u>City</u>	<u>User</u>
Electricity-except field lights	X	Initial \$1,000 contribution
Electricity-field lights	_____	X
Water/sewer*	X	Initial \$500 contribution
Gas	_____	X
Telephone	_____	X
Trash Hauling	X	_____

*Restroom facilities will be provided by the City and maybe either permanent restroom facilities or portable facilities. The City will be responsible for water charges associated with the bathroom and concession facilities. The User is responsible for any additional portable restrooms which may be required for special events, including tournaments, scheduled by the User. User will be responsible for all water charges associated with a future irrigation system.

13. **Signs and advertisements.** All signs or advertisements installed or displayed on the Premises must be approved by the City and conform to existing laws and ordinances. Approval will be based on size, materials, design, method of construction, content, location, visibility, and compatibility with sponsorships obtained by the City. No alcohol or tobacco advertising will be permitted. The City reserves the right to remove any signs or advertisements from the Premises that it has not approved and User agrees to pay the cost of any such removals. User shall be permitted to place approved advertising around the perimeter of the fields and structures on the Premises to generate income for the operation and maintenance of the Premises. City reserves the right to install signs on the Premises.
14. **Sponsorship coordination and approval.** All sponsorships to be advertised, posted or otherwise acknowledged on the Premises must be approved by the City. Sponsorships obtained by User and sales of merchandise and/or concessions by the User must conform to any applicable sponsorship agreements obtained by the City. No alcohol or tobacco sponsorships will be permitted. To allow for coordination of sponsorships for the Fairgrounds, including exclusive sponsorships sought by the City, the City requests potential regional and national sponsorships sought by the User, including but not limited to restaurant franchises, beverages, athletic companies, utilities, and financial institutions, be reviewed by the City prior to solicitation by the User. The requirements of this Section 14 do not extend to the sponsorship of individual teams.
15. **Hold harmless.** User will indemnify and hold the City harmless from all loss, liability, cost, or damages that may occur or be claimed with respect to any person or property, as a result of the User's negligence in connection with its use or maintenance of the Premises, including any act or omission by the User, its agents, servants, volunteers, participants, or employees. User will additionally indemnify and hold the City harmless from all loss, liability, cost or damages occurring to the Premises as a result of User's use or maintenance of the Premises, or the use of the Premises by any sub-user of User.

16. **Insurance.**

A. **BUILDING AND STRUCTURES.** The City shall provide building and structure insurance in the same manner and amount that it would for any City-owned park structure. Providing this insurance does not obligate the City to incur any cost in repair or replacement beyond the insurance coverage provided. Such insurance will exclude coverage for a future irrigation system. User may carry additional insurance at User's cost if such insurance is available.

B. **GENERAL LIABILITY.** User shall maintain general liability insurance in the amount of \$1,000,000 covering liability arising directly or indirectly from the User's use and maintenance of the Premises. This insurance must also extend to the preparation and sale of any food on the Premises. User shall provide to the City a certificate of insurance for the coverage and amount specified above with the City listed as an additional named insured.

User agrees to immediately cease all use of the Premises if its general liability insurance is canceled or expired or if it has reason to believe the insurance is canceled or expired. The User must notify the City immediately in this case.

City agrees that during periods of "open time", times not scheduled by the User or sub-users, the City's general liability insurance will provide coverage for any person using the facility who is not covered by the User's insurance.

C. **CONTENTS.** User is solely responsible for insurance for personal property on the Premises if the User elects such coverage. The City will not provide insurance for any personal property not owned by the City.

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21. **Liens and encumbrances.** User may not encumber the Premises, property, fixtures, or any improvements. User shall promptly pay when due all obligations or indebtedness incurred by virtue of this Agreement. This Agreement is subject to provisions of the City Charter, ordinances, and state statutes prohibiting alienation of title.
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23. **Board Membership.** *[This paragraph is applicable only if the User is a single non-profit formed to manage use and maintenance of facilities at Fairgrounds Park.]* The City may, in the City's sole discretion, appoint one non-voting member to the User's board of directors or management team.
24. **Notices.** Any notice sent to the parties shall be to the following addresses:

City: City of Hagerstown
City Engineer
1 East Franklin St.
Hagerstown, Maryland 21740
and
City Hall
Mayor's Office
1 E. Franklin St.
Hagerstown, MD 21740

User: Hagerstown Fairgrounds Softball
Assoc.
Mike Shifler, Vice President
981 Mt. Aetna Road
Hagerstown, MD 21742
and
Mike Kelbaugh
16902 Hastings Dr.
Williamsport, MD 21795

25. **Current User information.** User will provide the City with a current list of all officers including name, title, home address, and telephone number. User shall indicate the individual who has primary responsibility for scheduling the Premises. User will provide an updated list within 30 days of any changes and with each Agreement renewal request.
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The parties agree and represent to each other that the undersigned have the authority to accept and sign this Agreement.

WITNESS

CITY OF HAGERSTOWN, MARYLAND

Mayor Date

WITNESS

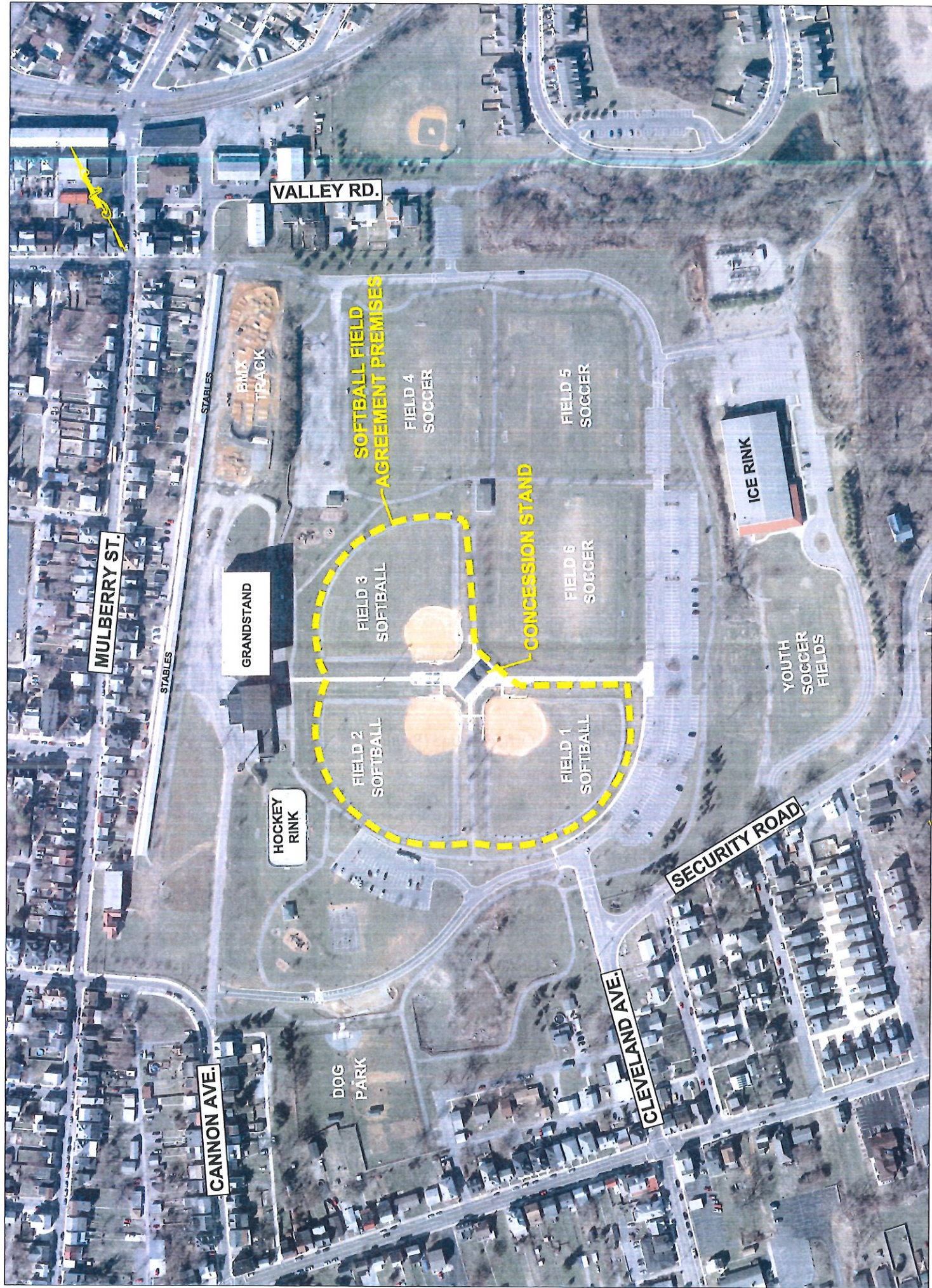
HAGERSTOWN FAIRGROUND
SOFTBALL ASSOCIATION

Officer Signature Date

Officer Name (Printed) Date

Officer Signature Date

Officer Name (Printed) Date



FAIRGROUNDS PARK - SOFTBALL FIELD USER AGREEMENT - EXHIBIT A

Our Mission

The mission of the Hagerstown Fairgrounds Softball Association (HFSA) is to make the softball complex at Fairgrounds Park a 'showcase' for the city of Hagerstown, Maryland. We will strive to operate and maintain this facility in such a manner as to make it the premier softball venue in the Mid-Atlantic Region. We will also value and maintain a family friendly atmosphere for all end users of this fine facility.

About Us

The HFSA was created by the leadership of the Hagerstown Area Church Softball League. The HFSA was formed in 2001 as an entity to lease and maintain the newly constructed softball complex at Fairgrounds Park which is owned by the City of Hagerstown. In addition to grounds maintenance, our organization also has a fundraising component. As a 501C.3 non-profit entity, the HFSA utilizes all proceeds for field improvements such as fencing and field lighting, in addition to routine field maintenance. We also operate the concession stand at Fairgrounds Park. Proceeds from concessions are just one of a number of our fundraising mechanisms. Others include hosting youth tournaments, and organizing golf tournaments, basket bingos, quarter auctions, and 5K race events.

Hagerstown Fairground Softball Association

Fairground Park Investments Since 2001

2001- Loan from City to Build Concession building \$20,000 and \$20,000 to start up for Equipment in concession along with field materials bases, etc.	\$40,000.00**
2005- City Loan to put up side fencing down sides of fields for safety	\$26,915.00**
2006- HFSA Purchased and installed lights for Field 1. Listed is a summary of all purchases and pay outs.	\$184,500.00
2012- HFSA went to the County about help with Field 2 light installation. The City and County contributed \$37,800.00 each included in the City and County partnership totals Below.	\$39,330.00
2012- Air Conditioning for the concession stand.	\$8,000.00
2015- Gates were installed on fields by Horst Fencing.	\$3,820.00
2017- Newer Infield mix on fields	\$2,200.00
2018- More Turf and Dirt Infield Mix	\$5,206.58
2019- Installed Dug outs which includes design, roofs, Steel poles	\$25,855.36
2019- More Turf and Dirt to refresh fields	\$2,231.52

HFSA Total **\$334,810.46**

County Contributions-Fields 1 & 2.....	\$ 77,800.00
City Participation-Field 2.....	\$ 69,600.00
In-Kind Services Labor/Installation Equipment.....	\$ 26,000.00*

Total Fairground Investment.....**\$508,210.46**

*While installing the lights on both fields we received a lot of donated services, labor and equipment usage from local businesses including Myers Building Systems, Sweeney Masonry, TRIAD Engineering, Fox & Associates, Inc., and volunteers from the Hagerstown Area Church Softball League. **The evolution of the softball complex at Fairgrounds Park is the direct result of a successful partnership between Local Government, a local non-profit (HFSA) and local businesses.**

**** We took a five-year loan from the City of Hagerstown for \$16,000 toward the dugouts. We have paid three installments at \$3,200 against our loan.**

Hagerstown Fairground Softball Association Expenses

Fields & Lights	Musco Lighting (Yearly loan payment for lights)	\$ 23,225.00	
	I & Y Construction (6 holes)	19,000.00	
	Ellsworth Electric (trenching and running electric)	15,000.00	
	R.H.L	3,960.00	
	Thomas, Bennett, & Hunter (concrete for bases)	708.00	
	Backfilling and Grooming Trenching	1,120.00	
	Ted's Rent It Center	69.60	
	Hopewell Sheet Metal (electrical cabinet)	1,447.50	
	Valley Quarry (dirt for infields 2007)	2,805.20	
	Field Fertilizing	350.00	
	Weed Killer (warning tracks of fields)	184.00	
	Rentals Unlimited	221.21	
	Lesko Grass Seed	232.50	
	Beacon Athletics (base plugs and broom for drag)	181.56	
	Loan Payments (City of Hagerstown 2007 & 2008)	13,383.00	
	Sub Total		\$ 81,887.57
Miscellaneous	Hopewell Manufacturing (marque)	\$ 320.00	
	Robinson/Robinson (setting up 501c3)	300.00	
	Internal Revenue Service (applying for tax exemption)	750.00	
	G.S.Images (sign for marque)	225.00	
	Decals-n-More (signs for sponsors)	1,290.40	
	Sub Total		\$ 2,885.40
Fundraising Expenses Materials & Supplies	Play-It-Again Sports	\$ 490.00	
	Oak Printing	1,490.50	
	Gaming Commission	70.00	
	Jackie Kelley (materials for filling baskets)	547.92	
	Fire Hall	437.50	
	Bingo Callers	300.00	
	Herald Mail (advertising for all fundraisers)	1,903.75	
	Variety shop (bingo items)	1,071.45	
	Leiters Cateriers	9,104.86	
	Sukey Rankin (baskets for Bingo)	15,518.82	
	Jerry's Sports (shirts for 5K Run)	862.00	
	Jack Raidt	100.00	
	Paul Bannister	110.25	
	Paul Hottinger	100.00	
	Fire Police	100.00	
	City Police	328.00	
	Stamps	205.00	
	Sub Total		\$ 32,740.05
Total Expenses			<u>\$117,513.02</u>

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

Topic:

Approval of a Resolution: Renewal of User Agreement Hagerstown Area Police Athletic League

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Resolution -
_User_Agreement_iwth_Hagerstown_Police_Athletic_League.pdf

User_Agreement_PAL.pdf

Description

Motion and Resolution -
User Agreement with PAL
Hagerstown Area Police
Athletic League User
Agreement

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of a Resolution to Renew the User Agreement with the Hagerstown Police Athletic League (PAL)

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

MOTION: I hereby move for approval of a Resolution authorizing the renewal of the User Agreement between the City of Hagerstown and the Hagerstown Area Police Athletic League effective January 1, 2021 through December 31, 2023. This Agreement shall automatically renew for two additional twelve (12) month periods unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

DATE OF PASSAGE: 10/27/2020

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE RENEWAL
OF THE USER AGREEMENT BETWEEN THE CITY OF HAGERSTOWN
AND THE HAGERSTOWN AREA POLICE ATHLETIC LEAGUE**

RECITALS

WHEREAS, the City of Hagerstown owns certain property within its corporate boundaries known as Fairgrounds Park; and

WHEREAS, the City has developed said property for recreational use; and

WHEREAS, Hagerstown Area Police Athletic League ("User") has previously used a portion of said property under a valid User Agreement; and

WHEREAS, User has requested that the City allow User to renew its User Agreement at Fairgrounds Park effective January 1, 2021 pursuant to the terms of the attached User Agreement; and

WHEREAS, the Mayor and Council find it to be 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 above recitals are incorporated herein by reference; and
2. That the Mayor be and is hereby authorized to execute and deliver the User Agreement, a copy of which is attached hereto and incorporated herein; and
3. That the Mayor be and is hereby authorized to execute any other documentation necessary to effectuate the purpose of this Resolution.

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

WITNESS AND ATTEST AS
TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Introduction: N/A
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

City of Hagerstown
Fairgrounds Park
Hagerstown Area Police Athletic League User Agreement

Date: _____

City of Hagerstown, Maryland, a municipal corporation, referred to in this agreement as “City”, and the Hagerstown Area Police Athletic League (PAL), a non-profit organization, referred to in this agreement as “User”, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do agree as follows:

1. **Description of Premises.** City agrees to allow User *non-exclusive use* of a portion of the Hagerstown Fairgrounds adjacent to the Clubhouse building in the southwest part of the Fairgrounds property, including the site for a roller hockey rink, illustrated in attached Exhibit A, *non-exclusive use* of the youth baseball field located in Fairgrounds Park north of Valley Road, illustrated in attached Exhibit A, and *exclusive use* of the Clubhouse building also shown as Exhibit A, and in more detail in attached Exhibit B, jointly referred to in this Agreement as “Premises”.

Non-Exclusive Use means that the User has priority scheduling status with the City but not sole use of the Premises. At the beginning of the term of this Agreement and at the beginning of each calendar year during the term of this Agreement, User may schedule with the City all dates and time necessary to offer its recreational programs and to maintain the Premises as required by this Agreement. With respect to the portion of Fairgrounds Park adjacent to the Clubhouse building, the City reserves the right to schedule up to 2 special events per year at the Premises. User will handle the scheduling of the Premises for other groups in a manner approved by the City. With respect to the baseball field located in Fairground Park north of Valley Road, the City may schedule all remaining dates and times on a first come, first served basis, and the City reserves the right to schedule its own recreational or special events at the field. With respect to both locations, on dates and times not reserved by or scheduled by the User, the City may permit the general public access to, and use of, the Premises.

Exclusive Use means that the User is the sole user of the Premises. User may secure the Premises and control use of the Premises. City shall not authorize others to use the Premises without the User’s written consent. User agrees that the primary use of the facility will be for programs open to the general public.

2. **Term of agreement.** The term of this agreement shall be from January 1, 2021 to December 31, 2023.
3. **Renewal.** This Agreement shall automatically renew for two additional twelve (12) month periods unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

Notwithstanding the foregoing, the City may terminate this agreement at any time upon giving User ninety (90) days written notice, only if the Mayor and Council are required by law, or have determined that it is in the best interests of the Citizens of

the City, to utilize the Premises for purposes other than recreation or park uses. Said termination shall not take effect until the conclusion of the User's annual schedule and post-season play for the year in which the notice is given, unless otherwise required by law.

4. **Rent.** City shall charge no monetary rent for the use of the Premises.
5. **Use of Premises.** User agrees that the Premises shall be used exclusively for User's youth programs, in-line hockey and other skating activities, programs of the User's sponsoring law enforcement agencies, and other similar uses. User must obtain City approval for any other events or activities including but not limited to carnivals, and the use of outside vendors.
6. **Program responsibility.** User has sole responsibility for the recreational program anticipated by this Agreement. The recreational program offered by the User may not discriminate base on race, color, creed, national origin, or gender. The City shall have no obligation to assist in the provision of services that the User intends to provide by virtue of this Agreement or to provide the services if the User terminates this Agreement.
7. **Concessions.** User may operate a food and merchandise concession at the Premises to raise funds for operating expenses of the Premises and the recreational program offered by the User. User must obtain and pay for any necessary permits and licenses and comply with all regulations pertaining to concession sales.
8. **Fees charged by User.**
 - A. User may not charge any fee to members of the public to watch events on the Premises.
 - B. User may charge entrance fees to participants in regular and special events sponsored by the User.
 - C. User may charge a user fee, not to exceed the then current City user fee for comparable facilities, when scheduling use of the Premises by other groups.
 - D. Revenues generated by fees shall be used for the operation and maintenance of the Premises, construction of facilities on the Premises, or providing recreational programs at the Premises.
 - E. If requested by the City, User shall provide an annual accounting of revenues and expenses related to the use and operation of the Premises and the recreational program offered by the User.
9. **Ownership of improvements.** All permanent improvements to the Premises including, but not limited to, the Clubhouse, in-line hockey rink, fencing, lighting, scoreboards, signs, and parking facilities are the property of the City. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that it may wish to remove from the Premises. The decision to transfer title and permit removal it within the sole discretion of the City.

10. **Maintenance of Premises.**

- A. GROUND. User shall maintain the grounds to City standards including mowing, seeding, irrigating, fertilizing, sweeping and cleanup of trash, debris, leaves, and downed branches. User is responsible for the maintenance of the in-line hockey rink including, but not restricted to, the surface, permanent dasher boards, etc. City will maintain all trees including planting, trimming, and removal of dead trees. City shall maintain and repair all paved trails, walkways, and roadways constructed for general public use.
- B. RESTROOMS. City shall clean and maintain any restrooms on the Premises that are open for general public use whenever the Fairground Park is open to the public. User shall clean and maintain any restrooms, on or off the Premises, that the City and User agree will be open to the public only when User is using the Premises. In either case, City will be responsible for providing supplies, winterizing the restroom facilities, and maintaining plumbing and electrical systems.
- C. CLUBHOUSES. User shall clean and provide general janitorial maintenance of all facilities on the Premises except as noted in paragraph B above. User shall be responsible for any damage by the User to buildings and structures that exceeds normal wear and tear. City agrees to be responsible for electrical, mechanical and plumbing systems and make any and all structural repairs required.
- D. BLEACHERS. User is responsible for all maintenance, repairs, and replacements of permanent bleachers. Any bleacher repair requires a City building permit and must be inspected by the City. Maintenance, repairs, and replacements of temporary bleachers are the responsibility of the owner of the temporary bleachers. User shall monitor all bleachers for safe conditions and shut down and prohibit use of any bleacher section which is not safe until repairs are made.
- E. FENCING AND DASHER BOARDS. User is responsible for all maintenance, repairs, and replacements for fencing and dasher boards.
- F. RINK LIGHTING. City is responsible for all maintenance, repairs, and replacements for rink lighting.
- G. SCOREBOARDS AND SIGNS. User is responsible for all maintenance, repairs, replacements for scoreboards and signs.
- H. PARKING. User is responsible for cleanup of trash, general debris in parking areas on the Premises.
- I. SAFETY. User assumes full responsibility for inspecting and maintaining all structures, facilities, and grounds for which User is responsible in a safe condition to minimize the risk of personal injury. The City reserves the right to inspect any structure or facility on City property and may issue a notice to the User for any structural or maintenance deficiencies. Upon receipt of such notice, User shall make the necessary improvements within 7 calendar days unless additional time is agreed to by the City. Upon written request of the User, the City will inspect the Premises to verify conformance with applicable City codes and regulations.

J. **EXTERIOR COLORS.** Colors used on exterior surfaces of buildings and structures must be approved by the City.

11. **Construction of improvements.** User must obtain approval from the City for all permanent improvements to the Premises and obtain all necessary permits for the approved construction. This approval will include design, materials, method of construction, form, color, suitability, and conformity to the Fairgrounds Master Plan. No temporary structures including, but not limited to, concession trailers, storage trailers, and sheds shall be installed or parked on the Premises without approval of the City.

12. **Utilities and services.** Utilities and services shall be provided and paid for by the parties as indicated below:

<u>Utility Service</u>	<u>City</u>	<u>User</u>
Electricity-except rink lights	X	
Electricity – rink lights	X	
Water/Sewer*	X	
Gas (separately metered)		X
Telephone		X
Trash Hauling	X	

*Restroom facilities will be provided by the City and may be either permanent restroom facilities or portable facilities. The User is responsible for any additional portable restrooms which may be required for special events, including tournaments, scheduled by the User.

13. **Signs and advertisements.** All signs or advertisements installed or displayed on the Premises must be approved by the City and conform to existing laws and ordinances. Approval will be based on size, materials, design, method of construction, content, location, visibility, and compatibility with sponsorships obtained by the City. No alcohol or tobacco advertisements will be permitted. The City reserves the right to remove any signs or advertisements from the Premises that it has not approved and User agrees to pay the cost of any such removals. User shall be permitted to place approved advertising around the perimeter of the rink and structures on the Premises to generate income for the operation and maintenance of the Premises. City reserves the right to install signs on the Premises.

14. **Sponsorship coordination and approval.** All sponsorships to be advertised, posted or otherwise acknowledged on the Premises must be approved by the City. Sponsorships obtained by User and sales of merchandise and/or concessions by the User must conform to any applicable sponsorship agreements obtained by the City. No alcohol or tobacco sponsorships will be permitted. To allow for coordination of sponsorships for the Fairgrounds, including exclusive sponsorships sought by the City, the City requests potential regional and national sponsorships sought by the User, including but not limited to restaurant franchises, beverages, athletic companies, utilities, and financial institutions, be reviewed by the City prior to solicitation by the User.

15. **Hold harmless.** User will indemnify and hold the City harmless from all loss, liability, cost, or damages that may occur or be claimed with respect to any person or property, as a result of the User's negligence in connection with its use or maintenance of the Premises, including any act or omission by the User, its agents, servants, volunteers, participants, or employees. User will additionally indemnify and hold the City harmless from all loss, liability, cost or damages occurring to the Premises as a result of User's use or maintenance of the Premises.
16. **Insurance.**
- A. **BUILDING AND STRUCTURES.** The City shall provide building and structure insurance in the same manner and amount that it would for any City-owned park structure. Providing this insurance does not obligate the City to incur any cost in repair or replacement beyond the insurance coverage provided. User may carry additional insurance at User's cost if such insurance is available.
- B. **GENERAL LIABILITY.** User shall maintain general liability insurance in the amount of \$1,000,000 covering liability arising directly or indirectly from the User's use and maintenance of the Premises. This insurance must also extend to the preparation and sale of any food on the Premises. User shall provide to the City a certificate of insurance for the coverage and amount specified above with the City listed as an additional named insured.
- User agrees to immediately cease all use of the Premises if its general liability insurance is canceled or expired or if it has reason to believe the insurance is canceled or expired. The User must notify the City immediately in this case.
- City agrees that during periods of general public access the City's general liability insurance will provide primary coverage for any person using the Premises who is not covered by the User's insurance.
- C. **CONTENTS.** User is solely responsible for insurance for personal property on the Premises if the User elects such coverage. The City shall not provide insurance for any personal property not owned by the City.
17. **Damage to personal property.** User is responsible for all personal property kept, stored, or placed on the property in conjunction with the User's use of the Premises. City shall not be responsible for any loss or damage to personal property for any reason.
18. **Public requirements.** User shall comply with all laws, orders, ordinances, park rules and regulations, permit regulations, and other public requirements in effect now or in the future affecting the Premises or the use of the Premises, and hold the City harmless from expense or damages resulting from failure to do so. The Premises are not exempted from compliance with zoning or other municipal codes or ordinances nor from any other requirements of law due to title being in the name of the City.
19. **Assignment or sublease.** User may not assign this agreement or sublease the Premises.

20. **Liens and encumbrances.** User may not encumber the Premises, property, fixtures, or any improvements. User shall promptly pay when due all obligations or indebtedness incurred by virtue of this Agreement. This Agreement is subject to provisions of the City Charter, ordinances, and state statutes prohibiting alienation of title.
21. **City assistance.** Nothing in this Agreement shall prohibit the User from requesting the City provide additional services or support nor prohibit the City from providing additional services or support at the sole discretion of the City.
22. **Notices.** Any notice sent to the parties shall be to the following addresses:
- | | |
|---|---|
| <i>City:</i> City of Hagerstown
Public Works Manager
51 W. Memorial Blvd.
Hagerstown, MD 21740 | <i>User:</i> Hagerstown Area Police
Athletic League
50 N. Burhans Blvd.
Hagerstown, MD 21740 |
|---|---|
23. **Current User Information.** User will provide the City with a current list of all officers including name, title, home address, and telephone number. User shall indicate the individual who has primary responsibility for scheduling the Premises. User will provide an updated list within 30 days of any changes and at the beginning of each calendar year.
24. **Default.** It shall constitute default if the User fails to use the premises for its intended purpose or fails to abide by the terms of this Agreement. Upon receiving written notice from the City of default, the User shall have thirty (30) days to come into compliance with this Agreement, unless a longer period is agreed to by the parties. If the User fails to cure the default after receiving notice, the City may terminate this Agreement immediately.
25. **Approvals.** Any requirement of prior approval by the City contained herein shall mean approval of the City Administrator or his designee and shall not require formal approval of the Mayor and Council.

The parties agree and represent to each other that the undersigned have the authority to accept and sign this Agreement.

ATTEST:

THE CITY OF HAGERSTOWN

Donna Spickler, City Clerk

BY: _____
Robert E. Bruchey, II, Mayor

WITNESS:

HAGERSTOWN AREA POLICE
ATHLETIC LEAGUE

By: _____



POLICE ATHLETIC LEAGUE AGREEMENT - EXHIBIT A

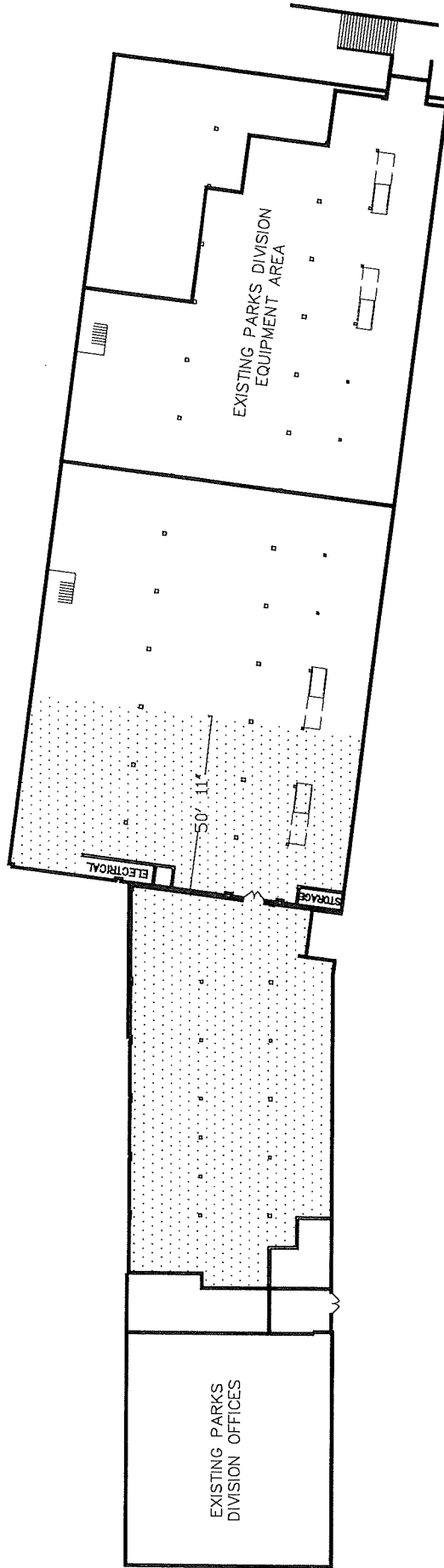


EXHIBIT B
LEASE AREA — POLICE ATHLETIC LEAGUE
09/30/2010
1" = 30'

LEASE AREA

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE RENEWAL
OF THE USER AGREEMENT BETWEEN THE CITY OF HAGERSTOWN
AND THE HAGERSTOWN AREA POLICE ATHLETIC LEAGUE**

RECITALS

WHEREAS, the City of Hagerstown owns certain property within its corporate boundaries known as Fairgrounds Park; and

WHEREAS, the City has developed said property for recreational use; and

WHEREAS, Hagerstown Area Police Athletic League ("User") has previously used a portion of said property under a valid User Agreement; and

WHEREAS, User has requested that the City allow User to renew its User Agreement at Fairgrounds Park effective January 1, 2021 pursuant to the terms of the attached User Agreement; and

WHEREAS, the Mayor and Council find it to be 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 above recitals are incorporated herein by reference; and
2. That the Mayor be and is hereby authorized to execute and deliver the User Agreement, a copy of which is attached hereto and incorporated herein; and
3. That the Mayor be and is hereby authorized to execute any other documentation necessary to effectuate the purpose of this Resolution.

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

WITNESS AND ATTEST AS
TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Introduction: N/A
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

City of Hagerstown
Fairgrounds Park
Hagerstown Area Police Athletic League User Agreement

Date: _____

City of Hagerstown, Maryland, a municipal corporation, referred to in this agreement as “City”, and the Hagerstown Area Police Athletic League (PAL), a non-profit organization, referred to in this agreement as “User”, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do agree as follows:

1. **Description of Premises.** City agrees to allow User *non-exclusive use* of a portion of the Hagerstown Fairgrounds adjacent to the Clubhouse building in the southwest part of the Fairgrounds property, including the site for a roller hockey rink, illustrated in attached Exhibit A, *non-exclusive use* of the youth baseball field located in Fairgrounds Park north of Valley Road, illustrated in attached Exhibit A, and *exclusive use* of the Clubhouse building also shown as Exhibit A, and in more detail in attached Exhibit B, jointly referred to in this Agreement as “Premises”.

Non-Exclusive Use means that the User has priority scheduling status with the City but not sole use of the Premises. At the beginning of the term of this Agreement and at the beginning of each calendar year during the term of this Agreement, User may schedule with the City all dates and time necessary to offer its recreational programs and to maintain the Premises as required by this Agreement. With respect to the portion of Fairgrounds Park adjacent to the Clubhouse building, the City reserves the right to schedule up to 2 special events per year at the Premises. User will handle the scheduling of the Premises for other groups in a manner approved by the City. With respect to the baseball field located in Fairground Park north of Valley Road, the City may schedule all remaining dates and times on a first come, first served basis, and the City reserves the right to schedule its own recreational or special events at the field. With respect to both locations, on dates and times not reserved by or scheduled by the User, the City may permit the general public access to, and use of, the Premises.

Exclusive Use means that the User is the sole user of the Premises. User may secure the Premises and control use of the Premises. City shall not authorize others to use the Premises without the User’s written consent. User agrees that the primary use of the facility will be for programs open to the general public.

2. **Term of agreement.** The term of this agreement shall be from January 1, 2021 to December 31, 2025.
3. **Renewal.** This Agreement shall automatically renew for two additional twenty-four (24) month periods unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the end of the then-current term.

Notwithstanding the foregoing, the City may terminate this agreement at any time upon giving User ninety (90) days written notice, only if the Mayor and Council are required by law, or have determined that it is in the best interests of the Citizens of

the City, to utilize the Premises for purposes other than recreation or park uses. Said termination shall not take effect until the conclusion of the User's annual schedule and post-season play for the year in which the notice is given, unless otherwise required by law.

4. **Rent.** City shall charge no monetary rent for the use of the Premises.
5. **Use of Premises.** User agrees that the Premises shall be used exclusively for User's youth programs, in-line hockey and other skating activities, programs of the User's sponsoring law enforcement agencies, and other similar uses. User must obtain City approval for any other events or activities including but not limited to carnivals, and the use of outside vendors.
6. **Program responsibility.** User has sole responsibility for the recreational program anticipated by this Agreement. The recreational program offered by the User may not discriminate base on race, color, creed, national origin, or gender. The City shall have no obligation to assist in the provision of services that the User intends to provide by virtue of this Agreement or to provide the services if the User terminates this Agreement.
7. **Concessions.** User may operate a food and merchandise concession at the Premises to raise funds for operating expenses of the Premises and the recreational program offered by the User. User must obtain and pay for any necessary permits and licenses and comply with all regulations pertaining to concession sales.
8. **Fees charged by User.**
 - A. User may not charge any fee to members of the public to watch events on the Premises.
 - B. User may charge entrance fees to participants in regular and special events sponsored by the User.
 - C. User may charge a user fee, not to exceed the then current City user fee for comparable facilities, when scheduling use of the Premises by other groups.
 - D. Revenues generated by fees shall be used for the operation and maintenance of the Premises, construction of facilities on the Premises, or providing recreational programs at the Premises.
 - E. If requested by the City, User shall provide an annual accounting of revenues and expenses related to the use and operation of the Premises and the recreational program offered by the User.
9. **Ownership of improvements.** All permanent improvements to the Premises including, but not limited to, the Clubhouse, in-line hockey rink, fencing, lighting, scoreboards, signs, and parking facilities are the property of the City. Permanent improvements or fixtures made or attached to the Premises by any party during the term of this Agreement shall become the property of the City when installed. User may request the City transfer title to the User of any fixture that it may wish to remove from the Premises. The decision to transfer title and permit removal it within the sole discretion of the City.
10. **Maintenance of Premises.**

- A. **GROUNDS.** User shall maintain the grounds to City standards including mowing, seeding, irrigating, fertilizing, sweeping and cleanup of trash, debris, leaves, and downed branches. User is responsible for the maintenance of the in-line hockey rink including, but not restricted to, the surface, permanent dasher boards, etc. City will maintain all trees including planting, trimming, and removal of dead trees. City shall maintain and repair all paved trails, walkways, and roadways constructed for general public use.
- B. **RESTROOMS.** City shall clean and maintain any restrooms on the Premises that are open for general public use whenever the Fairground Park is open to the public. User shall clean and maintain any restrooms, on or off the Premises, that the City and User agree will be open to the public only when User is using the Premises. In either case, City will be responsible for providing supplies, winterizing the restroom facilities, and maintaining plumbing and electrical systems.
- C. **CLUBHOUSES.** User shall clean and provide general janitorial maintenance of all facilities on the Premises except as noted in paragraph B above. User shall be responsible for any damage by the User to buildings and structures that exceeds normal wear and tear. City agrees to be responsible for electrical, mechanical and plumbing systems and make any and all structural repairs required.
- D. **BLEACHERS.** User is responsible for all maintenance, repairs, and replacements of permanent bleachers. Any bleacher repair requires a City building permit and must be inspected by the City. Maintenance, repairs, and replacements of temporary bleachers are the responsibility of the owner of the temporary bleachers. User shall monitor all bleachers for safe conditions and shut down and prohibit use of any bleacher section which is not safe until repairs are made.
- E. **FENCING AND DASHER BOARDS.** User is responsible for all maintenance, repairs, and replacements for fencing and dasher boards.
- F. **RINK LIGHTING.** City is responsible for all maintenance, repairs, and replacements for rink lighting.
- G. **SCOREBOARDS AND SIGNS.** User is responsible for all maintenance, repairs, replacements for scoreboards and signs.
- H. **PARKING.** User is responsible for cleanup of trash, general debris in parking areas on the Premises.
- I. **SAFETY.** User assumes full responsibility for inspecting and maintaining all structures, facilities, and grounds for which User is responsible in a safe condition to minimize the risk of personal injury. The City reserves the right to inspect any structure or facility on City property and may issue a notice to the User for any structural or maintenance deficiencies. Upon receipt of such notice, User shall make the necessary improvements within 7 calendar days unless additional time is agreed to by the City. Upon written request of the User, the City will inspect the Premises to verify conformance with applicable City codes and regulations.

J. EXTERIOR COLORS. Colors used on exterior surfaces of buildings and structures must be approved by the City.

11. **Construction of improvements.** User must obtain approval from the City for all permanent improvements to the Premises and obtain all necessary permits for the approved construction. This approval will include design, materials, method of construction, form, color, suitability, and conformity to the Fairgrounds Master Plan. No temporary structures including, but not limited to, concession trailers, storage trailers, and sheds shall be installed or parked on the Premises without approval of the City.

12. **Utilities and services.** Utilities and services shall be provided and paid for by the parties as indicated below:

<u>Utility Service</u>	<u>City</u>	<u>User</u>
Electricity-except rink lights	X	
Electricity – rink lights	X	
Water/Sewer*	X	
Gas (separately metered)		X
Telephone		X
Trash Hauling	X	

*Restroom facilities will be provided by the City and may be either permanent restroom facilities or portable facilities. The User is responsible for any additional portable restrooms which may be required for special events, including tournaments, scheduled by the User.

13. **Signs and advertisements.** All signs or advertisements installed or displayed on the Premises must be approved by the City and conform to existing laws and ordinances. Approval will be based on size, materials, design, method of construction, content, location, visibility, and compatibility with sponsorships obtained by the City. No alcohol or tobacco advertisements will be permitted. The City reserves the right to remove any signs or advertisements from the Premises that it has not approved and User agrees to pay the cost of any such removals. User shall be permitted to place approved advertising around the perimeter of the rink and structures on the Premises to generate income for the operation and maintenance of the Premises. City reserves the right to install signs on the Premises.
14. **Sponsorship coordination and approval.** All sponsorships to be advertised, posted or otherwise acknowledged on the Premises must be approved by the City. Sponsorships obtained by User and sales of merchandise and/or concessions by the User must conform to any applicable sponsorship agreements obtained by the City. No alcohol or tobacco sponsorships will be permitted. To allow for coordination of sponsorships for the Fairgrounds, including exclusive sponsorships sought by the City, the City requests potential regional and national sponsorships sought by the User, including but not limited to restaurant franchises, beverages, athletic companies, utilities, and financial institutions, be reviewed by the City prior to solicitation by the User.

15. **Hold harmless.** User will indemnify and hold the City harmless from all loss, liability, cost, or damages that may occur or be claimed with respect to any person or property, as a result of the User's negligence in connection with its use or maintenance of the Premises, including any act or omission by the User, its agents, servants, volunteers, participants, or employees. User will additionally indemnify and hold the City harmless from all loss, liability, cost or damages occurring to the Premises as a result of User's use or maintenance of the Premises.

16. **Insurance.**

A. **BUILDING AND STRUCTURES.** The City shall provide building and structure insurance in the same manner and amount that it would for any City-owned park structure. Providing this insurance does not obligate the City to incur any cost in repair or replacement beyond the insurance coverage provided. User may carry additional insurance at User's cost if such insurance is available.

B. **GENERAL LIABILITY.** User shall maintain general liability insurance in the amount of \$1,000,000 covering liability arising directly or indirectly from the User's use and maintenance of the Premises. This insurance must also extend to the preparation and sale of any food on the Premises. User shall provide to the City a certificate of insurance for the coverage and amount specified above with the City listed as an additional named insured.

User agrees to immediately cease all use of the Premises if its general liability insurance is canceled or expired or if it has reason to believe the insurance is canceled or expired. The User must notify the City immediately in this case.

City agrees that during periods of general public access the City's general liability insurance will provide primary coverage for any person using the Premises who is not covered by the User's insurance.

C. **CONTENTS.** User is solely responsible for insurance for personal property on the Premises if the User elects such coverage. The City shall not provide insurance for any personal property not owned by the City.

17. **Damage to personal property.** User is responsible for all personal property kept, stored, or placed on the property in conjunction with the User's use of the Premises. City shall not be responsible for any loss or damage to personal property for any reason.

18. **Public requirements.** User shall comply with all laws, orders, ordinances, park rules and regulations, permit regulations, and other public requirements in effect now or in the future affecting the Premises or the use of the Premises, and hold the City harmless from expense or damages resulting from failure to do so. The Premises are not exempted from compliance with zoning or other municipal codes or ordinances nor from any other requirements of law due to title being in the name of the City.

19. **Assignment or sublease.** User may not assign this agreement or sublease the Premises.

20. **Liens and encumbrances.** User may not encumber the Premises, property, fixtures, or any improvements. User shall promptly pay when due all obligations or indebtedness incurred by virtue of this Agreement. This Agreement is subject to provisions of the City Charter, ordinances, and state statutes prohibiting alienation of title.
21. **City assistance.** Nothing in this Agreement shall prohibit the User from requesting the City provide additional services or support nor prohibit the City from providing additional services or support at the sole discretion of the City.
22. **Notices.** Any notice sent to the parties shall be to the following addresses:
- | | |
|---|---|
| <i>City:</i> City of Hagerstown
Public Works Manager
51 W. Memorial Blvd.
Hagerstown, MD 21740 | <i>User:</i> Hagerstown Area Police
Athletic League
50 N. Burhans Blvd.
Hagerstown, MD 21740 |
|---|---|
23. **Current User Information.** User will provide the City with a current list of all officers including name, title, home address, and telephone number. User shall indicate the individual who has primary responsibility for scheduling the Premises. User will provide an updated list within 30 days of any changes and at the beginning of each calendar year.
24. **Default.** It shall constitute default if the User fails to use the premises for its intended purpose or fails to abide by the terms of this Agreement. Upon receiving written notice from the City of default, the User shall have thirty (30) days to come into compliance with this Agreement, unless a longer period is agreed to by the parties. If the User fails to cure the default after receiving notice, the City may terminate this Agreement immediately.
25. **Approvals.** Any requirement of prior approval by the City contained herein shall mean approval of the City Administrator or his designee and shall not require formal approval of the Mayor and Council.

The parties agree and represent to each other that the undersigned have the authority to accept and sign this Agreement.

ATTEST:

THE CITY OF HAGERSTOWN

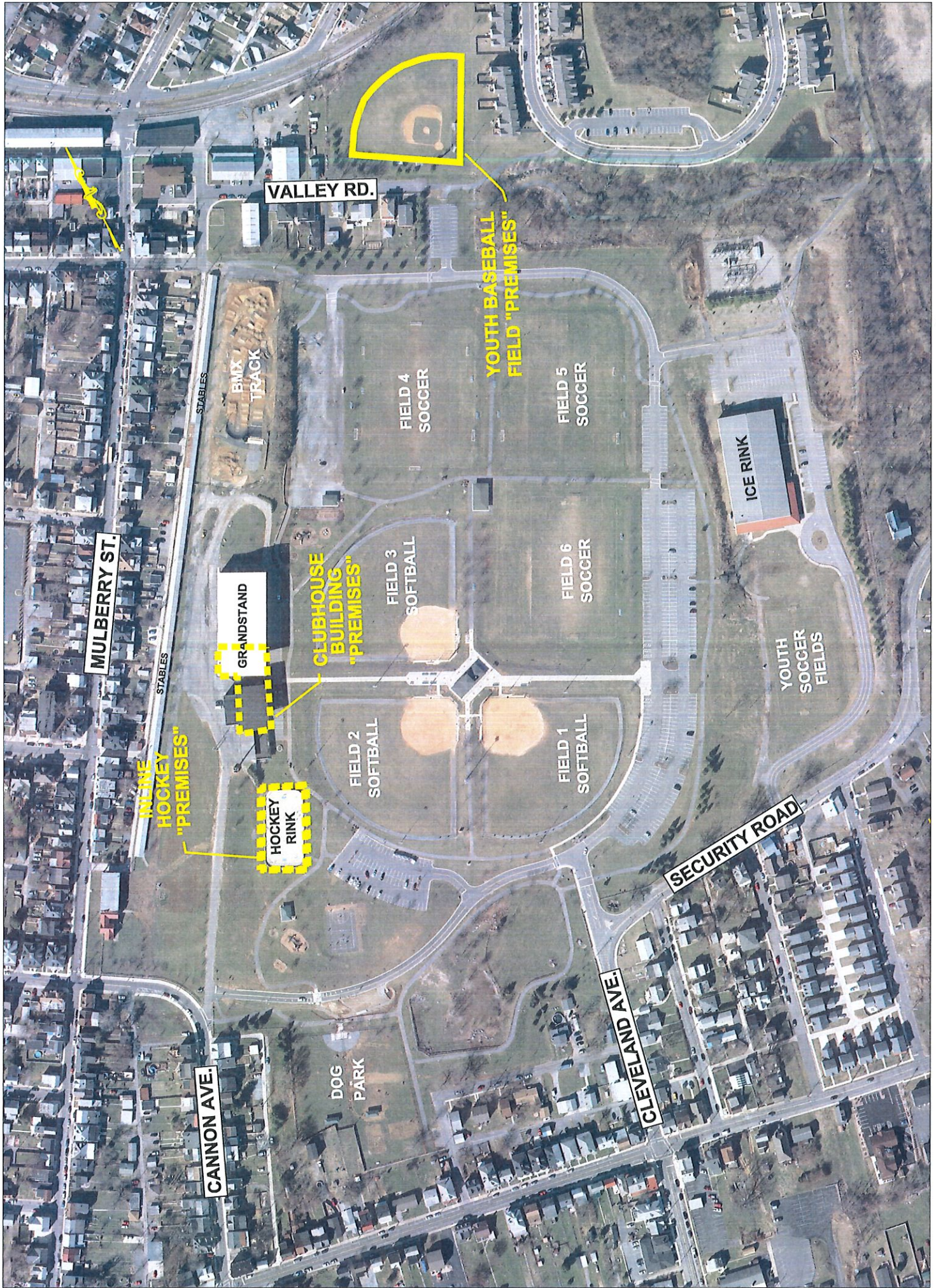
Donna Spickler, City Clerk

BY: _____
Robert E. Bruchey, II, Mayor

WITNESS:

HAGERSTOWN AREA POLICE
ATHLETIC LEAGUE

By: _____



POLICE ATHLETIC LEAGUE AGREEMENT - EXHIBIT A

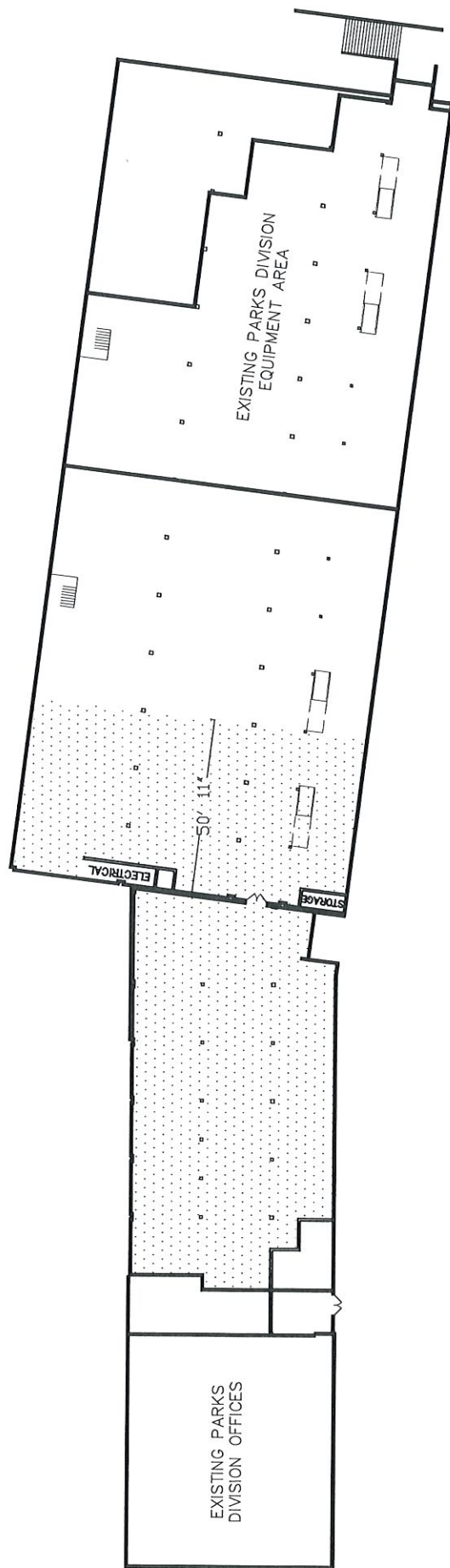


EXHIBIT B
LEASE AREA - POLICE ATHLETIC LEAGUE
09/30/2010
1" = 30'

 LEASE AREA

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

Topic:

Approval of a Resolution: Alter Traffic Flow in Alley 1-76 and Alley 1-77

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Resolution_-_Alter_Traffic_Flow.pdf

alley_1-76_and_1-77.2020.pdf

Description

Motion and Resolution -
Altering Traffic in Two Alleys

Resolution to Alter Traffic -
Alley 1-76 & 1-77

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of a Resolution to Alter Traffic Flow in Alley 1-76 & Alley 1-77

Charter Amendment

Code Amendment

Ordinance

Resolution

Other

 X

MOTION: I hereby move to approve a Resolution to alter traffic flow in Alley 1-76 as one-way southbound and Alley 1-77 one-way westbound. This is a request from the Salvation Army and is recommended by the Board of Traffic & Parking.

EFFECTIVE DATE: 10/27/2020

CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION TO ALTER TRAFFIC FLOW BY MAKING ALLEY 1-76 ONE-WAY SOUTHBOUND AND ALLEY 1-77 ONE-WAY WESTBOUND

RECITALS

WHEREAS, pursuant to its police powers, the City of Hagerstown maintains a systems of streets, alleys and ways within the corporate limits of the City for the benefit of its citizenry; and

WHEREAS, this system of streets includes two alleys designated at Alley 1-76, which alley is located between George Street and Alley 1-77 and Alley 1-77, which alley is located between Alley 1-76 and Wise Street; and

WHEREAS, the Salvation Army has off-street parking on these alleys around their Gym that is diagonal and suited to one-way traffic and they have requested that Alley 1-76 be made one-way southbound and Alley 1-77 be made one-way westbound to improve traffic flow and avoid opposing traffic conflicts; and

WHEREAS, the Board of Traffic & Parking has recommended that these Alleys be made one-way as requested: and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the citizens of the City of Hagerstown to implement the plan to make these alleys one-way as requested;

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 be and are incorporated herein as if restated verbatim.
2. The traffic flow on Alley 1-76 be designated as one-way southbound between George Street and Alley 1-77 as depicted on the Plan of Traffic Flow Changes attached hereto as Exhibit A and incorporated herein.
3. That Alley flow on Alley 1-77 be designated as one-way westbound between Alley 1-76 and Wise Street as depicted on the Plan of Traffic Flow Changes attached hereto as Exhibit A and incorporated herein
4. That the Parks and Engineering Department, Public Works Department and any other department of the City of Hagerstown be and is hereby authorized to take such other and further action as may be necessary or advisable to effectuate the purposes of this Resolution.

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

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Robert Bruchey, Mayor

Date of Introduction: October 27, 2020
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

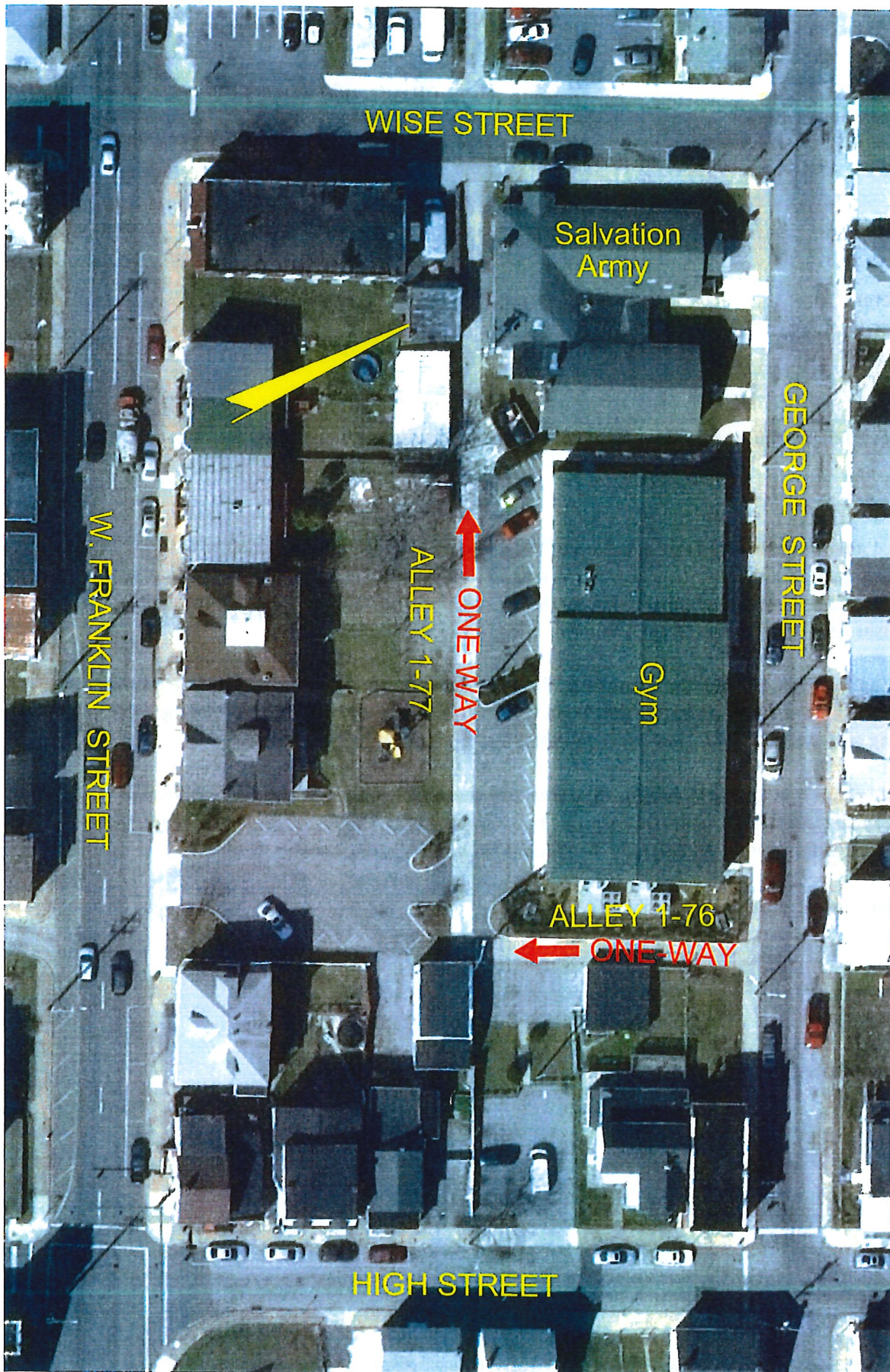


EXHIBIT 'A'

Alley 1-76 + 1-77

Compl. 2020-038



DOING
THE MOST
GOOD™

William Booth, Founder
Brian Peddle, General
Commissioner Willis Howell, Territorial Commander
Major Art Penhale, Divisional Commander
Captains Jimmy and Ashley Taylor, Corps Officers
Lieutenant Charlene Cover, Assistant Corps Officer

February 18, 2020

Lt. Wayne Zimmerer
Hagerstown Police Dept.
50 N. Burhans Blvd.
Hagerstown, MD 21740

RE: Traffic Pattern change request for alleyways around The Salvation Army property

Lt. Zimmerer,

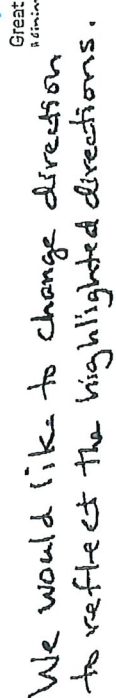
Per your request, I am requesting that the direction of the one-way alleyway that turns off of George St and goes behind our gymnasium's HVAC systems be changed. Currently, in order to access the one-way alley you either have to drive through our parking lot or drive behind The Salvation Army Community Center which causes issue for those leaving our Community Center parking areas.

I am also requesting that the alleyway that runs from Wise St behind our facility be changed to a one-way alleyway to avoid the aforementioned issues that arise from those exiting our facility and parking areas. The tenant parking area would still be able to be accessed just from the other direction.

Most vehicles, other than those coming to our programs, use these alleyways as a cut through instead having to use the main streets. This has created issues for us with exiting The Salvation Army property as well as various issues with property damage (i.e. broken fence, broken curbs, broken shrubbery).

Thank you for your consideration.

Captain Jimmy Taylor
Commanding Officer
The Salvation Army of Washington County



We would like to change direction to reflect the highlighted directions.

CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION TO ALTER TRAFFIC FLOW BY MAKING ALLEY 1-76 ONE-WAY SOUTHBOUND AND ALLEY 1-77 ONE-WAY WESTBOUND

RECITALS

WHEREAS, pursuant to its police powers, the City of Hagerstown maintains a systems of streets, alleys and ways within the corporate limits of the City for the benefit of its citizenry; and

WHEREAS, this system of streets includes two alleys designated at Alley 1-76, which alley is located between George Street and Alley 1-77 and Alley 1-77, which alley is located between Alley 1-76 and Wise Street; and

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WHEREAS, the Board of Traffic & Parking has recommended that these Alleys be made one-way as requested: and

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4. That the Parks and Engineering Department, Public Works Department and any other department of the City of Hagerstown be and is hereby authorized to take such other and further action as may be necessary or advisable to effectuate the purposes of this Resolution.

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WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Robert Bruchey, Mayor

Date of Introduction: October 27, 2020
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

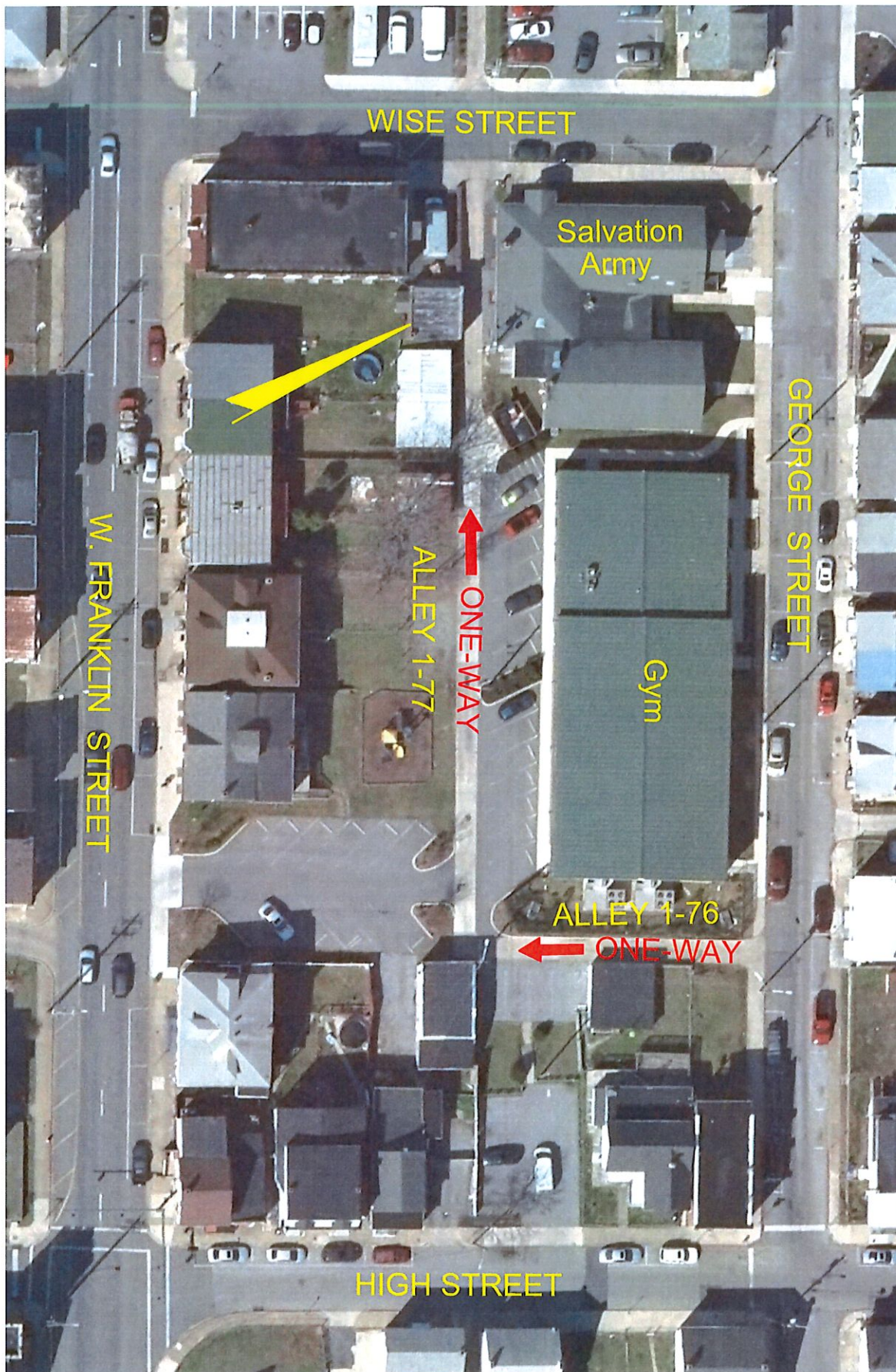


EXHIBIT 'A'

Alley 1-76 + 1-77

Compl. 2020-038



DOING
THE MOST
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William Booth, Founder
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February 18, 2020

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I am also requesting that the alleyway that runs from Wise St behind our facility be changed to a one-way alleyway to avoid the aforementioned issues that arise from those exiting our facility and parking areas. The tenant parking area would still be able to be accessed just from the other direction.

Most vehicles, other than those coming to our programs, use these alleyways as a cut through instead having to use the main streets. This has created issues for us with exiting The Salvation Army property as well as various issues with property damage (i.e. broken fence, broken curbs, broken shrubbery).

Thank you for your consideration.

Captain Jimmy Taylor
Commanding Officer
The Salvation Army of Washington County

We would like to change direction to reflect the highlighted directions.



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

Topic:

Approval of a Resolution: FY 2021 Community Legacy Grant Application

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

FY_21_CL_Grant_Motion_and_Resolution_Combined.docx

Description

FY 21 CL Grant Motion and
Resolution

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: **Resolution: FY 2021 Community Legacy Application**

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

MOTION: I hereby move that the Mayor and City Council approve a resolution indicating approval of the City's FY 2021 Community Legacy application to the Maryland Department of Housing and Community Development. The applications request: (1) \$1,500,000 to support an Upper Floor Market Rate Housing Development Fund; (2) \$200,000 to assist with CDC Acquisition/Rehab of Vacant, Blighted Buildings Fund; and (3) \$100,000 to support the Broadband Fit-Out Fund to Facilitate Distance Learning and Job Development.

DATE OF PASSAGE: 10/27/2020

EFFECTIVE DATE: 10/27/2020

LOCAL RESOLUTION

Resolution of the Mayor and Council of the City of Hagerstown approving the application and receipt of financing for *Community Legacy* projects (“the Projects”) further described in the *Community Legacy* application (“the Application”), to be financed either directly by the Department of Housing and Community Development (the “Department”) of the State of Maryland or through other departments or agencies of the State of Maryland.

WHEREAS, the Mayor and City Council of the City of Hagerstown recognizes that there is a significant need for reinvestment and revitalization of Hagerstown’s Sustainable Community Area; and

WHEREAS, the Department, either through *Community Legacy* or through other Programs of the Department, or in cooperation with other State departments or agencies, may provide some or all of the financing for the Projects in order to assist in making them financially feasible; and

WHEREAS, the Projects are located within a priority funding area under Section 5-7B-02 of the Smart Growth Act and within the Hagerstown Sustainable Community Area, and the Projects will conform to the local zoning code; and

WHEREAS, the applicable law and regulations require approval of the *Community Legacy* Projects and Project Financing by the Mayor and City Council of the City of Hagerstown;

NOW, THEREFORE BE IT RESOLVED THAT, the Mayor and City Council of the City of Hagerstown hereby endorses the Projects; and HEREBY approves the request in the form of a grant in the approximate amount of up to \$1,800,000: (i) \$1,500,000 to support an Upper Floor Market Rate Housing Development Fund; (ii) \$200,000 to assist with CDC Acquisition/Rehab of Vacant, Blighted Buildings Fund; and (iii) \$100,000 to support the Broadband Fit-Out Fund to Facilitate Distance Learning and Job Development; and

BE IT FURTHER RESOLVED THAT, the chief elected executive official be, and is hereby requested to endorse this Resolution, thereby indicating his approval thereof; and

BE IT FURTHER RESOLVED THAT, the Mayor is hereby authorized to execute documents and take any action necessary to carry out the intent of these resolutions; and,

BE IT FURTHER RESOLVED THAT, copies of this Resolution be sent to the Secretary of Housing and Community Development of the State of Maryland.

READ AND PASSED THIS 27th day of October, 2020.

ATTEST/WITNESS:

MAYOR AND CITY COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Passage: 10/27/2020
Effective Date: 10/27/2020

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

Topic:

Approval of a Resolution: FY 2021 Strategic Demolition Grant Application

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

FY_21_SDF_Grant_Motion_and_Resolution_Combined.docx

Description

FY 21 SDF Grant Motion
and Resolution

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: **Resolution: FY 2021 Strategic Demolition Fund Application**

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

MOTION: I hereby move that the Mayor and City Council approve a resolution indicating approval of the City's FY 2021 Strategic Demolition Fund application to the Maryland Department of Housing and Community Development. The application requests funding to assist with two projects: 1) \$250,000 for pre-construction costs for the Doleman Black Heritage Museum and 2) \$500,000 to support pre-development and development activities on the Jonathan Street neighborhood.

DATE OF PASSAGE: 10/27/2020
EFFECTIVE DATE: 10/27/2020

LOCAL RESOLUTION

Resolution of the Mayor and Council of the City of Hagerstown approving the application and receipt of financing for a *Strategic Demolition Fund* project (“the Project”) further described in the *Strategic Demolition Fund* application (“the Application”), to be financed either directly by the Department of Housing and Community Development (the “Department”) of the State of Maryland or through other departments or agencies of the State of Maryland.

WHEREAS, the Mayor and City Council of the City of Hagerstown recognizes that there is a significant need for reinvestment and revitalization of Hagerstown’s Sustainable Community Area; and

WHEREAS, the Department, either through the *Strategic Demolition Fund* or through other Programs of the Department, or in cooperation with other State departments or agencies, may provide some or all of the financing for the Project in order to assist in making it financially feasible; and

WHEREAS, the Project is located within a priority funding area under Section 5-7B-02 of the Smart Growth Act and within the Hagerstown Sustainable Community Area, and the Project will conform to the local zoning code; and

WHEREAS, the applicable law and regulations require approval of the *Strategic Demolition* Project and Project Financing by the Mayor and City Council of the City of Hagerstown;

NOW, THEREFORE BE IT RESOLVED THAT, the Mayor and City Council of the City of Hagerstown hereby endorses the Project; and HEREBY approves the request in the form of a grant in the approximate amount of \$750,000: (i) \$250,000 for pre-construction costs for the Doleman Black Heritage Museum; and (ii) \$500,000 to support pre-development and development activities on the Jonathan Street neighborhood; and

BE IT FURTHER RESOLVED THAT, the chief elected executive official be, and is hereby requested to endorse this Resolution, thereby indicating his approval thereof; and

BE IT FURTHER RESOLVED THAT, the Mayor is hereby authorized to execute documents and take any action necessary to carry out the intent of these resolutions; and,

BE IT FURTHER RESOLVED THAT, copies of this Resolution be sent to the Secretary of Housing and Community Development of the State of Maryland.

READ AND PASSED THIS 27th day of October, 2020.

ATTEST/WITNESS:

MAYOR AND CITY COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
Robert E. Bruchey, II, Mayor

Date of Passage: 10/27/2020
Effective Date: 10/27/2020

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

Topic:

Approval of a Resolution: Salt Utilization Agreement with Maryland State Highway Administration

Mayor and City Council Action Required:

Discussion:

Seeking approval to enter into a 3 year agreement with the Maryland State Highway Administration to purchase bulk road salt in an emergency situation. See the attached.

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_Sheet_for_SHA_Salt_Utilization_Agreement_2020.pdf

Resolution_for_Salt_Utilitization_Contract_2020.pdf

City_of_Hagerstown_3-YR_Salt__Template_#1_09-14-2020.pdf

Memo_State_Salt_Agreement.pdf

Description

Motion Sheet Salt Utilization Agreement

Resolution Salt Utilization Agreement

Three Year Salt Utilization Agreement

Memo Salt Utilization Agreement

REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: **Approval of a Salt Utilization Agreement with the Maryland State Highway Administration**

Charter Amendment

Code Amendment

Ordinance

✓ Resolution

Other

MOTION: I hereby move for the approval of a resolution to enter into Salt Utilization Agreement with the Maryland State Highway Administration. The agreement allows the City of Hagerstown to purchase road salt from state highway stockpiles during winter weather emergencies. The City shall reimburse the highway administration for cost of the salt, delivery charges and overhead.

Date of Introduction: October 27, 2020
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE ENTRY INTO A SALT UTILIZATION AGREEMENT
WITH THE MARYLAND DEPARTMENT OF TRANSPORTATION STATE HIGHWAY
ADMINISTRATION
FOR THE PURCHASE OF SALT DURING WINTER SNOW EMERGENCIES**

RECITALS

WHEREAS, the City of Hagerstown is a Maryland Municipal Corporation which utilizes salt application on City roads during winter snow emergencies; and

WHEREAS, the City may need to obtain additional salt during said winter snow emergencies; and

WHEREAS, the Maryland Department of Transportation State Highway Administration (“MDOT SHA”) has agreed to allow the City to obtain salt from MDOT SHA stockpiles during a winter snow event in accordance with the Salt Utilization Agreement (“Agreement”); and

WHEREAS, the City agrees to reimburse the MDOT SHA for the cost of the salt, a delivery charge, and SHA overhead, if applicable; and

WHEREAS, the term of the Agreement shall be for a period of three (3) years; 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 this Agreement with the MDOT SHA;

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 Salt Utilization Agreement, a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor and the Director of Public Works be and are 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.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

Robert E. Bruchey, II, Mayor

Date of Introduction: October 27, 2020
Date of Passage: October 27, 2020
Effective Date: October 27, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

THREE YEAR SALT UTILIZATION AGREEMENT

by and between

Maryland Department of Transportation
State Highway Administration

and

City of Hagerstown, Maryland

This AGREEMENT ("**Agreement**") made as of the 1st day of September 2020, executed in duplicate, by and between the Maryland Department of Transportation State Highway Administration ("**MDOT SHA**") and City of Hagerstown, Maryland, a political subdivision of the State of Maryland and a body politic and corporate ("**CITY**").

WHEREAS, during certain winter snow emergency operations ("**Snow Event**") the CITY may have a need to obtain additional salt ("**Salt**") to effectively complete their winter snow operations; and

WHEREAS, the CITY has requested, and MDOT SHA has agreed, to allow the CITY to obtain Salt from MDOT SHA stockpiles during a Snow Event in accordance with the terms and conditions contained herein; and

WHEREAS, the CITY shall reimburse MDOT SHA for the cost of Salt plus other related expenses; and

WHEREAS, MDOT SHA and the CITY agree that this Agreement will benefit both parties of this Agreement and will promote the safety, health and general welfare of the citizens of the State.

NOW, THEREFORE, in consideration of the premises and of the mutual promises between the MDOT SHA and the CITY, as set forth herein, the adequacy of which is hereby acknowledged, the parties hereby agree to the following:

I. TERM & BUDGET

The Term of this Agreement is for a period of three (3) years beginning the first (1st) day of September 2020 and ending on the thirty first (31st) day of August 2023, both dates inclusive, unless sooner terminated as set forth herein. For budgeting and planning purposes only, during the Term of this Agreement the total cost for Salt shall not exceed One Hundred Fifty Thousand Dollars (\$150,000). This is an estimate only and the CITY shall be responsible for actual costs incurred at the time of acquisition.

II. SALT COSTS

- A. The cost of Salt, at the time of execution of this Agreement is Sixty Eight Dollars and Thirty One Cents (\$ 68.31) per ton, which includes the price of the Salt, a Delivery Charge and an Overhead Charge.
- B. The Salt price listed herein are subject to awarded contracts by MDOT SHA and shall be adjusted accordingly.
- C. The Delivery Charge includes the cost of fuel and mileage to transport the Salt to an MDOT SHA Salt dome. The Overhead Charge is determined by the federally approved Overhead Rate that may be adjusted on October 1st of each year. The current Overhead Rate is seven and eighty seven hundredths percent (7.87%).
- D. The cost of the Salt may be adjusted weekly to account for Delivery Charge variances.

III. ESTABLISHMENT of the SALT COST

MDOT SHA has established a charge number for the CITY which will be used to document Salt withdrawals from MDOT SHA's inventory system. The current charge number for the CITY is **BY301M84**.

IV. PROCEDURES

- A. Salt Scheduling
 - 1. MDOT SHA Shop Locations: For purposes of this Agreement, the MDOT SHA shops to be used for Salt for the CITY, as determined by MDOT SHA, are:
 - Hagerstown Shop Salt Dome
 - 2. Prior to a Snow Event: The CITY will contact Butch (Rodney) Glenn, MDOT SHA's Resident Maintenance Engineer (RME), or designee, of the Hagerstown Shop at 301 794-4790 to arrange for the CITY's trucks to be loaded with the Salt at the designated location the day before a local forecasted snow if time permits; otherwise MDOT SHA and the CITY will determine which MDOT SHA salt storage site is appropriate to use to load the Salt onto the trucks and MDOT SHA will provide an operator to facilitate the loading of the Salt.
 - 3. During the Snow Event: The CITY will contact the appropriate MDOT SHA Shop nearest to that truck and request to be loaded at an approximate preferred time of arrival. MDOT SHA will then arrange for an operator to

meet the CITY truck at that location as close to the preferred time as possible without negatively affecting MDOT SHA operations. In addition, if a CITY truck is in the vicinity of a specific dome during a Snow Event and an MDOT SHA operator is present, the CITY truck may then be topped off, if desired. In situations where the MDOT SHA Snow Event operations are already active when the CITY operations begin, the CITY can notify MDOT SHA as far in advance as possible and MDOT SHA will make every effort to provide an operator at all the locations requested in order to begin loading CITY trucks with Salt.

4. Post Snow Event: The CITY can contact the appropriate MDOT SHA shop to request re-loading after a Snow Event, and MDOT SHA will schedule the re-loading at both parties' convenience.
5. The CITY shall not return any unused Salt to any MDOT SHA shop.

B. Load Records

1. The CITY shall ensure all vehicles picking up Salt on their behalf are identified by a sticker or placard indicating the CITY's name.
2. Only an MDOT SHA authorized loader operator shall load the CITY trucks.
3. MDOT SHA shall create a written loading record that must be signed by the CITY driver. A copy shall be given to the CITY driver to account for every load of Salt that the CITY receives from MDOT SHA. Each load record shall contain the following information:
 - a. truck number or license tag number,
 - b. the number of scoops/ buckets loaded,
 - c. the number of tons loaded based on the scoops / bucket size value multiplied by the number of scoops /buckets.

V. PAYMENT

- A. MDOT SHA shall provide a detailed invoice to the CITY by May 31st of each year for all actual costs incurred by MDOT SHA to provide Salt to the CITY. The invoice shall be accompanied by normal documentation from MDOT SHA to evidence actual costs incurred.
- B. Upon request by the CITY, MDOT SHA may provide information to include the number of buckets and estimated tonnage provided to the CITY for each date of withdrawal.
- C. The estimated cost of the Salt is based on the average amount of Salt used during the previous three (3) years at the prevailing rate at the time of execution of this Agreement and will be subject to future adjustments during the Term according to costs for Salt, delivery and overhead in effect at that time.

D. REIMBURSEMENT

1. Reimbursement to MDOT SHA for the SALT during the Term, including MDOT SHA overhead, is estimated to be One Hundred Fifty Thousand Dollars (\$150,000) and is based on estimated quantities from the previous term, however, actual costs and tonnage may vary and the CITY shall reimburse MDOT SHA for all actual tonnage (which includes the delivery charge) and overhead costs.
- E. In the event of extremely heavy Salt usage, MDOT SHA reserves the right to submit progress billings to the CITY in lieu one annual invoice.
- F. The CITY shall reimburse MDOT SHA for all costs incurred by MDOT SHA for all supplied Salt provided during the Term pursuant to this Agreement within thirty (30) days of receipt of each invoice.
- G. In the event MDOT SHA does not receive payment of invoices within thirty (30) days of the CITY's receipt of each invoice, MDOT SHA will notify the CITY of the overdue payment and provide the CITY the opportunity to pay such overdue amounts. If payment of the overdue amount is not received within thirty (30) days following notification, MDOT SHA will then notify the CITY in writing, and the parties hereby agree that MDOT SHA may make a deduction from the CITY's share of Highway User Revenue equal to the overdue invoice amount(s) or MDOT SHA may refer the overdue amount to the Central Collection Unit, at 300 West Preston Street, Room 500, Baltimore MD 21201-2365 for collection of overdue amount.

VI. GENERAL

- A. MDOT SHA does not supply Brine, a pretreatment salt-based mixture.
- B. Title VI Assurances. All parties to this Agreement shall comply with the requirements of **APPENDIX A** (2 pages) and **APPENDIX E** (1 page) of MDOT SHA's Standard Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A which generally set forth non-discrimination regulations and other civil rights related regulations. **APPENDIX A** and **APPENDIX E** are attached hereto and incorporated herein as substantive parts of this Agreement. The term "Acts" in Appendix A refers to 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3. The term "Recipient" in Appendix refers to MDOT SHA.
- C. MDOT SHA and the CITY agree to cooperate with each other to accomplish the terms and conditions of this Agreement.
- D. The provisions contained in this Agreement shall be binding upon the parties until the earlier to occur of; (i) three (3) years from the date first written above, (ii) thirty (30) days after written notice has been given by either party to the other that they elect to no longer be bound by the terms and conditions of this Agreement, or

(iii) August 31, 2023. However, termination of this Agreement and any Amendments is contingent on all outstanding invoices being paid by the CITY to MDOT SHA.

- E. The CITY shall indemnify, hold harmless and defend, at MDOT SHA's option, the State of Maryland, MDOT SHA and the Maryland Department of Transportation, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, incurred in connection with the loss of life, personal injury and/or property damage arising from or in connection with the activities performed pursuant to this Agreement by the CITY or its contractors, agents or assigns.
- F. MDOT SHA shall reserve the right to limit or deny Salt to the CITY in order to avoid jeopardizing MDOT SHA's snow remediation operations.
- G. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and assigns.
- H. This Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.
- I. The recitals (WHEREAS clauses) at the beginning of this Agreement are incorporated as substantive provisions of this Agreement.
- J. All notices and/or invoices, if to the CITY, shall be addressed to:

Eric B. Deike
Director of Public Works
City of Hagerstown
51 West Memorial Blvd
Hagerstown, MD 21740
Phone: 301 739-8577 Ext. 176
Fax: 301 791-6761
E-mail: edeike@hagerstownmd.org

And if to MDOT SHA:

Butch (Rodney) Glenn
Resident Maintenance Engineer
Maryland State Highway Administration
18320 Col. Henry K. Douglas Drive
Hagerstown, MD 21740
Phone: 301-791-4790
Fax: 301-791-4694
E-mail: rglen@mdot.maryland.gov

With copies to:

Mr. Anthony Crawford, District Engineer, D-6

Maryland Department of Transportation
State Highway Administration
1251 Vocke Road
La Vale, MD 21502-3347\
Phone: 301-729-8400
Fax: 301-729-6968
Email: acrawford@mdot.maryland.gov

And,

MDOT SHA Agreements Team
Office of Procurement and Contract Management
State Highway Administration
707 N. Calvert Street
Mailstop C-405
Baltimore, MD 21202
Phone: (410) 545-5547
E-mail: shaagreementsteam@mdot.maryland.gov

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the day and year first above written.

**MARYLAND DEPARTMENT OF
TRANSPORTATION
STATE HIGHWAY ADMINISTRATION**

WITNESS

By: _____ (SEAL)
Andre Futrell
Deputy Administrator for
District Operations

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

RECOMMENDED FOR APPROVAL:

Assistant Attorney General

Butch (Rodney) Glenn
Resident Maintenance Engineer

William J. Bertrand
Director
Office of Finance

CITY OF HAGERSTOWN, MARYLAND
a body corporate and politic

WITNESS

BY: _____(Seal)
Robert E. Bruchey II
Mayor

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

CITY Attorney

APPENDIX A OF THE TITLE VI ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction; the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42

U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Federal Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP 'persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 741 00);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



CITY OF HAGERSTOWN, MARYLAND

Public Works Department

(301)739-8577 ext. 178

October 7, 2020

To: Scott Nicewarner, City Administrator

From: Eric B. Deike, Public Works Director

Re: Salt Utilization Agreement with Maryland State Highway Administration

RECOMMENDATION

Staff is seeking Mayor and Council approval for the City of Hagerstown to enter into a Salt Utilization Agreement with the Maryland State Highway Administration (SHA) to purchase bulk road salt during snow emergency operations. Cost per ton would initially be Sixty-Eight Dollars and Thirty-One Cents (\$68.31) per ton which includes the price of the salt, delivery and an overhead charge. The cost of salt may be adjusted weekly to account for delivery charge variances.

DISCUSSION

The City of Hagerstown has a limited capacity to store bulk road salt for snow emergency operations. On site storage is approximately one thousand tons. During snow events, salt is utilized and replenished throughout the snow season. Salt supplies can be quickly depleted during a cycle of continuous storms, slow deliveries or simply a lack of product. The city currently has little recourse when salt supplies run low other than obtaining salt from the salt supplier or possibly purchasing salt from the Washington County Highway Department.

The Maryland State Highway Administration will allow local governments to purchase salt from them as needed during snow emergencies if the salt is available. The local governments must have an approved Salt Utilization Agreement in place before salt can be purchased.

The salt would be obtained from the state highway shop located off of Sharpsburg Pike. The current cost of the salt is Sixty-Eight Dollars and Thirty-One Cents (\$68.31) per ton which includes the price of the salt, delivery and an overhead charge. This is about ten dollars more per ton than the city will be purchasing salt through the Washington County Government contract.

The Washington County Government contracts for bulk road salt for themselves and the City of Hagerstown. A contract should be in place by the beginning of November. Salt has only been purchased once from SHA in the previous 21 years so utilizing SHA for salt should be considered as a last resort option for the City.

Finally, the city has previously entered into a Salt Utilization Agreement with the Maryland Highway Administration in October of 2017. The agreement was for three years.

FINANCIAL IMPACT

Purchasing road salt from the State of Maryland would only occur under the most extreme of circumstances where our salt supplier would fail to provide bulk road salt. The

state's price is approximately ten dollars more per ton over what the city will be paying this year's vendor.

A typical storm may use 200 tons of salt. At an additional ten dollars per ton, that would equate to an estimated \$2,000 of additional cost for one storm.

CONCLUSION

Approval of the Salt Utilization Agreement provides the City with another option for road salt if necessary. Staff believes it to be wise to have the formal agreement in place well before the salt is needed from SHA. Staff looks forward to discussing this issue with the Mayor and Council at a future work session.

Cc: M. Hepburn

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

Topic:

Approval of Addition of Farmers' Market Property (25 W. Church St.) to the Competitive Negotiated Sale (CNS) Process

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Add_Farmers__Market_to_CNS.pdf

Description

Motion - Addition of
Farmers' Market to CNS

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval to add Farmer's Market Property - 25 West Church Street to the City's Competitive Negotiated Sale (CNS) Process

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

MOTION: I hereby move for the Mayor & City Council to approve the addition of 25 West Church Street Farmer's Market Property and adjacent parking areas to the City's Competitive Negotiated Sale (CNS) Process, with the goal of transferring the property to the private sector and returning the property to the tax rolls. The property will be added to CNS with a list price of \$970,000 based on a recently conducted appraisal. Purchase proposals will need to accommodate existing City offices located in the building and will be evaluated based on both offer price and how the future use of the property will contribute to the vitality of downtown.

DATE OF INTRODUCTION: 10/27/2020

DATE OF PASSAGE: 10/27/2020

EFFECTIVE DATE: 10/27/2020



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

TO: Scott Nicewarner, City Administrator

FROM: Doug Reaser, Business Development Specialist
Jonathan Kerns, Community Development Manager

DATE: October 14, 2020

RE: Review of Farmer's Market Property -25 West Church Street
and possible addition to the Competitive Negotiated Sale program

Staff members will attend the October 20, 2020 Work Session of the Mayor and City Council to review the Farmer's Market property, 25 West Church Street, and the possibility of adding this property to the City's Competitive Negotiated Sale (CNS) program with the goal of transferring the property to the private sector.

25 West Church Street Property Considerations

- An appraisal of the 25 West Church Street building structure was performed by William G Bowen, Inc. and has a current market value of **\$600,000** (appraisal did not include parking area parcels adjacent to the building)
- Separate Land appraisal report valued Market House parking lot areas at **\$370,000**
- Current Hagerstown Fire Department operations located in the northern half of the building
- City Farmer's Market and private vendor businesses operations in the southern half of the building
- Engineering and Planning and Code Administration vehicles utilize the building's below grade parking garage
- United States Postal Service leases 74 Market Lot parking spaces for annual rent of \$40,000
- Farmer's Market Building is managed and maintained within the City's General Fund

Competitive Negotiated Sale Process

A brief summary of the Competitive Negotiated Sales Process is as follows:

- The Competitive Negotiated Sale is a process that facilitates the sale of City-owned properties with the goal of returning the property to the private sector for its redevelopment and highest/best use.
- The City of Hagerstown makes real estate available for purchase and redevelopment.
- The Department of Community and Economic Development (DCED) coordinates the process and accepts purchase applications.
- The Mayor and City Council identifies properties to be offered for sale and ultimately approves any development concept and purchase.

We seek Mayor and City Council direction on adding the Farmer's Market Property to the CNS program. If staff receive direction to add this property to the CNS program, a motion to approve this action will be scheduled for the October 27th Regular Session.

Attachments: Motion adding 25 West Church Street to CNS program

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

Topic:

Approval of Acceptance of 2020-2021 Recruitment and Retention Grant for Hagerstown Police Department

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_HPD_Recruiting_and_Retention_Grant.pdf

Acceptance_of_Police_Recruitment_and_Retention_Grant.pdf

Description

Motion - HPD Recruitment and Retention Grant

Memo - Recruitment and Retention Grant

REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Acceptance of HPD Recruiting and Retention Grant

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

MOTION: I hereby move for Mayor and Council approval to accept a Governor's Office of Crime Control and Prevention grant for \$30,000.00. The purpose of the grant is to assist in the Hagerstown Police Department's Recruitment and Retention program to recruit and retain sworn officers. The program efforts are to attract more qualified candidates that can successfully complete the hiring process and police academy, and retain existing sworn personnel. Grant funding provides incentives.

Acceptance of the grant will not require additional funding to the approved budget and will run through the remainder of FY 21.

DATE OF PASSAGE: October 27, 2020



CITY OF HAGERSTOWN MARYLAND

DEPARTMENT OF POLICE
50 N. Burhans Blvd.

Non-Emergency 301-790-3700
Emergency 240-313-4345
Fax 301-733-5513

September 25, 2020

To: Scott Nicewarner,
City Administrator

From: Paul J. Kifer, *PJK*
Chief of Police

Ref: 2020 - 2021 Police Recruitment and Retention Grant Acceptance

The Hagerstown Police Department is seeking Mayor and Council approval to accept a Governor's Office of Crime Control and Prevention grant for \$30,000.00.

The purpose of the grant is to assist in the Hagerstown Police Department's Recruitment and Retention program to recruit and retain sworn officers. The program efforts are to attract more qualified candidates that can successfully complete the hiring process and police academy, and retain existing sworn personnel. Grant funding provides incentives.

Acceptance of the grant will not require additional funding to the approved budget, and will run through the remainder of FY21.



A Nationally Accredited Law Enforcement Agency

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Acceptance of HPD Recruiting and Retention Grant

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

MOTION: I hereby move for Mayor and Council approval to accept a Governor's Office of Crime Control and Prevention grant for \$30,000.00. The purpose of the grant is to assist in the Hagerstown Police Department's Recruitment and Retention program to recruit and retain sworn officers. The program efforts are to attract more qualified candidates that can successfully complete the hiring process and police academy, and retain existing sworn personnel. Grant funding provides incentives.

Acceptance of the grant will not require additional funding to the approved budget and will run through the remainder of FY 21.

DATE OF PASSAGE: October 27, 2020

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

Topic:

Approval of After School Program - BTJ Dance Class (After School Program) - Hagerstown
Housing Authority - \$ 3,500.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_After_School_Program_-_BTJ_Dance_Group.pdf

CONSENT_AGENDA_-_BTJ.pdf

BTJ.pdf

Description

Motion - BTJ Dance Class

Consent Agenda - BTJ
Dance Class

Proposal - BTJ Dance
Class

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Approval of After School Program – BTJ Dance Group

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

MOTION: I hereby move for Mayor and Council approval for funding of the BTJ Dance Group after school program that is held at the Suman Avenue Community Building.

The HHA provides a variety of constructive after school programs to area youth. This program runs for the 2020 – 2021 school year at a cost of \$3,500.00.

DATE OF INTRODUCTION: October 27, 2020
DATE OF PASSAGE: October 27, 2020

Do Not Complete This Section:
APPROVED FOR:
CONSENT AGENDA _____
NEW BUSINESS _____

Unbudgeted * \$ Source of Funds General Fund - operating budget
 *(See Department Manager's Comments)

2020 - 2021 BTJ Dance Class

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
<u>Sole Source</u>		\$ _____

COMMENTS

(1) DEPARTMENT MANAGER:

With our current national climate
on social injustices & systemic racism
this funding provides valuable activity
to our minority community

Cher Pawley 9/28/2020
Signature/Date

(2) PURCHASING AGENT:

Recommend approval.

Jason T. Miller 10/9/2020
Signature/Date

(3) FINANCE MANAGER:

Approve

Michelle R. 10/9/20
Signature/Date

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Recommend Approval

Scott Newman 10/15/2020
Signature/Date

Continued Dance Program Proposal

August 27, 2020

Proposal: For the City of Hagerstown to collaborate with the City of Hagerstown Housing Authority to continue the existing BTJ dance class located in the Community Building for the period September 2020 until May 2021

History: The BTJ dance class began as part of the CSAFE Youth Prevention element in 1999. The funding was included in the City of Hagerstown award to support youth activities which also included the after school programs, and has continued to the current year. The class is free to all participants and proper dance shoes are supplied. Costumes for the recital are also provided.

Overview of the project: Youth Prevention is the element of the CSAFE strategy that advocates for proactive activities for youth. To that end, the BTJ dance classes take place each Saturday morning at the Suman Avenue Community building. Since 1999, approximately 20 girls of all ages meet and learn dance technique and build self-confidence. The BTJ dancers have performed at the Maryland Theater in the Ballet and All That Jazz recital.

Purpose: Qualified dance instructors from Ballet and All That Jazz will provide a supervised program for the participants in a safe environment. The participants have the opportunity to be a part of a structured organization while being reinforced with character building and positive life skills.

Some of the participants have been in the class since its inception, which demonstrates the positive impact of belonging to a special group can have on a young female. There is commitment on the part of each girl to arrive on time and actively participate with the group each week. Parent participation has greatly improved over time. In the beginning, parents would drop their children off. Now they stay to monitor the class which is a benefit to both parents and children.

Mission: Dollars spent on "quality of life" youth oriented programs are well worth the investment. Conclusions from a national study reported that:

1. Quality programs can markedly increase engagement in learning by providing students with opportunities for personal attention from adults, a peer group with positive aspirations, and hands-on activities that hold students' interest.
2. Students who are engaged in learning behave better in school, have better work habits, higher educational aspirations, and a better relationship with parents.
3. Positive effects extend to families and communities. Research indicated that investments in programs for youth are likely to have benefits that far outweigh the costs.

Supervision: The BTJ dance class will be supervised by parents of the participants who volunteer their time.

Fiscal Responsibility: The Hagerstown Housing Authority will assume fiscal responsibility for funds contributed by the City of Hagerstown.

Budget: The budget depends on the number of participants and the cost of costumes. The average cost for program and snacks has been \$3500.

Do Not Complete This Section:
APPROVED FOR:
CONSENT AGENDA _____
NEW BUSINESS _____

***(See Department Manager's Comments)**

2020 - 2021 BTJ Dance Class

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
Sole Source		\$

COMMENTS

(1) DEPARTMENT MANAGER:

With our current national climate
on social injustices + systemic racism
this funding provides valuable activity
to our minority community

Cheryl Pawley 9/21/2020
Signature/Date

(2) PURCHASING AGENT:

Signature/Date

(3) FINANCE MANAGER:

Signature/Date

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Signature/Date

Continued Dance Program Proposal

August 27, 2020

Proposal: For the City of Hagerstown to collaborate with the City of Hagerstown Housing Authority to continue the existing BTJ dance class located in the Community Building for the period September 2020 until May 2021

History: The BTJ dance class began as part of the C SAFE Youth Prevention element in 1999. The funding was included in the City of Hagerstown award to support youth activities which also included the after school programs, and has continued to the current year. The class is free to all participants and proper dance shoes are supplied. Costumes for the recital are also provided.

Overview of the project: Youth Prevention is the element of the C SAFE strategy that advocates for proactive activities for youth. To that end, the BTJ dance classes take place each Saturday morning at the Suman Avenue Community building. Since 1999, approximately 20 girls of all ages meet and learn dance technique and build self-confidence. The BTJ dancers have performed at the Maryland Theater in the Ballet and All That Jazz recital.

Purpose: Qualified dance instructors from Ballet and All That Jazz will provide a supervised program for the participants in a safe environment. The participants have the opportunity to be a part of a structured organization while being reinforced with character building and positive life skills.

Some of the participants have been in the class since its inception, which demonstrates the positive impact of belonging to a special group can have on a young female. There is commitment on the part of each girl to arrive on time and actively participate with the group each week. Parent participation has greatly improved over time. In the beginning, parents would drop their children off. Now they stay to monitor the class which is a benefit to both parents and children.

Mission: Dollars spent on "quality of life" youth oriented programs are well worth the investment. Conclusions from a national study reported that:

1. Quality programs can markedly increase engagement in learning by providing students with opportunities for personal attention from adults, a peer group with positive aspirations, and hands-on activities that hold students' interest.
2. Students who are engaged in learning behave better in school, have better work habits, higher educational aspirations, and a better relationship with parents.
3. Positive effects extend to families and communities. Research indicated that investments in programs for youth are likely to have benefits that far outweigh the costs.

Supervision: The BTJ dance class will be supervised by parents of the participants who volunteer their time.

Fiscal Responsibility: The Hagerstown Housing Authority will assume fiscal responsibility for funds contributed by the City of Hagerstown.

Budget: The budget depends on the number of participants and the cost of costumes. The average cost for program and snacks has been \$3500.

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

Topic:

Approval of After School Program at the Parkside Community Center - Hagerstown Housing Authority - \$ 18,881.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion -
_After_School_Program_Parkside_Community_Center.pdf

PARKSIDE.pdf

CONSENT_AGENDA_-_PARKSIDE.pdf

Description

Motion - Parkside
Community Center After
School Program

Proposal - Parkside After
School

CONSENT AGENDA -
PARKSIDE

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Approval of After School Program at the Parkside Community Center

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

MOTION: I hereby move for Mayor and Council approval for funding of the after school program at Parkside Community Center.

The HHA provides a variety of constructive after school programs to area youth. This program runs for the 2020 – 2021 school year at a cost of \$18,881.00.

DATE OF INTRODUCTION: October 27, 2020
DATE OF PASSAGE: October 27, 2020

CITY OF HAGERSTOWN
MAYOR AND COUNCIL
PURCHASE/CONTRACT INFORMATION
MEETING OF 10/27/20

Do Not Complete This Section:

APPROVED FOR: _____
CONSENT AGENDA _____
NEW BUSINESS _____

Originating Department Police By Paul J. Kifer

Account No. 0110004 559314 Account/Project Name Parkside After School Program

Budget Amount \$ 18,881 Account Balance \$ 18,881 Year 21 C.I.P. Control No. _____

Unbudgeted * \$ _____ Source of Funds General Fund

*(See Department Manager's Comments)

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<u>1</u>	<u>2020 - 2021 After School Program Expenses</u>	<u>\$ 18,881.00</u>
TOTAL VALUE		<u>\$ 18,881.00</u>

ABOVE TO BE USED FOR:

2020 - 2021 After School Program Expenses

RECOMMENDED VENDOR:

BUSINESS NAME: Housing Authority of the City of Hagerstown

ADDRESS: 35 West Baltimore Street

CITY, STATE: Hagerstown, Maryland 21740

BID/PROPOSAL/QUOTE NO.: _____ (Circle one)

OTHER VENDORS:

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
<u>Sole Source</u>	_____	\$ _____
_____	_____	_____
_____	_____	_____
_____	_____	_____

COMMENTS

(1) DEPARTMENT MANAGER:

This is covered under the budget
AND IS MORE IMPORTANT THAN EVER
during these challenging times of
COVID + social injustice issues.

Paul J. K. 9/27/20
Signature/Date

(2) PURCHASING AGENT:

Recommend approval.

Jason J. Miller 10/09/2020
Signature/Date

(3) FINANCE MANAGER:

Approve

Michelle Hopewell
Signature/Date 10/9/20

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Recommend Approval

Scott McQuinn 10/15/2020
Signature/Date

Hagerstown Housing Authority Homework Program 2020-2021

August 27, 2020

Proposal: For the City of Hagerstown to accept COVID-19 adaptations and changes to previously approved proposal for funding of Parkside Pals. Proposal is for school year 2020-2021. The approved program collaborates with the City of Hagerstown Housing Authority to provide an after-school program located at the Parkside Community Building on Suman Avenue.

Overview of Proposed Changes to the project: For Parkside Pals to continue to operate under current state restrictions, changes are being proposed to adapt to COVID-19 regulations. The program will be made available to K-3rd grade participants either onsite with staff and participants maintaining social distancing, wearing masks and providing proper sanitation practices, or virtually via Zoom or similar type virtual program. Each grade group will receive onsite services one day a week and virtual services the other three days.

Onsite Schedule:

- Monday- Kindergarten Students
- Tuesday- 1st Grade Students
- Wednesday- 2nd Grade Students
- Thursday- 3rd Grade Students

Whether onsite or attending virtually, the children will participate in:

- Center Court (review schedule for the day, affirmations)
- Homework help/ tutoring
- Recreational Activity
- Lesson of the Day (Virtual)
- Closing Activity

The hours of program operation will coordinate with the schedules of Ruth Ann Primary and Eastern Elementary school schedules. Each tutor and the program lead will be assigned a grade group to work with. This will allow adequate social distancing with staggered staff and smaller groups of participants in the community building.

The program will not meet on days that school is closed or when there is an early dismissal.

The program will continue to operate in Park Side Community Building located on Suman Avenue. Prior to the start of the program, staff will receive training on COVID practices and use of virtual technology. Once state restrictions are removed and Washington County Schools have returned to in person classes, the after-school program will revert to the normal, previously approved way of operating.

Purpose: In compliance with COVID regulations, qualified staff will provide a supervised program for students in grades K-3 that will focus on homework assistance, enrichment opportunities, character building and life skills sessions.

Mission: There are no proposal changes to the mission. Dollars spent on "quality of life" youth-oriented programs are well worth the investment. Conclusions from a national study reported that:

1. Quality programs can markedly increase engagement in learning by providing students

- with opportunities for personal attention from adults, a peer group with positive aspirations, and hands-on activities that hold students' interest.
2. Students who are engaged in learning behave better in school, have better work habits, higher educational aspirations, and a better relationship with parents.
 3. Positive effects extend to families and communities. Research indicated that investments in programs for youth are likely to have benefits that far outweigh the costs.

This program is especially important now considering distance learning and the need for additional assistance to students, parents and teachers during this time.

Staff roles and responsibilities:

Staff roles and responsibilities will remain as approved prior.

1. The lead staff person will plan daily lessons and activities. The lead staff will be responsible for maintaining attendance sheets, monthly reports and program calendars. The lead will interact with the student's teachers to confirm assignments and areas needing improvement.
2. The support staff will assist with homework assignments; assist with planning special projects and activities. The support staff will take direction from the lead staff. Support staff will report planned or emergency absences to the lead staff as soon as possible.

Supervision: The after school program will be supervised by the Hagerstown Housing Authority and will regularly consult to evaluate and assess the program.

Fiscal Responsibility: The Hagerstown Housing Authority will assume all fiscal responsibility for funds contributed by the City of Hagerstown.

Student Registration: All participants of the after school program will have a completed and signed registration for that includes a student and parent contract.

Budget: City has provided \$18,881 in the past. The Housing Authority will fund the differences in the budget.

Expense Type	Amount	Total
Program Lead/Director: 2 hrs x 4 days x 32 weeks 16.00 per hour	4,096.00	4,096.00
Program Lead/Director planning: 3 hrs per week x 32 weeks 16.00 per hour	1,536.00	1,536.00
1 Assistant Lead: 2 hrs per day x 4 days x 32 weeks @ 12.50 per hour	3200.00	3200.00
2 Support staff: 2 hrs per day x 4 days x 32 weeks x 2 staff 11.60 per hour (minimum wage effective 1/2021).	5,940.00	5940.00
Incentives and Special Activities, snacks and supplies	3860	3860
Administration Fee. 6%	1069	1069
Total cost	19,701.00	19, 701.00

Hagerstown Housing Authority Homework Program 2020-2021

August 27,2020

Proposal: For the City of Hagerstown to accept COVID-19 adaptations and changes to previously approved proposal for funding of Parkside Pals. Proposal is for school year 2020-2021. The approved program collaborates with the City of Hagerstown Housing Authority to provide an after-school program located at the Parkside Community Building on Suman Avenue.

Overview of Proposed Changes to the project: For Parkside Pals to continue to operate under current state restrictions, changes are being proposed to adapt to COVID-19 regulations. The program will be made available to K-3rd grade participants either onsite with staff and participants maintaining social distancing, wearing masks and providing proper sanitation practices, or virtually via Zoom or similar type virtual program. Each grade group will receive onsite services one day a week and virtual services the other three days.

Onsite Schedule:

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Whether onsite or attending virtually, the children will participate in:

- Center Court (review schedule for the day, affirmations)
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- Recreational Activity
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The hours of program operation will coordinate with the schedules of Ruth Ann Primary and Eastern Elementary school schedules. Each tutor and the program lead will be assigned a grade group to work with. This will allow adequate social distancing with staggered staff and smaller groups of participants in the community building.

The program will not meet on days that school is closed or when there is an early dismissal.

The program will continue to operate in Park Side Community Building located on Suman Avenue. Prior to the start of the program, staff will receive training on COVID practices and use of virtual technology. Once state restrictions are removed and Washington County Schools have returned to in person classes, the after-school program will revert to the normal, previously approved way of operating.

Purpose: In compliance with COVID regulations, qualified staff will provide a supervised program for students in grades K-3 that will focus on homework assistance, enrichment opportunities, character building and life skills sessions.

Mission: There are no proposal changes to the mission. Dollars spent on "quality of life" youth-oriented programs are well worth the investment. Conclusions from a national study reported that:

1. Quality programs can markedly increase engagement in learning by providing students

with opportunities for personal attention from adults, a peer group with positive aspirations, and hands-on activities that hold students' interest.

2. Students who are engaged in learning behave better in school, have better work habits, higher educational aspirations, and a better relationship with parents.
3. Positive effects extend to families and communities. Research indicated that investments in programs for youth are likely to have benefits that far outweigh the costs.

This program is especially important now considering distance learning and the need for additional assistance to students, parents and teachers during this time.

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Staff roles and responsibilities will remain as approved prior.

1. The lead staff person will plan daily lessons and activities. The lead staff will be responsible for maintaining attendance sheets, monthly reports and program calendars. The lead will interact with the student's teachers to confirm assignments and areas needing improvement.
2. The support staff will assist with homework assignments; assist with planning special projects and activities. The support staff will take direction from the lead staff. Support staff will report planned or emergency absences to the lead staff as soon as possible.

Supervision: The after school program will be supervised by the Hagerstown Housing Authority and will regularly consult to evaluate and assess the program.

Fiscal Responsibility: The Hagerstown Housing Authority will assume all fiscal responsibility for funds contributed by the City of Hagerstown.

Student Registration: All participants of the after school program will have a completed and signed registration for that includes a student and parent contract.

Budget: City has provided \$18,881 in the past. The Housing Authority will fund the differences in the budget.

Expense Type	Amount	Total
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Incentives and Special Activities, snacks and supplies	3860	3860
Administration Fee. 6%	1069	1069
Total cost	19,701.00	19, 701.00

Do Not Complete This Section:
APPROVED FOR: _____
CONSENT AGENDA _____
NEW BUSINESS _____

Unbudgeted * \$ _____	Source of Funds _____	General Fund _____
*(See Department Manager's Comments)		

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<u>1</u>	<u>2020 - 2021 After School Program Expenses</u>	<u>\$ 18,881.00</u>
	TOTAL VALUE	<u>\$ 18,881.00</u>

[illegible]

BUSINESS NAME: Housing Authority of the City of Hagerstown

ADDRESS: 35 West Baltimore Street

CITY, STATE: Hagerstown, Maryland 21740

OTHER VENDORS:

<u>Firm</u>	<u>City/State</u>	<u>Total Amount</u>
Sole Source		\$

COMMENTS

(1) DEPARTMENT MANAGER:

This is covered under the budget
and is more important than ever
during these challenging times of
Covid + social injustice issues.

Paul J. K. 9/6/20
Signature/Date

(2) PURCHASING AGENT:

Signature/Date

(3) FINANCE MANAGER:

Signature/Date

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Signature/Date

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

Topic:

Approval of Contractor Selection Process for Community Legacy Grant Funded Project for First Hose Company (33 S. Potomac Street)

Mayor and City Council Action Required:

Staff request Mayor & City Council approval of the contractor selection process for the First Hose Company's State of Maryland Community Legacy grant funded rehabilitation project.

Discussion:

Background on First Hose Project

In 2019, the State of Maryland awarded \$20,000 in FY2019 Community Legacy grant funding to the First Hose Company. This funding is to be used for window installation and historic ceiling restoration work at the First Hose Company property located at 33 South Potomac Street. The window installation and historic ceiling restoration work was required by the Maryland Historic Trust due to Maryland Theatre construction impacts to the First Hose Company structure.

In August of 2019, the City entered into a sub-recipient grant agreement with the First Hose Company in order to pass through the \$20,000 in State Community Legacy grant funding for the window and ceiling project. After execution of this agreement, The First Hose Company began to seek contractor estimates for this work. Multiple contractor estimates were solicited by the First Hose Company and they received two comprehensive estimates from area contractors: A.V. Rauth & Sons and Callas Contractors. At this time, First Hose Company has requested to move forward with the A.V. Rauth & Sons as low estimate contractor (\$22,820) for this project. Sealed bidding was not required per the State Grant agreement. DCED staff plan to work with First Hose Company representatives to ensure their contractor's final scope of work does not exceed available funding resources.

Based on the sub-recipient agreement between the City of Hagerstown and the First Hose Company, Mayor & City Council approval is needed for First Hose Company's contractor selection process. This action is scheduled for approval during the October 27th Regular Session. Staff will be available during the October 20th work session to answer any questions on the above.

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and City Council approve the contractor solicitation and selection process for the First Hose Company's Historic Preservation project at 33 S Potomac Street. This project is funded via State of Maryland Community Legacy Grant funding and City approval of the First Hose Company's contractor solicitation and selection process is required per the sub-recipient agreement between the City of Hagerstown and the First Hose Company. The First Hose Company has selected A.V. Rauth & Sons to perform the historic preservation work.

Action Dates:

DATE OF PASSAGE: 10/27/2020

EFFECTIVE DATE: 10/27/2020

ATTACHMENTS:**File Name**

Motion -
_Contractor_Selection_for_CL_Project_at_First_Hose.pdf
102020_First_Hose_Contractor_Selection_Process.pdf

Description

Motion - Contractor
Selection for CL Project at
First Hose
First Hose Contractor
Selection

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: Approval of Contractor Selection Process for Community Legacy
Grant Funded Project for First Hose Company (33 S. Potomac Street)

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

MOTION: I hereby move that the Mayor and City Council approve the contractor solicitation and selection process for the First Hose Company's Historic Preservation project at 33 S Potomac Street. This project is funded via State of Maryland Community Legacy Grant funding and City approval of the First Hose Company's contractor solicitation and selection process is required per the sub-recipient agreement between the City of Hagerstown and the First Hose Company. The First Hose Company has selected A.V. Rauth & Sons to perform the historic preservation work.

DATE OF PASSAGE: 10/27/2020

EFFECTIVE DATE: 10/27/2020



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager

Date: October 15, 2020

RE: **State Community Legacy Grant Funded Project– First Hose Property Rehabilitation Contractor Selection**

Mayor & Council Action Requested:

Staff request Mayor & City Council approval of the contractor selection process for the First Hose Company's State of Maryland Community Legacy grant funded rehabilitation project.

Background on First Hose Project

In 2019, the State of Maryland awarded \$20,000 in FY2019 Community Legacy grant funding to the First Hose Company. This funding is to be used for window installation and historic ceiling restoration work at the First Hose Company property located at 33 South Potomac Street. The window installation and historic ceiling restoration work was required by the Maryland Historic Trust due to Maryland Theatre construction impacts to the First Hose Company structure.

In August of 2019, the City entered into a sub-recipient grant agreement with the First Hose Company in order to pass through the \$20,000 in State Community Legacy grant funding for the window and ceiling project. After execution of this agreement, The First Hose Company began to seek contractor estimates for this work. Multiple contractor estimates were solicited by the First Hose Company and they received two comprehensive estimates from area contractors: A.V. Rauth & Sons and Callas Contractors. At this time, First Hose Company has requested to move forward with the A.V. Rauth & Sons as low estimate contractor (\$22,820) for this project. Sealed bidding was not required per the State Grant agreement. DCED staff plan to work with First Hose Company representatives to ensure their contractor's final scope of work does not exceed available funding resources.

Based on the sub-recipient agreement between the City of Hagerstown and the First Hose Company, Mayor & City Council approval is needed for First Hose Company's contractor selection process. This action is scheduled for approval during the October 27th Regular Session. Staff will be available during the October 20th work session to answer any questions on the above.

Attachments: First Hose Sub-recipient Agreement for Community Legacy Funding
First Hose Project Contractor Estimate Tabulation
Motion

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

CITY OF HAGERSTOWN

**SUB-RECIPIENT GRANT AGREEMENT
BETWEEN THE CITY OF HAGERSTOWN AND
FIRST HAGERSTOWN HOSE COMPANY**

This Sub-Recipient Grant Agreement is entered into as of this 8th day of August, 2019, by and between the City of Hagerstown ("Grantor" or "City") and First Hagerstown Hose Company. ("Sub-recipient" or "First Hose").

RECITALS

The Department of Housing and Community Development, a principal department of the State of Maryland ("Department") has entered into a **Community Legacy Program Grant Agreement** ("the Grant Agreement"), dated May 14th, 2019, with the City of Hagerstown.

Pursuant to the Grant Agreement, a copy of which is attached hereto as Attachment #1 and which is incorporated herein by reference and made a part of this Agreement as if entirely stated herein, the City has been awarded grant funds for the Hagerstown Urban Improvement Project (the "UIP") in the amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) (the "Grant"). The purpose of the Grant is to provide assistance with the construction costs associated with the UIP.

As part of this Subrecipient Grant Agreement, Subrecipient has agreed to comply with all requirements of the Grant as set forth in the Grant Agreement, and as a result the City has designated Subrecipient to be the beneficiary of the authorized funding for eligible expenses, and has allocated Twenty Thousand Dollars (\$20,000.00) ("Subrecipient Grant Funds") to Subrecipient for that purpose.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. The foregoing recitals be and are hereby incorporated herein by reference.
2. The City of Hagerstown shall pass through to First Hose the Community Legacy Fund Award of \$20,000 for the purpose of construction activities related to renovations to the First Hose Building, located at 31-33 South Potomac Street, Hagerstown, Maryland ("the Building"). In particular, First Hose shall (a) re-open two original window openings on the fourth floor (northwest elevation) of the Building and install new aluminum clad wood window sashes to match the original design, pane division and appearance; and (b) repair and restore the original tin ceiling in the second floor meeting room, in accordance with Memorandum of Agreement Amendment No. 1, dated 9/6/18, by and among First

Hose, the DCHD, MHT and the City (the "Project").

3. First Hose shall faithfully perform and certify the performance of the Project as outlined in the Grant Agreement. First Hose shall be subject to the same terms and conditions applicable to the City as contained in the Grant Agreement between the City and the Department. Should a conflict arise during the performance or administration of the Project between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.
4. First Hose shall allow the City and the Department to inspect the Project during construction.
5. The City may terminate this Agreement if the Project has not commenced by the Commencement Date of June 1, 2020, has not been completed by the Completion Date of June 30, 2021, or the Project is not being completed in a manner satisfactory to the City or the Department.
6. Any changes to the Project plan as outlined in the Grant Agreement must be approved by the City and the Department.
7. First Hose shall provide quarterly progress reports on the Project to the City as prescribed in the Grant Agreement.
8. Grant disbursements shall be as prescribed in the Grant Agreement. Subrecipient acknowledges that the City has the right to take any and all corrective action it deems necessary in its sole and absolute discretion to address Subrecipient's failure to comply with established reporting requirements. Corrective action includes, but is not limited to, withholding of payments, instituting financial penalties, and declaring Subrecipient in default of this Agreement.
9. Should the City or the Department determine that First Hose is in default of the Grant Agreement, First Hose shall be subject to the remedies prescribed in the Grant Agreement, as determined necessary by the City and the Department.
10. The parties agree that Subrecipient shall act as an independent contractor for the purposes of fulfilling its duties and obligations under this Agreement.
11. Any modifications to the UIP as described in this Agreement, which are mutually agreed upon by the City, Department, and Subrecipient may be incorporated into this Agreement by a written letter of amendment upon approval by all parties.

12. Subrecipient agrees that the City or its agents has the right to periodically review/monitor the fiscal and programmatic records of the Subrecipient relating to this Agreement and further agrees to fully cooperate with any reasonable request(s) by the City in relation to any said review/monitoring.
13. Subrecipient shall permit the City, and any authorized representatives of the Department to inspect and audit all data and records of Subrecipient relating to its performance under this Agreement at any time during the term of this Agreement. This section shall survive any termination of this Agreement.
14. If the Subrecipient contracts any portion of the work to another organization, person(s), business or entity they must fully comply with and follow all provisions related to procurement, contractor selection, debarment, required by the Department. All eligible contracts including contracts for matching funds shall be submitted to the Department and the City for approval prior to requesting reimbursement for incurred costs. The subrecipient must provide evidence to the City that any selected person, business, or entity is not debarred from doing business with the State or City prior to entering into any binding contract to perform work related to the UIP.
15. All covenants, agreements, representations and warranties made in this Agreement and in any other documents delivered pursuant hereto shall survive closeout of the Grant Agreement and shall continue in full force and effect until the City has complied with all terms and conditions of the close-out agreement executed by and between Department and the City for the UIP.
16. All notices, requests, approvals, and consents of any kind made pursuant to this agreement shall be in writing. Any such communication shall be addressed as follows:
 - (a) Communications to the City of Hagerstown shall be mailed to:

City of Hagerstown
Department of Planning and Code Administration
One E. Franklin Street
Hagerstown, MD 21740
Attn: Kathleen A. Maher, Planning and Code Administration Director
 - (b) Communications to First Hagerstown Hose Company shall be mailed to:

First Hagerstown Hose Company
PO Box 4958

Hagerstown, MD 21742
Attn: Gerald Saum, Treasurer

17. This Agreement contains the entire understanding and obligations of the parties and supersedes all prior representation, understandings, and communications. Furthermore, this Agreement shall not be construed to imply that the City will pay for any expenses incurred by Subrecipient as provided above and beyond the period **ending June 1, 2024.**

WITNESS the hands and seals of the City of Hagerstown and First Hagerstown Hose Company, as of the date first set forth above.

WITNESS/ATTEST:

Noraa H. Spucki

CITY OF HAGERSTOWN

By: *R. E. Bruckey, II* (SEAL)
Robert E. Bruckey, II
Mayor
City of Hagerstown

FIRST HAGERSTOWN HOSE COMPANY

By: *David Stevens* (SEAL)

President – David Stevens

By: *Pam Stevens* (SEAL)

Vice President – Pam Stevens

By: *Ray Lushbaugh* (SEAL)

Secretary– Ray Lushbaugh

By: *Gerald Saum* (SEAL)

Treasurer – Gerald Saum

By: *Blaine Snyder* (SEAL)

Standing Committee – Blaine Snyder

By: Richard J. Stallings (SEAL)

Standing Committee – Richard Stallings

By: John Miller Jr. (SEAL)

Standing Committee – John Miller Jr.

By: Alan Carmack (SEAL)

Standing Committee – Alan Carmack

By: Nelson Marker (SEAL)

Standing Committee – Nelson Marker

Attachment #1:

Community Legacy Program Grant Agreement, with Exhibits A - C

Exhibit

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY LEGACY PROGRAM GRANT AGREEMENT

FY2019

TABLE OF CONTENTS

AWARDEE: City of Hagerstown
AWARD ID#: SRP-CL-2019-Hagerstown-00313
PROJECT NAME: Urban Improvement Project

- ☐ **Community Legacy Program Grant Agreement**
- ☐ **Exhibit A - SRP-CL-2019-Hagerstown-00313**
Project Description, Scope of Work, and Special Conditions
- ☐ **Exhibit B - SRP-CL-2019-Hagerstown-00313**
Project Budget
- ☐ **Exhibit C - SRP-CL-2019-Hagerstown-00313**
Project Schedule

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY LEGACY PROGRAM GRANT AGREEMENT
Project/Capital Grant**

THIS COMMUNITY LEGACY PROGRAM GRANT AGREEMENT (this "Agreement") is entered into as of the Effective Date (as defined herein) by and between the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**, a principal department of the State of Maryland (the "Department"), and City of Hagerstown (the "Grantee").

RECITALS

- A. This Agreement is issued pursuant to Annotated Code of Maryland Housing and Community Development Article, §§ 6-201 through 6-213, as amended, (the "Act") and the regulations promulgated thereunder set forth in COMAR 05.17.01 (the "Regulations"). The Act establishes the Community Legacy Program (the "Program"). Capitalized terms not defined herein have meanings set forth in the Regulations.
- B. The purposes of the Program are to:
 - 1. Preserve existing communities as desirable places to live and conduct business, thereby reducing outward pressure for sprawl development; and
 - 2. Provide financial assistance to Sponsors or their designees for the development of sustainable community plans or Community Legacy projects.
- C. In reliance upon the representations and certifications contained in Grantee's Fiscal Year 2019 application (the "Application") the Department has approved an award of funds to Grantee to carry out a Community Legacy project, to be expended by Grantee in conformity with the requirements and provisions of the Act, the Regulations, and this Agreement.

AGREEMENT

IN CONSIDERATION of the Recitals, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Department and Grantee agree as follows:

1) Sustainable Community Designations.

- a) The Project is located in a geographic area that has been designated by the Smart Growth Subcabinet (as defined in the State Government Article §9-1406) as a Sustainable Community (the "Area").
- b) The Project will enhance and support the plan that has been approved by the Smart Growth Subcabinet as a Sustainable Community Plan (the "Plan").

2) Grant.

- a) In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, the Department agrees to provide Grantee with funds in the amount of **Four Hundred and Twenty Thousand Dollars (\$420,000)** (the "Grant") to be used for the purposes of funding the Community Legacy Project (the "Project") described in Exhibit A - SRP-CL-2019-Hagerstown-00313 (the "Project Description").
- b) Grantee agrees to use the Grant only for the approved Project and only in the approved Area. Grantee agrees that it will use the Grant and operate the Project in accordance with the provisions of the Act, the Regulations, and this Agreement.
- c) The Project shall not include or support the following types of activities: pawn shops, gun shops, tanning salons, massage parlors, adult video/book shop, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors or liquor stores.
- d) The Application may have included projects other than the Project. The approval of the Application and the Project and the execution of this Agreement are not to be construed as approval of any other projects described in the Application.

3) Expenditure of Grant Funds.

- a) All Grant funds shall be expended on or before the Completion Date (as defined in Section 4(b) of this Agreement).
- b) Grantee shall expend the Grant in accordance with the budget set forth in Exhibit B - SRP-CL-2019-Hagerstown-00313 (the "Project Budget"). Grantee may not expend more than the amount allocated for any category in the Project Budget without the prior written consent of the Department.
- c) Unless otherwise agreed to in writing by the Department, Grantee shall expend at least fifty percent (50%) of the Grant funds for the Project by the first (1st) anniversary of the Effective Date.
- d) All costs incurred by Grantee before the Effective Date and before approval by the Department of the release of Grant funds are incurred voluntarily, at Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement.

- e) If, upon completion of the Project, there are cost savings and/or undisbursed funds, Grantee shall return any remaining Grant funds to the Department.
- 4) Commencement and Completion of the Project; Inspection during Construction or Rehabilitation; Changes.
- a) Grantee shall commence the Project on the date (the "Commencement Date") set forth in Exhibit C - SRP-CL-2019-Hagerstown-00313 (the "Project Schedule").
 - b) Grantee shall complete the Project prior to the date set forth in the Project Schedule (the "Completion Date").
 - c) If the Project involves capital construction or improvements, the Department, its agents and its employees shall be allowed to inspect the Project during construction or rehabilitation.
 - d) The Department must approve all changes to the Project Description, Project Schedule, Project Budget, or any other term of this Agreement, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the Area, and modifications to the Completion Date.
 - e) Grantee shall ensure that all necessary approvals for the commencement of the Project have been obtained, including all applicable permits and licenses.
 - f) On or before the Completion Date, Grantee shall obtain all certifications, licenses, permits, and approvals necessary to operate the Project, and shall otherwise satisfy all requirements necessary to operate the Project.
- 5) Conditions Precedent to Disbursement of the Grant. The Department shall not disburse the Grant until Grantee has complied with the following conditions:
- a) The Maryland Historical Trust has reviewed the Project for impact on historic structures, and, if required has approved the architectural plans and specifications for the Project.
 - b) The Maryland Codes Administration has approved all the Project plans and specifications.
 - c) Grantee has complied with all other terms and conditions of the Grant as required by the Department to the Department's satisfaction, including the satisfaction of any special conditions as noted on Exhibit A.
- 6) Other Funds.
- a) In addition to the Grant, Grantee may (i) be in the process of obtaining written commitments to receive other funds for the Project; (ii) have written commitments to receive other funds for the Project; or (iii) have already received other funds for the Project (collectively, the "Other Funds"). Other Funds shall be described by source, use and amount in the Project Budget.
 - b) Upon request, Grantee shall provide the Department with information and documentation in forms acceptable to the Department regarding the Other Funds. Such information and documentation shall include but not be limited to information concerning Grantee's receipt and expenditure of the Other Funds. In the event the Department determines, in its sole discretion, that all or any portion of the Other Funds are not available, are not going to be disbursed to Grantee for any reason, or that Other Funds received by Grantee have not been properly expended, the Department may, in its sole discretion, declare Grantee in default of this Agreement and exercise its remedies pursuant to this Agreement.
- 7) Disbursement of the Grant.

- a) After the Effective Date, the Department will disburse Grant funds to Grantee on a reimbursement basis as the Project progresses. Grantee shall submit a request for payment in a manner and form approved by the Department. A request for payment shall identify in detail all expenses incurred for which reimbursement is being sought, and shall have attached copies of the supporting invoices and other documentation of such expenses.
 - b) Requests for payment should be made allowing approximately thirty (30) days to receive the Grant funds. The request for payment shall not exceed the eligible costs incurred and approved by the Department. The Department, in its sole discretion, may disburse funds for eligible costs anticipated to be incurred or costs incurred prior to the Effective Date.
 - c) The Department has the right to withhold disbursement of Grant funds if at any time the Department determines, in its sole discretion, that Grantee is not performing or completing the Project in a manner satisfactory to the Department. The Department shall have the right at any time to request that Grantee provide additional supporting documentation with any request for payment.
- 8) Records, Inspections and Reports.
- a) Records.
 - i) Grantee shall maintain accurate financial, management, programmatic and other records of the Grantee, including meeting minutes of Grantee's Board of Directors if applicable, for transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively, the "Records"). The Records shall be in a form acceptable to the Department. Grantee shall retain the Records for three (3) years following the date the Department approves the Final Report described in Section 8(c) below.
 - ii) Grantee shall make the Grantee's administrative offices, its personnel, whether full time, part time, consultants or volunteers, and the Records available to the Department for inspection upon request, during the term of the Agreement and for a period of three (3) years following the date the Department approves the Final Report. The Grantee shall permit the Department to perform program monitoring, evaluation and audit activities as determined to be necessary, at the discretion of the Department.
 - iii) Grantee shall cause to be maintained for the Department's inspection the books, accounts, and records of contractors in connection with the Project for three (3) years past the date of termination of the contractual relationship between the contractor and Grantee.
 - b) Inspections. During the term of this Agreement and for a period of three (3) years following the date the Department approves the Final Report, Grantee shall permit the Department to monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement. This provision shall survive the term of this Agreement.
 - c) Reports.
 - i) On January 1, April 1, July 1, and October 1 of each year during the term of this Agreement, Grantee shall provide the Department with interim progress reports in a manner and form to be determined by the Department. The interim progress reports shall contain such information as the Department requests, including, but not limited to, work accomplished and problems encountered, past and projected expenditures made against the Project Budget, and benchmarks reached. Grantee shall ensure that each interim progress report is received by the Department within ten (10) working days after the due date.
 - ii) Within forty-five (45) days after Grantee completes the Project, Grantee shall submit to the Department a final report (the "Final Report") in a manner and form to be determined by the Department that describes the

completed Project, the success of the Project, any problems encountered in completing the Project, and such other information as the Department requires. The Final Report shall also contain an expense and revenue summary of the Project, certified by the highest fiscal officer of Grantee, that lists all expenditures relating to the Grant. In addition, any completed studies, surveys, reports, or other work products, if applicable, shall be attached to the Final Report.

- iii) In addition to the requirements set forth above, Grantee shall provide the Department with such additional records, reports, and other documentation as may be required by the Department.

9) Default and Remedies; Termination.

- a) A default shall consist of: (i) the breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement; (ii) the expenditure of Grant funds for any use other than as provided in the Project Budget or in the approved scope of work for the Project; (iii) the failure to commence or complete the Project by the dates set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in the Department's sole determination; (iv) Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets; (v) the failure to obtain Other Funds if, in the Department's sole discretion, such failure would significantly impact the Project; or (vi) a change in Grantee's staffing capacity that adversely affects Grantee's ability to carry out the Project, in the Department's sole discretion.
- b) The Department shall give Grantee written notice of default, and Grantee shall have thirty (30) days from the date of such notice to cure the default. Upon the occurrence of a default that continues beyond the cure period, the Department shall have the right to terminate this Agreement immediately by written notice to Grantee. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets, the Department's right to terminate this Agreement shall be immediate without a notice and cure period.
- c) In the event of termination by the Department:
- i) The Department may withhold disbursement of Grant funds. Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
- ii) The Department may demand repayment from Grantee of any portion of the Grant proceeds that the Department, in its sole discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings; and
- iii) The Department, in its sole discretion, may demand repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings.
- d) In addition to exercising any or all of the rights and remedies contained in this Agreement, the Department at any time may proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.
- e) Grantee agrees to return any remaining proceeds of the Grant to the Department upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.

10) Grantee's Certifications. Grantee certifies that:

- a) Grantee is a Local Government, a group of Local Governments, a Community Development Organization, or a Community Development Financial Institution, as those terms are defined in the Regulations and has the requisite power and authority to enter into and carry out the transactions contemplated by this Agreement.

- b) The acceptance of the Grant and the entering into of the Agreement have been duly authorized, executed, and delivered by Grantee, and are the valid and legally binding acts and agreements of Grantee.
 - c) None of Grantee's assignees, designees, agents, members, officers, employees, consultants, or members of its governing body, or any local governmental authority exercising jurisdiction over the Project, and no other public official who exercises or has exercised any functions or responsibilities with respect to the Project during such person's tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for any work or any activity to be performed in connection with the Project, or receive any benefit therefrom, that is part of the Project at any time during or after such person's tenure. No officer, director, or member of Grantee will personally benefit from the Grant or the Project.
 - d) The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects.
 - e) Prior to commencement of the Project, Grantee has obtained or will obtain all federal, state, and local government approvals, permits, and licenses that may be required to accomplish the Project and the scope of work.
 - f) Grantee has not been, nor currently is, the subject of an investigation by any federal, state, or local governmental entity for alleged criminal or civil violations of laws or regulations enforced by these entities.
- 11) Liability. Grantee releases the Department from, agrees that the Department shall not have any liability for, and agrees to protect, indemnify, and save harmless the Department from and against any and all liabilities, suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against the Department, as a result of or in connection with the Project, except for the gross negligence or willful misconduct of the Department. This Section shall survive the term of this Agreement.
- 12) Indemnification. Grantee agrees that all costs incurred by the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses, or costs, including reasonable attorney's fees, shall be immediately and without notice due and payable by Grantee to the Department, except for claims arising solely from the Department's willful misconduct or gross negligence. Grantee's obligation to indemnify the Department shall survive the term of this Agreement. If Grantee is a Local Government any indemnification or other obligation to reimburse or compensate the Department provided by the Grantee pursuant to this Agreement is subject to appropriations as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (2006 Repl. Vol.) (the "LGTC"); Md. Code Ann. Art. 25A, Sec. 1A (2005 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-509 (2006 Repl. Vol.), all as amended from time to time (together, the "Local Government Indemnification Statutes"), and is not to be deemed as a waiver of any immunity that may exist in any action against a local government for its officers, agents, volunteers and employees.
- 13) Nondiscrimination and Drug and Alcohol Free Workplace; Fair Practices Certification.
- a) Grantee may not discriminate against and hereby certifies that it prohibits discrimination against and will not discriminate against any person on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age in any aspect of its projects, programs or activities.
 - b) Grantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, housing, and credit practices, including:
 - i) Titles VI and VII of the Civil Rights Act of 1964, as amended;

- ii) Title VIII of the Civil Rights Act of 1968, as amended;
- iii) Title 20 of the State Government Article, Annotated Code of Maryland, as amended;
- iv) The Department's Minority Business Enterprise Program, as amended;
- v) The Governor's Executive Order 01.01.1989.18 relating to Drug and Alcohol Free Workplaces, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;
- vi) The Fair Housing Amendments Act of 1988, as amended; and
- vii) The Americans with Disabilities Act of 1990, as amended.

14) Environmental Certification and Indemnification: Lead Paint. In connection with the ownership, lease, rehabilitation, construction, operation or demolition of real property or improvements thereon that are or may become a part of the Project (collectively and individually, "Property"):

- a) Grantee represents, warrants, and covenants that there are no hazardous materials located on the Property, that it will not cause or allow any hazardous materials to be placed on the Property, that it will carry out the Project in compliance with all requirements imposed by any governmental authority with respect to any hazardous materials that may be placed on the Property, and that to the best of its knowledge the Property is in compliance with all applicable federal and State environmental laws and regulations.
- b) Grantee shall indemnify and hold the Department, its employees and agents harmless from all loss, liability, damage, costs, and expenses of any kind whatsoever, including as a result of any lawsuit brought or threatened, settlement reached, or governmental order, and including reasonable attorneys' fees, for failure of the Property to comply in all respects with all environmental requirements. Grantee's obligation to indemnify the Department shall survive the term of this Agreement.
- c) Grantee covenants that it shall comply with all federal, State, and local laws and requirements concerning the treatment and removal of lead paint from the Property.

15) Non-Sectarian Certifications.

- a) Grantee certifies that no part of the Grant funds, no part of the Project, and no part of the Property, shall be used for the furtherance of sectarian religious instruction, or in connection with the design, acquisition, or construction of any building used or to be used as a place of sectarian religious worship or instruction, or in connection with any program or department of divinity for any religious denomination, including (but not limited to) religious services, religious instruction, or other activities that have an explicitly religious content.
- b) Grantee certifies that it will provide services of the Project to clients on a nondiscriminatory basis, including (but not limited to) the provision of services without regard to the creed, religion, or religious affiliation of the clients.

16) Insurance.

- a) Grantee shall maintain or shall cause to be maintained property and commercial general liability insurance coverages on the Project and Property both during and after construction or rehabilitation, and if necessary, Grantee shall pay the expense of such insurance.

- b) Grantee shall determine whether the Project is located in a 100-year flood plain, as designated by the United States Department of Housing and Urban Development. If the Project is located in a 100-year flood plain, Grantee shall require flood insurance coverage, and if necessary, Grantee shall pay the expense of such insurance.
 - c) Grantee shall require the general contractor to provide general contractor's insurance coverage for comprehensive public liability, property damage liability/builder's risk, and workers' compensation in the form and amounts required by the Grantee.
 - d) Insurance coverages shall be provided by a company that is registered with the Maryland Insurance Agency and authorized to transact business in the State.
 - e) To the extent applicable, insurance coverage shall be in force prior to the disbursement of the Grant proceeds and shall contain terms and coverages satisfactory to the Department.
 - f) To the extent required by the Department, Grantee shall submit to the Department an ACORD insurance certificate naming the Department and the Grantee as loss payee and additional insured.
 - g) To the extent required by the Department, ACORD insurance certificates shall provide for notification to the Department and Grantee prior to Project-related cancellation of any insurance policies.
 - h) If Grantee is a Local Government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Department.
- 17) Notices. All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid, addressed as follows:

- a) Communications to the Department shall be mailed to:

Department of Housing and Community Development
Division of Neighborhood Revitalization
7800 Harkins Road
Lanham, Maryland 20706
Attn: Community Legacy Program

with a copy to:

Office of the Attorney General
7800 Harkins Road
Lanham, Maryland 20706
Attention: Division of Neighborhood Revitalization

- b) Communications to Grantee shall be mailed to:

City of Hagerstown
14 North Potomac Street, Suite 200 A
Hagerstown, MD 21740
Attention: Jonathan Kerns

- 18) Amendment. This Agreement may not be amended except by a written instrument executed by the Department and Grantee.

- 19) Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- 20) Assignment. This Agreement may not be assigned without the prior written approval of the Department.
- 21) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant.
- 22) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland without regard to conflict of laws provisions.
- 23) Term of Agreement. Unless sooner terminated pursuant to the terms of this Agreement or extended by an amendment to the Agreement, this Agreement shall be effective as of the date it is executed by the Department (the "Effective Date") and shall remain in effect until the Department's receipt and approval of the Final Report.
- 24) Further Assurances and Corrective Instruments. Grantee agrees that it will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.
- 25) Delay Does Not Constitute Waiver. No failure or delay of the Department to exercise any right, power or remedy consequent upon default shall constitute a waiver of any such term, condition, covenant, certification or agreement of any such default or preclude the Department from exercising any right, power or remedy at any later time or times.
- 26) Technical Assistance. If the Project is not being completed in a manner satisfactory to the Department, or Grantee has violated a provision of this Agreement, prior to the Department declaring a default, the Department may request Grantee to accept technical assistance the Department feels is necessary for the Project to proceed in a manner acceptable to the Department.
- 27) Department's Signs. If required by the Department, Grantee agrees to display one or more signs identifying the Project as a recipient of financial assistance under the Program if the Department furnishes such sign(s). Grantee shall be responsible for the installation of the signs. In the event that a license, permit, or other permission is required from a local jurisdiction in order to display said signs, Grantee agrees to pay all requisite license or permit fees.
- 28) Notice Regarding Disclosure of Information Relating to the Project. The Department intends to make available to the public certain information regarding the Project and the Grantee. In addition, the Department may be required to disclose information about the Project to the Board of Public works and the Maryland General Assembly and may desire to disclose such information to other State officials or their staff, local government officials or their staff, and other lenders and funding sources. The Department is also required to disclose information in response to a request for information made pursuant to the Public Information Act, General Provisions Article, Section 4-101 et seq. of the Annotated Code of Maryland (the "PIA Act"). Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the name, location, and description of the Project; the date and amount of financial assistance awarded by the Department; the terms of the financial assistance; use of funds; information contained in the application for financial assistance; a copy of the application; and the sources, amounts and terms of other funding used to complete the Project, including capital contributions from the Grantee. Certain information may be exempt from disclosure under the PIA Act. Requests for disclosure of

information made pursuant to the PIA Act are evaluated on an individual basis by the Department. If Grantee believes that any of the information it has provided to the Department is exempt from disclosure, Grantee should attach a statement to this Agreement describing the information it believes to be exempt from disclosure and provide an explanation therefor. The Department cannot guarantee non-disclosure of such information but may consider Grantee's statement when responding to a request made pursuant to the PIA Act.

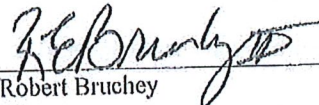
- 29) CONFESSION OF JUDGMENT. THE UNDERSIGNED HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR CLERK OF ANY COURT OF RECORD IN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR AND, WITH OR WITHOUT DECLARATION FILED, CONFESS JUDGMENT AGAINST THE UNDERSIGNED IN FAVOR OF THE HOLDER, ASSIGNEE OR SUCCESSOR OF HOLDER OF THIS AGREEMENT, AT ANY TIME, FOR THE PARTIAL OR TOTAL AMOUNT OF THE GRANT DESCRIBED HEREIN, TOGETHER WITH COSTS OF SUIT AND ATTORNEY'S COMMISSION OF TEN (10) PERCENT FOR THE COLLECTION; AND THE UNDERSIGNED EXPRESSLY RELEASES ALL ERRORS, WAIVES ALL STAY OF EXECUTION, RIGHTS OF INQUISITION AND EXTENSION UPON ANY LEVY UPON REAL ESTATE AND ALL EXEMPTION OF PROPERTY FROM LEVY AND SALE UPON ANY EXECUTION HEREON; AND THE UNDERSIGNED EXPRESSLY AGREES TO CONDEMNATION AND EXPRESSLY RELINQUISHES ALL RIGHTS TO BENEFITS OR EXEMPTIONS UNDER ANY AND ALL EXEMPTION LAWS NOW IN FORCE OR WHICH MAY HEREAFTER BE ENACTED.

WITNESS the hands and seals of the Department and the Grantee.

WITNESS/ATTEST:

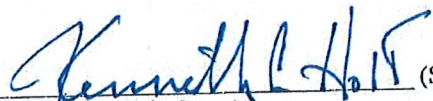
CITY OF HAGERSTOWN

Donna K. Spickler

By:  (SEAL)
Name: Robert Bruchey
Title: Mayor

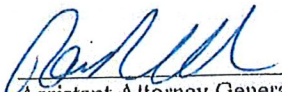
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT, a principal
department of the State of Maryland

Amiko X. Neal

By:  (SEAL)
Kenneth C. Holt, Secretary

5/14/19.
Date Executed on behalf of the Department/
Effective Date

Approved for form and
Legal sufficiency


Assistant Attorney General

Exhibits

- Exhibit A - Project Description, Scope of Work, and Special Conditions
- Exhibit B - Project Budget
- Exhibit C - Project Schedule

EXHIBIT A - SRP-CL-2019-Hagerstown-00313
PROJECT DESCRIPTION, SCOPE OF WORK, AND SPECIAL CONDITIONS

Project Name:
Urban Improvement Project

1. Project Description:

Assist with the construction costs associated with the Urban Improvement Project (UIP) in Downtown Hagerstown.

2. Project Address(es):

33-53 West Washington Street (rear of buildings) and 31-33 South Potomac Street.

3. Scope of the Project:

Predevelopment activities and construction to support the plaza and trail extension and construction of the plaza and trail as well as alterations to the adjacent structure, the First Hagerstown Hose Company (Hose Company Building), including removal of a portion of the cornice, removal of an attached chimney stack on the northeast elevation, removal and blocking of eight windows on the northeast elevation, and modifications to the roof coping along the northeast elevation.

4. Project Financing (Evidence and Use of Funding Sources):

Community Legacy will contribute \$400,000 toward predevelopment activities and construction of the plaza and trail as part of the Urban Improvement Project as well as \$20,000 towards alterations to the adjacent First Hagerstown Hose Company Building per the MOA Agreement executed on September 6, 2018. The City of Hagerstown will contribute \$1,086,700 towards the Plaza and trail extension.

5. Special Conditions:

If this award contains capital funds; all capital funds are to be used strictly for approved capital activities. The disbursement of grant funds requires that the Project be in a designated Sustainable Community at the time the funds are disbursed.

EXHIBIT B - SRP-CL-2019-Hagerstown-00313
PROJECT BUDGET

Project Name:
Urban Improvement Project

USE OF FUNDS BY ACTIVITY	AWARD FUNDS		OTHER SOURCES OF FUNDS			TOTALS BY ACTIVITY
	Capital Amount	Operating Amount	Applicant's Contribution	Name(s) of Other Source(s)	Other Source Amount	
Site Pre-Dev: Acquisition	\$0	\$0	\$280,000		\$0	\$280,000
Site Pre-Dev: Arch/Eng Design	\$0	\$0	\$25,000		\$0	\$25,000
Site Pre-Dev: Demolition	\$0	\$0	\$114,500		\$0	\$114,500
Site Pre-Dev: Infrastructure	\$0	\$0	\$0		\$0	\$0
Site Pre-Dev: Stabilization	\$0	\$0	\$0		\$0	\$0
Site Dev: New Construction	\$400,000	\$0	\$91,974	POS, MHAA, ect.	\$903,026	\$1,395,000
Site Dev: Rehabilitation/ Renovation	\$20,000	\$0	\$0		\$0	\$20,000
Operations: Studies and Planning	\$0	\$0	\$0		\$0	\$0
Operations: Proj Admin (Cash)	\$0	\$0	\$0		\$0	\$0
Operations: Proj Admin (In-Kind)	\$0	\$0	\$0		\$0	\$0
Other (a): Site Pre-Dev: Demolition, Stabilization, Infrastructure, Utility Relocation	\$0	\$0	\$575,226	FY 18 SDF	\$300,000	\$875,226
Other (b):	\$0	\$0	\$0		\$0	\$0
Other (c):	\$0	\$0	\$0		\$0	\$0
Other (d):	\$0	\$0	\$0		\$0	\$0
TOTALS:	\$420,000	\$0	\$1,086,700		\$1,203,026	\$2,709,726

Total Award: \$420,000
Total Project Cost: \$2,709,726

PROJECT TIMELINE

Project Name:

[illegible]

R-19-24

Construction Tabulation
First Hagerstown Hose Co.

Callas Contractors, LLC	\$ 61,100.00
A.V.Rauth & Sons Inc.	\$ 22,820.00
Crown Inc	Ceiling painting Only
Henry Eby & Sons Inc	N/B
United Enterprises Construction LLC	N/B



CITY OF HAGERSTOWN, MARYLAND

Department of Community and Economic Development

To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager

Date: October 15, 2020

RE: **State Community Legacy Grant Funded Project– First Hose Property Rehabilitation Contractor Selection**

Mayor & Council Action Requested:

Staff request Mayor & City Council approval of the contractor selection process for the First Hose Company's State of Maryland Community Legacy grant funded rehabilitation project.

Background on First Hose Project

In 2019, the State of Maryland awarded \$20,000 in FY2019 Community Legacy grant funding to the First Hose Company. This funding is to be used for window installation and historic ceiling restoration work at the First Hose Company property located at 33 South Potomac Street. The window installation and historic ceiling restoration work was required by the Maryland Historic Trust due to Maryland Theatre construction impacts to the First Hose Company structure.

In August of 2019, the City entered into a sub-recipient grant agreement with the First Hose Company in order to pass through the \$20,000 in State Community Legacy grant funding for the window and ceiling project. After execution of this agreement, The First Hose Company began to seek contractor estimates for this work. Multiple contractor estimates were solicited by the First Hose Company and they received two comprehensive estimates from area contractors: A.V. Rauth & Sons and Callas Contractors. At this time, First Hose Company has requested to move forward with the A.V. Rauth & Sons as low estimate contractor (\$22,820) for this project. Sealed bidding was not required per the State Grant agreement. DCED staff plan to work with First Hose Company representatives to ensure their contractor's final scope of work does not exceed available funding resources.

Based on the sub-recipient agreement between the City of Hagerstown and the First Hose Company, Mayor & City Council approval is needed for First Hose Company's contractor selection process. This action is scheduled for approval during the October 27th Regular Session. Staff will be available during the October 20th work session to answer any questions on the above.

Attachments: First Hose Sub-recipient Agreement for Community Legacy Funding
First Hose Project Contractor Estimate Tabulation
Motion

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

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: October 27, 2020

TOPIC: **Approval of Contractor Selection Process for Community Legacy Grant Funded Project for First Hose Company (33 S. Potomac Street)**

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

MOTION: I hereby move that the Mayor and City Council approve the contractor solicitation and selection process for the First Hose Company's Historic Preservation project at 33 S Potomac Street. This project is funded via State of Maryland Community Legacy Grant funding and City approval of the First Hose Company's contractor solicitation and selection process is required per the sub-recipient agreement between the City of Hagerstown and the First Hose Company. The First Hose Company has selected A.V. Rauth & Sons to perform the historic preservation work.

DATE OF PASSAGE: 10/27/2020
EFFECTIVE DATE: 10/27/2020

CITY OF HAGERSTOWN

SUB-RECIPIENT GRANT AGREEMENT BETWEEN THE CITY OF HAGERSTOWN AND FIRST HAGERSTOWN HOSE COMPANY

This Sub-Recipient Grant Agreement is entered into as of this 8th day of August, 2019, by and between the City of Hagerstown ("Grantor" or "City") and First Hagerstown Hose Company. ("Sub-recipient" or "First Hose").

RECITALS

The Department of Housing and Community Development, a principal department of the State of Maryland ("Department") has entered into a **Community Legacy Program Grant Agreement** ("the Grant Agreement"), dated May 14th, 2019, with the City of Hagerstown.

Pursuant to the Grant Agreement, a copy of which is attached hereto as Attachment #1 and which is incorporated herein by reference and made a part of this Agreement as if entirely stated herein, the City has been awarded grant funds for the Hagerstown Urban Improvement Project (the "UIP") in the amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) (the "Grant"). The purpose of the Grant is to provide assistance with the construction costs associated with the UIP.

As part of this Subrecipient Grant Agreement, Subrecipient has agreed to comply with all requirements of the Grant as set forth in the Grant Agreement, and as a result the City has designated Subrecipient to be the beneficiary of the authorized funding for eligible expenses, and has allocated Twenty Thousand Dollars (\$20,000.00) ("Subrecipient Grant Funds") to Subrecipient for that purpose.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. The foregoing recitals be and are hereby incorporated herein by reference.
2. The City of Hagerstown shall pass through to First Hose the Community Legacy Fund Award of \$20,000 for the purpose of construction activities related to renovations to the First Hose Building, located at 31-33 South Potomac Street, Hagerstown, Maryland ("the Building"). In particular, First Hose shall (a) re-open two original window openings on the fourth floor (northwest elevation) of the Building and install new aluminum clad wood window sashes to match the original design, pane division and appearance; and (b) repair and restore the original tin ceiling in the second floor meeting room, in accordance with Memorandum of Agreement Amendment No. 1, dated 9/6/18, by and among First

Hose, the DCHD, MHT and the City (the "Project").

3. First Hose shall faithfully perform and certify the performance of the Project as outlined in the Grant Agreement. First Hose shall be subject to the same terms and conditions applicable to the City as contained in the Grant Agreement between the City and the Department. Should a conflict arise during the performance or administration of the Project between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.
4. First Hose shall allow the City and the Department to inspect the Project during construction.
5. The City may terminate this Agreement if the Project has not commenced by the Commencement Date of June 1, 2020, has not been completed by the Completion Date of June 30, 2021, or the Project is not being completed in a manner satisfactory to the City or the Department.
6. Any changes to the Project plan as outlined in the Grant Agreement must be approved by the City and the Department.
7. First Hose shall provide quarterly progress reports on the Project to the City as prescribed in the Grant Agreement.
8. Grant disbursements shall be as prescribed in the Grant Agreement. Subrecipient acknowledges that the City has the right to take any and all corrective action it deems necessary in its sole and absolute discretion to address Subrecipient's failure to comply with established reporting requirements. Corrective action includes, but is not limited to, withholding of payments, instituting financial penalties, and declaring Subrecipient in default of this Agreement.
9. Should the City or the Department determine that First Hose is in default of the Grant Agreement, First Hose shall be subject to the remedies prescribed in the Grant Agreement, as determined necessary by the City and the Department.
10. The parties agree that Subrecipient shall act as an independent contractor for the purposes of fulfilling its duties and obligations under this Agreement.
11. Any modifications to the UIP as described in this Agreement, which are mutually agreed upon by the City, Department, and Subrecipient may be incorporated into this Agreement by a written letter of amendment upon approval by all parties.

12. Subrecipient agrees that the City or its agents has the right to periodically review/monitor the fiscal and programmatic records of the Subrecipient relating to this Agreement and further agrees to fully cooperate with any reasonable request(s) by the City in relation to any said review/monitoring.
13. Subrecipient shall permit the City, and any authorized representatives of the Department to inspect and audit all data and records of Subrecipient relating to its performance under this Agreement at any time during the term of this Agreement. This section shall survive any termination of this Agreement.
14. If the Subrecipient contracts any portion of the work to another organization, person(s), business or entity they must fully comply with and follow all provisions related to procurement, contractor selection, debarment, required by the Department. All eligible contracts including contracts for matching funds shall be submitted to the Department and the City for approval prior to requesting reimbursement for incurred costs. The subrecipient must provide evidence to the City that any selected person, business, or entity is not debarred from doing business with the State or City prior to entering into any binding contract to perform work related to the UIP.
15. All covenants, agreements, representations and warranties made in this Agreement and in any other documents delivered pursuant hereto shall survive closeout of the Grant Agreement and shall continue in full force and effect until the City has complied with all terms and conditions of the close-out agreement executed by and between Department and the City for the UIP.
16. All notices, requests, approvals, and consents of any kind made pursuant to this agreement shall be in writing. Any such communication shall be addressed as follows:
 - (a) Communications to the City of Hagerstown shall be mailed to:

City of Hagerstown
Department of Planning and Code Administration
One E. Franklin Street
Hagerstown, MD 21740
Attn: Kathleen A. Maher, Planning and Code Administration Director
 - (b) Communications to First Hagerstown Hose Company shall be mailed to:

First Hagerstown Hose Company
PO Box 4958

Hagerstown, MD 21742
Attn: Gerald Saum, Treasurer

17. This Agreement contains the entire understanding and obligations of the parties and supersedes all prior representation, understandings, and communications. Furthermore, this Agreement shall not be construed to imply that the City will pay for any expenses incurred by Subrecipient as provided above and beyond the period **ending June 1, 2024.**

WITNESS the hands and seals of the City of Hagerstown and First Hagerstown Hose Company, as of the date first set forth above.

WITNESS/ATTEST:

Donna H. Spickler

CITY OF HAGERSTOWN

By: *R. E. Bruchey, II* (SEAL)
Robert E. Bruchey, II
Mayor
City of Hagerstown

FIRST HAGERSTOWN HOSE COMPANY

By: *David Stevens* (SEAL)

President – David Stevens

By: *Pam Stevens* (SEAL)

Vice President – Pam Stevens

By: *Ray Lushbaugh* (SEAL)

Secretary – Ray Lushbaugh

By: *Gerald Saum* (SEAL)

Treasurer – Gerald Saum

By: *Blaine Snyder* (SEAL)

Standing Committee – Blaine Snyder

By: Richard J. Stallings (SEAL)

Standing Committee – Richard Stallings

By: John Miller Jr. (SEAL)

Standing Committee – John Miller Jr.

By: Alan Carnack (SEAL)

Standing Committee – Alan Carnack

By: Nelson Marker (SEAL)

Standing Committee – Nelson Marker

Attachment #1:

Community Legacy Program Grant Agreement, with Exhibits A - C

Exhibit

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY LEGACY PROGRAM GRANT AGREEMENT**

FY2019

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AWARDEE: City of Hagerstown
AWARD ID#: SRP-CL-2019-Hagerstown-00313
PROJECT NAME: Urban Improvement Project

- ☐ **Community Legacy Program Grant Agreement**
- ☐ **Exhibit A - SRP-CL-2019-Hagerstown-00313
Project Description, Scope of Work, and Special Conditions**
- ☐ **Exhibit B - SRP-CL-2019-Hagerstown-00313
Project Budget**
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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
COMMUNITY LEGACY PROGRAM GRANT AGREEMENT
Project/Capital Grant**

THIS COMMUNITY LEGACY PROGRAM GRANT AGREEMENT (this "Agreement") is entered into as of the Effective Date (as defined herein) by and between the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**, a principal department of the State of Maryland (the "**Department**"), and City of Hagerstown (the "**Grantee**").

RECITALS

- A. This Agreement is issued pursuant to Annotated Code of Maryland Housing and Community Development Article, §§ 6-201 through 6-213, as amended, (the "**Act**") and the regulations promulgated thereunder set forth in COMAR 05.17.01 (the "**Regulations**"). The Act establishes the Community Legacy Program (the "**Program**"). Capitalized terms not defined herein have meanings set forth in the Regulations.
- B. The purposes of the Program are to:
 - 1. Preserve existing communities as desirable places to live and conduct business, thereby reducing outward pressure for sprawl development; and
 - 2. Provide financial assistance to Sponsors or their designees for the development of sustainable community plans or Community Legacy projects.
- C. In reliance upon the representations and certifications contained in Grantee's Fiscal Year 2019 application (the "**Application**") the Department has approved an award of funds to Grantee to carry out a Community Legacy project, to be expended by Grantee in conformity with the requirements and provisions of the Act, the Regulations, and this Agreement.

AGREEMENT

IN CONSIDERATION of the Recitals, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Department and Grantee agree as follows:

1) Sustainable Community Designations.

- a) The Project is located in a geographic area that has been designated by the Smart Growth Subcabinet (as defined in the State Government Article §9-1406) as a Sustainable Community (the "Area").
- b) The Project will enhance and support the plan that has been approved by the Smart Growth Subcabinet as a Sustainable Community Plan (the "Plan").

2) Grant.

- a) In consideration of the various obligations to be undertaken by Grantee pursuant to this Agreement, the Department agrees to provide Grantee with funds in the amount of **Four Hundred and Twenty Thousand Dollars (\$420,000)** (the "Grant") to be used for the purposes of funding the Community Legacy Project (the "Project") described in Exhibit A - SRP-CL-2019-Hagerstown-00313 (the "Project Description").
- b) Grantee agrees to use the Grant only for the approved Project and only in the approved Area. Grantee agrees that it will use the Grant and operate the Project in accordance with the provisions of the Act, the Regulations, and this Agreement.
- c) The Project shall not include or support the following types of activities: pawn shops, gun shops, tanning salons, massage parlors, adult video/book shop, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors or liquor stores.
- d) The Application may have included projects other than the Project. The approval of the Application and the Project and the execution of this Agreement are not to be construed as approval of any other projects described in the Application.

3) Expenditure of Grant Funds.

- a) All Grant funds shall be expended on or before the Completion Date (as defined in Section 4(b) of this Agreement).
- b) Grantee shall expend the Grant in accordance with the budget set forth in Exhibit B - SRP-CL-2019-Hagerstown-00313 (the "Project Budget"). Grantee may not expend more than the amount allocated for any category in the Project Budget without the prior written consent of the Department.
- c) Unless otherwise agreed to in writing by the Department, Grantee shall expend at least fifty percent (50%) of the Grant funds for the Project by the first (1st) anniversary of the Effective Date.
- d) All costs incurred by Grantee before the Effective Date and before approval by the Department of the release of Grant funds are incurred voluntarily, at Grantee's risk and upon its own credit and expense, and Grantee's authority to be reimbursed from the Grant funds shall be governed by the provisions of this Agreement.

- e) If, upon completion of the Project, there are cost savings and/or undisbursed funds, Grantee shall return any remaining Grant funds to the Department.
- 4) Commencement and Completion of the Project; Inspection during Construction or Rehabilitation; Changes.
- a) Grantee shall commence the Project on the date (the "Commencement Date") set forth in Exhibit C - SRP-CL-2019-Hagerstown-00313 (the "Project Schedule").
 - b) Grantee shall complete the Project prior to the date set forth in the Project Schedule (the "Completion Date").
 - c) If the Project involves capital construction or improvements, the Department, its agents and its employees shall be allowed to inspect the Project during construction or rehabilitation.
 - d) The Department must approve all changes to the Project Description, Project Schedule, Project Budget, or any other term of this Agreement, including modifications to the scope of work of the Project, modifications involving carrying out Project activities in a geographic area other than the Area, and modifications to the Completion Date.
 - e) Grantee shall ensure that all necessary approvals for the commencement of the Project have been obtained, including all applicable permits and licenses.
 - f) On or before the Completion Date, Grantee shall obtain all certifications, licenses, permits, and approvals necessary to operate the Project, and shall otherwise satisfy all requirements necessary to operate the Project.
- 5) Conditions Precedent to Disbursement of the Grant. The Department shall not disburse the Grant until Grantee has complied with the following conditions:
- a) The Maryland Historical Trust has reviewed the Project for impact on historic structures, and, if required has approved the architectural plans and specifications for the Project.
 - b) The Maryland Codes Administration has approved all the Project plans and specifications.
 - c) Grantee has complied with all other terms and conditions of the Grant as required by the Department to the Department's satisfaction, including the satisfaction of any special conditions as noted on Exhibit A.
- 6) Other Funds.
- a) In addition to the Grant, Grantee may (i) be in the process of obtaining written commitments to receive other funds for the Project; (ii) have written commitments to receive other funds for the Project; or (iii) have already received other funds for the Project (collectively, the "Other Funds"). Other Funds shall be described by source, use and amount in the Project Budget.
 - b) Upon request, Grantee shall provide the Department with information and documentation in forms acceptable to the Department regarding the Other Funds. Such information and documentation shall include but not be limited to information concerning Grantee's receipt and expenditure of the Other Funds. In the event the Department determines, in its sole discretion, that all or any portion of the Other Funds are not available, are not going to be disbursed to Grantee for any reason, or that Other Funds received by Grantee have not been properly expended, the Department may, in its sole discretion, declare Grantee in default of this Agreement and exercise its remedies pursuant to this Agreement.
- 7) Disbursement of the Grant.

- a) After the Effective Date, the Department will disburse Grant funds to Grantee on a reimbursement basis as the Project progresses. Grantee shall submit a request for payment in a manner and form approved by the Department. A request for payment shall identify in detail all expenses incurred for which reimbursement is being sought, and shall have attached copies of the supporting invoices and other documentation of such expenses.
- b) Requests for payment should be made allowing approximately thirty (30) days to receive the Grant funds. The request for payment shall not exceed the eligible costs incurred and approved by the Department. The Department, in its sole discretion, may disburse funds for eligible costs anticipated to be incurred or costs incurred prior to the Effective Date.
- c) The Department has the right to withhold disbursement of Grant funds if at any time the Department determines, in its sole discretion, that Grantee is not performing or completing the Project in a manner satisfactory to the Department. The Department shall have the right at any time to request that Grantee provide additional supporting documentation with any request for payment.

8) Records, Inspections and Reports.

a) Records.

- i) Grantee shall maintain accurate financial, management, programmatic and other records of the Grantee, including meeting minutes of Grantee's Board of Directors if applicable, for transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively, the "Records"). The Records shall be in a form acceptable to the Department. Grantee shall retain the Records for three (3) years following the date the Department approves the Final Report described in Section 8(c) below.
- ii) Grantee shall make the Grantee's administrative offices, its personnel, whether full time, part time, consultants or volunteers, and the Records available to the Department for inspection upon request, during the term of the Agreement and for a period of three (3) years following the date the Department approves the Final Report. The Grantee shall permit the Department to perform program monitoring, evaluation and audit activities as determined to be necessary, at the discretion of the Department.
- iii) Grantee shall cause to be maintained for the Department's inspection the books, accounts, and records of contractors in connection with the Project for three (3) years past the date of termination of the contractual relationship between the contractor and Grantee.

b) Inspections. During the term of this Agreement and for a period of three (3) years following the date the Department approves the Final Report, Grantee shall permit the Department to monitor the Project to ensure that the Project is being carried out in accordance with the terms of this Agreement. This provision shall survive the term of this Agreement.

c) Reports.

- i) On January 1, April 1, July 1, and October 1 of each year during the term of this Agreement, Grantee shall provide the Department with interim progress reports in a manner and form to be determined by the Department. The interim progress reports shall contain such information as the Department requests, including, but not limited to, work accomplished and problems encountered, past and projected expenditures made against the Project Budget, and benchmarks reached. Grantee shall ensure that each interim progress report is received by the Department within ten (10) working days after the due date.
- ii) Within forty-five (45) days after Grantee completes the Project, Grantee shall submit to the Department a final report (the "Final Report") in a manner and form to be determined by the Department that describes the

completed Project, the success of the Project, any problems encountered in completing the Project, and such other information as the Department requires. The Final Report shall also contain an expense and revenue summary of the Project, certified by the highest fiscal officer of Grantee, that lists all expenditures relating to the Grant. In addition, any completed studies, surveys, reports, or other work products, if applicable, shall be attached to the Final Report.

iii) In addition to the requirements set forth above, Grantee shall provide the Department with such additional records, reports, and other documentation as may be required by the Department.

9) Default and Remedies; Termination.

- a) A default shall consist of: (i) the breach by Grantee of any term, condition, covenant, agreement, or certification contained in this Agreement; (ii) the expenditure of Grant funds for any use other than as provided in the Project Budget or in the approved scope of work for the Project; (iii) the failure to commence or complete the Project by the dates set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, in the Department's sole determination; (iv) Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets; (v) the failure to obtain Other Funds if, in the Department's sole discretion, such failure would significantly impact the Project; or (vi) a change in Grantee's staffing capacity that adversely affects Grantee's ability to carry out the Project, in the Department's sole discretion.
- b) The Department shall give Grantee written notice of default, and Grantee shall have thirty (30) days from the date of such notice to cure the default. Upon the occurrence of a default that continues beyond the cure period, the Department shall have the right to terminate this Agreement immediately by written notice to Grantee. Notwithstanding the above, upon the occurrence of a default under this Agreement involving Grantee's bankruptcy, insolvency, or the dissolution or liquidation of Grantee's business organization or assets, the Department's right to terminate this Agreement shall be immediate without a notice and cure period.
- c) In the event of termination by the Department:
 - i) The Department may withhold disbursement of Grant funds. Grantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
 - ii) The Department may demand repayment from Grantee of any portion of the Grant proceeds that the Department, in its sole discretion, determines were not expended in accordance with this Agreement, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings; and
 - iii) The Department, in its sole discretion, may demand repayment of all Grant funds disbursed to Grantee, plus all costs and reasonable attorneys' fees incurred by the Department in recovery proceedings.
- d) In addition to exercising any or all of the rights and remedies contained in this Agreement, the Department at any time may proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceedings, all of which shall survive the termination of this Agreement.
- e) Grantee agrees to return any remaining proceeds of the Grant to the Department upon termination of the Agreement, whether due to default, completion of the Project, or for any other reason.

10) Grantee's Certifications. Grantee certifies that:

- a) Grantee is a Local Government, a group of Local Governments, a Community Development Organization, or a Community Development Financial Institution, as those terms are defined in the Regulations and has the requisite power and authority to enter into and carry out the transactions contemplated by this Agreement.

- b) The acceptance of the Grant and the entering into of the Agreement have been duly authorized, executed, and delivered by Grantee, and are the valid and legally binding acts and agreements of Grantee.
 - c) None of Grantee's assignees, designees, agents, members, officers, employees, consultants, or members of its governing body, or any local governmental authority exercising jurisdiction over the Project, and no other public official who exercises or has exercised any functions or responsibilities with respect to the Project during such person's tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for any work or any activity to be performed in connection with the Project, or receive any benefit therefrom, that is part of the Project at any time during or after such person's tenure. No officer, director, or member of Grantee will personally benefit from the Grant or the Project.
 - d) The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects.
 - e) Prior to commencement of the Project, Grantee has obtained or will obtain all federal, state, and local government approvals, permits, and licenses that may be required to accomplish the Project and the scope of work.
 - f) Grantee has not been, nor currently is, the subject of an investigation by any federal, state, or local governmental entity for alleged criminal or civil violations of laws or regulations enforced by these entities.
- 11) Liability. Grantee releases the Department from, agrees that the Department shall not have any liability for, and agrees to protect, indemnify, and save harmless the Department from and against any and all liabilities, suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against the Department, as a result of or in connection with the Project, except for the gross negligence or willful misconduct of the Department. This Section shall survive the term of this Agreement.
- 12) Indemnification. Grantee agrees that all costs incurred by the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses, or costs, including reasonable attorney's fees, shall be immediately and without notice due and payable by Grantee to the Department, except for claims arising solely from the Department's willful misconduct or gross negligence. Grantee's obligation to indemnify the Department shall survive the term of this Agreement. If Grantee is a Local Government any indemnification or other obligation to reimburse or compensate the Department provided by the Grantee pursuant to this Agreement is subject to appropriations as well as the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (2006 Repl. Vol.) (the "LGTC"); Md. Code Ann. Art. 25A, Sec. 1A (2005 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-509 (2006 Repl. Vol.), all as amended from time to time (together, the "**Local Government Indemnification Statutes**"), and is not to be deemed as a waiver of any immunity that may exist in any action against a local government for its officers, agents, volunteers and employees.
- 13) Nondiscrimination and Drug and Alcohol Free Workplace; Fair Practices Certification.
- a) Grantee may not discriminate against and hereby certifies that it prohibits discrimination against and will not discriminate against any person on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age in any aspect of its projects, programs or activities.
 - b) Grantee shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, housing, and credit practices, including:
 - i) Titles VI and VII of the Civil Rights Act of 1964, as amended;

- ii) Title VIII of the Civil Rights Act of 1968, as amended;
- iii) Title 20 of the State Government Article, Annotated Code of Maryland, as amended;
- iv) The Department's Minority Business Enterprise Program, as amended;
- v) The Governor's Executive Order 01.01.1989.18 relating to Drug and Alcohol Free Workplaces, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;
- vi) The Fair Housing Amendments Act of 1988, as amended; and
- vii) The Americans with Disabilities Act of 1990, as amended.

14) Environmental Certification and Indemnification; Lead Paint. In connection with the ownership, lease, rehabilitation, construction, operation or demolition of real property or improvements thereon that are or may become a part of the Project (collectively and individually, "Property"):

- a) Grantee represents, warrants, and covenants that there are no hazardous materials located on the Property, that it will not cause or allow any hazardous materials to be placed on the Property, that it will carry out the Project in compliance with all requirements imposed by any governmental authority with respect to any hazardous materials that may be placed on the Property, and that to the best of its knowledge the Property is in compliance with all applicable federal and State environmental laws and regulations.
- b) Grantee shall indemnify and hold the Department, its employees and agents harmless from all loss, liability, damage, costs, and expenses of any kind whatsoever, including as a result of any lawsuit brought or threatened, settlement reached, or governmental order, and including reasonable attorneys' fees, for failure of the Property to comply in all respects with all environmental requirements. Grantee's obligation to indemnify the Department shall survive the term of this Agreement.
- c) Grantee covenants that it shall comply with all federal, State, and local laws and requirements concerning the treatment and removal of lead paint from the Property.

15) Non-Sectarian Certifications.

- a) Grantee certifies that no part of the Grant funds, no part of the Project, and no part of the Property, shall be used for the furtherance of sectarian religious instruction, or in connection with the design, acquisition, or construction of any building used or to be used as a place of sectarian religious worship or instruction, or in connection with any program or department of divinity for any religious denomination, including (but not limited to) religious services, religious instruction, or other activities that have an explicitly religious content.
- b) Grantee certifies that it will provide services of the Project to clients on a nondiscriminatory basis, including (but not limited to) the provision of services without regard to the creed, religion, or religious affiliation of the clients.

16) Insurance.

- a) Grantee shall maintain or shall cause to be maintained property and commercial general liability insurance coverages on the Project and Property both during and after construction or rehabilitation, and if necessary, Grantee shall pay the expense of such insurance.

- b) Grantee shall determine whether the Project is located in a 100-year flood plain, as designated by the United States Department of Housing and Urban Development. If the Project is located in a 100-year flood plain, Grantee shall require flood insurance coverage, and if necessary, Grantee shall pay the expense of such insurance.
 - c) Grantee shall require the general contractor to provide general contractor's insurance coverage for comprehensive public liability, property damage liability/builder's risk, and workers' compensation in the form and amounts required by the Grantee.
 - d) Insurance coverages shall be provided by a company that is registered with the Maryland Insurance Agency and authorized to transact business in the State.
 - e) To the extent applicable, insurance coverage shall be in force prior to the disbursement of the Grant proceeds and shall contain terms and coverages satisfactory to the Department.
 - f) To the extent required by the Department, Grantee shall submit to the Department an ACORD insurance certificate naming the Department and the Grantee as loss payee and additional insured.
 - g) To the extent required by the Department, ACORD insurance certificates shall provide for notification to the Department and Grantee prior to Project-related cancellation of any insurance policies.
 - h) If Grantee is a Local Government, the insurance requirements contained herein may be satisfied through evidence of a self-insurance program satisfactory to the Department.
- 17) Notices. All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication, unless otherwise specified, shall be deemed effective as of the date it is mailed, postage prepaid, addressed as follows:

- a) Communications to the Department shall be mailed to:

Department of Housing and Community Development
Division of Neighborhood Revitalization
7800 Harkins Road
Lanham, Maryland 20706
Attn: Community Legacy Program

with a copy to:

Office of the Attorney General
7800 Harkins Road
Lanham, Maryland 20706
Attention: Division of Neighborhood Revitalization

- b) Communications to Grantee shall be mailed to:

City of Hagerstown
14 North Potomac Street, Suite 200 A
Hagerstown, MD 21740
Attention: Jonathan Kerns

- 18) Amendment. This Agreement may not be amended except by a written instrument executed by the Department and Grantee.

- 19) Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- 20) Assignment. This Agreement may not be assigned without the prior written approval of the Department.
- 21) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Grant.
- 22) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Maryland without regard to conflict of laws provisions.
- 23) Term of Agreement. Unless sooner terminated pursuant to the terms of this Agreement or extended by an amendment to the Agreement, this Agreement shall be effective as of the date it is executed by the Department (the "**Effective Date**") and shall remain in effect until the Department's receipt and approval of the Final Report.
- 24) Further Assurances and Corrective Instruments. Grantee agrees that it will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by the Department to comply with any existing or future State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Agreement.
- 25) Delay Does Not Constitute Waiver. No failure or delay of the Department to exercise any right, power or remedy consequent upon default shall constitute a waiver of any such term, condition, covenant, certification or agreement of any such default or preclude the Department from exercising any right, power or remedy at any later time or times.
- 26) Technical Assistance. If the Project is not being completed in a manner satisfactory to the Department, or Grantee has violated a provision of this Agreement, prior to the Department declaring a default, the Department may request Grantee to accept technical assistance the Department feels is necessary for the Project to proceed in a manner acceptable to the Department.
- 27) Department's Signs. If required by the Department, Grantee agrees to display one or more signs identifying the Project as a recipient of financial assistance under the Program if the Department furnishes such sign(s). Grantee shall be responsible for the installation of the signs. In the event that a license, permit, or other permission is required from a local jurisdiction in order to display said signs, Grantee agrees to pay all requisite license or permit fees.
- 28) Notice Regarding Disclosure of Information Relating to the Project. The Department intends to make available to the public certain information regarding the Project and the Grantee. In addition, the Department may be required to disclose information about the Project to the Board of Public works and the Maryland General Assembly and may desire to disclose such information to other State officials or their staff, local government officials or their staff, and other lenders and funding sources. The Department is also required to disclose information in response to a request for information made pursuant to the Public Information Act, General Provisions Article, Section 4-101 et seq. of the Annotated Code of Maryland (the "**PIA Act**"). Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the name, location, and description of the Project; the date and amount of financial assistance awarded by the Department; the terms of the financial assistance; use of funds; information contained in the application for financial assistance; a copy of the application; and the sources, amounts and terms of other funding used to complete the Project, including capital contributions from the Grantee. Certain information may be exempt from disclosure under the PIA Act. Requests for disclosure of

information made pursuant to the PIA Act are evaluated on an individual basis by the Department. If Grantee believes that any of the information it has provided to the Department is exempt from disclosure, Grantee should attach a statement to this Agreement describing the information it believes to be exempt from disclosure and provide an explanation therefor. The Department cannot guarantee non-disclosure of such information but may consider Grantee's statement when responding to a request made pursuant to the PIA Act.

- 29) CONFESSION OF JUDGMENT. THE UNDERSIGNED HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR CLERK OF ANY COURT OF RECORD IN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR AND, WITH OR WITHOUT DECLARATION FILED, CONFESS JUDGMENT AGAINST THE UNDERSIGNED IN FAVOR OF THE HOLDER, ASSIGNEE OR SUCCESSOR OF HOLDER OF THIS AGREEMENT, AT ANY TIME, FOR THE PARTIAL OR TOTAL AMOUNT OF THE GRANT DESCRIBED HEREIN, TOGETHER WITH COSTS OF SUIT AND ATTORNEY'S COMMISSION OF TEN (10) PERCENT FOR THE COLLECTION; AND THE UNDERSIGNED EXPRESSLY RELEASES ALL ERRORS, WAIVES ALL STAY OF EXECUTION, RIGHTS OF INQUISITION AND EXTENSION UPON ANY LEVY UPON REAL ESTATE AND ALL EXEMPTION OF PROPERTY FROM LEVY AND SALE UPON ANY EXECUTION HEREON; AND THE UNDERSIGNED EXPRESSLY AGREES TO CONDEMNATION AND EXPRESSLY RELINQUISHES ALL RIGHTS TO BENEFITS OR EXEMPTIONS UNDER ANY AND ALL EXEMPTION LAWS NOW IN FORCE OR WHICH MAY HEREAFTER BE ENACTED.

WITNESS the hands and seals of the Department and the Grantee.

WITNESS/ATTEST:

CITY OF HAGERSTOWN

Donna H. Spickard

By: Robert Bruchey (SEAL)
Name: Robert Bruchey
Title: Mayor

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT, a principal
department of the State of Maryland

Amiko A. Neal

By: Kenneth C. Holt (SEAL)
Kenneth C. Holt, Secretary

5/14/19
Date Executed on behalf of the Department/
Effective Date

Approved for form and
Legal sufficiency

[Signature]
Assistant Attorney General

Exhibits

- Exhibit A - Project Description, Scope of Work, and Special Conditions
- Exhibit B - Project Budget
- Exhibit C - Project Schedule

EXHIBIT A - SRP-CL-2019-Hagerstown-00313
PROJECT DESCRIPTION, SCOPE OF WORK, AND SPECIAL CONDITIONS

Project Name:
Urban Improvement Project

1. Project Description:

Assist with the construction costs associated with the Urban Improvement Project (UIP) in Downtown Hagerstown.

2. Project Address(es):

33-53 West Washington Street (rear of buildings) and 31-33 South Potomac Street.

3. Scope of the Project:

Predevelopment activities and construction to support the plaza and trail extension and construction of the plaza and trail as well as alterations to the adjacent structure, the First Hagerstown Hose Company (Hose Company Building), including removal of a portion of the cornice, removal of an attached chimney stack on the northeast elevation, removal and blocking of eight windows on the northeast elevation, and modifications to the roof coping along the northeast elevation.

4. Project Financing (Evidence and Use of Funding Sources):

Community Legacy will contribute \$400,000 toward predevelopment activities and construction of the plaza and trail as part of the Urban Improvement Project as well as \$20,000 towards alterations to the adjacent First Hagerstown Hose Company Building per the MOA Agreement executed on September 6, 2018. The City of Hagerstown will contribute \$1,086,700 towards the Plaza and trail extension.

5. Special Conditions:

If this award contains capital funds; all capital funds are to be used strictly for approved capital activities. The disbursement of grant funds requires that the Project be in a designated Sustainable Community at the time the funds are disbursed.

EXHIBIT B - SRP-CL-2019-Hagerstown-00313
PROJECT BUDGET

Project Name:
Urban Improvement Project

USE OF FUNDS BY ACTIVITY	AWARD FUNDS		OTHER SOURCES OF FUNDS			TOTALS BY ACTIVITY
	Capital Amount	Operating Amount	Applicant's Contribution	Name(s) of Other Source(s)	Other Source Amount	
Site Pre-Dev: Acquisition	\$0	\$0	\$280,000		\$0	\$280,000
Site Pre-Dev: Arch/Eng Design	\$0	\$0	\$25,000		\$0	\$25,000
Site Pre-Dev: Demolition	\$0	\$0	\$114,500		\$0	\$114,500
Site Pre-Dev: Infrastructure	\$0	\$0	\$0		\$0	\$0
Site Pre-Dev: Stabilization	\$0	\$0	\$0		\$0	\$0
Site Dev: New Construction	\$400,000	\$0	\$91,974	POS, MHAA, ect.	\$903,026	\$1,395,000
Site Dev: Rehabilitation/ Renovation	\$20,000	\$0	\$0		\$0	\$20,000
Operations: Studies and Planning	\$0	\$0	\$0		\$0	\$0
Operations: Proj Admin (Cash)	\$0	\$0	\$0		\$0	\$0
Operations: Proj Admin (In-Kind)	\$0	\$0	\$0		\$0	\$0
Other (a): Site Pre-Dev: Demolition, Stabilization, Infrastructure, Utility Relocation	\$0	\$0	\$575,226	FY 18 SDF	\$300,000	\$875,226
Other (b):	\$0	\$0	\$0		\$0	\$0
Other (c):	\$0	\$0	\$0		\$0	\$0
Other (d):	\$0	\$0	\$0		\$0	\$0
TOTALS:	\$420,000	\$0	\$1,086,700		\$1,203,026	\$2,709,726

Total Award: \$420,000
Total Project Cost: \$2,709,726

Project Name:
Urban Improvement Project

R-19-24

Construction Tabulation
First Hagerstown Hose Co.

Callas Contractors, LLC	\$ 61,100.00
A.V.Rauth & Sons Inc.	\$ 22,820.00
Crown Inc	Ceiling painting Only
Henry Eby & Sons Inc	N/B
United Enterprises Construction LLC	N/B

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

Topic:

Approval of Funding for a Community Coalition Lobbyist

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Funding_for_Community_Coalition_Lobbyist.pdf

Description

Community Coalition
Lobbyist

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: October 27, 2020

TOPIC: Approval of Funding for a Community Coalition Lobbyist

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

MOTION: I hereby move for Mayor and Council authorization of the expenditure of \$5,000.00 from the General Fund operating budget in order to contribute toward hiring John Favazza with the firm of Mannis, Canning & Associates, as the Community Coalition Lobbyist. Other committed partners include the Washington County Commissioners, Hagerstown Community College, Washington County Library System, Town of Williamsport, Visit Hagerstown, Washington County Chamber of Commerce, CHIEF (Washington County Industrial Foundation), and Greater Hagerstown Committee.

DATE OF PASSAGE: October 27, 2020

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

Topic:

Approval of Property Abatement Fund Expenditure for Demolition of 341 Jonathan Street

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Description

Approval_of_Property_Abatement_Fund_Expenditure_for_Demolition_of_341_Jonathan_Street.pdf	341 Jonathan Street
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REQUIRED MOTION
MAYOR & CITY COUNCIL
HAGERSTOWN, MARYLAND

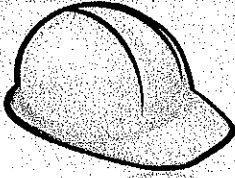
October 27, 2020

TOPIC: Approval of property abatement fund expenditure for demolition of 341 Jonathan St.

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

MOTION: I hereby move for approval of property abatement fund expenditure for demolition of 341 Jonathan St. The Mayor and City Council has directed staff to collect quotes from the property owner of 341 Jonathan St. for demolition of the entire structure. The property located at 341 Jonathan St. has been deteriorating for the last several years. The City has been seeking compliance from the property owner by rehabilitating the property or demolishing the property. PCAD has been unable to obtain a court order to demolish the structure due to the courts being closed during the pandemic. PCAD has no estimated time of when a court hearing would be able to be heard for a demolition through Chapter 187, Nuisance and Abandoned Property Abatement Ordinance. The property owner has stepped forward with a plan to demolish the property to be compliant with recent orders. This approval would be placed as a tax lien on the parcel in order to gain compliance with City Code and recognizing the City's inability to demolish a property through the court system during the pandemic. The total value of the demolition is \$17,000. The owner has paid \$5,667; the City will pay a maximum amount of \$11,333 towards the demolition contingent upon the contractor, SST Enterprise LLC, obtaining approval as a vendor with the City of Hagerstown.

DATE OF PASSAGE:	10/27/2020
EFFECTIVE DATE:	10/27/2020



QUOTE

SST Enterprise, LLC

For all your construction needs

6109 Springwater PL, Ste 2402
Frederick, MD 21701
301-873-1858
ssenterprisellc2016@gmail.com

QUOTE NO. D1522
DATE: 2020-09-23

EXPIRATION DATE DATE
Quote Valid for 60 Days

TO Pamela Parson
Jonathan Street House of Prayer Inc
18321 Wolfpack Way
Hagerstown, MD 21740
301-331-1262
Customer ID No. PP9820

Reference : 341 Jonathan Street

Scope of work shall consist of:

1. Complete demolition and raising of the existing footprint of structure located at 341 Jonathan Street
2. All brick and wood shall be hauled away to an appropriate dump site and / or landfill.
3. Shale will be used to fill any voids lower than 3 inches below grade.
4. The existing 4 inches shall be topped with topsoil finished with seed and straw.
5. Install and maintain safety measures, signs, cones and any means necessary for safety on the work site and the safety of pedestrians and nearby structures.

	\$16,000.00
1. Bonding and fees	\$1,000.00
Total for all Construction services	\$17,000.00

Terms and condition:

1. Contractor will furnish all materials, labor, equipment, disposal, supervision and insurance for the work mentioned above.
2. Contractor will adhere to all local, state, and federal O.S.H.A. / M.O.S.H.A. guidelines
3. Contractor will be allowed all salvageable materials from property that remains.
4. Contractor will not be responsible for notification to the state and contacting miss utilities
5. All utilities are capped and are the sole responsibility of the owner.

Quotation prepared by:

SJ

This is a quotation on the goods named, subject to the conditions noted below: Describe any conditions pertaining to these prices and any additional terms of the agreement. You may want to include contingencies that will affect the quotation.

To accept this quotation, sign here and return:

Pamela Parson

THANK YOU FOR YOUR BUSINESS!

QUOTE

**Professional LLC
322 MITCHELL AVE
HAGERSTOWN, MD 21740
MHIC 96739**

QUOTE No. XXXX
DATE: 2020-10-12

EXPIRATION DATE DATE
Quote Valid for 60 Days

TO Pamela Parson
Jonathan Street House of Prayer Inc
18321 Wolfpack Way
Hagerstown, MD 21740
301-331-1262

Reference : 341 Jonathan Street

Scope of work shall consist of:

1. Complete demolition and raising of the existing footprint of structure located at 341 Jonathan Street
2. All brick and wood shall be hauled away to an appropriate dump site and / or landfill.
3. Shale will be used to fill any voids lower than 3 inches below grade.
4. The existing 4 inches shall be topped with topsoil finished with seed and straw.
5. Install and maintain safety measures, signs, cones and any means necessary for safety on the work site and the safety of pedestrians and nearby structures.

Total for all Construction services

\$25,000.00

Terms and condition:

1. Contractor will furnish all materials, labor, equipment, disposal, supervision and insurance for the work mentioned above.
2. Contractor will adhere to all local, state, and federal O.S.H.A. / M.O.S.H.A. guidelines
3. Contractor will be allowed all salvageable materials from property that remains.
4. Contractor will not be responsible for notification to the state and contacting miss utilities
5. All utilities are capped and are the sole responsibility of the owner.

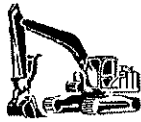
Quotation prepared by:

This is a quotation on the goods named, subject to the conditions noted below: Describe any conditions pertaining to these prices and any additional terms of the agreement. You may want to include contingencies that will affect the quotation.

To accept this quotation, sign here and return:

THANK YOU FOR YOUR BUSINESS!

Allegany Wrecking & Salvage, LLC



Contract Proposal

13905 Weaver Avenue
P.O. Box 618
Maugansville, MD 21767
Phone: (301) 707-6912 Cell: (240) 329-7835
Email: Alleganywrecking8@gmail.com

Date: 9/7/2020
Quotation #: 2039
Contract ID #: 2039

Bill To: Pastor Pamela Parsons
Name: Pamela Parsons
Street Address: 341 Johnathan St
City, State, ZIP: Hagerstown, MD 21740
Phone: 301-331-1262
Email: Pastorpherson@gmail.com

Job Location – 341 Johnathan St. Hagerstown, MD 21740

<u>Description</u>	<u>Amount</u>
Scope of work shall consist of:	
1. Complete demolition and raising of the existing footprint of structure located at 341 Johnathan St.	
2. All brick and wood shall be hauled away to an appropriate dump site and/or landfill.	
3. Shale will be used to fill any voids lower than 3 inches below grade.	
4. The existing 4 inches shall be topped with topsoil finished with seed and straw	

Terms and conditions:

1. Contractor will furnish all materials, labor, equipment, disposal, supervision and insurance for the work mentioned above.
2. Contractor will adhere to all local, state and federal O.S.H.A./M.O.S.H.A. guidelines.
3. Contractor will be allowed all salvageable materials from property that remains.
4. Contractor will not be responsible for any hazardous materials.
5. Property owners will be responsible for notification to the state and contacting Miss Utilities.
6. Property owners are to make sure all utilities are disconnected prior to the start of demolition.

Lump Sum of work described above ----- \$ \$18,000.00

By signing this you agree to all terms mentioned and agree to pay all monies due to said contractor.

Joshua W. Merrbaugh
Joshua W. Merrbaugh

10/8/2020
Date

Signature

The above prices, specifications and conditions are satisfactory and are hereby accepted.
Please contact our office if you have any questions regarding this quotation.

Thank You for your Business!