



Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman James L. Furstenberg
Councilwoman Laurie P. Marchini

City Administrator Jeffrey F. Silka
City Solicitor Michael Scott Cohen
City Clerk Allison K. Layton

AGENDA

M&CC Regular Meeting
3 Pershing Street, Cumberland MD 21502

DATE: July 02, 2024

OPEN SESSION – 6:15 PM

Pledge of Allegiance

Roll Call

Statement of Closed Meeting

Approval of Minutes

1. Approving the Closed, Work and Regular Session Minutes from June 18, 2024

Public Comments – FOR AGENDA ITEMS ONLY

All public comments are limited to 5 minutes per person

New Business

(A) Ordinances

1. Ordinance 3985 (*1st reading*) - authorizing the execution of (1) a contract for exchange of real estate for the exchange of certain surplus real property owned by the Mayor and City Council of Cumberland located at 454 Goethe Street for the real property owned by James W. Wormack and Joyce E. Wormack at 415 Central Avenue, (2) a deed for the purpose of conveying the property and (3) such supplemental documents as may be required to effect the transaction
2. Ordinance 3986 (*1st reading*) - authorizing the transfer of three parcels of real property located at 406, 410 RR and 412 Goethe Street to Dawn Hite for the purchase price of \$300
3. Ordinance 3987 (*1st reading*) - authorizing the transfer of the parcel of real property located at 469 Goethe Street to Justin Lamp for the purchase price of \$500

- [4.](#) Ordinance 3988 (*1st reading*) - authorizing the transfer of the parcel of real property located at 111 South Street to Covenant Keeper, Inc. for the purchase price of \$2,150
- [5.](#) Ordinance 3989 (*1st reading*) - authorizing the transfer of the parcel of real property located at 526 Broadway Circle to James and Terry Froelich for the purchase price of \$2,001
- [6.](#) Ordinance 3990 (*1st reading*) - authorizing the transfer of the parcel of real property located at 424 Goethe Street to Jonathan Pressman for the purchase price of \$7,000

(B) Orders (Consent Agenda)

- [1.](#) Order 27,492 - authorizing the contract renewal with Link Computer Corporation for the renewal of the MuniLink Utility Billing System for a one year term beginning July 1, 2024 in the amount not to exceed \$46,029.12
- [2.](#) Order 27,493 - authorizing the City Administrator to approve Change Order No. 2 to City Project “Operation and Maintenance of the Heat Drying Facilities for Sludge Processing”, through New England Fertilizer Company (NEFCO), in the increased amount of \$245,000 to inform and update the yearly cost of the 15-year contract to its current pricing of \$1,250,000
- [3.](#) Order 27,494 - authorizing the City Administrator to approve Change Order No. 1 to City Project “Constitution Park Trails Project” (2022-32-RECR), in the increased amount of \$1,425 to cover additional Administrative Fees and Insurance, bringing the new contract value to \$379,761.82
- [4.](#) Order 27,495 - authorizing the City Administrator to execute Change Order No. 3 with Triton Construction for additional tree removals, excavation, replacement of collapsed sewer lines and relocation of existing water service line for the Baltimore Street Access Project (City Project 12-16-M), in the amount of \$120,225.94, bringing the new contract value to \$14,902,660.94
- [5.](#) Order 27,496 - authorizing the City Administrator to execute Change Order No. 2, with Harbel, Inc. due to the need for additional concrete repair discovered after the project began, for the repair of Bridge A-C-01 McMullen Bridge (City Project 18-16-BR), in an increased amount of \$23,933.78, bringing the total contract price not to exceed \$526,888.31
- [6.](#) Order 27,497 - executing a donation agreement between the Mayor and City Council and Matthew J. Hunt, for the donation of the parcel of real property at 212 Baltimore Street and the improvements thereon, if any, to the City
- [7.](#) Order 27,498 - authorizing payment to various community groups from the hotel/motel tax receipts in an amount not to exceed \$45,000 when added to the community groups detailed in Order 27,499 also dated July 2, 2024
- [8.](#) Order 27,499 - authorizing payment to various community groups from the hotel/motel tax receipts in an amount not to exceed \$45,000 when added to the community groups detailed in Order 27,498 also dated July 2, 2024

9. Order 27,500 - authorizing the execution of an Outdoor Dining Lease Agreement with Coney Island Lunch, Inc. DBA Curtis Coney Island Famous Weiners for the use of the public right of way immediately in front of and adjacent to the property for outside cafe dining for a term effective July 1, 2024 through October 31, 2025

Public Comments

All public comments are limited to 5 minutes per person

Adjournment

File Attachments for Item:

1. Approving the Closed, Work and Regular Session Minutes from June 18, 2024

Mayor and City Council of Cumberland

Closed Session Minutes

Allegany Museum, 3 Pershing St

2nd Floor Conference Room

Tuesday, June 18, 2024; 4:30 p.m.

On June 18, 2024, the Mayor and City Council met in closed session at 4:30 p.m. in the Second Floor Conference Room of the Allegany Museum at 3 Pershing Street to discuss matters that relate to contract negotiations with the International Association of Firefighters Local #203. Authority to close the session is provided by Section 3-305(b)(9) of the General Provisions Article of the Annotated Code of Maryland.

MOTION: Motion to enter into Closed Session was made by Council Member Frazier, seconded by Council Member Cioni , and was passed on a vote of 5-0.

PRESENT: Raymond M. Morriss, President; Council Members Richard Cioni, Eugene Frazier-Absent, Jimmy Furstenberg, and Laurie Marchini

ALSO PRESENT: Jeffrey F. Silka, City Administrator; Allison K. Layton, City Clerk; Michael S. Cohen, City Solicitor and Shannon Adams, Fire Chief



Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman James L. Furstenberg
Councilwoman Laurie P. Marchini

City Administrator Jeffrey F. Silka
City Solicitor Michael Scott Cohen
City Clerk Allison K. Layton

MINUTES

M&CC Regular Public Meeting
Allegany Museum, 3 Pershing Street

DATE: June 18, 2024

I. OPEN SESSION – 6:15 p.m.

II. Pledge of Allegiance

III. Roll Call

PRESENT:

Council Member Richard J. "Rock" Cioni
Council Member Eugene T. Frazier
Council Member James L. Furstenberg, III
Council Member Laurie P. Marchini
President Raymond M. Morriss, President

Also Present: Jeffrey F. Silka, City Administrator; Allison K. Layton, City Clerk; Chuck Ternet, Chief of Police; Shannon Adams, Fire Chief; Media Representatives

IV. Presentations

1. Presentation of Employee Retirement Awards

Mayor Morriss opened the meeting by acknowledging Kevin Ogle's departure from the City of Cumberland with 52 years of employment. Chief Ternet spoke about Kevin's career with the Cumberland City Police Department and highlighted a timeline of his career. In October of 1972 he was hired as a Police officer. In 1992 promoted to Corporal, 1995 promoted to Sargent, 1998 promoted to Lieutenant, 2003 promoted to Captain, 2006 named Active Chief, 2009 he retired as Deputy Chief. A few months later he was hired as supervisor of the Cumberland Parking Authority and announced his final departure from the City of Cumberland on June 21, 2024. Chief Ternet spoke about the people who were fortunate to work with Kevin and how much of a mentor he was to them, Kevin trained hundreds of Police Officers. When Kevin was hired, he made \$2.73 an hour, his total salary was \$5,600 a

year. On Kevin's original application he had 2 choices to apply for, his 1st choice was for the Police, his 2nd choice was for the Fire, so his entire legacy was based on a checkbox. After reading Kevin's retirement letter, Ternet stated how happy and blessed the city had been to have him as a part of their family. During Kevin's career he designed a new badge that was more reflective of the City and is now a part of his new legacy. The officers have been wearing the badges since he designed them. He was presented with a large version of the badge he designed with the Deputy Chief on it. A photo was taken with Kevin, his wife, members of the M&CC, as well as Chief Ternet.

2. Recognizing the Allegany Girl's Softball Team for winning State Championship.

Mayor Morriss acknowledged the Allegany Girls Softball Team for winning the State Championship and finishing their season with a record of 22-0 and presented them with a Certificate of Recognition. Coach Brandon Monahan thanked everyone for recognizing the girls and spoke how great of an opportunity it has been to have watched 5 of these girls, who stuck together through the years and now achieved a championship together, seeing them develop and see all the hard work and effort that they put in as well as time and training. Brandon mentioned the girls and their positions, Abi Britton, Senior Pitcher, Maylee Blank, second baseman and Mackenzie Monahan, Short stop. Abi has been pitching for eight years and with a speed of 101mph. A group photo was taken with M&CC.

V. Statement of Closed Meeting

On June 18, 2024, the Mayor and City Council met in closed session at 4:30 p.m. in the Second Floor Conference Room of the Allegany Museum at 3 Pershing Street to discuss matters that relate to contract negotiations with the International Association of Firefighters Local #203. Authority to close the session is provided by Section 3-305(b)(9) of the General Provisions Article of the Annotated Code of Maryland.

VI. Director's Reports

Motion to approve the reports was made by Council Member Furstenberg, seconded by Council Member Cioni, and was passed on a vote of 5-0.

(A) Administrative Services

1. Administrative Services Monthly for May 2024

(B) Public Works

1. Maintenance Division Monthly Report for May 2024

(C) Fire

1. Fire Department Monthly Report for May 2024

(D) Police

1. Police Department Monthly Report for May 2024

VII. Approval of Minutes

Motion to approve the minutes was made by Council Member Furstenburg, seconded by Council Member Marchini, and was passed on a vote of 5-0.

1. Approval of the Work and Regular Session Minutes from May 21, 2024 and June 4, 2024

Public Comments - Agenda Items Only

No Public comments

All public comments are limited to 5 minutes per person

VIII. New Business

(A) Resolution

1. Resolution 2024-03 (*one reading only*) - approving an application to the MD Department of Housing and Community Development for Revitalization 2025 Projects totaling up to \$400,000

READING: The Resolution was submitted in title only for its reading and was passed on a vote of 5-0.

(B) Orders (Consent Agenda)

Mr. Silka reviewed each item on the Consent Agenda, and Mayor Morriss called for questions or comments. **Motion** to approve each order was made by Council Member Furstenberg, seconded by Council Member Cioni, and was passed on a vote of 5-0.

1. Order 27,476 - approving the 2024 Annual Action Plan projects for the Community Development Block Grant Program
2. Order 27,477 - authorizing the abatement of taxes, interest and water/sewer for the City-owned properties at 208 Virginia Avenue, 513 Fayette Street, 26 Industrial Blvd. and 317 Cecelia Street in the total amount of \$16,022.28
3. Order 27,478 - declaring equipment to be surplus property and authorized for sale, scrap or disposal

4. Order 27,479 - rescinding the bid of Aylen Milanes for surplus equipment "2014 Cub Cadet Tank LZ Commercial" due to non-compliance with bid procedures, and accepting the bid of \$2,525 from Donelly Bohrer for said equipment
5. Order 27,480 - accepting the proposal from Cleveland Brothers CAT, for the purchase of one new Caterpillar 246D3 Skid Steer Loader in the total amount not to exceed \$46,520, in accordance with City Code Sec 2-171 (c) relating to to purchasing cooperatives and piggyback contracts
6. Order 27,481 - accepting the proposal from Cleveland Brothers CAT, to purchase one new Caterpillar Weiler P385C Asphalt Paver in the total amount not to exceed \$267,390, in accordance with City Code Sec 2-171 (c) relating to to purchasing cooperatives and piggyback contracts
7. Order 27,482 - accepting the proposal from Stephenson Equipment for the purchase of one new LeeBoy L300 Trailer Mounted Tack Tank in the total amount not to exceed \$24,955.40, in accordance with City Code Sec 2-171 (c) relating to to purchasing cooperatives and piggyback contracts
8. Order 27,483 - accepting the proposal from Stephenson Equipment for the purchase of one new Bomag BW120AD5 Asphalt Roller in the total amount not to exceed \$60,279, in accordance with City Code Sec 2-171 (c) relating to to purchasing cooperatives and piggyback contracts
9. Order 27,484 - authorizing the execution of an Encroachment Agreement by and between the Mayor and City Council of Cumberland and Thomas J. and Lori M. Cehlarik for the purpose of installation, maintenance, repair and replacement of a chair lift at their residence
10. Order 27,485 - authorizing the sole source renewal of the LOGOS.net Finance/HR system support and maintenance contract for a one year term at a cost not to exceed \$56,838.52
11. Order 27,486 - approving the sole source purchase from Amazon Web Services, Inc. to provide server hosting and support services for FY25 in the not to exceed amount of \$37,000
12. Order 27,487 - authorizing the City Administrator to execute all FY25 Employment Agreements for part-time employees of the City of Cumberland
13. Order 27,488 - authorizing the City Administrator to execute all Seasonal Employment Agreements for the 2024 Spring/Summer season which shall not exceed 6 months from the date of execution
14. Order 27,489 - authorizing the execution of an Outdoor Dining Lease Agreement with Coachs Entertainment Enterprises, L.L.C. (Mezzo's), Uncle Jack's Pizzeria and Pub, Inc., SHAFCO T/A City Lights American Grill and Bar, Embassy Theatre Corporation and Baltimore Street Grill for the use of the public right of way immediately in front of and adjacent to the property for outside cafe dining for a term effective June 1, 2024 through October 31, 2025

16. Order 27,490 - declaring certain City-owned properties located at 454-456 Goethe Street, 404 Furnace Street, Lots 63-65 Young's Terrace and Lots 5-6-7, Blk 28 Sperry Terrace, to be surplus and authorizing them for sale
17. Order 27,491 - approving the sole source purchase from L/B Water Service, Inc. for one new Mueller CL-12 Large Tapping Machine for the Water Department in the total amount not to exceed \$52,341.99

IX. Public Comments

Chris Meyers addressed the M&CC that he is a resident of 15 S. Liberty Street, a local business owner and an employee of the local radio station. Chris stated that he is here tonight because he and the DCBA and Allegany County Historic Society have secured a special event permit for the “Rock the Block” event for October 12, 2024, a free community event. It will be a two-stage event on Pershing Street and Merchant’s Alley that will celebrate the end of construction on the Baltimore Street redesign as well as a thank you to the community for supporting small businesses during the construction. Chris is requesting an open container permit for the event. They have secured three music acts and are working on a fourth. One of the bands is an 80’s East Coast tribute Band and will bring outside locals to the event.

Councilwoman Marchini asked Chris if he has worked with the DDC about this event because they did not hear anything about it at the meeting. Chris responded that the DDC is aware of the event.

Frank Clark addressed the M&CC that he had sent out an email on May 19, 2024, regarding a space that was provided on Johnson Street for trees to be planted. His concern is the size of the tree being on a 45 sq foot space due to utilities. Frank asked who he could contact about when the sidewalks get replaced to have the utilities moved so we can plant trees. Says he addressed M&CC a few months ago concerning a \$50K program called Reimagine Greene Street that was done in 2015 and one of the recommendations was to plant trees on Greene Street and he feels that we missed that opportunity to replace the utilities because of those sidewalks being replaced. He feels that someone needs to oversee contacting utility companies to have this work done when a project like this is taking place to increase the number of trees that can be planted.

Mayor Morriss thanked Frank for coming in and sharing his concerns and agreed that the City needs to a better job of following plans that were done in the past and do better moving forward.

Senator Mike McKay presented the M&CC with a 90-day report stating that the Senate President, Speaker of the House presents a 90-day report to every member of the MD General Assembly. The report has listed every bill that his office has entered, 36 for this year, 14 that have passed and 4 that went to summer studies. The reason for this 90-day report is to show full transparency on how he is voting in Annapolis. In Realtime third reader votes for a bill (final votes) are posted on Facebook as well as his website along with every vote that has been passed by the General Assembly for the last 10 years. That information is compiled, an end of session letter is put together along with a spreadsheet representing Garrett, Allegany and Washington Counties showing all of the state dollars that are secured coming back to the three jurisdictions, which includes money that goes to Frostburg State University, Department of

Corrections and really gives a Snapshot of how well or not we do at bringing money back to the state of Maryland. Anything that we win is a team effort, we thank you for testifying on bills and funding and for your support of the General Assembly.

This idea started with a 3-ring binder that the Department of Legislative Services would copy for him and because he is the only one who does this, he was told that they could no longer do that for him. So, this year he was able to have it published on Amazon for \$4.75. He went on to say that he thinks it is important that the M&CC know what he is doing in Annapolis. Mike thanked the M&CC for allowing him to represent them in the Maryland General Assembly this past year and he is looking forward to working with us on priorities for the City of Cumberland in the 2025 session.

Mike added that they were also able to get \$500K for the Harrison Street intersection, passed an Oral Health bill for the 10th year in a row and were able to obtain \$500K to train emergency room doctors on administering pain medications and educating patients who may be addicted to Opioids on getting them the mental health services that they need. The bill was passed bipartisan support. Councilwoman Marchini asked Mike if he would have time to meet with the M&CC to discuss future Legislation before his return to Annapolis, Mike said yes and that his office would send out email on behalf of the delegation in October asking if they would like to meet with Legislation.

Peggy Keene greeted the M&CC and began by stating that she came to them in February of 2024 and December of 2023. When she recently went to the George Washington Headquarters for her shift on Saturday around 10:00 am, she found the grounds covered in trash. 10 lbs. of trash were picked up from around the headquarters and there was a garbage can also overflowing with trash, an area used as a bathroom and flies all over the location. On the porch there was a rat that disappeared under the house. As their shift ended and the next shift came in, they witnessed rats scampering up trees and in the holes in the foundation. During the shift change they found several individuals sitting in the grass eating behind the HQ and they were informed that visitors were being expected. Upon coming back to check on her employee, 2 hours later, there was a police car parked under the bridge and the people behind the HQ had disappeared, however one man was sleeping behind the monument with all of his belongings which cannot be observed from the street.

On the following Saturday, June 15, 2024, she began her shift at 10:00am to find more trash around the HQ. At the back of the building, she found a cardboard box that contained human feces, with the flies still everywhere. She greeted visitors but some just came up to the door and left. One woman was afraid to walk back to her car at the train station, so she waited for a group to walk with them while another group of people left due to all the flies. When the next shift arrived, she informed them that they needed to close the HQ due to all the trash, feces, rats and flies. Peggy updated that there have only been 40 visitors to the HQ which is very low and went on to address the M&CC that they need help now, the vagrancy situation around the HQ is out of control, as it is being used by patrons to charge their phones, eat food, use as a garbage dump, outside bathroom facility and drug distribution center. Peggy apologized for presenting these issues in a public meeting, but she asked for a private meeting back in February. The Daughters of the American Revolution are asking for a port a potty under the bridge, removal of the outdoor electrical outlets, install a locked outlet box, provide garbage pickup on days and weekends with a larger can, lights to illuminate the HQ at night and a ramp with a pipe rail for disabled and elderly visitors. Respect should be shown for this piece of history that the father of our County George Washington stayed in.

Mayor Morriss thanked Peggy for providing that information and stated that Mr. Silka, Chief Ternet and he would discuss the issue and work with her to discuss holding people accountable for their actions. Peggy added that she wanted to thank Eugene Frazier and Chief Ternet for all their help.

All public comments are limited to 5 minutes per person

X. Adjournment

With no further business at hand, the meeting adjourned at 7:10 p.m.

Minutes approved on _____

Raymond M. Morriss, Mayor _____

ATTEST: Allison K. Layton, City Clerk _____



Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman James L. Furstenberg
Councilwoman Laurie P. Marchini

City Administrator Jeffrey F. Silka
City Solicitor Michael Scott Cohen
City Clerk Allison K. Layton

Mayor and City Council of Cumberland

WORK SESSION

2nd Floor Conference Room
Allegany Museum
3 Pershing Street
Cumberland, MD 21502

Tuesday, June 18, 2024, 5:00 p.m.

PRESENT: Mayor Raymond M. Morriss; Council Members Eugene Frazier, Jimmy Furstenberg, Rock Cioni and Laurie Marchini.

ALSO PRESENT: Jeffrey F. Silka, City Administrator; Allison Layton, City Clerk; Michael Scott Cohen, City Solicitor; Chuck Ternent, Chief of Police; Shannon Adams, Fire Chief; Ruth Davis-Rogers, Historic Preservation Planner;

Media: Teresa McMinn, Cumberland Times-News; Kathy Cornwell, WCBC

I. DISCUSSION ON DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD) GRANTS

Jeff turned over the discussion to Ruth Davis-Rogers who explained that the funding the Historic Preservation department has been applying for through the Department of Housing and Community Development for Community Legacy Projects. The state is divided into five different areas and we are applying for four different grants for which approval from the Mayor and City Council would be needed. Ruth went over the programs with the Mayor and City Council members and stated that they will not know if they get approved for the funding for about six months.

The first project they have applied for is the Central Avenue Gateway Project in the amount of \$400K. The funds would be used to remove blighted properties along I-68 to enhance Cumberland's Gateway in an effort to improve the public perception of the community. There are currently 22 blighted properties that are included in this project. Cumberland has acquired 8 since June of 2017. The project was presented to Allegany County and they felt it had enough merit to warrant them matching our future investments and becoming a partner. The Mayor and City

Council and the Allegany County Commissioners endorsed the project and each agreed to provide \$200K in funding. The City notified property owners to let them know of their intent to acquire the properties and invited them to a public meeting to discuss the purchase. Eight of the current properties have structures on them, but only three are currently occupied. Once the project is funded, the City of Cumberland would like to move forward with the purchase or transfer of remaining properties. If the property has a structure the City will demolish, grade and seed the lot to be used for green space until the best use is determined at a later date.

The second project is the Virginia Avenue Facade grant for \$200K for the retail district. The program would offer funding to property owners interested in redeveloping the facades of their commercial properties. With the help of Maryland Housing and Community Development, we would like to expand the program in Midtown to Southside. With the request, we can provide grants to 13-20 commercial building owners, depending on the cost of the projects, and owners must provide matching funds. The owner would provide half and the grant would provide the other half. Ruth updated that it has been 12-15 years since any investments have been made in the Virginia Avenue area.

The third is the Roof Replacement program and the requested amount was for \$100K, this program would be in continuation of the program awarded in 2021 & 2024. The program allows us to help low-income families, elderly and disabled individuals as well as Veterans. No matching funds are required with this program. Ruth stated that the program is very popular as there is a stack of applications at this time. She went on to explain that the applicants have to qualify for the program and that it is for low income only, they must be up to date on their taxes and the condition of the structure is taken into consideration as well. The cost of a roof right now is about \$12-15K, so we are unsure how many people we can help.

The last program we are applying for is the Age in Place Home Modification grant with a requested amount of \$100K. This program is to help low-income seniors with modifications so they can remain in their home. A 2020 US Census reported that by 2030 we will be at 73 million people that will be at least age 65+. 55% of Baby Boomers that were surveyed, plan to remain in their homes as they age and less than ¼ of those surveyed have not made any modifications to accommodate changes that come with aging. Cumberland has a high population of elderly residents so this program would greatly benefit their needs. The modifications would include stairlifts, ramps, handrails, non-slip flooring, comfort height toilets, replacing bathtubs with walk in showers, the program does not require matching funds. Councilwoman Marchini asked Ruth how the projects were selected, and Ruth explained that it was based on the need and phone calls they received. They researched how much funding other communities have received and what programs they have used that Maryland prefers to work with. Councilman Cioni asked about the demand for roof replacement and Ruth confirmed that she receives calls daily.

II. HOTEL/MOTEL GRANT DISCUSSION

Mr. Silka began the discussion by addressing the list of projects that the M&CC was asked for their input on. \$45K is budgeted for this project. Michael Cohen asked if the list had taken into account the Boards that council members serve on. Mr. Silka advised that when the time comes to approve the funds, there would need to be two orders in place. Mayor Morriss asked the council members if they are all good with everything, and all members agreed they were good.

III. REVIEW OF THE PUBLIC MEETING AGENDA OF JUNE 18, 2024

Mr. Silka began the discussion by updating that Lee Borrer has provided an action plan for the 2024 Community Development Block Grant. He continued that for the Outdoor dining leases, the estimated space was put into place that the restaurant would have, which will be subject to the final design. Because we are unsure when everything will be completed, the City has extended the leases through October of 2025 in order to provide the restaurant operators extra time. The encroachment agreement is for accessibility issues in which a person would not be able to access their home, so we are allowing them to encroach upon the City's right of way to put in a chair lift. Mr. Silka continued with surplus property and equipment such as weed eaters. And the authority to do the seasonal and part time employment agreement. Rock highlighted that the City is trying with Gothe Street, Jeff added that it is a part of the revitalization program we just do not have the money to do it all at once.

IV. MAYOR AND CITY COUNCIL UPDATES

Councilman Frazier mentioned worldatlas.com and stated that the website mentions towns to visit in Maryland and Cumberland was one of them, so Cumberland is getting noticed. He also shared that he will be attending the upcoming Maryland Municipal League Conference (MML).

Mayor Morriss stated that Let's Beautify Cumberland (LBC!) is taking nominations for their Blue-Ribbon awards and if anyone sees an outstanding property, they should reach out to Ed Mullany so LBC! can do their due diligence to rank the properties. He continued that LBC! is also continuing to raise funds for the town clock and they had a yard sale on June 1, 2024 at Times News with a great turnout.

Mayor Morriss shared that the Farmer's Market would be on Thursday morning and later that evening would be the Levitt AMP music series, with gates opening at 6:30 p.m. and music starting at 7:00 p.m. He also updated that he and Ruth Davis-Rogers participated in a meeting with the Maryland Department of Planning and had a good group of people from Washington, Allegany and Garrett counties expressing their concerns. Most of the discussion was on housing so it was nice to hear what other communities are doing in their efforts. The department has changed their processes and the Secretary and her staff now visit regions. This allows each region the opportunity to have a good discussion and to hear what is going on in other communities in the surrounding area.

Next, Mayor Morriss updated on the progress that Teabow was making and stated that we can really see the improvements on Arch Street and for the first time in a long time, we are seeing spec homes being built. Mayor Morriss noted how professional the company is, mentioning the boards they provide that display their permits, designs and plans.

Mayor Morriss added that MML is next week and is a great educational experience for elected officials and staff to learn how everything in a municipal government works. It provides the opportunity what is going on in other communities.

Councilwoman Marchini updated the search is on for a smaller Christmas tree for Baltimore Street this year, and if anyone knows of where to obtain one, to please contact Melinda Kelleher. The quarterly Town Hall meeting will be June 27, 2024 at 2:00 p.m.

She shared that the ribbon cutting at Madison Paige was last Saturday and with the addition of Lefty's the first floor of the Rosenbaum building will be full. Marchini continued sharing that granite was placed on the waterfall side and concrete was poured on Baltimore Street. Also, the Allegany Museum opening was Friday for the Allegany High School Project showing the history of Baltimore Street and will be up until September. She reminded all that meetings are held regularly to discuss the reopening of Baltimore Street and the weekend plans that follow and also asked everyone to remind residents who live in Historic districts to please contact Ruth Davis-Rogers before beginning any exterior projects as Ruth can assist them in getting the correct materials, applying for grants and helping with tax credits.

Ms. Davis-Rogers added it would just be a conversation to help guide residents and pointed out that it is only local Historic districts that have strict guidelines that have to be followed. The guidelines are not for policing structures but instead about protecting so as not to compromise them. Washington Street, for example, is known for being one of the most special historic streets in Maryland. When someone is not following the guidelines, they are not only hurting themselves but also their neighbors as well. The Historic Preservation Commission is here to help and Ruth can provide products and people to connect them with what can help them as well.

Marchini continued that 11 proposals had been received for the Wayfinding plan that will be used to create comprehensive Wayfinding planning using technology and signage, for travel by car, bike, walking to connect people to restaurants and other sites in the area to encourage them to stay longer and revisit. Also, the Garden Club tours are this weekend with the focus being on the City.

Mayor Morriss reminded all that City Hall is closed for Juneteenth and will remain closed to the public for the next two weeks for HVAC construction. The Tax and Utility Department will be relocated to the Willetts building on 446 Mechanic Street. Some staff will be working from home while others will be out for MML. Jeff updated that all staff is available through phone and email, everything is operational outside of the building. Councilman Furstenburg asked if the mail slot was still open for utility payments, Mayor Morriss confirming that it is still available for payments but anyone needing assistance will need to go to 446 Mechanic Street.

V. ADJOURNMENT

With no further business at hand, the meeting adjourned at 5:42 p.m.
Respectfully Submitted,

Allison K. Layton
City Clerk

Minutes approved on: _____

File Attachments for Item:

. Ordinance 3985 (*1st reading*) - authorizing the execution of (1) a contract for exchange of real estate for the exchange of certain surplus real property owned by the Mayor and City Council of Cumberland located at 454 Goethe Street for the real property owned by James W. Wormack and Joyce E. Wormack at 415 Central Avenue, (2) a deed for the purpose of conveying the property and (3) such supplemental documents as may be required to effect the transaction

ORDINANCE NO. 3985

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF (1) A CONTRACT FOR EXCHANGE OF REAL ESTATE FOR THE EXCHANGE OF CERTAIN SURPLUS REAL PROPERTY OWNED BY MAYOR AND CITY COUNCIL OF CUMBERLAND LOCATED AT 454 GOETHE STREET, CUMBERLAND, MD 21502 FOR THE REAL PROPERTY OWNED BY JAMES W. WORMACK AND JOYCE E. WORMACK LOCATED AT 415 CENTRAL AVE, CUMBERLAND, MD 21502, (2) A DEED FOR THE PURPOSE OF CONVEYING THE PROPERTY LOCATED AT 454 GOETHE STREET TO THE JAMES W. WORMACK AND KIMBERLY WORMACK, AND (3) SUCH SUPPLEMENTAL DOCUMENTS AS MAY BE REQUIRED TO EFFECT THE TRANSACTION CONTEMPLATED BY THE SAID CONTRACT FOR EXCHANGE OF REAL ESTATE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain unimproved parcel of real property located at 454 Goethe Street, in the City of Cumberland, Allegany County, Maryland;

WHEREAS, the said property was declared to be surplus property under the terms of Order No. 27,490, passed by the Mayor and City Council on June 18, 2024;

WHEREAS, James W. Wormack and Joyce E. Wormack are the fee simple owners of a certain unimproved parcel of real property located at 415 Central Avenue, in the City of Cumberland, Allegany County, Maryland;

WHEREAS, the Wormacks desire to exchange the real property located at 415 Central Avenue for the real property located at 454 Goethe Street as an even trade pursuant to the terms of a Contract for Exchange of Real Estate, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Mayor and City Council of Cumberland deem it to be in the interest of the City to enter into the said Contract for Exchange of Real Estate in that the City is acquiring property on Central Avenue for open space, at least for the immediate future.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor be and he is hereby authorized to execute the Contract for Exchange of Real Estate attached hereto as Exhibit A;

SECTION 2: BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute a deed in the form attached hereto as Exhibit B or in a similar form deemed to be acceptable to the City Solicitor, conveying the real property and improvements thereon, if any, located at 454 Goethe Street, Cumberland, MD 21502 to James W. Wormack and Kimberly Wormack in exchange for James Wormack and Joyce Wormack's conveyance of the real property and improvements located at 415 Central Avenue to Mayor and City Council of Cumberland;

SECTION 3: AND BE IT FURTHER ORDAINED, that the city Solicitor be and he is hereby authorized to execute a HUD-I or similar closing statement and such other documents as may be required or expedient for the purpose of facilitating and completing the closing for the transactions contemplated by the terms of the Contract for Exchange of Real Estate attached hereto as Exhibit A and he is further authorized to deliver the deed executed by the Mayor and City Clerk to the Wormacks at the said closing; and

SECTION 4: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this ____ day of July, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

CONTRACT FOR EXCHANGE OF REAL ESTATE

THIS CONTRACT FOR EXCHANGE OF REAL ESTATE ("Contract") is made by and between **Mayor and City Council of Cumberland** (the "City"), a Maryland municipal corporation, and **James W. Wormack ("James"), Joyce E. Wormack ("Joyce") and Kimberly Wormack ("Kimberly")** and is effective as of the date it is fully executed by the parties hereto, the said date hereinafter being referred to as the "Effective Date."

Section 1 - Definitions

1.1. "415 Central" means the unimproved parcel of real estate located at 415 Central Avenue, Cumberland, MD 21502 which is presently owned by James and Joyce, who are brother and sister, and is more particularly described in the deed to them from Roger Lee Michael dated June 30, 1988 and recorded among the Land Records of Allegany County, Maryland (the "Land Records") in Deed Liber 573, folio 162. 415 Central is identified as Tax ID No. 22-011782. If there are any improvements on 415 Central, they shall be deemed to be a part of 415 Central and shall be conveyed to the City at Closing.

1.2. "454 Goethe" means the unimproved parcel of real estate located at 454 Goethe Street, Cumberland, MD 21502 which is presently owned by the City and is more particularly described as Parcel Two in the deed to it from Kevin Kniseley, Personal Representative of the Estate of Robinhood Constitution AKA Mark Shryock and Mark A. Shryock dated March 13, 2024 and recorded among the Land Records in Book 2969, Page 209. 454 Goethe is identified as Tax ID No. 23-008408. If there are any improvements on 454 Goethe, they shall be deemed to be a part of 454 Goethe and shall be conveyed to the City at Closing.

1.3. "Closing" means the consummation of the property transfers contemplated by the terms of this Contract.

1.4. "Date of Closing" means the date listed in **Section 6.1** of this Contract or, if modified pursuant to the terms of this Contract, the actual date when the matters described in **Section 6** are performed.

1.5. "Encumbrance" means any mortgage, judgment, lien, security interest, charge or other encumbrance except (a) any use and occupancy restriction of public record, privately or governmentally imposed, and generally applicable to properties in the immediate neighborhood of the Property; (b) publicly recorded easements for public utilities; and (c) other easements which may be observed by an inspection of the Property.

Section 2 - Agreement of Exchange

2.1. The City agrees to transfer 454 Goethe to James and Kimberly in exchange for the contemporaneous transfer of 415 Central to the City from James and Joyce. James, Joyce and Kimberly (collectively, the "Wormacks") agree to this transaction as well.

Section 3. Consideration

3.1. No consideration shall be payable from either party to the other in connection with transactions contemplated by the terms of this Contract. The exchange of the properties and the parties' covenants and agreements relative thereto constitute the sole consideration under this Contract.

Section 4 - Warranties and Condition of Title.

4.1. Title to 454 Goethe and 415 Central shall be good and merchantable and free of all Encumbrances.

4.2. If any title defect is revealed that causes either 454 Goethe or 415 Central to be unmerchantable and to which the transferee of that property objects, the provisions of this **Section 4.2** shall apply.

4.2.1. If the title defect consists of an Encumbrance, which can be satisfied by the payment of a certain sum, the transferor of that property may elect to pay the Encumbrance and proceed to Closing or cancel this Contract.

4.2.2. If the Encumbrance is not such that it can be satisfied by the payment of a certain sum, the transferor of that property may elect to satisfy the Encumbrance, in which event the Date of Closing may be postponed for a period not to exceed thirty (30) days, except upon the written consent of the parties, to enable the transferor to satisfy the Encumbrance. If the Encumbrance cannot be satisfied on or before the Date of Closing and if the transferor either does not elect to satisfy the Encumbrance, or, having so elected, fails to do so, the transferee may either accept the property with the Encumbrance against it or cancel this Contract.

4.2.3. In the event a title defect is discovered by either party, written notice of that defect and the manner in which the party discovering the defect wishes to proceed in regard to the matters addressed in **Section 4.2.1** and **4.2.2** above must be provided to the other party before Closing. Any party who fails to provide this written notice in a timely manner shall have waived their rights under **Section 4.2** of this Contract.

4.3. The City makes no representations or warranties concerning the condition of 454 Goethe. James and Kimberly acknowledge they have had the opportunity to inspect it and agree to accept it in its "as is" condition as of the Date of Closing.

4.4. The James and Joyce make no representations or warranties concerning the condition of 415 Central. The City acknowledges that it has had the opportunity to inspect 415 Central and it agrees to accept it in its "as is" condition as of the Date of Closing.

Section 5 – Risk of Loss

5.1. Until such time as Closing is completed, risk of loss for 415 Central resides with the James and Joyce. Until such time as Closing is completed, risk of loss for 454 Goethe resides with the the City.

Section 6 - Closing

6.1. Closing shall be not later than forty-five (45) days from the date of the City's passage of an ordinance authorizing the consummation of the transactions described in this Contract. It is understood that, as a condition precedent to the approval of this Contract, the City must declare 454 Goethe to be surplus property and wait a minimum of twenty (20) days before proceeding with the passage of an ordinance authorizing the execution of this Contract and the deed effecting the

conveyance of 454 Goethe to the James and Kimberly and further authorizing the consummation of the transactions contemplated by the terms of this Contract. Both the entry of the order declaring 454 Goethe to be surplus property and the passage of the ordinance will be addressed during the course of the City's biweekly regular meetings.

6.2. At Closing, the City shall deliver to the James and Kimberly a quitclaim deed in recordable form conveying fee simple title to 454 Goethe to them.

6.3. At Closing, the James and Joyce shall deliver to the City a quitclaim deed in recordable form conveying fee simple title to 415 Central to it.

6.4. The City Solicitor and City Administrator are authorized to consent to extensions of the Closing Date on the City's behalf.

Section 7 - Adjustments and Allocations

7.1. State, county and municipal taxes and water and sewer service charges and other public charges with respect to 454 Goethe, if any, shall be apportioned to the date of Closing, and will be assumed and paid thereafter by the James and Kimberly. The transferor shall be responsible for the portion of said costs that accrued prior to and through the Date of Closing.

7.2. The City shall abate the taxes due on 415 Central and will seek abatement of the taxes due to the County and shall pay the unabated portion of those taxes.

Section 8 – Default

8.1. Either party may seek the specific performance of cancellation of this Contract as its/their sole remedy in the event of a default. If either party institutes litigation to enforce the terms of this Contract, the prevailing party in such litigation shall be entitled to judgment for the reasonable legal fees, court costs and litigation expenses it/they incurred in enforcing the terms of this Contract.

Section 9 - Miscellaneous

9.1. Time is of the essence under each of the terms of this Contract.

9.2. This Contract, covering real property located in the State of Maryland, shall be construed according to Maryland law.

9.3. This Contract shall bind upon and run to the benefit of the parties, and their respective heirs, personal representatives, successors and/or assigns.

9.4. Neither party may assign their/its rights under this Contract except upon the written consent of the other party.

9.5. This Contract may be modified only by a written document signed by each of the parties to its terms.

9.6. This written document embodies all of the agreements between the parties. Neither party is relying upon any statement or representation not contained in this written document.

IN WITNESS WHEREOF, the parties have executed this Contract on the date written beneath their signatures below.

WITNESS/ATTEST:

MAYOR AND CITY COUNCIL
OF CUMBERLAND

Allison Layton, City Clerk

By: _____
Raymond M. Morriss, Mayor

Date

James W. Wormack

Date

Joyce E. Wormack

Date

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **James W. Wormack and Joyce E. Wormack** (the “Grantors”) and **Mayor and City Council of Cumberland** (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00) and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantors do hereby quitclaim to the Grantee, its successors and assigns, all of the Grantors’ right, title, interest and estate in and to the following-described piece or parcel of real estate lying and being in Allegany County, Maryland, to wit:

ALL that lot or parcel of land known as Lot No. D on the plat of the "Harrison Property" on Ann Street Extended (now Central Avenue) in the City of Cumberland, Allegany County, Maryland, and more particularly described as follows, to-wit:

BEGINNING at a point in the Eastern line of Ann Street (now Central Avenue) distant North 78-11/12 degrees West 18-1/2 feet from the southwest corner of the brick foundation wall of the house on the lot hereby described; it being also the beginning of Lot C, and running thence with Ann Street (now Central Avenue) (as shown by Asahael Willison), North 42-2/3 degrees East 25 feet, then at right angles to Ann Street (now Central Avenue), South 47-1/3 degrees East 120 feet, then parallel with Ann Street (now Central Avenue) South 42-2/3 degrees West 25 feet to Lot C, then with said lot, North 47-1/3 degrees West 120 feet to the beginning.

IT BEING the same property described in the deed from Roger Lee Michael to James W. Wormack and Joyce E. Wormack, his sister, dated June 30, 1988, and recorded among the Land Records of Allegany County, Maryland in Deed Liber 573, folio 162

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, its successors and assigns, in fee simple forever.

WITNESS the hands and seals of the Grantors the date first written above.

WITNESS/ATTEST:

By: _____ (SEAL)
James W. Wormack

By: _____ (SEAL)
Joyce E. Wormack

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this _____ day of June, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **James W. Wormack**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, and did acknowledge that he executed the same for the purposes therein contained; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00 and that the total payment made to the grantor was \$0.00; and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantors are residents of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this _____ day of June, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Joyce E. Wormack**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, and did acknowledge that she executed the same for the purposes therein contained; and she further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00 and that the total payment made to the grantor was \$0.00; and she further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantors are residents of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

Attorney Certification

I hereby certify that the foregoing instrument was prepared by the undersigned attorney licensed to practice law in the State of Maryland. He further certifies that he did not perform a title search in connection with its preparation.

Michael Scott Cohen

NO TITLE SEARCH PERFORMED

THIS DEED, made this _____ day of June, 2024, by and between **Mayor and City Council of Cumberland** (the “City”), a Maryland municipal corporation, and **James W. Wormack and Kimberly Wormack, husband and wife** (the “Grantees”).

WITNESSETH:

That for and in consideration of the sum of One Dollar (\$1.00) and for other good and valuable consideration, the receipt of all of which is hereby acknowledged, the City does hereby quitclaim to the Grantees, their personal representatives, heirs and assigns, all of the City’s right, title, interest and estate in and to the following-described piece or parcel of real estate lying and being in the City of Cumberland, Allegany County, Maryland, to wit:

ALL that lot, piece or parcel of ground situate, lying and being on the northwesterly side of Goethe Street in the City of Cumberland, Allegany County, Maryland, comprising the whole of Lot No. 14 and parts of Lots Nos. 13 and 15 in Henderson and Pearre's Addition to the City of Cumberland, a plat of which said addition is recorded in Plat Box 1, page 77, Allegany County Land Records, and more particularly described in one parcel as follows, to-wit:

BEGINNING for the same parcel at the end of 8 feet on the first line of Lot No. 13 of said Addition, the said point being also North 29 degrees 35 minutes East 136 feet from the northeasterly corner of the brick house, known as the Darnell House; and running thence with the said Goethe Street, North 29 degrees 35 minutes East 50 feet to a point 8 feet on the first line of Lot No. 15 of said addition; and thence running at right angles to said street, North 60 degrees 25 minutes West 100 feet; thence South 29 degrees 35 minutes West 50 feet to the end of 17 feet on the third line of Lot No. 13, in said Addition; thence running across said Lot No. 13 South 60 degrees 25 minutes East 100 feet to the place of **BEGINNING**.

IT BEING the same property described as Parcel Two in the deed from Kevin Kniseley, Personal Representative of the Estate of Robinhood Constitution AKA Mark Shryock and Mark A. Shryock, to Mayor and City Council of Cumberland dated March 13, 2024, and recorded among the Land Records of

Allegany County, Maryland in Book 2969, Page 209.

SUBJECT TO all outconveyances, use and occupancy restrictions, privately or governmentally imposed and generally applicable to properties in the immediate neighborhood of the property conveyed hereby, reservations, agreements, rights of way, easements and other matters of record, and to easements or other matters which can be observed by a careful inspection of the property.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantees, their personal representatives, heirs and assigns, in fee simple forever as tenants by the entireties.

WITNESS the hand and seal of the City the day and year first above written.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ **(SEAL)**
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this _____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00; and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that a title search was not performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Ordinance 3986 (*1st reading*) - authorizing the transfer of three parcels of real property located at 406, 410 RR and 412 Goethe Street to Dawn Hite for the purchase price of \$300

ORDINANCE NO. 3986

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED "AN ORDINANCE TO ACCEPT THE BID OF DAWN HITE FOR THE PURCHASE OF THE PARCELS OF REAL PROPERTY IN THE CITY OF CUMBERLAND KNOWN AS 406 GOETHE STREET, 410 RR GOETHE STREET AND 412 GOETHE STREET, CUMBERLAND, MD 21502 AND, SUBJECT TO THE TERMS SET FORTH HEREINAFTER, TO AUTHORIZE THE EXECUTION OF A DEED TO EFFECT THAT CONVEYANCE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of certain parcels of real property located at 406, 410 RR and 412 Goethe Street, Cumberland, MD 21502 (the "Properties");

WHEREAS, the Property was declared surplus under the terms of Order No. 26,134, passed by the Mayor and City Council on November 15, 2022;

WHEREAS, the Property was included in the solicitation for bids known as the "2024 Request for Bids Surplus Properties Round VII" and received a bid for the purchase of the Property from Dawn Hite (the "Purchaser") for the sum of Three Hundred Dollars (\$300.00), and staff is recommending that the Mayor and City Council accept the bid; and

WHEREAS, subject to the hereinafter set forth terms, the Mayor and City Council deem the acceptance of this bid to be in the City's best interests.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council shall accept the bid of the Purchaser for the purchase of the Property for the sum of Three Hundred Dollars (\$300.00) subject to the following terms and conditions:

- A. The Property will be conveyed to the Purchaser by means of a quitclaim deed containing no warranties or representations of any kind, the form of which is set forth in the Exhibit A attached hereto;
- B. The Purchaser shall pay all of the recordation and transfer taxes that are required to record the said deed;
- C. The Purchaser will pay the City and County real estate taxes due from the date of the deed through the remainder of the current tax year and will assume responsibility for the payment of those taxes thereafter.
- D. The Purchaser shall remit the payments set forth below to the City Clerk at City Hall, 57 N. Liberty Street, Cumberland, MD 21502 by personal check, cashier's check or money order. A total of three (3) personal checks/cashier's checks/money orders must be presented to the City Clerk.
 - i. \$60.00 deed recordation fee made payable to "Circuit Court for Allegany County".
 - ii. The purchase price, pro-rated City real estate taxes and \$100.00 deed recordation service fee made payable "City of Cumberland".
 - iii. The pro-rated County real estate taxes and deed recordation and transfer taxes made payable to "Allegany County".
- E. Cash will not be accepted. Improperly remitted payments will be returned.
- F. Failure to remit the aforesaid payments to the City Clerk within sixty (60) days from the date of the passage of this Ordinance shall result in the rejection of the Purchaser's bid unless said

deadline is extended by the City Administrator or City Solicitor for good cause shown.

- G. The deed will be released for recordation upon the Purchaser's compliance with the foregoing provisions.

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute and deliver deeds effecting the aforesaid conveyances subject to the aforesaid terms and conditions;

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **Mayor and City Council of Cumberland** (the “Grantor”), a Maryland municipal corporation, and _____ (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of _____ Dollars (\$_____.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the Grantee, _____, forever in fee simple:

IT BEING the same property that was conveyed from _____ to the Grantor by deed dated _____ and recorded among the Land Records of Allegany County, Maryland in Book _____, Page _____.

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, _____ in fee simple forever.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$ _____ and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Ordinance 3987 (*1st reading*) - authorizing the transfer of the parcel of real property located at 469 Goethe Street to Justin Lamp for the purchase price of \$500

ORDINANCE NO. 3987

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED "AN ORDINANCE TO ACCEPT THE BID OF JUSTIN LAMP FOR THE PURCHASE OF THE PARCEL OF REAL PROPERTY IN THE CITY OF CUMBERLAND KNOWN AS 469 GOETHE STREET, CUMBERLAND, MD 21502 AND, SUBJECT TO THE TERMS SET FORTH HEREINAFTER, TO AUTHORIZE THE EXECUTION OF A DEED TO EFFECT THAT CONVEYANCE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property located at 469 Goethe Street, Cumberland, MD 21502 (the "Property");

WHEREAS, the Property was declared surplus under the terms of Order No. 27,411, passed by the Mayor and City Council on March 5, 2024;

WHEREAS, the Property was included in the solicitation for bids known as the "2024 Request for Bids Surplus Properties Round VII" and received a bid for the purchase of the Property from Justin Lamp (the "Purchaser") for the sum of Five Hundred Dollars (\$500.00), and staff is recommending that the Mayor and City Council accept the bid; and

WHEREAS, subject to the hereinafter set forth terms, the Mayor and City Council deem the acceptance of this bid to be in the City's best interests.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council shall accept the bid of the Purchaser for the purchase of the Property for the sum of Five Hundred Dollars (\$500.00) subject to the following terms and conditions:

- A. The Property will be conveyed to the Purchaser by means of a quitclaim deed containing no warranties

or representations of any kind, the form of which is set forth in the Exhibit A attached hereto;

- B. The Purchaser shall pay all of the recordation and transfer taxes that are required to record the said deed;
- C. The Purchaser will pay the City and County real estate taxes due from the date of the deed through the remainder of the current tax year and will assume responsibility for the payment of those taxes thereafter.
- D. The Purchaser shall remit the payments set forth below to the City Clerk at City Hall, 57 N. Liberty Street, Cumberland, MD 21502 by personal check, cashier's check or money order. A total of three (3) personal checks/cashier's checks/money orders must be presented to the City Clerk.
 - i. \$60.00 deed recordation fee made payable to "Circuit Court for Allegany County".
 - ii. The purchase price, pro-rated City real estate taxes and \$100.00 deed recordation service fee made payable "City of Cumberland".
 - iii. The pro-rated County real estate taxes and deed recordation and transfer taxes made payable to "Allegany County".
- E. Cash will not be accepted. Improperly remitted payments will be returned.
- F. Failure to remit the aforesaid payments to the City Clerk within sixty (60) days from the date of the passage of this Ordinance shall result in the rejection of the Purchaser's bid unless said deadline is extended by the City Administrator or City Solicitor for good cause shown.

G. The deed will be released for recordation upon the Purchaser's compliance with the foregoing provisions.

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute and deliver deeds effecting the aforesaid conveyances subject to the aforesaid terms and conditions;

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **Mayor and City Council of Cumberland** (the “Grantor”), a Maryland municipal corporation, and _____ (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of _____ Dollars (\$_____.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the Grantee, _____, forever in fee simple:

IT BEING the same property that was conveyed from _____ to the Grantor by deed dated _____ and recorded among the Land Records of Allegany County, Maryland in Book _____, Page _____.

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, _____ in fee simple forever.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$ _____ and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Ordinance 3988 (*1st reading*) - authorizing the transfer of the parcel of real property located at 111 South Street to Covenant Keeper, Inc. for the purchase price of \$2,150

ORDINANCE NO. 3988

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED "AN ORDINANCE TO ACCEPT THE BID OF COVENANT KEEPER, INC. FOR THE PURCHASE OF THE PARCEL OF REAL PROPERTY IN THE CITY OF CUMBERLAND KNOWN AS 111 SOUTH STREET, CUMBERLAND, MD 21502 AND, SUBJECT TO THE TERMS SET FORTH HEREINAFTER, TO AUTHORIZE THE EXECUTION OF A DEED TO EFFECT THAT CONVEYANCE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property located at 111 South Street, Cumberland, MD 21502 (the "Property");

WHEREAS, the Property was declared surplus under the terms of Order No. 27,411, passed by the Mayor and City Council on March 5, 2024;

WHEREAS, the Property was included in the solicitation for bids known as the "2024 Request for Bids Surplus Properties Round VII" and received a bid for the purchase of the Property from Covenant Keeper, Inc. (the "Purchaser") for the sum of Two Thousand One Hundred Fifty Dollars (\$2,150.00), and staff is recommending that the Mayor and City Council accept the bid; and

WHEREAS, subject to the hereinafter set forth terms, the Mayor and City Council deem the acceptance of this bid to be in the City's best interests.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council shall accept the bid of the Purchaser for the purchase of the Property for the sum of Two Thousand One Hundred Fifty Dollars (\$2,150.00) subject to the following terms and conditions:

- A. The Property will be conveyed to the Purchaser by means of a quitclaim deed containing no warranties

or representations of any kind, the form of which is set forth in the Exhibit A attached hereto;

- B. The Purchaser shall pay all of the recordation and transfer taxes that are required to record the said deed;
- C. The Purchaser will pay the City and County real estate taxes due from the date of the deed through the remainder of the current tax year and will assume responsibility for the payment of those taxes thereafter.
- D. The Purchaser shall remit the payments set forth below to the City Clerk at City Hall, 57 N. Liberty Street, Cumberland, MD 21502 by personal check, cashier's check or money order. A total of three (3) personal checks/cashier's checks/money orders must be presented to the City Clerk.
 - i. \$60.00 deed recordation fee made payable to "Circuit Court for Allegany County".
 - ii. The purchase price, pro-rated City real estate taxes and \$100.00 deed recordation service fee made payable "City of Cumberland".
 - iii. The pro-rated County real estate taxes and deed recordation and transfer taxes made payable to "Allegany County".
- E. Cash will not be accepted. Improperly remitted payments will be returned.
- F. Failure to remit the aforesaid payments to the City Clerk within sixty (60) days from the date of the passage of this Ordinance shall result in the rejection of the Purchaser's bid unless said deadline is extended by the City Administrator or City Solicitor for good cause shown.

G. The deed will be released for recordation upon the Purchaser's compliance with the foregoing provisions.

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute and deliver deeds effecting the aforesaid conveyances subject to the aforesaid terms and conditions;

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **Mayor and City Council of Cumberland** (the “Grantor”), a Maryland municipal corporation, and _____ (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of _____ Dollars (\$_____.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the Grantee, _____, forever in fee simple:

IT BEING the same property that was conveyed from _____ to the Grantor by deed dated _____ and recorded among the Land Records of Allegany County, Maryland in Book _____, Page _____.

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, _____ in fee simple forever.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$ _____ and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Ordinance 3989 (*1st reading*) - authorizing the transfer of the parcel of real property located at 526 Broadway Circle to James and Terry Froelich for the purchase price of \$2,001

ORDINANCE NO. 3989

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED "AN ORDINANCE TO ACCEPT THE BID OF JAMES AND TERRY FROELICH FOR THE PURCHASE OF THE PARCEL OF REAL PROPERTY IN THE CITY OF CUMBERLAND KNOWN AS 526 BROADWAY CIRCLE, CUMBERLAND, MD 21502 AND, SUBJECT TO THE TERMS SET FORTH HEREINAFTER, TO AUTHORIZE THE EXECUTION OF A DEED TO EFFECT THAT CONVEYANCE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property located at 526 Broadway Circle, Cumberland, MD 21502 (the "Property");

WHEREAS, the Property was declared surplus under the terms of Order No. 27,438, passed by the Mayor and City Council on April 2, 2024;

WHEREAS, the Property was included in the solicitation for bids known as the "2024 Request for Bids Surplus Properties Round VII" and received a bid for the purchase of the Property from James and Terry Froelich (the "Purchaser") for the sum of Two Thousand One Dollars (\$2,001.00), and staff is recommending that the Mayor and City Council accept the bid; and

WHEREAS, subject to the hereinafter set forth terms, the Mayor and City Council deem the acceptance of this bid to be in the City's best interests.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council shall accept the bid of the Purchaser for the purchase of the Property for the sum of Two Thousand One Dollars (\$2,001.00) subject to the following terms and conditions:

- A. The Property will be conveyed to the Purchaser by means of a quitclaim deed containing no warranties

or representations of any kind, the form of which is set forth in the Exhibit A attached hereto;

- B. The Purchaser shall pay all of the recordation and transfer taxes that are required to record the said deed;
- C. The Purchaser will pay the City and County real estate taxes due from the date of the deed through the remainder of the current tax year and will assume responsibility for the payment of those taxes thereafter.
- D. The Purchaser shall remit the payments set forth below to the City Clerk at City Hall, 57 N. Liberty Street, Cumberland, MD 21502 by personal check, cashier's check or money order. A total of three (3) personal checks/cashier's checks/money orders must be presented to the City Clerk.
 - i. \$60.00 deed recordation fee made payable to "Circuit Court for Allegany County".
 - ii. The purchase price, pro-rated City real estate taxes and \$100.00 deed recordation service fee made payable "City of Cumberland".
 - iii. The pro-rated County real estate taxes and deed recordation and transfer taxes made payable to "Allegany County".
- E. Cash will not be accepted. Improperly remitted payments will be returned.
- F. Failure to remit the aforesaid payments to the City Clerk within sixty (60) days from the date of the passage of this Ordinance shall result in the rejection of the Purchaser's bid unless said deadline is extended by the City Administrator or City Solicitor for good cause shown.

G. The deed will be released for recordation upon the Purchaser's compliance with the foregoing provisions.

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute and deliver deeds effecting the aforesaid conveyances subject to the aforesaid terms and conditions;

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **Mayor and City Council of Cumberland** (the “Grantor”), a Maryland municipal corporation, and _____ (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of _____ Dollars (\$_____.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the Grantee, _____, forever in fee simple:

IT BEING the same property that was conveyed from _____ to the Grantor by deed dated _____ and recorded among the Land Records of Allegany County, Maryland in Book _____, Page _____.

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, _____ in fee simple forever.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$ _____ and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Ordinance 3990 (*1st reading*) - authorizing the transfer of the parcel of real property located at 424 Goethe Street to Jonathan Pressman for the purchase price of \$7,000

ORDINANCE NO. 3990

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED "AN ORDINANCE TO ACCEPT THE BID OF JONATHAN PRESSMAN FOR THE PURCHASE OF THE PARCEL OF REAL PROPERTY IN THE CITY OF CUMBERLAND KNOWN AS 424 GOETHE STREET, CUMBERLAND, MD 21502 AND, SUBJECT TO THE TERMS SET FORTH HEREINAFTER, TO AUTHORIZE THE EXECUTION OF A DEED TO EFFECT THAT CONVEYANCE."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property located at 424 Goethe Street, Cumberland, MD 21502 (the "Property");

WHEREAS, the Property was declared surplus under the terms of Order No. 26,757, passed by the Mayor and City Council on February 16, 2021;

WHEREAS, the Property was included in the solicitation for bids known as the "2024 Request for Bids Surplus Properties Round VII" and received a bid for the purchase of the Property from Jonathan Pressman (the "Purchaser") for the sum of Seven Thousand Dollars (\$7,000.00), and staff is recommending that the Mayor and City Council accept the bid; and

WHEREAS, subject to the hereinafter set forth terms, the Mayor and City Council deem the acceptance of this bid to be in the City's best interests.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council shall accept the bid of the Purchaser for the purchase of the Property for the sum of Seven Thousand Dollars (\$7,000.00) subject to the following terms and conditions:

- A. The Property will be conveyed to the Purchaser by means of a quitclaim deed containing no warranties

or representations of any kind, the form of which is set forth in the Exhibit A attached hereto;

- B. The Purchaser shall pay all of the recordation and transfer taxes that are required to record the said deed;
- C. The Purchaser will pay the City and County real estate taxes due from the date of the deed through the remainder of the current tax year and will assume responsibility for the payment of those taxes thereafter.
- D. The Purchaser shall remit the payments set forth below to the City Clerk at City Hall, 57 N. Liberty Street, Cumberland, MD 21502 by personal check, cashier's check or money order. A total of three (3) personal checks/cashier's checks/money orders must be presented to the City Clerk.
 - i. \$60.00 deed recordation fee made payable to "Circuit Court for Allegany County".
 - ii. The purchase price, pro-rated City real estate taxes and \$100.00 deed recordation service fee made payable "City of Cumberland".
 - iii. The pro-rated County real estate taxes and deed recordation and transfer taxes made payable to "Allegany County".
- E. Cash will not be accepted. Improperly remitted payments will be returned.
- F. Failure to remit the aforesaid payments to the City Clerk within sixty (60) days from the date of the passage of this Ordinance shall result in the rejection of the Purchaser's bid unless said deadline is extended by the City Administrator or City Solicitor for good cause shown.

G. The deed will be released for recordation upon the Purchaser's compliance with the foregoing provisions.

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute and deliver deeds effecting the aforesaid conveyances subject to the aforesaid terms and conditions;

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2024.

Raymond M. Morriss, Mayor

ATTEST:

Allison Layton, City Clerk

EXHIBIT A

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ____ day of _____, 2024, by and between **Mayor and City Council of Cumberland** (the “Grantor”), a Maryland municipal corporation, and _____ (the “Grantee”).

WITNESSETH:

That for and in consideration of the sum of _____ Dollars (\$_____.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the Grantee, _____, forever in fee simple:

IT BEING the same property that was conveyed from _____ to the Grantor by deed dated _____ and recorded among the Land Records of Allegany County, Maryland in Book _____, Page _____.

SUBJECT TO all outconveyances, restrictions, reservations, agreements, rights of way, easements and other matters of record.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the Grantee, _____ in fee simple forever.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Allison Layton, City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this ____ day of _____, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Raymond M. Morriss**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$ [REDACTED] and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident entity of the State of Maryland.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: _____

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

MICHAEL SCOTT COHEN

File Attachments for Item:

. Order 27,492 - authorizing the contract renewal with Link Computer Corporation for the renewal of the MuniLink Utility Billing System for a one year term beginning July 1, 2024 in the amount not to exceed \$46,029.12

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,492

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland,

THAT, the contract with Link Computer Corporation, 140 Stadium Drive, PO BOX 250, Bellwood PA 16617, for the renewal of the MuniLink Utility Billing System for a one year term beginning July 1,2024 be and is hereby accepted in the amount not to exceed Forty Six Thousand Twenty Nine Dollars and Twelve Cents (\$46,029.12).

Raymond M. Morriss, Mayor

Budget: 003.033.48201

Council Agenda Summary

Meeting Date:

Key Staff Contact: Johnna Byers, Director IT

Item Title:

MuniLink Utility Billing System Hosting and Support

Summary of project/issue/purchase/contract, etc for Council:

IT requests an order for costs not to exceed \$46,029.12 for MuniLink Utility Billing System hosting and support. We have been using this system for over three years. We use it to generate utility bills for water, sewer, and trash service. We pay on a monthly basis.

It is budgeted in 003.330 48201

Link Computer Corporation
 140 Stadium Drive
 PO Box 250
 Bellwood, PA 16617
 United States
 (814) 742-7700



MUNI-LINK

www.muni-link.com

DATE: 5/24/2024 10:55

Date	Invoice
06/01/2024	216255
Customer ID	
C-100426	

Bill To:
CITY OF CUMBERLAND Attn: JOHNNA BYERS 57 NORTH LIBERTY STREET CUMBERLAND, MD 21501

Ship To
CITY OF CUMBERLAND 57 NORTH LIBERTY STREET CUMBERLAND, MD 21501

Terms	Due Date	PO Number	Reference
NET 30	07/01/2024		Monthly Billing for July

Muni-Link Billing Details	Price	
Agreement ML Billing - Cumberland	\$3,785.76	
Make checks payable to Link Computer Corporation. Please include your Customer ID or invoice number.	Invoice Subtotal:	\$3,785.76
	Sales Tax:	\$0.00
	Invoice Total:	\$3,785.76

Questions about your invoice? Contact Accounts Receivable at AR@linkcorp.com or call (814) 742-7700 x308.

Ask us about our customer referral program! Contact Chad Legros at clegros@muni-link.com.

Extended credit financing will accrue daily on past-due balances at an annual interest rate of 18%.
 A service fee of \$25 will be charged for NSF checks. All returns subject to restocking charges and
 must be received within twenty (20) days for credit.



NOTICE OF ANNUAL PRICE ADJUSTMENT (Cost of Living)

May 21, 2024

City of Cumberland

This is your notice that next month's invoice will include an Annual Price Adjustment, according to Schedule A of your contract.

Your scheduled Cost of Living increase:

Your current monthly Muni-Link invoice amount	\$3,785.76
Scheduled increase 3.6%	\$136.29
Your new monthly Muni-Link invoice amount	\$3,922.05

If you have any questions, please contact Kelley Massaro at 814.742.7700, ext 308, or at KMassaro@linkcorp.com.

Thank you for being a valued Muni-Link customer!

U.S. BUREAU OF LABOR STATISTICS

Mid-Atlantic Information Office

Consumer Price Index, Northeast Region – April 2024

Regional prices up 3.6 percent over the year

File Attachments for Item:

. Order 27,493 - authorizing the City Administrator to approve Change Order No. 2 to City Project "Operation and Maintenance of the Heat Drying Facilities for Sludge Processing", through New England Fertilizer Company (NEFCO), in the increased amount of \$245,000 to inform and update the yearly cost of the 15-year contract to its current pricing of \$1,250,000

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,493

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the City Administrator be and is hereby authorized to approve Change Order No. 2 to City Project "Operation and Maintenance of the Heat Drying Facilities for Sludge Processing", New England Fertilizer Company (NEFCO), 800 Kelly Way, Holyoke, MA, 01040, in the increased amount of Two Hundred Forty Five Thousand Dollars and No Cents (\$245,000) to inform and update the yearly cost of the 15-year contract to its current pricing of One Million, Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000).

Raymond M. Morriss, Mayor

Budget: 003.310.20100

Council Agenda Summary

Meeting Date: 7/2/2024

Key Staff Contact: Robert Smith

Item Title:

Change Order #2 to Operation and Maintenance of the Heat Drying Facilities for Sludge Processing

Summary of project/issue/purchase/contract, etc for Council:

This change order is to inform and update the yearly cost of the 15 year NEFCO contract to it's current pricing. The original M&CC Order 24,938 was in the amount of \$382,100 at the beginning of the contract. The first change order increased the price by \$622,900.00 to the current value of \$1,005,000.00. Each year, the price increases, per the contract language, based on the operational costs associated with the sludge processing and disposal process. The current price for FY24 is \$1,005,000.00. This change order would increase the current M&CC Order by \$245,000 to the new amount not to exceed \$1,250,000

Amount of Award: \$245,000

Budget number: 003.310.20110

Grant, bond, etc. reference: City Funds

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND


ORDER NO. 24,938

DATE: May 26, 2009

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT the Alternative Technical Proposal of the New England Fertilizer Company (NEFCO), 480 Hampden Street, Holyoke, Massachusetts, for the operation and maintenance of the Heat Drying Facilities for sludge processing and disposal at the Waste Water Treatment Plant (WWTP) in the amount of Three Hundred Eighty-two Thousand, One Hundred Dollars and No Cents (\$382,100.00) be and is hereby accepted; and

BE IT FURTHER ORDERED, that said Proposal shall be subjected to final review by the City Solicitor.



Mayor Lee N. Fiedler

Budget:
003-310-201

**Heat Drying Facility
For Sludge Processing and Disposal**

OPERATIONS AND MAINTENANCE AGREEMENT

between

Mayor and City Council

on behalf of the

City Of Cumberland, MD

Department Of Public Works

and

NEW ENGLAND FERTILIZER COMPANY

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HEAT DRYING FACILITY

OPERATIONS AND MAINTENANCE AGREEMENT

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**HEAT DRYING FACILITY
OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 26th day of May, 2009 by and between the MAYOR AND CITY COUNCIL OF CUMBERLAND, hereinafter called the "Owner", with offices at 57 North Centre Street, PO Box 1702, Cumberland, MD 21501-1702, and NEW ENGLAND FERTILIZER COMPANY, hereinafter called "Operator", with offices at 480 Hampden Street, P.O. Box 867, Holyoke, MA, 01041-0867.

WITNESSETH:

WHEREAS, the Owner through its Consulting Engineer, Whitman, Requardt & Associates, LLP (Engineer) through issuance of Request For Proposals has solicited Proposals for the design, construction, and fifteen-year operations for a Design/Build/Operate Heat Drying and Disposal facility; and

WHEREAS, the Owner desires to enter into a contract with the Operator for the long-term operation and maintenance of the Owner's facility; and

WHEREAS, the Owner desires to secure an efficient, long-term, and environmentally sound method to recycle and beneficially reuse those Biosolids generated; and

WHEREAS, the Federal Government and the State of Maryland encourage the recycling and beneficial reuse of residuals including Biosolids; and

WHEREAS, there are various processes available to provide for the beneficial reuse of Biosolids; and

WHEREAS, such processes can produce, among other things, Biosolids Reuse Products for beneficial reuse; and

WHEREAS, Operator has been selected to design, construct, and acceptance test a Heat Drying Facility (HDF) for the Owner in reliance on its skill, expertise and past experience with Biosolids processing; and

WHEREAS, Operator has been selected to operate and maintain the HDF on behalf of the Owner in reliance on its skill, expertise and past experience with Biosolids processing.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Owner and Operator agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

Acceptable Deliveries means the delivery by the Owner of Biosolids, which meet the requirements, set out in Schedule 1.

Acceptance Date means the first calendar day following the successful completion of the Acceptance Testing as provided in the Design and Construction Agreement (D & C Agreement).

Acceptance Test Standards means those set out in the D & C Agreement.

Accept, Accepted or Acceptance means the receipt by the HDF of Biosolids from the Owner.

Agreement means this Operations and Maintenance Agreement between the Operator and the Owner, including the Schedules.

Alternate Operations Plan means the plan by which the Operator shall continue to take Acceptable Deliveries in the event the HDF is incapable of Accepting and Processing Acceptable Deliveries, as set out in Schedule 2.

Annual Report has the meaning as described in Section 2.04 (c) of this Agreement.

As Received Weight means the dry mass of Biosolids as delivered to the HDF with no adjustment made for moisture content.

Owner means the Mayor and the City Council on behalf of the City Of Cumberland, Maryland.

Beneficial Reuse Products or BRUP means the end use product that is produced by the HDF from Biosolids.

Beneficial Re-Use means the sale or distribution of BRUP to others to be used for recycling purposes.

Billing Period means each calendar month in each Fiscal Year, except that the initial Billing Period shall begin on the Acceptance Date and end with the last day of the month in which the Acceptance Date occurs.

Biosolids means material as specified in Schedule 1.

Business Day means each Monday, Tuesday, Wednesday, Thursday, and Friday, excluding Thanksgiving Day and Christmas Day.

Change in General Law means any change in the Federal, State, or Local laws, rules, regulations, or requirements after November 21, 2008 which has, or may reasonably be expected to have, a direct or indirect, material, and adverse effect upon the cost to the Owner or the Operator of constructing, operating, maintaining, or modifying the HDF or the performance of the HDF, excluding a Change in Environmental Law. "Change in General Law" shall also mean any change in the Federal, State, or Local laws, rules, regulations, or requirements after November 21, 2008 which has, or may reasonably be expected to have, a direct or indirect, material, and adverse effect upon the cost to the of producing or delivering to the HDF Acceptable Deliveries as referred to and specified in Schedule 1. Change in General Law shall not include:

- a) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- b) union work rules which increase the operating cost of the HDF;
- c) any change in prevailing wage laws that impact the cost of operating and constructing the HDF;
- d) any change in Federal, State, or local tax laws, or any other tax law.

The parties agree that the costs, if any, associated with the types of changes in law described in a) through d) above shall be recovered in the annual adjustment by the Price Index Adjustment Factor to the Biosolids Service Fee.

Change in Environmental Law shall only mean a change in the Federal, State, or Local laws, rules, regulations, permits, or requirements after November 21, 2008 which has, or may reasonably be expected to have, a direct, material, and adverse effect upon the cost to the Owner or the Operator of constructing, operating, maintaining, or modifying the HDF or the performance of the HDF related solely to changes in the chemical or physical properties of the BRUP produced to allow for Beneficial Re-Use, or changes in the quality of the air discharged from the HDF, or to changes to the quality of the effluent discharged or storm water discharged from the HDF.

Consulting Engineer means Whitman, Requardt and Associates LLP., or successors, as determined by the Owner.

Contract Date means the day, month and year on which this Agreement was made and entered into as stated on page 1 hereof.

Cost Substantiation, as used in this Agreement, means, with respect to any cost necessarily incurred and paid by the Operator in accordance with the requirements of this Agreement, a statement signed by the Operator setting forth the amount of such cost for which cost recovery is requested and stating that such cost was properly chargeable to the Owner as a direct result of a

provision of this Agreement. The statement shall also attach thereto, copies of all invoices approved for payment from all third parties for all materials, services and equipment procured by the Operator and copies of all time sheets or payroll records for all of the Operator's personnel directly involved. Direct labor costs incurred by the Operator, other than overhead and profit, shall be based on actual cost for direct labor including applicable overtime rates and applicable benefits. Overhead and profit equal to 8% in total shall be included in items requested by the Operator for reimbursement through Cost Substantiation. All costs shall be subject to testing and examination by the Owner in accordance with GAAP.

Design and Construction Agreement or D & C Agreement means the D & C Agreement attached to this Agreement for reference only, as Schedule 5.

Disposal Facility means any landfill or disposal facility designated by the Owner.

Disposal Fee means the then current Solid Waste commercial disposal rate per Ton charged by the Owner.

Fiscal Year means the Owner's fiscal year which currently is July 1st to June 30th or, as may be adjusted from time to time.

G.A.A.P. means Generally Accepted Accounting Principles.

Good Working Condition means that the HDF and all parts inventory, specialty tools, and equipment show signs of only normal wear, being safe and fully functional and lacking the need for major repairs.

Hazardous Substance means any substance or material defined by the Federal and/ or Maryland State governments as a hazardous substance including but not limited to 42 U.S.C. Section 9601 et seq. 40 C.F.R. Part 302.

Heat Drying Facilities or HDF means the facility to be constructed for the Owner pursuant to the D & C Agreement for the purpose of accepting Biosolids from the Owner and for processing

into Biosolids Reuse Products, the existing Thickened Waste Activated Sludge Storage Tank, the existing Digested Sludge Storage Tank, and the existing Dewatering/Lime System.

HDF Site means the site as described in the proposal drawings.

Market, Marketing, or Marketed means the delivery of BRUP for the purpose of recycling or reuse.

Monthly Operation Payment means the net payment due the Operator as determined pursuant to Section 3.01(C) of this Agreement.

Operation and Maintenance Agreement or O & M Agreement means this Agreement.

Operation and Maintenance Plan (O&M Plan) means operating and maintenance provisions approved by the Owner and as updated from time to time pursuant to Schedule 4 of this Agreement.

Operator means New England Fertilizer Company (sometimes NEFCO).

Performance Guarantees means the guarantees set forth in Section 3.03 of this Agreement.

Performance Guarantee Damages means those damages as set forth in Section 3.04 of this Agreement.

Performance Standards and Applicable Law means attaining the biosolids quality specifications as set forth in Schedule 1 as well as meeting those standards set forth in Section 2.05.

Performance Tests Procedures means the Acceptance Test Procedures set forth in the D&C Agreement.

Performance Test Report means the Acceptance Test Report set forth in the D&C Agreement.

Fixed Facility Component Fee Price Index or Price Indices means:

(1) Use the U.S Department of Labor - Bureau of Labor Statistics Consumer Price Index for all Urban Users (CPI-U) in the South, Series ID No. CUUR0300SA0

Variable Component Fee Price Index or Indices means:

(1) With respect to the natural gas component of the Variable Component Fee, use the Producer Price Index (PPI) for Natural Gas To Industrial Users, Series ID No. PCU4981#23

(2) With respect to the polymer component of the Variable Component Fee, use the PPI for Plastic Material and Resin Mfg; Series I.D. No. PCU325211325211.

(3) With respect to the all other component of the Variable Component Fee, use the PPI for Intermediate Materials less Food and Energy, Series ID No. WPUSOP2900

(4) With respect to the fuel oil component (if used) of the Variable Component Fee, use the PPI for Home Heating Oil, Series I.D. No. WPS057302.

Price Index Adjustment Factor means one plus the decimal fraction, computed to three places, representing the percent change in each of the Price Indices from May 1, 2009 to the date of computation, which factors will each be multiplied by the amount subject to adjustment and then summed to determine the amount actually payable. The percentage change in the Price Indices shall be based on the change in each of the Indices over the period of time for the required adjustment. In the event a Price Index value for any computation month is not available at the time the required computation is to be made, the parties shall use the percentage change over the period ending with the most recent month for which the Price Index is available, and when the Price Index becomes available, the parties shall adjust all payments retroactively to the date for which the Price Index Adjustment Factor became effective.

Process, Processing, or Processed means the receiving, acceptance, handling, of Biosolids, and the preparation and making of BRUP by the HDF.

Product Market Specification Guarantee means the Performance Guarantee as set out in Section 3.03(C) of the O & M Agreement.

Received Biosolids means Biosolids that are pumped in the HDF for Processing by the HDF.

Residue means any semi-solid or solid material resulting from the Processing of Biosolids by the HDF that requires disposal as waste material.

Service Fee has the meaning as set out in Section 3.01 of this Agreement.

State means the State of Maryland.

Successor Operator shall have the meaning set forth in Section 5.06 of this Agreement.

Ton means net Ton or short Ton of 2,000 pounds.

Unacceptable Deliveries means Received Biosolids or the attempted delivery of Biosolids to the HDF that do not meet the requirements set out in Schedule 1.

Uncontrollable Circumstance means an act, event, or condition that has a direct, material, and adverse effect on the rights or obligations of a Party under this Agreement, if such act, event, or condition could not have been avoided by the exercise or use of reasonable care or precautions and is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or not complying with a condition required of such Party under this Agreement. Such acts, events, or conditions shall include, but shall not necessarily be limited to, the following:

- (A) an act of God, hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or similar occurrence;
- (B) the order, or injunction or judgment of any Federal, State, or local court, administrative agency or governmental body or officer with jurisdiction in the City of Cumberland, MD, including any exercise of the power of eminent domain, police power, condemnation, or other taking by or on behalf of any public, quasi-public, or private entity, provided, however, that such order or judgment shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon and that neither the contesting in good faith of any such order or judgment nor the

reasonable failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such Party;

(C) the failure to issue, or the suspension, termination, interruption, denial of renewal of any permit, license, consent, authorization or approval essential to a Party to carry out its obligations pursuant to this Agreement, if such act or event shall not arise in connection with or be related to the negligent or willful act, error, omission, or inaction of the Party relying thereon and that neither the contesting in good faith of any such order or judgment nor the reasonable failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such Party;

(D) the failure of any appropriate Federal, State, or local agency or public or private utility having operation jurisdiction with respect to the HDF to provide, and maintain and assure the provision of, all utilities necessary for the operation of the HDF;

Wastewater Treatment Facilities or WWTP means the Cumberland Wastewater Treatment Plant.

ARTICLE II

OPERATIONS AND MANAGEMENT

Section 2.01 Owner Responsibilities.

The Owner, under the terms and provisions of this Agreement, shall:

(A) Deliver or have delivered to the HDF a minimum of 1,277.5 dry Tons of Biosolids per Fiscal Year (hereinafter called the Guaranteed Annual Total of Biosolids) except that this amount shall be prorated for the initial Fiscal Year.

(B) Maintain an active liaison with Operator on all aspects of this Agreement and designate in writing to the Operator the Owner's site representative.

(C) Use reasonable efforts to minimize the number of deliveries that are not Acceptable Deliveries.

(D) Reimburse Operator for all costs of disposal of any Hazardous Substances (subject to Cost Substantiation) received by the HDF beyond the reasonable control of the Operator.

(E) Observe meter and scale calibrations performed by the Contractor.

(F) Make prompt payment to Operator of all sums due it under this Agreement.

(H) Use its best effort to insure coordination between the HDF and other Owner facilities in attempting to minimize operational impacts.

Section 2.02 Operating Agreement Initiation and Commencing Operation.

(A) **Commencement.** The Operator shall commence operation of the HDF in accordance with this Agreement on the Acceptance Date, subject to meeting and/or attaining the following,

(B) **Acceptance of Equipment and Facilities.** Upon conditional acceptance of the facilities constructed during the D & C Agreement by the Owner, the Operator will accept the remaining equipment and structures, which are included in the HDF definition herein, but were not constructed as part of the D & C Agreement (hereinafter referred to as "Existing Equipment". An initial inspection will be jointly conducted by the Owner and Operator to establish the condition of the Existing Equipment. This inspection shall take place thirty (30) days prior to the commencement of operations as defined in Section 2.02 (A). The Owner will remedy any and all Existing Equipment deficient conditions observed during this inspection.

(C) **Permits, Marketing Plan, and Financial Requirements.** All permits, the Marketing Plan, insurance, performance bonds, and other required financial documents shall be provided to the Owner prior to commencing operations.

(D) Consummables. An inventory of all consumables, spare parts, special tools, and other equipment for which responsibility will be assumed by the Operator shall be conducted as part of the initial inspection. This inventory will become the basis for contract close-out purposes upon the termination of this Agreement.

(E) Operating and Maintenance Records. An inventory of all existing operating records, maintenance records, drawings, and O & M manuals for which responsibility will be assumed by the Operator shall also be conducted as part of the initial inspection.

There will be no additional payment for Operating Agreement Initiation.

Section 2.03 Operator Responsibilities and Obligations

(A) Processing of Biosolids. The Operator shall Process all Acceptable Deliveries up to a maximum of 4,015 Dry Tons delivered to the HDF per Fiscal Year based on an average maximum daily Processing capacity of 11 Dry Tons on a Fiscal Year basis, and a maximum daily Processing capacity of 11 Dry Tons, in accordance with all other applicable provisions of this Agreement. The Performance Standards during the Operations shall be as defined in Schedule 6, unless otherwise agreed to in writing.

(B) Scheduling of HDF Activities. The Operator shall schedule HDF activities, including but not limited to deliveries, plant operations, planned maintenance, and plant tours in accordance with the O & M Plan, Schedule 4, the operation and maintenance manuals, this Agreement, and the operating schedule.

(C) Staffing and Training. Operator agrees to ensure that a sufficient number of qualified personnel are employed and assigned to operate and maintain the HDF at all times by providing operating and safety training before beginning operations and formal on-the-job training of employees during operations. HDF personnel, who have full authority to make operating decisions, and key maintenance and operating personnel shall be available at all times. A HDF

Plant Manager shall be employed and designated to provide single-point contact with the Owner's designated representative.

(D) Records and Reports. Operator shall prepare and maintain proper, accurate, and complete records of all transactions related to the HDF. These records shall include but not be limited to insurance and regulatory inspection records, BRUP records, visitors log, maintenance records, equipment replacement records and schedules, safety and accident reports, quantity of Biosolids Processed, quality of Biosolids Processed, quantity of BRUP delivered to markets, and quantity of BRUP in inventory

Operator shall provide the Owner with monthly reports within fifteen (15) days of the end of each month, including but not limited to the following operating data: scheduled operating days, shut down days, changes in HDF operation, quantity of Biosolids material delivered to the HDF, quality of Biosolids Processed, quantity of Biosolids Processed and Marketed, quantity of Biosolids Processed and disposed of, electricity consumption, potable water consumption, process water consumption, sanitary/side stream discharges, maintenance summary, laboratory test results, anticipated operating schedule for the next month, summary of all notices and laboratory tests and other reports filed with or received from all governmental bodies pursuant to governmental approvals, regulatory reports submitted and other data directly related to the HDF as deemed appropriate by the Owner.

Operator shall submit an annual report within sixty (60) days after the end of each Fiscal Year that incorporates a summary of the monthly operations report for the preceding twelve-month period and summarizes all required data and records.

(E) Conducting Site Tours, HDF Information, and Owner Site Access. The Operator and Owner shall schedule and conduct tours of the HDF. The Owner's authorized representative may conduct as many tours as necessary upon reasonable notice to the Operator. Literature describing

the HDF and its operation, if provided by the Owner, shall be distributed during the tour and to the general public. All literature distributed shall be approved by the Owner.

The Owner's designated HDF site representative shall have access to the HDF Site twenty-four (24) hours a day, seven (7) days a week, provided such representative shall not interfere with the Operator's operation or maintenance of the HDF.

(F) Site Access. The Operator shall comply with all WWTP security arrangements and plant traffic regulations. Plant speed limits shall not be exceeded by the Operator's vehicles or personnel. The Operator shall furnish a list of names of all of its personnel who will require access to the WWTP, along with a description of vehicles used, including license plate numbers. The Operator shall be responsible for the security of its facilities, subcontractors, and employees. Owner will not be responsible for security of Operator's facilities and/or property, and that of its employees. In that the Operator will be located on the WWTP site, all future regulatory programs which impact the WWTP may impact the Operator. In the event any future regulatory program causes Operator to incur additional costs, the Operator may seek additional compensation for such costs. The Operator shall comply with the Owner's need to ensure compliance with all future regulatory requirements.

(G) Limits Of Operations. Stockpiling of dewatered or heat dried biosolids shall be limited to the HDF constructed. All biosolids shall be stockpiled under cover and within a completely enclosed structure.

(H) Coordination With Ongoing WWTP Activities. The Operator shall plan, coordinate, and perform its work in a manner to prevent any interference with the operation of the WWTP. The Operator shall be responsible for any damage to WWTP roads, equipment, or facilities which occur directly from Operator operations. The Operator shall coordinate its activities with WWTP traffic, operation, and other activities. Parking for the Operator's personnel shall be within the HDF Site.

(I) Public Participation. The Operator shall provide support to the Owner at any public meeting held in relation to the permitting of the HDF, or at any such meetings held to promote public understanding.

(J) Residue Removal. The Operator shall be responsible for segregating any Residue from the Received Biosolids and hauling Residue from the HDF to an approved landfill.

(K) Product Marketing Plan and Backup Sludge Management Plan. The Operator shall provide a Marketing Plan which, at a minimum, describes the intended method(s) and location(s) of dried biosolids utilization and/or disposal. The Marketing Plan shall be included within the Operations and Maintenance Plan (Schedule 4). In addition, the Operator shall prepare and maintain an Alternate Operations Plan (Schedule 2) indicating the back-up method(s) which would be used in the event of failure of the primary method(s). The Marketing Plan and the Alternate Operations Plan shall be maintained current at all times and provided to the Owner. The Operator shall have the right and responsibility for Marketing and delivery of all BRUP produced by the HDF at the sole cost and expense of the Operator and the right to retain all revenues from sale of BRUP for the Operators account. Operator shall not store any BRUP outside of the silo unless alternative arrangements are approved by the Owner.

(L) Maintenance of Warranties. Operator will maintain all warranties in effect at the time of the Acceptance Date.

(M) Permits. Operator shall provide copies of all transport and disposal permits to the Owner.

(N) Progress Meetings. Quarterly progress meetings will be scheduled during the term of this Agreement to review, discuss, and coordinate the progress of this Agreement. The Operator will provide a representative to attend all such progress meetings.

(O) Taxes, Licenses, Permits. Operator shall, at his sole expense, pay all required taxes, (other than Maryland sales tax for which the Owner will provide a tax exempt number) and obtain and keep current all licenses and permits required by federal, state, county, or city law, for purposes related to the operations of the HDF.

Section 2.04 Operations and Maintenance Responsibilities.

(A) HDF Operations; Absolute Obligation. The Operator shall have full and complete responsibility for the operation of the HDF, including but not limited to Accepting Acceptable Deliveries and Processing Acceptable Deliveries.

The Operator shall not be required to receive Acceptable Deliveries at the HDF and allow them to be unloaded if unable to receive at the HDF because of Uncontrollable Circumstances. In the event of Uncontrollable Circumstances, Operator shall make every good faith effort to receive Acceptable Deliveries.

(B) HDF Repair and Maintenance. The Operator at its own cost shall at all times be responsible for:

- (1) Operating and maintaining the HDF in good working order consistent with the highest industry standards and practices for similar facilities, including, but not limited to, compliance with all federal state and local laws, rules, and regulations.
- (2) Maintaining the HDF and the HDF Site, including, but not limited to, drainage structures, roads and landscaping in good repair.
- (3) Keeping the HDF (including but not limited to, the equipment, building interior and exterior) and the HDF Site in a neat, clean and litter free condition. Litter control and housekeeping shall be performed as required and at least on a daily basis.

- (4) Preparing and maintaining an operations and maintenance manual for the HDF which shall include, but not be limited to, operational practices for startup, shutdown, normal operation, emergency conditions, scheduled maintenance of each piece of equipment at least equal to the manufacturer's recommendations and safety programs.
- (5) Providing and maintaining a computerized maintenance logging program which shall: (a) automatically print out scheduled maintenance work orders in accordance with the operations and maintenance manual recommended frequency; (b) log in work orders recommended by facility personnel or required due to facility shutdown (including cause of failure and corrective action taken); (c) log in work completed by maintenance staff; (d) print out historical maintenance records by (i) month (ii) Fiscal Year and (iii) total maintenance history for each piece of equipment for which maintenance records are kept; and (e) track the inventory and print order forms for required on-site spare and replacement parts.
- (6) Any planned repair or maintenance that will require more than seventy two (72) hours of down time of any processing equipment shall be reported to the Owner no less than five (5) days prior to the anticipated date. If the Owner determines that adequate repair and maintenance is not being performed in accordance with the Owner approved Operation and Maintenance Plan and industry practice, the Owner shall inform the Operator in writing. If the Operator within five working days fails to perform requested maintenance or fails to provide the Owner with an acceptable plan to perform the requested maintenance, the Owner and the

Operator shall meet and attempt to come to a mutually acceptable plan. If the parties fail to agree on a plan, the Owner shall have the right to perform the maintenance itself in a manner that minimizes interruption to the normal operation of the facility and bill the Operator for the work performed which shall be deducted from the next monthly Operating Payment. Copies of all invoices approved for payment from all third parties for all materials, services and equipment procured by the Owner and copies of all time sheets or payroll records for all of the Owner's personnel directly involved. Direct labor costs incurred by the Owner, other than overhead and profit, shall be based on actual cost for direct labor including applicable overtime rates and applicable benefits. Overhead and profit equal to 8% in total shall be allowed. All costs shall be subject to testing and examination by the Owner in accordance with GAAP.

- (7) Maintaining a reserve of any and all spare and replacement parts as appropriate and consistent with manufacturers recommended spare parts.

Any repair or maintenance act performed by the Operator which changes or alters the design of the HDF must be reviewed and approved in writing by the Owner prior to the repair or modifications implementation, and Operator shall provide the Owner with "as built" drawings within twenty (20) days of completion.

(C) Owner General Inspection; Annual HDF Performance Review and Inspection.

- (1) At any time during the term of this Agreement and upon prior reasonable notice to the Operator, the Owner, its agents and its representatives shall have the right to inspect the HDF to determine and ensure that the HDF is in full compliance with all environmental or other regulatory permits

applicable to the HDF, and shall have the right to visit and to take visitors throughout the Facility in order to inspect, observe and to permit others to observe the various services which the Operator performs, provided that such inspections and visitations shall not interfere with the performance of the Operator's obligations under this Agreement.

(D) Owner Requested Performance Re-Testing. At the Owner's written request, the Operator shall perform in a timely manner, all or any portion of (as requested by the Owner) the Acceptance Tests required by, and in accordance with, the D & C Agreement to confirm that the Performance Guarantees required by this Agreement are being met. The additional costs incurred by the Operator in performing these tests (if any) shall be paid for by the Owner. If any of the Performance Guarantees are not met as determined by such tests, the Operator, at its cost and expense, shall promptly repair, replace or otherwise modify the HDF and retest to confirm that the performance of the HDF meets the Performance Guarantees.

(E) Delivery of Biosolids. All biosolids will be delivered to the HDF via a sludge pump conveyance system.

(F) Rejection of Biosolids. Any and all biosolids that are Unacceptable Deliveries as defined by Schedule 1, the Operator shall use reasonable efforts to treat such Received Biosolids in accordance with the Performance Standards and Applicable Law. If the Operator is unable to treat Received Biosolids in compliance with the Performance Standards and Applicable Law, the Operator shall transport and dispose of the Received Biosolids in accordance with applicable law. The Operator shall promptly notify the Owner, in advance to the extent possible, of the additional costs, if any, incurred by the Operator to treat, transport, and dispose of Received Biosolids. Such costs will be subject to Cost Substantiation.

(G) **Metering For Payment.** Operator will operate and maintain all meters and other related data logging equipment required to measure and record all charges payable by the Owner, and all utilities provided by the Owner to the Operator. All metering equipment will be tested and calibrated in accordance with good industry practice. Test and calibration will be conducted annually, and calibration records will be provided to the Owner. If a meter recording is temporarily interrupted, Operator shall estimate the quantities based upon past usage during a similar period, and whatever other data or methodology is available for estimating the quantities during the period of interruption.

(H) **HDF Modifications and O & M Plan Update.** All modifications or improvements to the HDF or accessories must be approved by the Owner in writing. The Operator shall notify the Owner of any proposed modifications or improvements, in writing, including a detailed description of the proposed change or modification. Review and/or approval/disapproval by the Owner shall not be unreasonably withheld. In the event the Owner does not approve an Operator request for HDF modification, the parties shall proceed to resolve this matter pursuant to Section 5.01. The Operator, with the approval of the Owner, shall update the O & M Plan as needed or required by changes to the HDF equipment, changes to the operation of the HDF, changes to schedules, or changes due to any other circumstances. In such case the Operator shall prepare changes as necessary and submit them to the Owner for approval, and the Owner shall have thirty (30) days to respond with approval or comments as to what revisions should be made. If revisions are required, the Operator shall make needed revisions and resubmit to the Owner within 15 days of receiving the Owner comments, and this shall be repeated until agreement is reached. A failure by either the Operator or the Owner to timely respond shall be deemed approval.

(I) **Product Storage.** Operator agrees that any and all BRUP that is stored onsite must **be stored within the product storage silo.**

Section 2.05 Federal, State and Local Licensing.

(A) Operator will comply with all Federal, State and local laws, rules and regulations including license and permit requirements and regulations concerning the Processing, storage, transfer, handling, and sale of, Biosolids, Residue and Hazardous Substances. The Operator shall be responsible for providing all analytical testing required to obtain and maintain all sludge/biosolids related permits at Operator expense. Copies of results from all analytical testing shall be provided to the Owner within fifteen (15) days from the date of issuance.

(B) Operator shall adhere to applicable Federal, State and local regulations governing the safety and working conditions of its employees.

Section 2.06 Laws, Ordinances and Regulations.

(A) Each and every provision required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it was included herein and if through mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be physically amended to make such insertion. Operator shall keep itself fully informed of all Federal, State, and local laws, and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or affecting the conduct of the work.

(B) If any discrepancy or inconsistency should be discovered in this Agreement, in relation to any such law, ordinance, regulation, order or decree, Operator shall at all times, observe and comply with and shall cause all its agents, subcontractors and employees to observe and comply with all such existing laws, ordinances, regulations, orders and decrees, and shall protect, defend, indemnify and hold harmless the Owner and its officers and agents and employees against

any claims or liability arising from or based on the violation of any such laws, ordinances, regulations, orders or decrees whether by Operator, its agents, subcontractors, or its employees.

ARTICLE III

PAYMENTS, GUARANTEES AND DAMAGES

Section 3.01 Service Fee and Payments.

(A) Service Fee. The Operator shall be paid a Service Fee consisting of two components, the Fixed Facility Component and the Variable Product Component.

(1) **Fixed Facility Component (FFC)** shall be equal to an annual lump sum amount, payable in 12 equal monthly installments during each year of the Term of this Agreement. The FFC for the initial operating year of this Agreement is equal to \$382,100. The FFC shall be adjusted annually based on the Fixed Facility Component Price Index, the Price Adjustment Factor, and as described hereafter. In order that the annual adjustment shall conform to the Fiscal Year period, the following procedure shall apply: The first adjustment shall be calculated for a period of time that begins with May 1, 2009 and ends with the month in which the Acceptance Date occurs and shall be effective as of the Acceptance Date. The second adjustment shall be calculated for the period of time that begins with the month in which the Acceptance Date occurred and ends with June 30th following such Acceptance Date, and such second adjustment shall become effective on July 1 following that June. The third adjustment period shall begin with the month of July (immediately following the June of the second adjustment period) and shall end with the following June and

become effective the following July 1, and all subsequent adjustments shall be made in the same manner.

(2) **Variable Product Component (VPC)** of the Service Fee shall apply to all biosolids quantities processed by heat drying, and be paid as a cost per dry ton. As a minimum, the Owner shall pay the VPC to the Operator based upon the Guaranteed Annual Total of Biosolids for processing. The VPC for the initial operating year is equal to \$294.70 per dry ton, in the event natural gas is used. Alternatively, in the event fuel oil is used, the VPC for the initial operating year is equal to \$372.10. The VPC shall be adjusted annually based on the Variable Product Component Price Indices, the Price Adjustment Factor, and as described hereafter. In order that the annual adjustment shall conform to the Fiscal Year period, the following procedure shall apply: The first adjustment shall be calculated for a period of time that begins with May 1, 2009 and ends with the month in which the Acceptance Date occurs and shall be effective as of the Acceptance Date. The second adjustment shall be calculated for the period of time that begins with the month in which the Acceptance Date occurred and ends with June 30th following the Acceptance Date, and such second adjustment shall become effective on July 1 following that June. The third adjustment period shall begin with the month of July (immediately following the June of the second adjustment period) and shall end with the following June and become effective the following July 1, and all subsequent adjustments shall be made in the same manner.

(3) **Service Fee For Alternate Methods of Disposal.** The Alternate Service Fee (ASF) for any alternate method of disposal shall be negotiated at the time that the implementation of the alternate method of disposal is agreed upon with the Owner.

(B) Monthly Operation Payment. On or before the fifteenth day following the initial Billing Period and for each subsequent Billing Period the Operator shall provide a billing statement which shall set forth for the prior Billing Period the sum of:

- (1) Measurement of Quantities, plus
- (2) The amount of the FFC and VPC.

The Owner is responsible for the costs associated with the Operators operation and maintenance of the HDF related to the consumption of potable water, process water, sanitary/sidestream, and electricity, except Operator is not responsible for any consumption of potable water, process water, and sanitary/sidestream water directly associated with the dewatering operation. The Operator shall measure and record the quantity of all utilities provided by the Owner, and the quantity of biosolids produced. Consumption of Owner furnished utilities above or below the quantities guaranteed by the Operator will be subject to remedies or rewards as follows: The Operator shall pay all costs for utilities usage in excess of the Maximum Owner Furnished Utility Guarantee, hereinafter referred to as the Maximum Owner Furnished Utilities Guarantee Payment. The Operator shall receive additional compensation, hereinafter called the Maximum Owner Furnished Utilities Guarantee Credit, for all costs not incurred by the Owner for utilities usage that is below the Maximum Owner Furnished Utilities Guarantee. Adjustments will be determined annually at the anniversary date of the Service Agreement.

(C) Maximum Owner Furnished Utilities Guarantee.

- (1) Electricity: The HDF shall not utilize and consume more than 506 KWH per Ton of Received Biosolids Processed.
- (2) Potable Water: The HDF shall not utilize and consume more than 251 cubic feet of potable water per Ton of Received Biosolids Processed.

- (3) Process Water: The HDF shall not utilize and consume more than 17.10 per 1,000 gallons of process water per Ton of Received Biosolids Processed.
- (4) Sanitary/Sidestream: The HDF shall not generate and dispose of more than 19,534 gallons of sanitary/side stream per Ton of Received Biosolids Processed. Sanitary/sidestream concentrations shall not exceed the following:

Constituent	Maximum Concentration, mg/l
COD	450
BOD ₅	300
Total Solids	300
Ammonia	35
Vol. Acids	500
Total Phosphorus	20
Chlorides	287
pH	6.5-7.5

(D) Invoices; Method of Payment.

- (1) Each invoice submitted by the Operator shall include documentation sufficient to justify the payment by the Owner to the Operator. Upon the Owner's receipt of the Operator's billing statement, the Owner may verify any amounts included.
- (2) Payment of the Operator's billing statement shall be made to the Operator by the Owner within thirty days from the date that the Owner receives a properly formatted invoice containing the required documentation and free of errors.
- (3) If the Owner disputes an item in an invoice the Operator submits for any reason, including lack of supporting documentation or data, the Owner shall

temporarily delete the amount of the disputed item and pay the remainder of the invoice. The Owner shall promptly notify the Operator of the disputed items and request resubmittal.

Section 3.02 Annual Adjustments and Payments-Yearly Reconciliation. Within sixty (60) days of the end of each Fiscal Year, the Operator shall prepare a year-end statement which shall set forth all of the payments and deductions, as required in accordance with Section 3.01 above, made during the previous Fiscal Year's Billing Periods, plus any outstanding adjustments, together with a statement of any VPC Fee due the Operator for each Ton of Biosolids not delivered to the HDF which is less than the Guaranteed Annual Total of Biosolids required to be delivered by Section 2.01 (A) above during such Fiscal Year.

The Operator's year-end statement shall be complete with documentation of all charges, deductions and claims for items not previously submitted to the Owner and will be audited by the Owner as a record and final reconciliation of all such charges and claims for the Fiscal Year. The Owner shall review the year-end statement and notify the Operator of its concurrence therewith, or notify the Operator of deficiencies or objections to the year-end statement within thirty (30) days of receipt. Any uncontested amount shall be paid by the party owing same within ten (10) days of the Owner's notice described in the previous sentence and any contested amounts shall be submitted to dispute resolution as provided in Section 5.01 of this Agreement.

Section 3.03 Performance Guarantees.

(A) Operator Performance Guarantees. Upon commencement of operations by the Operator pursuant to this Agreement, the Operator shall guarantee that the operation of the HDF meets the following guarantees:

- (1) Acceptance Test Standards, but not including Maximum Utility Utilization,
- (2) Product Market Specification Guarantee.

These performance guarantees shall be used to determine the extent and amount, if any, of damages suffered by the Owner and assessed against the Operator during the term of this Agreement.

(B) Acceptance Test Standards. The HDF shall be operated and maintained to always be capable of meeting the Performance Guarantees when tested in accordance with Section 2.04(D).

(C) Product Market Specification Guarantee. The Operator guarantees the Beneficial Reuse Products produced by the HDF shall meet or exceed the requirements of Chapter 62-640.850, Maryland Administrative Code, or its successor regulations, for Class AA Residuals.

Section 3.04 Performance Guarantee Damages and Performance Guarantee Remedies.

The Operator agrees that monetary damages or other remedies shall be imposed against the Operator for occurrences described in this section.

(A) Performance Damages. The Operator shall pay, not as a remedy for breach, but as liquidated damages, the amount of :

- (1) In the event the Operator fails to market BRUP, excluding BRUP properly stored on HDF Site, Operator shall pay the Owner as liquidating damages the amount of \$100 per ton for each ton not properly marketed.

The parties agree that the amount of actual damages suffered by the Owner as a result of the failure to meet the Performance Guarantees would be difficult or impossible to measure, and thus agree to the liquidated damages as set out in this Section. The parties further agree that any fines or

monetary penalties assessed to the Owner by any regulatory authority which are directly related to the performance and/or operation of the HDF shall be the Operator's liability and Operator shall pay any said fines or monetary penalties, if required.

(B) Performance Guarantee Remedies. If a Performance Test demonstrates that any Performance Guarantee is not met, the Operator shall immediately repair the HDF and retest it to demonstrate that the repaired HDF meets the Performance Guarantee. Such repair and retesting shall all be at the Operator's cost and expense.

Section 3.05 Performance Bond or Surety.

The Operator shall secure a performance bond that may be annually renewable. At least sixty (60) days prior to the Scheduled Acceptance Date, the Operator shall deposit with the Owner a surety bond issued by an insurance company licensed to do business in the State of Maryland. The surety bond shall secure the Operator's performance under this Agreement and shall name Owner as beneficiary.

The penal sum of surety hereunder required by the Owner, shall be in the amount equal to the annual Service Fee payable to the Operator and shall be adjusted annually throughout the Term of the Agreement to reflect adjustments to the annual Service Fee. Said bond shall remain in full force and effect for a period of six (6) months after the termination of this Agreement and at the conclusion of such six (6) month period shall terminate. In the event of default or breach by Operator in its obligations to the Owner regarding performance, payment or otherwise under this Agreement, the Owner may make claim against such bond. There shall be no default or forfeiture pursuant to the terms of the Agreement if the failure to perform by Operator is caused by the occurrence of an Uncontrollable Circumstance.

Section 3.06 Indemnification.

To the extent permitted by law, the Operator shall defend, indemnify, and hold harmless the Owner, and its employees and representatives (hereafter "Indemnitees"), from any and all claims and liabilities for which the Indemnitees can or may be held liable as a result of personal injury (including death) to persons or damage to property occurring by reason of the Operator's negligent or intentionally wrongful acts or omissions arising out of or connected with this Agreement. Further, the Operator shall defend, indemnify, hold harmless the Indemnitees from and against any and all claims, demands, causes of action, fines, penalties, lawsuits and any and all liabilities of any kind resulting from, arising out of or as an incident to the Operator's breach of the terms of this Agreement, its negligent acts or omissions, or its intentionally wrongful acts or omissions.

The Operator shall not be required to indemnify any Indemnitees when an occurrence results from or arises out of the negligent acts, intentionally wrongful acts, or omissions of the Indemnitees, or breach of the terms of this Agreement by the Indemnitees.

The Operator's indemnification obligations, as set forth herein, include, but are not limited to the obligations to indemnify the Indemnitees for their reasonable attorneys' fees, court costs and litigation expenses.

Section 3.07 Uncontrollable Circumstances and Change In General Law.

(A) Neither the Owner nor Operator shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Circumstance, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. Neither the Operator nor the Owner shall be liable for any losses or damages, direct or indirect, special, consequential, incidental or otherwise, that may arise out of the delay in or failure of their respective performance attributable to or arising out of such Uncontrollable Circumstance, except as provided for herein.

Neither party shall, however, be excused from performance if non-performance is due to circumstances which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Circumstances, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement. The Operator and the Owner shall both cooperate to remove, reduce, or eliminate the adverse effects of such Uncontrollable Circumstance. In the event of catastrophic damage to the HDF, the Owner may terminate this Agreement.

(B) Changes in General Law. At such time as the Operator becomes aware that a Change in General Law has or is about to occur, Operator shall provide the Owner with a written report specifying the nature and the extent of the Change in General Law.

(1) Additional costs associated with Changes In General Law and other Unavoidable Circumstances to processing sludge and the production of finished product, if the Change In Law relates to activities or circumstances occurring to or at, or affecting the HDF, will be paid by the Owner. This relates to regulatory changes which may be implemented by regulatory or permitted authorities.

(2) Change in Environmental Law. In the event of a Change in Environmental Law (as defined herein) that has a direct, material, and adverse effect upon the cost to the Operator of operating, maintaining, or modifying the HDF, the Operator shall prepare and submit to the Owner a plan of remediation and estimated costs of such remedial measures. The Owner shall have the right to recommend modifications to the proposed remedial measures which

modifications shall not be unreasonably rejected by Operator. Upon approval of such plan by the Owner, Operator shall proceed with the remedial measures subject to any necessary adjustments in compensation or reimbursement for increased operating and maintenance costs or modification costs. The Operator shall not be excused from performance of its obligations as a result of the occurrence of a Change in Environmental Law unless such renders performance impossible. Absent impossibility of performance, the Operator's sole remedy shall be the procedure set forth herein and recovery of additional costs as provided for herein. The Owner and Operator shall mutually negotiate the cost of any modification costs for change required to be made to the HDF, and/or any increase in the Processing Fee commensurate with the increased cost. In the event the parties are unable to mutually agree, then the increase shall be determined in accordance with Section 5.01 of this Agreement.

Section 3.08 Insurance During Operations.

The following policies shall be obtained by the Operator covering all work under this Agreement with all policies being properly signed originals or certified copies and be written only by insurance companies authorized to do business in the State of Maryland. The Operator shall either require each subcontractor to procure and maintain the same coverage as required of the Operator or insure the activities of subcontractors in his own policies. The Operator and the Owner hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from or relating to the performance of this Agreement, which loss or damage is covered by valid and collectible insurance policies to the extent that such loss or damage is recoverable under said insurance policies or which loss or damage is to be paid by the Operator as a

deductible or self insured retention. The Operator shall maintain insurance for the HDF independent of insurance they may hold for other facilities.

(A) Comprehensive General Liability Insurance. Comprehensive General Liability Insurance shall be maintained by the Operator with a limit of not less than \$1,000,000.00 Bodily Injury, and Property Damage Combined Single Limit per occurrence. Coverage shall include Personal Injury, Liability Coverage, a "protective liability" endorsement to insure the contractual liability assumed under this Agreement (including written and oral contracts), Independent Operators, and Broad Form Property Damage including Completed Operations and Products and Liability coverage.

(B) Worker's Compensation and Employers Liability Insurance. Worker's Compensation and Employers Liability Insurance shall be maintained by the Operator in compliance with the laws of the State of Maryland. The Employers Liability limit shall not be less than \$1,000,000.00 each accident. If a Self-Insurance Worker's Compensation Program is used, it must be approved by the Insurance Commissioner of the State of Maryland in accordance with the laws of the State of Maryland.

(C) Comprehensive Automobile Liability Insurance. Comprehensive Automobile Liability Insurance shall be maintained by the Operator with a limit of not less than \$1,000,000.00 Bodily Injury and Property Damage Combined Single Limit Each Accident in accordance with the laws of the State of Maryland as to the ownership, maintenance and use of all owned, non-owned, leased or hired vehicles.

(D) All-Risk Property Insurance. Blanket coverage for all real and personal property naming the Owner as the owner and primary insured with no co-insurance limitations and an amount not less than 100% of the replacement cost of the HDF and all equipment. Coverage shall be written on a replacement cost basis and include flood, earthquake, and sinkhole coverage.

Coverage for Business Interruption and/or Extra Expense shall also be obtained if requested by the Owner. Any additional premium for Business Interruption and/or Extra Expense shall be reimbursed to the Operator based on Cost Substantiation.

(E) Environmental Impairment Liability. Environmental Impairment Liability insurance shall be maintained by the Operator with a limit of not less than \$1,000,000.

(F) Umbrella Liability Insurance. Umbrella or Excess Liability Insurance shall be maintained by the Operator with a limit of not less than \$5,000,000.00 Bodily Injury and Property Damage Combined Single Limit Each Occurrence. Coverage shall be applicable to all underlying coverage regardless of Umbrella or Excess Policy Conditions to the contrary and shall follow form on all underlying policies required in items (A), (C), and (D) of this Section 3.08.

(G) Other Insurance As May Be Required. Self insurance will be permitted only if adequate reinsurance is provided by an insurance company acceptable to the Owner.

(H) Policy Approval. Operator and his subcontractors shall not commence any on-site activities until all insurance certificates have been approved by the Owner's Risk Management Department.

(I) Policy Endorsements. All of the above policies shall include the following endorsements:

- (1) Policy cancellation, non-renewal or reduction of coverage will not be effective until after the Owner has received sixty (60) days advance notice by certified mail.
- (2) Violation by the insured of any terms or conditions of the policy shall not invalidate the policy or reduce any coverage.
- (3) The Owner shall be listed as additional insured on all policies.

ARTICLE IV

TERM, DEFAULT AND TERMINATION

Section 4.01 Term.

This Agreement shall continue in effect until fifteen (15) years from the Acceptance Date, with the sole and exclusive option to the Owner to extend for two (2) additional five (5) year terms upon the same terms and conditions of this Agreement, including Service Fees as determined in accordance with this Agreement. The Owner shall notify the Operator at least nine (9) months prior to the termination date of this Agreement of its intent to renew.

Section 4.02 Termination For Cause.

The Owner or Operator, where applicable, may cancel this Agreement with prior written notice upon any of the following grounds, unless such grounds are attributable to any Uncontrollable Circumstance:

(A) If Operator disposes of Biosolids or otherwise abandons or discards Biosolids not in accordance with this Agreement, the Owner must notify the Operator in writing of such disposition and the Operator is required within seventy-two hours to cease said activity.

(B) If Operator fails to operate and maintain the HDF in accordance with any applicable laws, the Owner shall notify the Operator in writing and Operator shall have seventy-two hours to submit an acceptable written plan to cure all violations within thirty (30) days, or such shorter time as may be ordered by the jurisdictional body giving citation or notice of such violation. Failure to cure any violation of law within such required time or a repeat violation within one (1) year shall be grounds for termination.

(C) The HDF fails to Process any Owner supplied Biosolids for a period of thirty (30) consecutive days, unless Operator has received prior written approval from the Owner.

(D) Operator fails to meet any Performance Guarantee for a period of thirty (30) consecutive operating days, unless Operator has received prior written approval from the Owner

(E) Except as otherwise provided in this Section or elsewhere in this Agreement, the failure of Operator or Owner to cure any material breach of this Agreement after receipt of a thirty (30) day written notice specifying such breach from the other party, unless excused by an Uncontrollable Circumstance.

(F) Any insurance required to be maintained by the Operator pursuant to this Agreement lapses or is cancelled, unless other insurance conforming to the requirements of this Agreement was in full force and effect at the time of such lapse or cancellation.

ARTICLE V

MISCELLANEOUS

Section 5.01 - Dispute Resolution

(A) The Parties shall use their best efforts to resolve any dispute or controversy by mutual agreement. The Owner and the Operator each agree that in the event of any dispute between them arising under this Agreement, neither party shall institute any legal action or arbitration against the other without first giving the other party thirty (30) days written notice thereof, including such particulars as will reasonably permit the party against which the claim is being made to respond, during which time the Parties agree to negotiate in good faith to attempt to resolve any such dispute, including representatives of each party empowered to finalize a binding resolution of the dispute making themselves available on a reasonable basis to permit at least one face-to-face meeting. If such dispute shall not be resolved by agreement within such thirty (30) day period, then, upon request of either party by written notice to the other, such dispute shall be submitted to a mutually-acceptable mediator for a period of two (2) months from the date of such notice (or any shorter period by agreement of the Owner and the Operator) in an effort to resolve such dispute by non-binding mediation. If any such dispute

shall arise at a time when the applicable statute of limitations would expire prior to the end of such thirty (30) day period or two (2) month mediation period, as the case may be, suit or arbitration may be instituted to satisfy the applicable statute of limitations, but the Parties agree that such action shall be stayed for such thirty (30) day period or two (2) month period (or any shorter period by agreement of the Owner and Operator) to permit efforts to resolve or mediate such dispute.

If such dispute shall not be resolved by agreement within such thirty (30) day period or by non-binding mediation, as the case may be, within the applicable period, any such controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. All mediation and arbitration proceedings shall be held in or near Cumberland, Maryland or such other location as is mutually agreeable to the Owner and the Operator. Each party shall bear its own costs in any mediation or arbitration, including without limitation attorney and other professional fees. The Parties shall pay in equal parts the mediator's and arbitrator(s)' fees and expenses.

(B) If either the Owner or the Contractor has withheld payment of an amount in dispute, upon resolution of such dispute, the non-prevailing party shall pay over to the prevailing party the disputed amount (or so much thereof as shall be determined to be due) plus interest at a rate equal to the published Treasury Bill Rate in effect from time to time during the period that payment was withheld, from the date on which such amount was due to the date of payment. Treasury Bill Rate means the average yield calculated on each U.S. Treasury auction on the thirteen (13) week U.S. Treasury Bill during the disputed period.

Section 5.02 Independent Operator.

Except as may be specifically agreed to in writing, Operator will at all times be an independent contractor and in no way will it be an employee or agent of the Owner. Operator shall not in any manner whatsoever commit the Owner to any obligation regardless of the nature thereof.

Section 5.03 Assignment.

Except as may be expressly provided otherwise in this Agreement, the Owner and the Operator shall have no right, power or authority to assign this Agreement or any portion thereof without prior approval of the other party which shall not be unreasonably withheld.

Section 5.04 Further Assurances.

Each party agrees to execute and deliver any instruments and to perform any action that may be necessary, or reasonably requested, in order to give full effect to this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents, and take such action as may be reasonably requested by the other party not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

Section 5.05 Industrial, Intellectual, and Software Property Rights.

(A) Payment of Royalties and Licenses. The Operator shall pay all royalties and technology license fees relating to the operation and maintenance of the HDF.

(B) Infringement Protection for Owner. The Operator shall indemnify and defend the Owner or any of its board members, officers, employees or representatives and hold each and all harmless against the liability, judgment, decrees, damages, interest, costs, expenses, and reasonable attorney's fees resulting from any claim or lawsuit alleging infringement of any patent, trademark

or copyright relating to the design of the HDF, or the unauthorized use of trade secrets by reason of the design and construction of the HDF by the Operator, or its subcontractors, suppliers or agents.

(C) Retainage of Intellectual Property Rights. The Operator hereby grants to the Owner and any successor operator of all or part of the HDF, the irrevocable, royalty-free and unrestricted license and right to use all formulas, processes, know-how, technology, innovations, computer software, trade secrets and other intellectual property developed by the Operator in connection with the performance of its obligations pursuant to this Agreement, both during the Term of this Agreement and after its expiration or termination and solely for use in direct connection with the operation of the HDF; provided, however, the Owner may not sell, license, transfer or formally authorize any other Person, other than a successor operator as provided above, to use such intellectual property, but the Owner and its employees and representatives may discuss, publish or otherwise freely and publicly communicate information concerning such intellectual property.

Upon the termination or, as applicable, expiration of this Agreement, the Operator shall provide the Owner, free of charge, with the software, hardware, computer maintenance program, system and source code established by, or for the use of, the Operator, as such program, system and source code was installed, upgraded or revised, together with any applicable licenses (to the extent the Owner is not a co-licensee), effective as of such termination or expiration date, for use by the Owner and its agents, Operators and/or successors solely in connection with the operation of the HDF. Said parties shall not otherwise use, sell or license such software. The Owner shall be responsible for maintaining any third party license after such termination or expiration. The Operator shall ensure that in no event shall any payments to be made by the Owner to third party licensors relating to such items exceed the periodic cost for same as would be obtainable in an arm's length transaction by a party obtaining such items from an unaffiliated third party, without any deferral or postponement of any such fees to a later period of such license or agreement, and with

substantially uniform payments throughout the term of the agreement. All such contracts must require substantially uniform payments throughout the respective terms, allowing for any regular customary commercial escalation of such payments.

If the Operator wishes to use items in the performance of this Agreement that are not compatible with the terms and conditions of this Section 5.05 (C), the Operator shall obtain the prior written approval of the Owner prior to using such items.

(D) Retainage of Patented Invention Rights. The Operator retains exclusive rights to all patented inventions and, subject to Section 5.05 (C), copyrighted materials, developed by the Operator in connection with the performance of its obligations pursuant to this Agreement, provided that the Operator will, at the expiration or termination of this Agreement, grant to the Owner and any successor operator of all or part of the HDF, a non-exclusive, non-transferable permanent license to use such inventions solely in direct connection with the operation of the HDF for an annual fee of one dollar (\$1.00). If the Operator wishes to use items in the performance of this Agreement that are not compatible with the terms and conditions of this Section 5.05 (D), the Operator shall obtain the prior written approval of the Owner prior to using such items.

(E) Treatment of Computer Hardware and Software. The costs of all computer hardware and software, including any software license fees, utilized by the Operator in connection with the performance of its obligations under this Agreement, shall be at the sole cost and expense of the Operator. Any and all portions of any replacement elements of any computerized maintenance management program or system provided by the Operator, or any computer hardware supporting the same, shall be of a quality equal to or better than the quality of the element(s) replaced, and shall first be approved by the Owner before implementation. All computer hardware and software licenses shall be in the name of both the Operator and the Owner (if necessary, the Operator shall purchase two licenses, one in its name and one in the Owner's name.

Immediately upon the earlier to occur of the termination or expiration of this Agreement, the Operator shall provide and deliver to the Owner, free of charge, possession of and all of its right, title and interest in and to all computer hardware obtained for the specific purpose and utilized by the Operator in connection with the performance of its obligations hereunder, including but not limited to all such hardware used in connection with the computerized maintenance management system program, the supervisory control and data acquisition (SCADA) and the human machine interface programming. The Operator shall also deliver and transfer, or arrange for the Owner to be a co-licensee for, any and all computer software, software licenses, source codes and other similar materials and information used by the Operator in preparing or storing the data and information, at no cost to the Owner other than future license fees payable to third party licensors, immediately upon the earlier to occur of the termination or expiration of this Agreement. The hardware, software, software licenses and source codes provided and delivered to the Owner pursuant to this Section 5.05 (E) shall be the same as such hardware, software, software licenses and source codes as same shall have been upgraded and revised, together with any applicable licenses, effective as of such termination or expiration date. The Operator shall ensure that in no event shall any payments to be made by the Owner to third party licensors relating to such computer software exceed the periodic cost for the same as would be obtainable in an arm's length transaction by a party obtaining such software from an unaffiliated third party, without any deferral or postponement of such fees to a later period of such license or agreement. All such computer hardware and software shall be used by the Owner and their agents, Operators and/or successors solely in connection with the operation of the HDF. Any lease of computer hardware by the Operator shall provide that such lease can be assigned to the Owner and upon its assignment, the term of the lease shall automatically be extended for one year with any additional rental payments due during the extension of the term to be paid by the Operator.

(F) Data and Information. All data and information collected, generated, prepared, or provided by the Operator as required by or pursuant to this Agreement shall be and remain the property of the Owner and shall be turned over to the Owner within ten (10) days after the earlier to occur of the termination or expiration of this Agreement; provided, however, the Operator may retain copies of all such information at its sole cost and expense

(G) Survival of Termination. This Section 5.05 shall survive termination of this Agreement.

Section 5.06 Transition and Closeout Requirements.

The following obligations of the Operator shall apply in the event that this Agreement is terminated and the Operator is not going to continue as the operator of the HDF. The entity that is to operate the HDF after this Agreement is terminated shall be referred to here as the Successor Operator.

(A) Successor Operator Access. The Operator shall provide the Successor Operator full and complete access to the HDF Site and all operation, repair, and maintenance activities. Such access shall commence six months prior to the expiration of this Agreement and may include, without limitation, the Successor Operator having one or more representatives on-site until the expiration of this Agreement. The Successor Operator and their on-site representatives shall not interfere with the Operator's operation and maintenance activities. All communication shall be between the Operator and the Owner and the Successor Operator and the Owner.

(B) Operation and Maintenance Records, Manuals and Drawings. Within thirty (30) days after notice of termination of this Agreement is given by either party, the Operator shall provide to the Owner an inventory of all records related in any way to the operation and maintenance of the HDF, including but not limited to, logs, manuals, procedures, reports,

calculations, databases, etc., and a complete inventory list of all spare parts, consumables, specialty maintenance tools and equipment. The records shall have been updated as required. The Operator shall be permitted to maintain a record copy of any such documents.

(C) Spare Parts, Consumables, Specialty Maintenance Tools and Equipment. Upon expiration of this Agreement, the Operator shall turnover to the Owner all spare parts, consumables, specialty maintenance tools and equipment related to, or required for, the operation and maintenance of the HDF, all of which shall be in Good Working Condition. Any of such items subject to this provision that are located off site, if any, shall be moved to the HDF within sixty (60) days prior to the expiration of this Agreement and stored in an appropriate manner. It is the intent of the parties that all spare parts, consumables, specialty maintenance tools and equipment shall be available to the Successor Operator.

(D) Training and Transition. The Operator shall provide training and transition for all HDF services at the expiration of the Agreement for a period not to exceed thirty (30) days.

(E) Final Inspection. Upon expiration of this Agreement, a final inspection of all facilities, including a performance test, will be conducted by the Owner. Equipment or performance identified by the Owner as deficient, excepting normal wear and tear and equipment life expectancy, shall be corrected by the Operator prior to final payment under the Agreement.

Section 5.07 Operator's Representations.

The Operator hereby represents to the Owner that:

(A) The Operator is duly organized under the laws of the Commonwealth of Massachusetts and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(B) The Operator has the power, authority, and legal right to enter into any performance obligations set forth in this Agreement, and the execution, delivery and performance hereof (1) have been duly authorized, (2) to the best knowledge of the Operator, has the requisite approval of appropriate governmental bodies, (3) to the best knowledge of the Operator, does not violate any judgment, order, law or regulation applicable to the Operator or any provisions of the Operator's legal existence, and (4) does not constitute a default under or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Operator under any agreement or instrument to which the Operator is a party or by which the Operator or its assets may be bound or affected.

(C) The Operator holds, or is expressly authorized under, the necessary patent rights, licenses, and franchises to modify and operate the HDF pursuant to the terms of this Agreement.

Section 5.08 Notices.

Any notices or communication required or permitted hereunder shall be in writing and sufficiently given or delivered in person or sent by certified or registered mail, postage prepaid, as follows:

As to the Operator: New England Fertilizer Company
c/o O'Connell Development Group
480 Hampden Street, P.O. Box 867
Holyoke, MA 01041-0867
Attention: James N. Sullivan
Phone 413-534-5667

Fax (413) 534-2902
E-Mail: jsullivan@oconnells.com

As to the Owner: City Of Cumberland, MD
P.O. Box 1702
Cumberland, MD 21501-1702
(301) 759-6427
Attention: Jeffrey E. Repp
City Administrator
Phone 301-759-6424
Fax 301-759-6438
E-Mail: jrepp@allconet.org

Notices shall be effective when received at the address specified above. Any party may make changes in the respective addresses to which such notice may be directed from time to time by written notice to the other party.

Facsimile is acceptable notice effective when received; however, facsimiles received (i.e. printed) after 5:00 P.M. will be deemed received on the next business day. The original of notice must still be mailed as required herein.

Section 5.09 Waiver.

The waiver by either party of a default or a breach of any provisions of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

Section 5.10 Modifications.

The provisions of this Agreement, including the present and all schedules attached hereto shall (1) constitute the entire agreement between the parties, and (2) be modified, unless provided herein to the contrary, only by written agreement duly executed by both parties. In the event of any

conflict, variation or inconsistency between these general terms and conditions of this Agreement and any of the schedules, these general terms and conditions shall control.

Section 5.11 Headings.

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 5.12 Governing Law.

This Agreement and any questions concerning its validity, construction and performance shall be governed by the laws of the State of Maryland.

Section 5.13 Venue.

Venue for all purposes arising out of this Agreement shall be in Cumberland, Maryland.

Section 5.14 Counterparts.

This Agreement may be executed in more than one counterpart each of which shall be deemed to be an original.

Section 5.15 Severability.

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of, or to, this Agreement or such other appropriate changes as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise effected by such action, remain in full force and effect.

Section 5.16 Schedules.

The following documents shall be schedules attached to this Agreement and incorporated herein by reference:


- Schedule 1. Biosolids Quality Specifications
- Schedule 2. Alternate Operations Plan
- Schedule 3. HDF Site
- Schedule 4. Operations and Maintenance Plan
- Schedule 5. Design and Construction Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the respective authorized representatives as of the date first written above.

ATTEST:

By: 
Marjorie A. Eirich, City Clerk

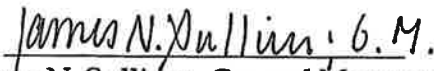
OWNER

By: 
Lee N. Fiedler, Mayor

WITNESSES:



Operator

By:  G.M.
James N. Sullivan, General Manager

SCHEDULE 1

BIOSOLIDS QUALITY SPECIFICATIONS

The successful operation of the Biosolids Processing Facility (HDF) requires that the Biosolids to be received meet the minimum requirements outlined below.

Liquid Biosolids shall solid content of 2.5-6 percent solids by weight and an average of not less than 3.5

Owner may incur additional substantiated charges if the sludge exceeds the ceiling of 40 CFR Part 503, Table 3, as listed below*:

a. Arsenic	41 mg/kg dry weight basis
b. Cadmium	39 mg/kg dry weight basis
c. Copper	1500 mg/kg dry weight basis
d. Lead	300 mg/kg dry weight basis
e. Mercury	17 mg/kg dry weight basis
f. Molybdenum	75 mg/kg dry weight basis
g. Nickel	420 mg/kg dry weight basis
h. Selenium	100 mg/kg dry weight basis
i. Zinc	2800 mg/kg dry weight basis

*Additional limitations may be imposed by MDE's definition of "Class I sewage sludge". Limitations are defined in COMAR 26.04.06.02 as follows:

Cadmium	25 Concentration (parts per million)
Copper	1000 Concentration (parts per million)
Lead	1000 Concentration (parts per million)
Mercury	10 Concentration (parts per million)
Nickel	200 Concentration (parts per million)
Zinc	2500 Concentration (parts per million)
PCB's	10 Concentration (parts per million)

The HDF shall not accept any materials that are hazardous waste.

The finished product which is shipped from the HDF as a product for use in general commerce shall

conform to the quality specifications of "Class A" material with respect to pathogen reduction, as that term is defined in 40 CFR Part 503, and shall comply with all other applicable local, State, and Federal law.

Operator shall perform and provide all sampling, laboratory testing and analysis, and quality assurance/quality control procedures and programs required by applicable local, State, and Federal law. Operator shall provide copies of Biosolids monitoring and testing data that is required by any and all local, state, or federal requirements, permits, and compliance reports. Biosolids monitoring shall be reported to the Owner within 15 days of the analysis.

SCHEDULE 2

ALTERNATE OPERATIONS PLAN

In the unlikely event that the facility is incapable of processing biosolids due to equipment failure, trucks may be diverted and hauled to an approved backup location. As an emergency back-up, NEFCO has contacted Mountainview Landfill, Inc. in Frostburg, Maryland (operated by Waste Management, Inc.) that could provide disposal services for all the biosolids generated by the City in the event of a complete emergency plant shutdown.

Operator shall develop a list of Alternate Landfill sites in addition to the landfill referenced herein. This additional information will be developed by the Operator during the term of the D & C Agreement. The Operator shall submit this report to the Owner for Owner's approval.

SCHEDULE 3

HDF SITE

To be defined after award.

SCHEDULE 4

OPERATIONS AND MAINTENANCE PLAN

(This schedule will be developed by the Operator during the term of the D & C Agreement for the HDF. This schedule is subject to the Owner's approval prior to its formal issuance.)

SCHEDULE 5

DESIGN AND CONSTRUCTION AGREEMENT

C

0

0

0

C

File Attachments for Item:

. Order 27,494 - authorizing the City Administrator to approve Change Order No. 1 to City Project "Constitution Park Trails Project" (2022-32-RECR), in the increased amount of \$1,425 to cover additional Administrative Fees and Insurance, bringing the new contract value to \$379,761.82

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,494

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the City Administrator be and is hereby authorized to approve Change Order No. 1 to City Project "Constitution Park Trails Project" (2022-32-RECR), in the increased amount of One Thousand Four Hundred Twenty and No Cents (\$1,425.00) to cover additional Administrative Fees and Insurance, bringing the new contact value to Three Hundred Seventy Nine Thousand Seven Hundred Sixty One Dollars and Eighty Two Cents (\$379,761.82)

Raymond M. Morriss, Mayor

Budget: 115.GP15.63000

Council Agenda Summary

Meeting Date: 7/2/2024

Key Staff Contact: Derrik Grimm

Item Title:

Change Order No. 1 to Constitution Park Trails Project, 2022-32-RECR

Summary of project/issue/purchase/contract, etc for Council:

This change order is to increase the original contract in the amount of \$1,425.00 in order to account for additional costs associated with the permitting requirements of this project. The cost breakdown is between Administrative Fees (registration with MD, document inquiry, etc.) and Insurance (additional liability insurance). This results in an overall increase of \$1,425.00 with the new contract value now being \$379,761.82.

Amount of Award: \$1,425.00

Budget number: 115.GP15.63000

Grant, bond, etc. reference: City Funds

Subject: Fwd: CSU Producer Resources Inc. Online Payment Confirmation
Date: Tuesday, June 25, 2024 at 9:25:46 AM Eastern Daylight Time
From: Jeremy Witek
To: Ola Portuondo

Caution: External (jeremywitek@yahoo.com)
Sensitive Content [Details](#)

[Report This Email](#) [FAQ](#) [GoDaddy Advanced Email Security](#), Powered by [INKY](#)



Jeremy Witek
Global Action Sports Solutions LLC

[262-206-0222](tel:262-206-0222) gassparks.net



Begin forwarded message:

From: cinfin@paymentus.com
Subject: CSU Producer Resources Inc. Online Payment Confirmation
Date: May 27, 2024 at 8:47:17 PM EDT
To: jeremywitek@yahoo.com
Reply-To: Billpay@paymentus.com

Please do not reply to this email, as we are not able to respond to messages sent to this address.

Dear Policyholder,

We are pleased to confirm your payment with CSU Producer Resources Inc. Below is a summary of your payment transaction.

Payments receiving a confirmation number before 3:00 pm Eastern Time are applied the same business day. Payments confirmed after 3:00 pm Eastern Time are applied the next business day. Next business day is defined as Monday - Friday except bank holidays.

Payments received and processed after the due date may be subject to a late fee.

If you have any questions on this payment, please contact Policyholder Services at 888-242-0888.

Thank you for your continued relationship with CSU Producer Resources Inc.

Confirmation Number: **3531272998**
Payment Date: **May 27 2024 8:45:13 PM**
Payment Amount: **\$1,347.24**

Payment Status: **ACCEPTED**
Email status: **Sent**

Contact Information

Billing Address Zip/Postal Code
Account holder email: jeremywitek@yahoo.com

Account Information

Policy type: **State: MD | Liability and Excess**
Account number: ******498593**
Payment method: **E-Check**

Payment Method Information

Account Type: **Checking Account**
Account Holder Name: **Global Action Sports Solutions**
Account Number: *******8105**
Routing Number: *******1988**
Bank Name: **WELLS FARGO BK NA WISCONSIN**

Payment Confirmation

Thank You!

Logged in as: gassparks1

Your payment has been successfully processed. Payment does not guarantee the submission will be accepted or approved. Log into your account to determine when your filing will be reviewed and either accepted or rejected.

Once your business is approved, you will receive your Department ID number within one business day.

[Click here to see current processing times for submitted filings.](#)

Note: Your bank statement will reflect a charge from MARYLAND GOVPAY.

Order ID	Item(s)	Fee
69001318	Global Action Sports Solutions : Foreign LLC Registration	\$100.00
	Rush Processing Fee	\$425.00
	Convenience Fee:	\$12.75
	Total:	\$537.75

We invite you to [complete our survey.](#)

Ask Our Business Chatbot



Confirmation

You must click the "Continue" button below in order to return to the state agency's website.

Please keep a record of your Confirmation Number, or [print this page](#) for your records.

Confirmation Number **WS2CFI011347167**

Payment Details

Description Dept of Financial Institution E-Payment
DFI Online CC Purchase
<https://www.wdfi.org>

Payment Amount \$100.00

Payment Date 05/02/2024

Status PROCESSED

Payment Method

Payer Name Aleksandra Portuondo

Card Number *0819

Card Type Visa

Approval Code 07359G

Confirmation Email ola@gassparks.net

Billing Address

Address 1 204 Evergreen Ln

City/Town Twin Lakes

File Attachments for Item:

. Order 27,495 - authorizing the City Administrator to execute Change Order No. 3 with Triton Construction for additional tree removals, excavation, replacement of collapsed sewer lines and relocation of existing water service line for the Baltimore Street Access Project (City Project 12-16-M), in the amount of \$120,225.94, bringing the new contract value to \$14,902,660.94

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,495

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the City Administrator be and is hereby authorized to execute Change Order No. 3 with Triton Construction, PO BOX 1360, 1944 Winfield Road, Saint Albans, WV 25177, for additional tree removals, excavation, replacement of collapsed sewer lines and relocation of existing water service line for the Baltimore Street Access Project (City Project 12-16-M), in the amount of One Hundred Twenty Thousand Two Hundred Twenty Five Dollars and Ninety Four Cents (\$120,225.94), bringing the new contract value to Fourteen Million, Nine Hundred Two Thousand Six Hundred Sixty Dollars and Ninety Four Cents (\$14,902,660.94).

Raymond M. Morriss, Mayor

Triton Construction	<i>Contract Price</i>
Original Contract Price	\$14,638,500.00
Change Order No. 1	\$98,775.00
Change Order No. 2	\$45,160.00
Change Order No. 3	\$120,225.94
Total Contract Value after CO 2	\$14,902,660.94

Budget: 115.099M.6300T – City Funds, TAP Funds

Council Agenda Summary

Meeting Date: 7/2/2024

Key Staff Contact: Matt Idleman

Item Title:

Change Order No. 3 to Baltimore Street Access Project, 12-16-M

Summary of project/issue/purchase/contract, etc for Council:

This change order is to add additional work not specified in the original contract in the amount of \$120,225.94 in order to meet the new requirements of the project. This work consists of additional tree removals, excavation, replacement of collapsed sewer lines, and relocation of existing water service line. Some of this work was directed by the City's Water Department in order to upgrade existing service lines and prevent future repair work that may be needed.

This change order is split between costs that will be funded by TAP and only City Funds due to the nature of the work performed. \$85,026.12 of this will be covered by TAP, whereas, \$35,199.82 will be City Cost. This results in an overall increase of \$120,225.94 with the new contract value now being \$14,902,660.94.

Amount of Award: \$120,225.94

Budget number: 115.099M.6300T

Grant, bond, etc. reference: City Funds, TAP Funds



CHANGE ORDER CONSTRUCTION

Authorization C.O. No. _____
 Contract No. AL624B51-LPA C.W.S. No _____
 Date 06/13/2024 District 6 Request No. 3
 Total Amount \$120,225.94 Work/Calendar Day 0
 Project No. AL624B51 FAP No. TAP-3(841)E
 Additional Federal Project Nos. _____ Amount _____

Request is hereby made (1) for funds to do the following Additional Work as an estimated cost as set forth below, and/or (2) to extend the time of completion of this Contract the number of days indicated below:

Project Description LPA - CITY OF CUMBERLAND / BALTIMORE STREET ACCESS PROJECT
 Route: BALTIMORE STREET / CUMBERLAND
 Location: MIDPOINT
 Project Limits BALTIMORE STREET / CUMBERLAND

Participation in cost by others (except Design Consultant) Yes No OOC Control Number: _____
 PCS Control Number: _____
 Signature: _____
 District Engineer Only
 Third Party Name _____ Amount _____ Notified _____
 City of Cumberland \$35,199.82 Yes No
 Approved: _____
 Deputy Administrator
 (Must sign if participation cost by others is YES)
 Potential Consultant Liability Yes No
 (If Yes, identify and attach applicable cost items.)
 Approved: _____
 Administrator
 (all developer and local government agreements over \$100,000)

	Work/Calendar Days	
Original Contract Amount	\$14,638,500.00	551
Authorized Redlines to date	\$0.00	
Total of Authorized COs	\$0.00	0
Total of Unauthorized COs	\$98,775.00	0
Redlines this CO	\$0.00	
Amount of this CO	\$120,225.94	0
Total COs	\$219,000.94	0
Percent of Original Contract	1.50%	0.00%
Authorized Contract Amount	\$14,638,500.00	551

CONTRACTOR'S ACCEPTANCE
 THE TERMS AND CONDITIONS OF THIS CHANGE ORDER, INCLUDING THE AMOUNT AND THE TIME CONTAINED HEREIN, CONSTITUTE A FULL ACCORD AND SATISFACTION BY THE ADMINISTRATION AND THE CONTRACTOR FOR ALL COSTS AND TIME OF PERFORMANCE RELATED TO THE ACTIONS DESCRIBED OR REFERENCED HEREIN, INCLUDING BUT NOT LIMITED TO, DELAY AND IMPACT COSTS RESULTING FROM THIS CHANGE ORDER. EXCEPT AS AMENDED HEREIN, ALL PROVISIONS OF SAID CONTRACT REMAIN IN FULL FORCE AND EFFECT.

Funds Available

Approved: _____
 Date Assistant Director
 Office of Finance and Information Technology

Date	Contractor	Title
Company: _____		
Approved: _____		
Date	Director - Office of Construction	(Up to 25% or 100 Days / \$750,000 whichever is less)

Approved: _____
 Date District Engineer
 (Up to 10% or 50 Days / \$500,000 whichever is less)

Approved: _____
 Date Deputy Administrator
 (Over 25% of up to 200 Days / \$1,000,000 whichever is less)

Acknowledged: _____
 Date Administrator
 (Over \$1,000,000 or 200 Days)

Change Order #3 for Contract AL624B51-LPA

Section 01 Code A Description Added for Item 3048.A 01A

<u>Item / Cat</u>	<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Ext. Cost</u>	<u>Reason</u>
3048.A 01A 300000-LS	UNUSED 36-INCH CORRUGATED POLYETHYLENE PIPE	LS	100.00	\$10,030.62	\$10,030.62	E-3-E
3049.A 01A 300000-LS	UNUSED 18-INCH CORRUGATED POLYETHYLENE PIPE	LS	100.00	\$1,082.25	\$1,082.25	E-3-E
3050.A 01A 300000-LS	UNUSED STD. ADA DOUBLE GRATE INLETS	LS	100.00	\$9,572.23	\$9,572.23	E-3-E
8111.A 01A 800000-LS	UNUSED 4-INCH DUCTILE IRON PIPE AND FITTINGS	LS	100.00	\$14,514.72	\$14,514.72	E-8-E
Total: 01A					\$35,199.82	

Section 01 Code B Description FHWA TAP FUNDS / CITY OF CUMBERLAND

<u>Item / Cat</u>	<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Ext. Cost</u>	<u>Reason</u>
1016.A 01B 100000-LS	ADDITIONAL TREE REMOVAL	LS	100.00	\$3,195.39	\$3,195.39	E-1-E
2011.A 01B 200000-LS	ADDITIONAL CLASS 1 EXCAVATION	LS	100.00	\$37,136.95	\$37,136.95	E-2-E
8112.A 01B 800000-LS	10-INCH PVC SEWER PIPE	LS	100.00	\$41,022.62	\$41,022.62	E-8-E
8113.A 01B 800000-LS	1-INCH WATER SERVICE LINE CONNECTION	LS	100.00	\$3,671.16	\$3,671.16	E-8-E
Total: 01B					\$85,026.12	

Change Order #3 for Contract AL624B51-LPA

Item Reason Code Totals

Reason Code	Cost	Description
E-1-E	\$3,195.39	CATEGORY CODES 1-9 >> PRELIMINARY >> Unforeseen Site Condition
E-2-E	\$37,136.95	CATEGORY CODES 1-9 >> GRADING >> Unforeseen Site Condition
E-3-E	\$20,685.10	CATEGORY CODES 1-9 >> DRAINAGE >> Unforeseen Site Condition
E-8-E	\$59,208.50	CATEGORY CODES 1-9 >> TRAFFIC >> Unforeseen Site Condition
CHANGE ORDER TOTAL		\$120,225.94

This work is necessary for the following reasons:

Item 1016.A - On April 6, 2023, City Engineers determined that two existing trees located on North Liberty Street at Sta. 36+49 and 36+65 needed to be removed due to roots pushing into the sidewalk and starting to compromise the staircase at 19 Frederick Street. These trees were originally called out in the plans to remain in place.

Item 2011.A - On June 13, 2023, the City of Cumberland Water Department requested moving all existing domestic service water lines in North Liberty Street over from the existing 4-inch line to the existing 8-inch line during this project. The 4-inch line is much older than the 8-inch line and there were fears of future repairs being needed beneath the new brick pavers if the issue was not addressed now. The contractor agreed to perform the necessary excavation and the City Water Department performed the water line work.

Item 3048.A - On July 24, 2023, the contractor discovered that the proposed 36-inch corrugated polyethylene pipe between Manholes 63 and 64 would not fit per the plans due to existing utility conflicts. The contractor was able to install a 24-inch pipe between the two manholes in place of the 36-inch pipe. The 36-inch pipe had already been purchased so the City agreed to pay for the unused material. This material is in the City's possession.

Item 3049.A - On May 19, 2023, the contractor discovered that the proposed 18-inch corrugated polyethylene pipe from Inlet 68 could not fit into proposed Manhole 64 due to limited space in the manhole (intersecting pipes). City Engineers and contractor mutually agreed to relocate the 18-inch pipe and drop it into the existing 36-inch concrete storm sewer pipe at Sta. 52+75 +/- . This resulted in extra work to relocate the inverts on the inlet, as well as unused 18-inch corrugated pipe. The City agreed to pay for the unused material. This material is in the City's possession.

Item 3050.A - On July 10, 2023, the contractor discovered that the ADA Double Grate Inlet at the southeastern corner of the Liberty Street / Baltimore Street intersection did not fit due to existing utility conflicts. In addition, on July 18, 2023, it was discovered that the ADA Double Grate Inlet at the southeastern corner of the Centre Street / Baltimore Street intersection did not fit due to existing utility conflicts. At both locations, City Engineers agreed to delete these inlets from the contract and the contractor re-graded these areas to allow stormwater to flow to other structures. The City agreed to pay for the unused structures. These structures are in the City's possession.

Item 8111.A - On June 13, 2023, after discussions with the City of Cumberland Water Dept., City Engineers requested that the proposed 4-inch water line shown on the plans running from the 18-inch water line in Baltimore Street to the end of the project limits at Pershing Street be upgraded to a 6-inch line. The contractor had already purchased the 4-inch material. The City agreed to pay for unused material. This material is in the City's possession.

Item 8112.A - On December 18, 2023, the contractor discovered that the existing 10-inch terracotta sanitary sewer line between Manhole 28 and Manhole 29 on North Liberty Street was completely collapsed. City Engineers determined that this line and all lateral connections needed to be replaced. There is no contract item for 10-inch PVC Sewer Line.

Item 8113.A - On August 1, 2023, the contractor discovered an existing 1-inch domestic water service line to 110 Baltimore Street (Gateway Center) that was not anticipated. The contractor was directed to move this service line over to the new 18-inch water line in Baltimore Street.

Support documentation is on file at the District 6 Office.

Item section and funding codes used in this Change Order but not used in the original Contract

01A

File Attachments for Item:

. Order 27,496 - authorizing the City Administrator to execute Change Order No. 2, with Harbel, Inc. due to the need for additional concrete repair discovered after the project began, for the repair of Bridge A-C-01 McMullen Bridge (City Project 18-16-BR), in an increased amount of \$23,933.78, bringing the total contract price not to exceed \$526,888.31

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,496

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the City Administrator be and is hereby authorized to execute Change Order No. 2, with Harbel, Inc. 11521 Milnor Avenue/PO BOX 358, Cumberland, MD, 21502, due to the need for additional concrete repair discovered after the project began, for the repair of Bridge A-C-01 McMullen Bridge (City Project 18-16-BR), in an increased amount of Twenty Three Thousand Nine Hundred Thirty Three Dollars and Seventy Eight Cents (\$23,933.78), bringing the total contract price not to exceed Five Hundred Twenty Six Thousand Eight Hundred Eighty Eight Dollars and Thirty One Cents (\$526,888.31).

Raymond M. Morriss, Mayor

Original Contract Price	\$500,577.92
Change Order No. 1	\$2,376.61
Change Order No. 2	\$23,933.78
Total Contract Price after CO 2	\$526,888.31

Budget: 115.99XE.63000

Council Agenda Summary

Meeting Date: 7/2/2024

Key Staff Contact: Matt Idleman, P.E.

Item Title:

Change Order No. 2 to Repairs to Bridge A-C-01 McMullen Bridge, 18-16-BR

Summary of project/issue/purchase/contract, etc for Council:

This change order is for the costs associated with additional concrete repair to the Interior Parapet that was discovered once the project was started in the amount of \$23,933.78. This results in an overall increase of \$23,933.78 with the new contract value now being \$526,888.31.

Amount of Award: \$23,933.78

Budget number: 115.99XE.63000

Grant, bond, etc. reference: City Funds & State Aid Funds

Harbel Inc.

Job: McMullen Bridge Repair										Job:			
										Last Modified:		6/26/24 10:09	
No.	Description	Qty	Unit	Unit Price	Sub Cost	Unit Price	Equipment Cost	Unit Price	Material Cost	Unit Price	Labor w/burden	Notes	
1	McMullen Bridge Interior Parapet Install				\$ -		\$ -		\$ -		\$ -		
					\$ -		\$ -		\$ -		\$ -		
					\$ -		\$ -		\$ -		\$ -		
	LABOR				\$ -		\$ -		\$ -		\$ -		
2	Laborer Skilled	80	HR		\$ -		\$ -		\$ -	54.54	\$ 8,726.40		
1	Carpenter	60	HR		\$ -		\$ -		\$ -	63.63	\$ 3,817.80		
2	Iron Worker	2	HR		\$ -		\$ -		\$ -	64.94	\$ 259.76		
1	Cement Finisher	12	HR		\$ -		\$ -		\$ -	64.35	\$ 772.20		
1	Foreman	40	HR		\$ -		\$ -		\$ -		\$ -		
	EQUIPMENT				\$ -		\$ -		\$ -		\$ -		
1	INGERSOLL RAND Air Compressor	40	HR		\$ -	60	\$ 2,400.00		\$ -		\$ -		
1	30lb Chipping Hammer	32	HR		\$ -	5	\$ 160.00		\$ -		\$ -		
1	One Ton Dump Truck	16	HR		\$ -	50	\$ 800.00		\$ -		\$ -		
1	Riviot Buster Demo Hammer	16	HR		\$ -	5	\$ 80.00		\$ -		\$ -		
1	Pick-up Truck	40	HR		\$ -	40	\$ 1,600.00		\$ -		\$ -		
1	Gas Power Concrete Mixer	16	HR		\$ -	30	\$ 480.00		\$ -		\$ -		
	MATERIAL				\$ -		\$ -		\$ -		\$ -		
1	Kaaufman Suregrout	1	LS		\$ -		\$ -	3000	\$ 3,000.00		\$ -		
					\$ -		\$ -		\$ -		\$ -		
					\$ -		\$ -		\$ -		\$ -		
					\$ -		\$ -		\$ -		\$ -		
	Total				\$ -		\$ 5,520.00		\$ 3,000.00		\$ 13,576.16	\$ 22,096.16	
											\$ 13,576.16	Total Labor	
											\$ 3,000.00	Total Material	
											\$ 5,520.00	Total Equipment	
											\$ -	Total Subcontractor	
										6%	\$ 180.00	Sales Tax	
											\$ 22,276.16	Sub Total	
										10%	\$ 1,357.62	O&P Labor	
										10%	\$ 300.00	O&P Material	
										0%	\$ -	O&P Subcontractor	
											\$ 23,933.78	Sub Total	
										0.00%	\$ -	Bond	
											\$ 23,933.78	Grand Total	

File Attachments for Item:

. Order 27,497 - executing a donation agreement between the Mayor and City Council and Matthew J. Hunt, for the donation of the parcel of real property at 212 Baltimore Street and the improvements thereon, if any, to the City

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,497

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT the Mayor be and is hereby authorized to execute a Donation Agreement by and between the Mayor and City Council of Cumberland the (“City”) and Matthew J. Hunt (“Owner”) for the Owner’s donation of the parcel of real property and the improvements thereon, if any, to the City:

- (i) 212 Baltimore Street, Cumberland, MD 21502
Tax ID No. 23-012413
Land Records Book 722, Page 562

BE IT FURTHER ORDERED, that the City shall accept the deed effecting the transfer of said property, provided the contingencies in the Donation Agreement are satisfied, and the City Administrator and City Solicitor shall have the authority to determine whether those contingencies are met; and

BE IT FURTHER ORDERED, that the City Administrator and City Solicitor are jointly and severally granted the authority to grant extensions of time for the date of settlement and execute and deliver such documents as are necessary to facilitate or effect the closing for the subject property.

Raymond M. Morriss, Mayor

DONATION AGREEMENT

THIS DONATION AGREEMENT (“Agreement”), is made by and between **Matthew J. Hunt** (the "Owner") and the **Mayor and City Council of Cumberland** (the “City”), a Maryland municipal corporation, and is effective upon the date of its completed execution, which date is hereinafter referred to as the “Effective Date.”

RECITALS

WHEREAS, the Owner owns the parcel of real property together with the improvements thereon, if any, located at 212 Baltimore Street, Cumberland, MD 21502 and described in the deed from Interfaith Housing of Western Maryland, Inc. to the Owner dated July 22, 2003 and recorded among the Land Records of Allegany County, Maryland in Deed Liber 722, folio 562 (the “Property”). The Property is identified as Tax ID No. 23-012413.

WHEREAS, the Owner offered to donate the Property to the City, and the City has agreed to accept that donation subject to the terms and conditions of this Agreement; and

WHEREAS, the parties deem the entry into this Agreement to be in their respective best interests.

WITNESSETH:

NOW THEREFORE, in consideration of the sum of \$1.00, in hand paid, the receipt of which is hereby acknowledged, and in consideration of these premises and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are not merely prefatory. They are incorporated by reference in and form a part of this Agreement as though they were set forth in full herein.

2. **Donation.** Subject to the terms and conditions of this Agreement, the Owner agrees to donate the Property together with the buildings and improvements thereon, if any, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining to the City and the City agrees to accept that donation. The closing for the donation shall be held (or the deed shall be delivered) no later than sixty (60) days from the Effective Date unless said time frame is extended by written agreement of the parties. The City Solicitor and City Administer are empowered by the City to execute agreements to extend this sixty (60) day period.

3. **Estate/Condition.** The Property shall be conveyed to the City in fee simple and in “AS IS” condition. The Owner shall convey the Property to the City by

means of a deed containing covenants of special warranty and further assurances. Said deed shall be delivered to the City at closing.

4. **Contingencies.** Closing and the City's acceptance of the deed(s) for the Property shall be subject to the following contingencies:

4.1. **Title.** Title to the Property shall be good and merchantable, free of liens and encumbrances except use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the Property.

4.2. **No Occupancy/Property Removal.** This Agreement is contingent upon the Owner delivering the Property to the City free from tenants or inhabitants of any kind. The Property shall not be subject to any written or oral leases or occupancy agreements of any kind. All personal property, junk and debris shall be removed from the Property prior to closing. In furtherance of the foregoing, the City shall have the right to conduct a walk-through inspection of the Property within 48 hours before settlement.

If, notwithstanding the foregoing, personal property remains in the Property subsequent to closing, it shall be deemed abandoned and the City may dispose of it in any manner it sees fit without any liability therefor. In that regard, the Owner agrees to indemnify and hold the City harmless from and against any and all liabilities, including, but not limited to, attorneys' fees, incurred as a result of or as an incident to the City's disposal of any personal property left behind in the Property/Properties subsequent to Closing. The parties agree that the covenants in this paragraph shall not merge into the deed effecting the conveyance of the Property/Properties to the City and shall survive closing.

4.3. **Waiver of Contingencies.** The City may waive any or all of the contingencies set forth in this section or elsewhere in this Agreement as to the Property by accepting a deed or deeds for the property. Any waiver of contingencies shall not be effective to effect the waiver of the covenants contained in the second paragraph Section 4.2 above.

5. **Appraisal.** The Owner has the right to have the Property appraised for purposes of claiming a tax deduction for the noncash charitable contribution of the Property to the City. The appraisal(s) shall be performed prior to closing or the date of the City's acceptance of the deed(s) for the Property. Upon delivery of the deed(s) for the Property and the City's acceptance of the same, the Owner shall provide the City with the appropriate tax documents relative to its eligibility to claim the aforesaid tax deduction, including, but not limited to, IRS Form 8283 and the acknowledgment required under 21 U.S.C. § 170(f)(8)¹. Upon the City's acceptance of the deed(s) and its

¹ Per 21 U.S.C. § 170(f)(8)(B), the contents of the acknowledgment should include the following information:

receipt of the appraisal(s) and the appropriate tax documentation, the City Administrator shall execute the tax documentation on behalf of the City, it being understood and agreed that he is specifically empowered to do so under the terms of this Agreement. It is understood and agreed that the City shall not be required to execute any such documents attesting to the value of the Property in the event such valuation is not supported by an appraisal or appraisals performed by a licensed real estate appraiser. Further, the Owner shall be solely responsible for the preparation and processing of the aforesaid tax documentation as well as its submission to the IRS, and the City shall have no liability relative thereto, even if it provides assistance to the Owner with respect to such matters.

6. **Risk of Loss.** The Property shall be held at the risk of the Owner until legal title has passed to the City.

7. **Possession.** The Owner agrees to give possession and occupancy of the Properties to the City upon the completion of closing.

8. **Timeliness.** Time is of the essence with respect to the provisions of this Agreement.

9. **Representations and Warranties.** As of the date of the closing contemplated hereby and as to the period of time during which the Owner held title to the Property, the Owner warrants that the Property (including land, surface water, ground water, and improvements) have, by acts or omission or commission, not been subjected to contamination, including (i) any hazardous waste, underground storage tanks, petroleum, regulated substances or used oil as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.) as amended, or by any regulations promulgated thereunder; (ii) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.) as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any oil, petroleum products and their byproducts as defined by the Maryland Natural Resources Code, § 8-411(a)(3) as amended, or by any regulations promulgated thereunder; (iv) any hazardous substance as defined by the Maryland Health Environmental Code, Title 7, Subtitle 2, as amended or by any regulations promulgated thereunder; (v) any substance the presence of which on, in or under the Property is prohibited by any law similar to those set forth above; and (vi) any other substance which by law, regulation, or ordinance requires special handling in its collection, storage, treatment or disposal. Notwithstanding the foregoing, if, subsequent to the date of the execution of this Agreement and prior to closing, the Owner discloses an environmental

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

condition on the Property to the City, the City shall have the option to take title to the Property, waiving and releasing its rights with respect to the aforesaid representations and warranties as to the matters so disclosed, or it may decline to take title to the Property without incurring any liability or obligations as a result of said declination.

10. **Transfer Charges/Recording Fees.** The transfer of the Property to the City is exempt from recordation and transfer taxes under Md. Tax Property Code Ann. § 12-108 (A)(1) and 13-207(a)(1). The City shall pay the court fee for the recordation of the deed(s) for the Property/Properties.

11. **Real Estate Taxes/Water & Sewer Bills/Municipal Infractions.**

11.1. **Real Estate Taxes.** The City will waive all City real estate taxes due on the Property that is conveyed to it. It will secure a waiver of the County real estate taxes due on the Property or it will pay them.

11.2. **Water & Sewer Bills.** The City will waive all City water and sewer bills presently due on the Property. The Owner shall be responsible for the payment of any water and sewer rents incurred subsequent to the Effective Date.

11.3. **Municipal Infractions.** All outstanding citations for municipal infractions due to property maintenance or nuisance infractions at the Property shall be withdrawn. If there are any pending court cases for those municipal infractions, they shall be dismissed. If any judgments have been entered for those municipal infractions, they shall be noted as having been satisfied.

12. **Breach of Agreement and Default.** The City and the Owner is required and agree to make full settlement in accordance with the terms of this Agreement and acknowledge that failure to do so constitutes a breach hereof. If the City fails to make full settlement or is in default due to its failure to comply with the terms, covenants and conditions of this Agreement, the Owner may pursue any legal or equitable rights which may be available to it. If the Owner fails to make full settlement or is in default due to his failure to comply with the terms, covenants and conditions of this Agreement, the City is entitled to pursue such rights and remedies as may be available, in law or in equity, including, without limitation, an action for specific performance of this Agreement.

13. **Assignability.** This Agreement may not be assigned except by written agreement of the parties.

14. **Captions.** The marginal captions of this Agreement are for convenience and in no way define or limit the intents, rights or obligations of the parties hereunder.

15. **Notices.** Any notice, request, demand, approval or consent given or required to be given under this Agreement shall, except as otherwise expressly provided

herein, be in writing and shall be deemed to have been given when mailed by United States certified mail, postage prepaid, return receipt requested at the address stated below.

To the Owner:

Mathew J. Hunt
212 Baltimore Street
Cumberland, MD 21502

To the City:

Jeffrey Silka
City Administrator
City of Cumberland
57 N. Liberty Street
Cumberland, MD 21502

with a copy to:

Michael Scott Cohen, Esquire
213 Washington Street
Cumberland, Maryland 21502

16. Entire Agreement. This Agreement contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Agreement mutually agree that it is binding upon them, their heirs, executors, administrators, personal representatives, successors and assigns.

17. Invalidity. If any provision or part of any provision contained in this Agreement shall be found for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions or the remaining part of any effective provisions of this Agreement, and it shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Maryland. It shall be enforceable with an action commenced in the Circuit Court for Allegany County, Maryland, and the parties hereto agree to be subject to the jurisdiction of such Court and further waive any claim that any action or proceeding arising out of or relating to this Agreement and commenced in such Court is commenced in an inconvenient forum or one that lacks proper venue.

19. Waiver of Jury Trial. THE PARTIES HERETO EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH

ANY OR ALL OF THEM MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH OF THEM REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL(S) TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

20. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

21. **Modification.** No modification or waiver by the parties of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement.

22. **Joint Drafting.** The parties hereto agree that this Agreement reflects the joint drafting efforts of each party, and any ambiguities shall not be construed against either party.

23. **Signing by Electronic Means.** Each of the parties hereto expressly authorizes and agrees to sign electronically (but not facsimile) transmitted copies of this Agreement. Once said electronically transmitted copies are fully executed, they shall have the same binding effect as would a signed original Agreement once delivered to the other party.

24. **Counterparts.** This Agreement may be executed in multiple parts, each of which shall be deemed an original and shall have the same binding effect as though a single original was executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Donation Agreement as of the dates set forth below with the specific intention that it constitute an instrument under seal.

WITNESS/ATTEST:

Chelsea Resnold
Matthew J. Hunt
MJH

 (SEAL)
Matthew J. Hunt

June 24, 2024
Date

**MAYOR AND CITY COUNCIL
CUMBERLAND**

Allison Layton ,
City Clerk

By: _____ (SEAL)
Raymond M. Morriss, Mayor

date

THIS DEED, made this 24 day of June, 2024 by and between **Matthew J. Hunt** (the "Grantor"), of Allegany County, Maryland, and **Mayor and City Council of Cumberland** (the "City"), a Maryland municipal corporation.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the Grantor does hereby grant, bargain and sell, release, confirm and convey unto the City, its successors and assigns, the following described property, to wit:

ALL that following described piece or parcel of ground lying and being situated on the Northwesterly side of Baltimore Avenue in the City of Cumberland, Allegany County, Maryland, and more particularly described as follows, to wit:

BEGINNING for the same on the Northwesterly side of Baltimore Avenue at a point distant 23.4 feet measured along said side of said Avenue in Northeasterly direction from the easterly or rear corner of the brick building now known (1962) as Brook's Hotel located at the intersection of said side of said Baltimore Avenue with the easterly side of Front Street, said point of beginning being also distant 104.4 feet measured in an easterly direction along said side of said Avenue from its intersection with the Easterly side of Front Street and running thence with the Northwesterly side of Baltimore Avenue North 34 degrees 24 minutes East 90 feet, thence with the division line between the lot hereby conveyed and the L.D. Rohrer property North 55 degrees 8 minutes West 125.4 feet to the southeasterly side of Shinbone Alley, and with said side of said alley South 40 degrees 35 minutes West 28 feet; thence following the division fence now standing (1928) South 52 degrees 47 minutes East 44.3 feet South 34 degrees 24 minutes West 21 feet South 55 degrees 36 minutes East 12 feet, South 4 degrees 42 minutes East 51.55 feet, South 55 degrees 36 minutes East 39.67 feet to the place of beginning.

IT BEING the same property which was conveyed from Interfaith Housing of Western Maryland, Inc. to Matthew J. Hunt, by deed dated July 22, 2003 and recorded among the Land Records of Allegany County, Maryland in Deed Liber 722, folio 562.

SUBJECT TO all outconveyances, use and occupancy restrictions, privately or governmentally imposed and generally application to properties in the immediate neighborhood of the property conveyed hereby, reservations, agreements, rights of way, easements and other

matters of record, and to easements or other matters which can be observed by a careful inspection of the property.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the City, its successors and assigns, in fee simple forever.

AND the said Grantor, for himself, his personal representatives, heirs and assigns, does hereby warrant specially the title to the above-described property and covenants that he will execute such other and further assurances of the same as may be requisite or necessary.

WITNESS the hand and seal of the Grantor the day and year first above written.

WITNESS:

Chelsea Rexrode
Matthew J. Hunt
MST

 (SEAL)
Matthew J. Hunt

**STATE OF MARYLAND,
ALLEGANY COUNTY, TO WIT:**

I HEREBY CERTIFY, that on this 29th day of June, 2024, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Matthew J. Hunt**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, and did acknowledge that he executed the same for the purposes therein contained; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00; and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident of the State of Maryland.

WITNESS my hand and Notarial Seal.

Chelsea Rexrode

NOTARY PUBLIC

My Commission Expires: 9/15/2027

Chelsea L. Rexrode
Notary Public
Allegany County
Maryland
My Commission Expires September 15, 2027

ATTORNEY CERTIFICATION

I **HEREBY CERTIFY** that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney.

Michael Scott Cohen

EXHIBIT A

ALL that following described piece or parcel of ground lying and being situated on the Northwesterly side of Baltimore Avenue in the City of Cumberland, Allegany County, Maryland, and more particularly described as follows, to wit:

BEGINNING for the same on the Northwesterly side of Baltimore Avenue at a point distant 23.4 feet measured along said side of said Avenue in Northeasterly direction from the easterly or rear corner of the brick building now known (1962) as Brook's Hotel located at the intersection of said side of said Baltimore Avenue with the easterly side of Front Street, said point of beginning being also distant 104.4 feet measured in an easterly direction along said side of said Avenue from its intersection with the Easterly side of Front Street and running thence with the Northwesterly side of Baltimore Avenue North 34 degrees 24 minutes East 90 feet, thence with the division line between the lot hereby conveyed and the L.D.. Rohrer property North 55 degrees 8 minutes West 125.4 feet to the southeasterly side of Shinbone Alley, and with said side of said alley South 40 degrees 35 minutes West 28 feet; thence following the division fence now standing (1928) South 52 degrees 47 minutes East 44.3 feet South 34 degrees 24 minutes West 21 feet South 55 degrees 36 minutes East 12 feet, South 4 degrees 42 minutes East 51.55 feet, South 55 degrees 36 minutes East 39.67 feet to the place of beginning.

File Attachments for Item:

. Order 27,498 - authorizing payment to various community groups from the hotel/motel tax receipts in an amount not to exceed \$45,000 when added to the community groups detailed in Order 27,499 also dated July 2, 2024

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,498

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT the City Comptroller be and is hereby authorized to make payment to the following community groups in an amount not to exceed Forty-Five Thousand Dollars and No Cents (\$ 45,000.00), when added to the community groups outlined in Order 27,499 dated July 2, 2024;

Allegany Arts Council	3,800.00
Allegany County Historical Society	3,000.00
Cumberland Cultural Foundation	1,700.00
Cumberland Theatre	4,400.00
Embassy Theatre	3,500.00
Friends Aware - Baskets and Brews	700.00
Mountain Maryland Trails	3,300.00
Mountainside Baroque	1,600.00
Robotics and Engineering in Allegany County	2,000.00
Rock the Mountains, LLC	3,100.00
Savage Mountain Punk Arts	1,100.00
Schoolhouse Quilters Guild, Inc.....	1,600.00
The Cumberland Masonic Temple, Inc.	1,500.00
The Jonathan and Mary Lynn Magruder Heritage House	2,200.00
Tri-State Community Concert Association, Inc.	1,500.00
Wheelsup Adventures, Inc.....	2,100.00
TOTAL	<u>\$ 37,100.00</u>

BE IT FURTHER ORDERED, THAT said contributions are to be funded from the hotel/motel tax receipts.

Raymond M. Morris, Mayor

File Attachments for Item:

. Order 27,499 - authorizing payment to various community groups from the hotel/motel tax receipts in an amount not to exceed \$45,000 when added to the community groups detailed in Order 27,498 also dated July 2, 2024

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,499

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT the City Comptroller be and is hereby authorized to make payment to the following community groups in an amount not to exceed Forty-Five Thousand Dollars and No Cents (\$ 45,000.00), when added to the community groups outlined in Order 27,498 dated July 2, 2024;

Allegany County Museum	3,800.00
Canal Place (CPPDA)	4,100.00
TOTAL	<u>\$ 7,900.00</u>

BE IT FURTHER ORDERED, THAT said contributions are to be funded from the hotel/motel tax receipts.

Raymond M. Morris, Mayor

File Attachments for Item:

. Order 27,500 - authorizing the execution of an Outdoor Dining Lease Agreement with Coney Island Lunch, Inc. DBA Curtis Coney Island Famous Weiners for the use of the public right of way immediately in front of and adjacent to the property for outside cafe dining for a term effective July 1, 2024 through October 31, 2025

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,500

DATE: July 2, 2024

ORDERED, By the Mayor and City Council of Cumberland, Maryland,

THAT, the Mayor be and is hereby authorized to execute an Outdoor Dining Lease Agreement by and between the Mayor and City Council of Cumberland and:

CONEY ISLAND LUNCH, Inc., DBA Curtis Coney Island Famous Weiners

detailing terms for the use of the public right-of-way immediately in front of and adjacent to each property for outside café dining for a term effective July 1, 2024 through October 31, 2025.

Raymond M. Morriss, Mayor

OUTDOOR DINING LEASE AGREEMENT

THIS OUTDOOR DINING LEASE AGREEMENT (“Lease”) is made and executed this ____ day of _____, 2024, by and between the **Mayor and City Council of Cumberland**, a Maryland municipal corporation (the “City”) and **CONEY ISLAND LUNCH, INC. DBA Curtis Coney Island Famous Weiners** (“Lessee”).

WHEREAS, Lessee operates a restaurant at 35 North Liberty Street, Cumberland, MD 21502;

WHEREAS, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

WHEREAS, Lessee wishes to expand its operation to include outside café dining on a portion of the public right-of-way adjacent to its restaurant; and

WHEREAS, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Demise**. The City hereby leases to Lessee a certain parcel of property located on the public right-of-way adjacent to Lessee’s restaurant, the area of which encompasses that portion of the right-of-way directly to a depth of 8 feet and length of 36 feet, the corners of which shall be marked by the Lessee subject to the approval of the City, which leased parcel of land (hereinafter referred to as the “Demised Premises”) is shown on the plat/drawing attached hereto and incorporated by reference herein as Exhibit 1. Notwithstanding the foregoing, Lessee shall be responsible for allowing pedestrian traffic to pass through the Demised Premises at a location or locations to be approved by the City or as directed by the City, subject to modifications as directed by the City during the term of this Lease.

2. **As-Is Condition; No Warranties or Representations**. Except as expressly set forth herein, Lessee accepts the Demised Premises in its as-is where-is condition, with all faults and defects, latent or patent, known or unknown, presently existing or that may arise in the future. The City disclaims all liability and responsibility for any representation, warranty, statement, or information made, communicated, or furnished (orally or in writing) to Lessee or any of its agents, employees or representatives made prior to or following the date of this Agreement unless it is modified as provided for hereinafter.

2. **Term**. The term of this lease shall commence on June 1, 2024, and shall terminate on October 31, 2025, unless sooner terminated as provided for herein.

3. **Use of Property**. The Demised Premises shall be occupied and used by Lessee for the provision of outdoor café dining to Lessee’s restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

4. **Special Events.** The City shall be entitled to suspend Lessee's use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area to ensure that patrons do not take alcoholic beverages off the premises of the Lessee. Any such beverages to be consumed with the Demised Premises shall be served in non-breakable containers. Glass bottles or glasses are not permitted in the area of the Demised Premises.

8. **Furnishings & Equipment.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. All such furnishings and equipment must be approved by the City before use within said area. Upon the City's request of the City, Lessee shall remove said furnishings and/or equipment from the Demised Premises and store them in a neat and orderly manner.

9. **Rules and Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment and Subletting.** This Lease and the rights granted hereby shall not be assigned or subletted by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

12. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

13. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

14. **Release.** The Lessee hereby irrevocably and unconditionally releases, cancels, and forever discharges the City and its directors, officers, officials, employees, affiliates, agents, and

representatives from any and all claims, complaints, causes of action, demands, damages, obligations, liabilities, losses, promises, agreements, controversies, penalties, expenses, and executions of any kind or nature whatsoever, whether known or unknown, actual or potential, whether arising in law or in equity, which the Lessee may have, may have had, or may in the future obtain, arising out of or relating to any acts, omissions, agreements, or events relating in any manner to this Lease. The provisions of this section shall survive the termination or earlier expiration of this Lease.

15. Insurance. So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and property damage occurring on the Demised Premises which shall include the City as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy will name the "MAYOR AND CITY COUNCIL OF CUMBERLAND" as the Certificate Holder and as an additional insured, and will include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

*General Public Liability 2M - Aggregate
1M-Occur*

16. Indemnification. Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys' fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

- a) Lessee's use of the Demised Premises or the conduct of its business on the Demised Premises;
- b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or
- c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

17. Default. After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

- a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.
- b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.

Corp.

c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

18. Repossession Upon Default. Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee's right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

19. Other Remedies. Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

20. Waiver. One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

21. Notice. Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Silka
City Administrator
57 N. Liberty Street
Cumberland, MD 21502

To Lessee:

Gino Giatras
Curtis Coney Island Famous Weiners
35 N. Liberty Street
Cumberland MD 21502

22. Governing Law. The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

23. Gender/Tense/Conjugation. The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

24. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

25. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

26. **Jury Trial Waiver.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LEASE.

27. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

28. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

29. **Public Health Contingencies.** The terms and conditions of this Lease are subject to all orders, ordinances, laws, statutes, rules and regulations of local, state and/or federal governments, pertaining to public health concerns, including, but not limited to, pandemics.

30. **Baltimore Street Redevelopment Project.** The terms and conditions of this Lease are subject to modification and/or suspension if and when such action is deemed necessary to accommodate construction during the planned Baltimore Street Redevelopment Project.

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

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

By: _____
Raymond M. Morriss, Mayor

**CONEY ISLAND LUNCH, INC. DBA Curtis
Coney Island Famous Wiener**

By: _____ (Seal)
Signature

Printed name

Witness

12:37

91%

← COI - Coney Island Lunch & Louis...

Client#: 28256 CONEISL1 DATE (MM/DD/YYYY) 6/27/2024

ACORD. CERTIFICATE OF LIABILITY INSURANCE

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

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

PRODUCER CBIZ Insurance Services, Inc. 44 Baltimore Street Cumberland, MD 21502 301 777-1500	CONTACT NAME: Select Business Unit PHONE No.: 888-408-7500 FAX No.: E-MAIL ADDRESS: cbizselect@cbiz.com
INSURED Coney Island Lunch & Louis G Glatras 15 N Liberty Street Cumberland, MD 21502-2312	INSURER A: The Brethren Mutual Insurance Company NAIC # 13501 INSURER B: Travelers Property Casualty Co of Ameri 25674 INSURER C: INSURER D: INSURER E: INSURER F:

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

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

FORM NO.	TYPE OF INSURANCE	ADDL. COVERAGE	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC OTHER:		CPP000993814	06/01/2024	06/01/2025	EACH OCCURRENCE: \$1,000,000 DAMAGE TO RENTED: \$100,000 MED EXP (Per person): \$5,000 PERSONAL & ADV INJURY: \$1,000,000 GENERAL AGGREGATE: \$2,000,000 PRODUCTS - COMP/OP AGG: \$2,000,000 COMBINED SINGLE LIMIT (See Remarks): \$ BOOBY INJURY (Per person): \$ BOOBY INJURY (Per accident): \$ PROPERTY DAMAGE (Per occurrence): \$ EXCESS LIABILITY: \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in PA) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	UB3Y3659772442G	06/01/2024	06/01/2025	<input checked="" type="checkbox"/> PER <input type="checkbox"/> OTH- <input type="checkbox"/> STATUTE <input type="checkbox"/> ER E.L. EACH ACCIDENT: \$100,000 E.L. DISEASE - EA EMPLOYEE: \$100,000 E.L. DISEASE - POLICY LIMIT: \$500,000

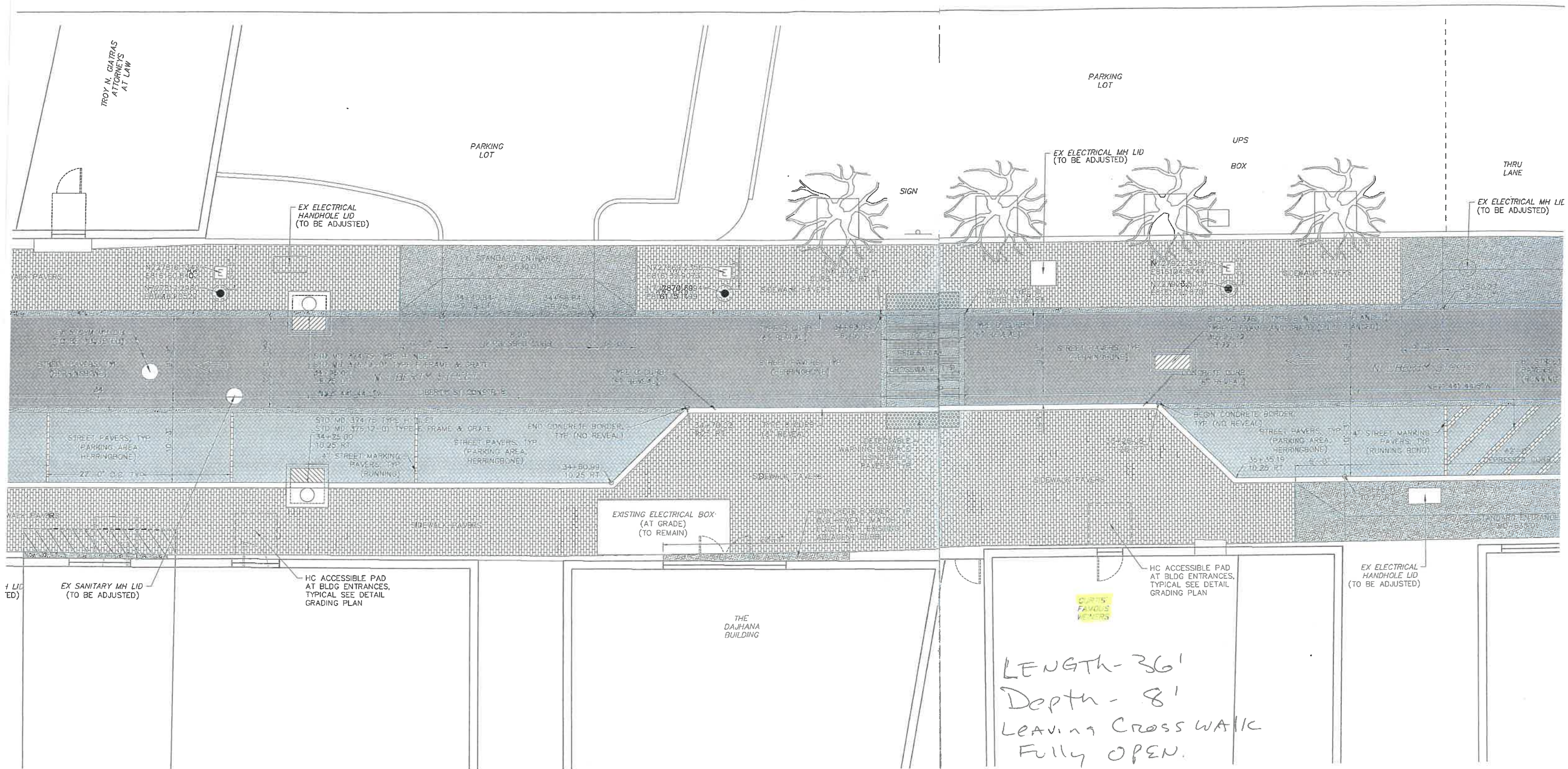
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 181, Additional Remarks Schedule, may be attached if more space is required)
 RE: General Liability coverage includes coverage for Outdoor Dining at Scheduled Locations.

CERTIFICATE HOLDER City of Cumberland Maryland Allison K. Layton, City Clerk 57 North Liberty Street Cumberland, MD 21502	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE CBIZ Insurance Services, Inc.
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**LIBERTY STREET PLAN
STA 33+75 TO STA 35+00**

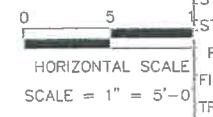
**LIBERTY STREET I
STA 35+00 TO STA**

- PROPOSED LEGEND**
- [Pattern] CONCRETE STEPS, CURB, BORDER, OR STOOP
 - [Pattern] DWS USING BRICK PAVERS (RUNNING BOND)
 - [Pattern] SIDEWALK PAVERS
 - [Pattern] STREET MARKING PAVERS
 - [Pattern] STREET PAVERS (PARKING: HERRINGBONE)
 - [Pattern] STREET PAVERS (STREET: HERRINGBONE)
 - [Pattern] STREET PAVERS (CROSSWALK: RUNNING BOND)
 - [Pattern] STREET PAVERS (ACCENT: SOLDIER)
 - [Pattern] BITUMINOUS PAVEMENT RECONSTRUCTION

- [Symbol] FLOW OF TRAFFIC
- [Symbol] TRENCH DRAIN
- [Symbol] WAYFINDING SIGN AND CONC BASE
- [Symbol] LOCKABLE HOSE BIB
- [Symbol] NEW BARK MULCH BED
- [Symbol] EXISTING BASEMENT UNDER SIDEWALK

EXISTING TEXT
PROPOSED TEXT

SEE LANDSCAPE PLANTING DETAILS FOR TREE AND PLANT LOCATIONS
SEE PROPOSED UTILITY PLANS FOR UNDERGROUND UTILITY LOCATIONS



LAYOUT

- PROPOSED LEGEND**
- [Symbol] PEDESTRIAN CROSSING SIGNAL
 - [Symbol] PEDESTRIAN POLE LIGHT
 - [Symbol] PEDESTRIAN PATHWAY LIGHT (TYPE 5)
 - [Symbol] PEDESTRIAN PATHWAY LIGHT (TYPE 4)
 - [Symbol] RECEPTACLE PEDESTAL
 - [Symbol] TRAFFIC SIGNAL HANDHOLE
 - [Symbol] TRAFFIC HANDHOLE
 - [Symbol] TRAFFIC POWER SUPPLY
 - [Symbol] OPTIC HANDHOLE
 - [Pattern] CONCRETE STEPS, CURB, BORDER, OR STOOP
 - [Pattern] DWS USING BRICK PAVERS (RUNNING BOND)
 - [Pattern] SIDEWALK PAVERS
 - [Pattern] STREET MARKING PAVERS
 - [Pattern] STREET PAVERS (PARKING: HERRINGBONE)
 - [Pattern] STREET PAVERS (STREET: HERRINGBONE)
 - [Pattern] STREET PAVERS (CROSSWALK: RUNNING BOND)
 - [Pattern] STREET PAVERS (ACCENT: SOLDIER)
 - [Pattern] BITUMINOUS PAVEMENT RECONSTRUCTION

- [Symbol] FLOW OF TRAFFIC
- [Symbol] TRENCH DRAIN
- [Symbol] WAYFINDING SIGN AND CONC BASE
- [Symbol] LOCKABLE HOSE BIB
- [Symbol] NEW BARK MULCH BED
- [Symbol] EXISTING BASEMENT UNDER SIDEWALK

EXISTING TEXT
PROPOSED TEXT

LENGTH - 36'
DEPTH - 8'
LEAVING CROSSWALK FULLY OPEN.