Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini

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

AGENDA

M&CC Public Meeting
City Hall

DATE: December 06, 2022

OPEN SESSION – 6:15 PM

Pledge of Allegiance

Roll Call

Statement of Closed Meeting

Proclamations

1. A Proclamation declaring Municipal Government Month

Approval of Minutes

1. Approval of the Closed, Work, and Regular Session Minutes of June 7, 2022, the Work Session Minutes of July 19, 2022, the Special Public Meeting Minutes of August 4, 2022, and the Closed, Work, and Regular Session Minutes of August 16, 2022

Public Comments – for Agenda Items only

All public comments are limited to 5 minutes per person

Unfinished Business

(A) Ordinances

1. Ordinance 3935 *(2nd and 3rd readings)* - authorizing the amendment of Sections 16-1 through 16-6 of the Code of the City of Cumberland for the purpose of updating pay grades

New Business

(A) Resolutions

1. Resolution 2022-10 (*one reading only*) - adopting an employer money purchase retirement plan with MissionSquare

2. Resolution 2022-11 (*one reading only*) - adopting an employee deferred compensation plan with MissionSquare

(A) Ordinances

1. Ordinance 3936 *(1st reading)* - an ordinance to repeal and re-enact with amendments sections 19-2 to 19-5 of Chapter 19 of the Code of the City entitled "Public Ethics" for the purpose of complying with state law

2. Ordinance 3937 (*1st reading*) – an ordinance to approve the petition to amend the official zoning map zoning map to rezone property located at the intersection of Seton Drive and Pinecrest Drive from R-S (Suburban Residential) to B-L (Local Business)

(B) Orders (Consent Agenda)

1. Order 27,136 - lifting Section 11-113 of the City Code from 9:00 PM on December 31, 2022 through 2:00 AM on January 1, 2023., to allow for the use of open containers of alcohol within certain areas of the downtown during the "New Year's Eve" event; notwithstanding that open glass containers shall not be permitted

2. Order 27,137 - accepting the proposal from Carl Belt, Inc. for the Constitution Park Splash Pad Project (14-21-RE) in an amount not to exceed $499,020.91

3. Order 27,138 - accepting the proposal from Carl Belt, Inc. for the Constitution Park Amphitheater Contract (31-21-RE) in an amount not to exceed $170,387.23

4. Order 27,139 - accepting the proposal of Micro-Tech Designs to perform SCADA improvement as needed for emergencies or maintenance and entering into a three (3) year agreement at a cost not to exceed of $490,000

5. Order 27,140 - declaring certain City-owned properties to be surplus and authorizing them for public sale

6. Order 27,141 - amending Order 26,508 and executing a new Cooperation Agreement with the Housing Authority of the City of Cumberland recognizing the name change from Wills Creek View, LP to JFK Apartments, LP

7. Order 27,142 - approving FY22 General Fund appropriations and transfers

8. Order 27, 143 - authorizing an allocation from the Baltimore Street Improvement funds in an amount not to exceed $420,000 to the CEDC for their Downtown Capital Assistance Program in exchange for the DGS Capital Grant of $420,000 awarded to the CEDC for the Baltimore Street Improvement Project

Public Comments

All public comments are limited to 5 minutes per person

Adjournment

File Attachments for Item:

1. A Proclamation declaring Municipal Government Month.

City of Cumberland
- MARYLAND -

Proclamation

WHEREAS, *The City of Cumberland was established by an act of the Maryland General Assembly in 1815 and now stands as the County Seat of Allegany County; and*

WHEREAS, *Municipal government has historically fostered a strong foundation for government service and cooperation at the county, state, and federal levels of government and represents the most responsive level of government, allowing citizens direct access to their elected officials; and*

WHEREAS, *municipalities work to enhance the quality of life of residents by providing services such as public safety, public works, planning and zoning, water and waste services, historical preservation, election processes, and parks and recreation; and*

WHEREAS, *in an effort to educate citizens about municipal government and the importance of taking part in the local civic process, the Mayor and City Council of Cumberland are proud to promote municipal government awareness.*

Now, Therefore, the Mayor and City Council of Cumberland,
do hereby proclaim

"MUNICIPAL GOVERNMENT MONTH"

in the City of Cumberland

Given under our Hands and Seals with the Corporate Seal of the City of Cumberland hereto attached, duly attested by the City Clerk.

ATTEST:

Allison K. Layton
City Clerk

MAYOR AND CITY COUNCIL OF CUMBERLAND

Raymond M. Morriss
Mayor

File Attachments for Item:

1. Approval of the Closed, Work, and Regular Session Minutes of June 7, 2022, the Work Session Minutes of July 19, 2022, the Special Public Meeting Minutes of August 4, 2022, and the Closed, Work, and Regular Session Minutes of August 16, 2022

Mayor and City Council of Cumberland

Closed Session Minutes

City Hall, 57 N. Liberty Street, Cumberland, MD 21502
2nd Floor Conference Room
Tuesday, June 7, 2022; 5:00 p.m.

The Mayor and City Council convened in public session followed immediately by a motion to close the meeting pursuant to Section 3-305 (b)(1) and (3) of the General Provisions Article of the Annotated Code of Maryland to discuss a personnel issue, the potential acquisition of a parcel of property, and a real estate matter involving City-owned property.

MOTION: Motion to enter into Closed Session was made by Council Member Marchini, 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, Joseph George, and Laurie Marchini.

ALSO PRESENT: Jeffrey Silka, City Administrator; Ken Tressler, Director of Administrative Services; Michael S. Cohen, City Solicitor; Marjorie Woodring, City Clerk

Mayor and City Council of Cumberland

WORK SESSION

City Hall Council Chambers
57 N. Liberty Street
Cumberland, MD 21502

Tuesday, June 7, 2022, 5:45 p.m.

PRESENT: Raymond M. Morriss, President; Council Members: Richard Cioni, Eugene Frazier, Joe George, and Laurie Marchini.

ALSO PRESENT: Jeffrey Silka, City Administrator; Michael Cohen, City Solicitor; Marjorie Woodring, City Clerk; Ken Tressler, Director of Administrative Services; Ruth Davis-Rogers, Historic Planner/Preservation Coordinator

I. PUBLIC MEETING AGENDA REVIEW-JUNE 7, 2022

Ruth Davis-Rogers advised that she would be presenting Community Legacy projects at tonight's regular public meeting, and provided a packet for M&CC. She added that the resolution for approval will be on the next public meeting.

Mr. Silka asked if anyone had anything specific from the Agenda to discuss.

Councilman Frazier inquired about CAR No. 149 - concealed weapons. Mr. Cohen advised there is already a state law that covers carrying concealed weapons, and said this is just housekeeping and is keeping in compliance with state law.

Councilwoman Marchini asked about Order No. 27012 – ZTA 22-02. Mr. Silka advised that in researching restrictions for the Memorial Hospital site, it was not in the City's ordinances to allow for mixed use. He stated that this changes the zoning ordinance to allow that, which is RO zoning.

There was discussion about Change Order No. 6 to the residential grass mowing contract. Mr. Silka explained that they can't find adequate seasonal employees. He said if it's on the contract, they know it will get done, besides being cheaper and more efficient.

There was discussion about council members being approached by residents saying the grass mowing should be done in-house. Mr. Silka explained that since people take vacations in the summer – which is when mowing is done – the lowest productivity is in the summer. He added that when all is said and done – wages, pension, benefits, it would figure out to about $70K per full-time person. Mr. Cohen stated that this topic was addressed by a prior M&CC administration, and at that time staff was doing the mowing. He said Council looked at it and found that it was much more economically feasible to hire a third party.

II. MAYOR AND CITY COUNCIL UPDATES

Councilman Frazier discussed some upcoming events downtown, along with the Juneteenth Gala, and proposed getting a full table at the event.

Councilwoman Marchini discussed several things going on, including the Youth Coalition, the Lovers Leap film, AYPS soft opening, Day Camp at the Park, in its 33rd year, and a new employee at the DDC. She also mentioned that Lee Borror is offering to help with grants to find funding for different group activities.

Councilman Cioni noted that Let's Beautify Cumberland didn't meet this month due to a death in Ed Mullaney's family. He stated that the Park Pool and Concession Stand seem to be going well, and mentioned that Jason Deal provided a long report on the reorganization of the Parks and Recreation Department. Mayor Morriss discussed a local businessperson-sponsored evening swim on Friday night. Councilman Cioni will get with P&R, and Councilman Frazier suggested adding a movie.

Councilman George noted that there was nothing new with the Planning and Zoning Commission.

Mayor Morriss discussed DelFest and Delville, and mentioned that the Tuesday night Pub Crawl went really well, as did DelFest. He advised that he would be out all next week at MML, along with Councilman George, Mr. Silka, and Allison Layton.

The Mayor stated that there is a River Park meeting today to review the request for mitigation. He added that they received a very positive letter from the MDE acknowledging the ecological benefits of the project.

III. ADJOURNMENT

With no further business at hand, the meeting adjourned at 6:02 p.m.

Respectfully submitted,

Allison K. Layton
City Clerk

Minutes approved _____

Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini

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

MINUTES

M&CC Regular Meeting
City Hall Council Chambers, 57 N. Liberty St., Cumberland, MD

DATE: June 07, 2022

I. OPEN SESSION – 6:15 P.M.

II. Pledge of Allegiance

III. Roll Call

PRESENT:

Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini
President Raymond M. Morriss

Also Present: Jeffrey F. Silka, City Administrator; Marjorie Woodring, City Clerk; Michael S. Cohen, City Solicitor; Kenneth Tressler, Director of Administrative Services

IV. Statement of Closed Meeting

1. Summary Statement of closed meeting held June 7, 2022

   Mayor Morriss announced that a closed meeting had been held on June 7, 2022 at 5:00 p.m. and read into the record a summary of that meeting which is attached hereto and made a part of these minutes as required under Section 3-306 (c)(2) of the General Provisions Article of the Annotated Code of Maryland.

V. Presentations

1. Presentation from Local Management Board of Allegany County on the findings of the Youth Services Analysis performed by Archway Station.

   Dr. Stephanie Hutter-Thomas advised that she did the Youth Services Analysis as part of the Archway Station team and provided a PowerPoint presentation. She also provided

background on Archway Station and the services they provide to adults and minors. She explained that this presentation represents a very brief summary, and stated that a report will be forthcoming with more detailed information. Dr. Hutter-Thomas stated that the project background was essentially the Local Management board of Allegany County who provided grant funding for this work. She reviewed the PowerPoint presentation and the objectives of the analysis, as well as data collection strategies and evaluation of findings.

Mayor Morriss stated that one of the most important things is taking care of our youth. He thanked Dr. Hutter-Thomas and said it's good to see the study and the work, which will help with other organizations, like the Carver Board, to understand what the community really wants. He added that he's looking forward to the final report.

There was discussion about how the YMCA factors into this, with their day camps, trips, etc. Dr. Hutter-Thomas explained that the YMCA is in their database; however, the biggest issue is accessibility because of where they are located for kids without transportation.

There was discussion about the collaboration with other programs and recommendations for a rec center, and needing to band together. Mayor Morriss stated that the key is a youth engagement committee, and said it's better to consolidate and have fewer programs and engage more people, which he stated would be easier to coordinate.

There was discussion on if the community is providing mental health services to children. It was stated that there is conversation around about the absence of substance abuse treatment for youth.

2. Presentation of the proposed FY23 Community Legacy Program grant submission and project list.

Ms. Davis-Rogers, Historic Planner/Preservation Coordinator, provided a PowerPoint presentation and said the Round for FY23 Application Period has been opened up. She explained the Sustainable Communities Program, and reviewed the eligible projects.

VI. Proclamations

1. Proclaiming the month of June, 2022 in Cumberland as Men's Health Month

Mayor Morris read the Proclamation.

VII. Director's Reports

Motion to approve the report was made by Councilman George, seconded by Councilman Cioni, and was passed on a vote of 5-0.

(A) Administrative Services

1. Administrative Services monthly report for March, 2022

VIII. Approval of Minutes

Motion to approve the minutest was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

1. Approval of the Work, Closed, and Regular Session Minutes of February 1, 2022, the Work Session Minutes of February 8, 2022, and the Regular Session Minutes of February 15, 2022

IX. Unfinished Business

(A) Ordinances

1. Ordinance No. 3915 ***(2nd and 3rd readings***) - to rescind Ordinance No. 3912, which authorized the conveyance of 107/109 S. Allegany Street to Del & Del Allegany Properties, LLC for the amount of $3,500, accepting the Del & Del Properties, LLC request to renege their bid, and accepting the bid of C Corp Leasing in the amount of $5,000 for said property, as originally offered in the 2022 Request for Bids for Surplus Property Rounds IV

   SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilman Frazier, seconded by Councilman Cioni, and was passed on a vote of 5-0.

   Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

   THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0

2. Ordinance No. 3916 (***2nd and 3rd readings***) – providing for the City Tax Levy for FY23.

   SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilman Frazier, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.

   Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

   THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0

3. Ordinance No. 3917 ***(2nd and 3rd readings)*** - providing for the annual expenditure appropriation for the FY23 General Fund

   SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilman George, seconded by Councilman Cioni, and was passed on a vote of 5-0.

   Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

   THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0

4. Ordinance No. 3918 *(2nd and 3rd readings)* - providing for the annual expenditure appropriation for the FY23 Water Fund.

SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilman Cioni, seconded by Councilman George, and was passed on a vote of 5-0.

Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0.

5. Ordinance No. 3919 *(2nd and 3rd readings)* - providing for the annual expenditure appropriation for the FY23 Sewer Fund.

SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilman Frazier, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.
Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0

6. Ordinance No. 3920 ***(2nd and 3rd readings)*** - providing for the annual expenditure appropriations for the FY23 Special Purpose Funds.

SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the second reading and move to the third after comment was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

Mayor Morriss called for questions or comments. Being none, the ordinance moved to its third reading.

THIRD READING: The ordinance was presented in title only for its third reading. **Motion** to accept the third reading was passed on a vote of 5-0.

X. New Business

(A) Charter Amendment Resolutions

1. **Charter Amendment No. 149** ***(1st reading)*** - to rescind Charter Amendment No. 145 and repeal any affects upon the Charter by its passage, and to repeal Section 75 of the Charter, which prohibits the carrying of concealed weapons.

Mr. Silka advised that these three CARs were passed in 2019, but due to an administrative oversight with one of the public hearings, the City has to re-adopt them.

FIRST READING: Charter Amendment No. 149 was presented in title only for its first reading. **Motion** to accept the first reading and table until next meeting was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

2. **Charter Amendment Resolution No. 150** ***(1st reading)*** - to rescind Charter Amendment No. 146 and repeal any affects upon the Charter by its passage, and to repeal and reenact with amendments Charter Section 24 pertaining to the publication of ordinances, when ordinances take effect, and the admissibility of codification in evidence.

   FIRST READING: Charter Amendment No. 150 was presented in title only for its first reading. **Motion** to accept the first reading and table until next meeting was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

3. **Charter Amendment Resolution No. 151** ***(1st reading)*** - to rescind Charter Amendment No. 147 and repeal any affects upon the Charter by its passage, and to repeal Charter Sections 192 - 203 pertaining to the Mayor and City Council's authority over the Memorial Hospital.

   Mr. Silka advised that

   FIRST READING: Charter Amendment No. 151 was presented in title only for its first reading. **Motion** to accept the first reading and table until next meeting was made by Councilman George, seconded by Councilman Cioni, and was passed on a vote of 5-0.

(A) Ordinances

1. **Ordinance No. 3921** ***(1st reading)*** - authorizing execution of a deed to convey certain surplus property that is the former site of the Memorial Hospital to the Cumberland Economic Development Corporation.

   Mr. Silka advised that this ordinance will fulfill the MOU requirement to transfer the property to the CEDC, with limitations in place as to what can be developed there.

   FIRST READING: the ordinance was presented in title only for its first reading. **Motion** to accept the first reading and table until next meeting was made by Councilman Frazier, seconded by Councilwoman Marchini, 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 all Consent Agenda items was made by Councilman Cioni, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.

Order 27,010 - authorizing the abatement of City real estate taxes for City-owned properties at 412 Goethe St., 406 Goethe St., 846 Gephart Dr., 842 Gephart Dr., 619

Greene St., 420 Pine Ave., 222 Pear St., 124 Columbia St., 13. W. Clement St., 804 Maryland Ave., and 439 Andrews St., and City real estate taxes *and* utilities at 435 Columbia St., 421 Arch St., and 409 Central Ave.

Mr. Silka advised that the total taxes for these abatements is $28,665, and total utilities $6,577

Order 27,011 - authorizing the execution of a billing agreement by and between the M&CC and Carter Professional Services, LLC, dba Medical Claim-Aid to perform billing and claims service on behalf of the Mayor and City Council related to EMS transports and fire/rescue incidents, effective 7/1/22 for 5 years with option to renew for an additional 3 years upon mutual agreement. The City will be billed the sum of 7.25% of all payments received during the preceding month related to ambulance transports

Mr. Silka advised that this allows for a renewal from the provider, and is recommended by the Fire Chief.

Order 27,012 - accepting the recommendation from the Cumberland Planning and Zoning Commission, dated April 27, 2022, to approve a Zoning Text Amendment (ZTA #22-02) to provide guidance for Dwelling Units / Mixed-Uses as a permitted use in Residential-Office (R-O) Zones and authorizing formal procedures to approve the amendment to commence

Mr. Silka advised that this order basically cleans up the City's zoning ordinance to allow for mixed-use buildings in the R-O Zones.

Order 27,013 - lifting the "Open Containers of Alcohol" provisions of the City Code (Section 11-113) on June 11, 2022, from 12:00 p.m. until 9:00 p.m., within the area of North Centre Street between Baltimore Street and Frederick Street for the North Centre Street Festival; notwithstanding that open glass containers shall not be permitted.

Mr. Silka advised that a map attached to the order outlines the Open Containers area.

Order 27,014 - authorizing execution of a BMX Facility Long-Term User Agreement with Riverside BMX for the use of the BMX bike track in the Mason Sports Complex through June 30, 2023, with the option to renew for one-year periods upon mutual consent.

Mr. Silka advised that this is a continuation of the use of the BMX track and said it's a really good example of a successful public/private partnership.

Order 27,015 - accepting certain bids received for the "2022 Sale of Surplus Vehicles and Equipment" and rejecting all other bids.

Mr. Silka advised that these surplus vehicles and equipment were authorized to be auctioned off, and said that brings in over $30,000.

Order 27,016 authorizing the execution of Change Order No. 6 to the current contract with Casey Smith, LLC dba ServicePro for City Project "2019 Residential Grass Mowing" (10-19-M) in the decreased amount of $3,048 to add/remove recently acquired

or sold properties at various locations within the City limits, bringing the new contract value to $55,637.

Order 27,017 - accepting the bid of Carl Belt, Inc. for City Project "Influent Screening System Upgrade" (02-21-WWTP) in the not-to-exceed lump sum cost of $1,420,500.

Mr. Silka advised that four bids were received for this project, and explained how the influent screening system works.

Order 27,018 - accepting the bid from Sharon Marvin for the "Operation of the Concession Stand at Constitution Park for the 2022 Season" in the amount of $400 for the season, and authorizing the Mayor to execute a Concession License Agreement providing for terms for use of the Constitution Pool Concession Area through September 30, 2022.

Mr. Silka advised that Ms. Marvin was the only bidder for the project.

Order 27,019 - approving the submission of the 2022 Community Development Block Grant (CDBG) 2022 Annual Action Plan Funding to the Department of Housing and Urban Development and authorizing the Mayor to execute documentation necessary for submission and for the receipt of funding.

Mr. Silka advised that this has gone through the public notice and public hearing processes, and said there is $800K to expend, along with bringing in $4,750 from 2020 surplus.

Order 27,020 - accepting the proposal from Insight Public Sector SLED to provide Cisco 9300 switches and related equipment and software for the amount not to exceed $30,000.

Mr. Silka advised that these were budgeted for the next fiscal year, but since they became available now, it was decided to go ahead and purchase them while they are available.

Order 27,021 - approving Amendment No. 2-4182022 to the Community Development Block Grant (CDBG) Program effective June 7, 2022.

Mr. Silka advised that this reduces the allocation of the Baltimore Street Redesign by $162K and re-allocates it to the South Street ADA improvements.

XI. Public Comments

Dave Biser, 17 Long Drive, spoke about homelessness and crime in the area, and provided a PowerPoint presentation, as well as photos from Facebook. He explained that people go through the downtown stealing flowers from businesses, said there is human feces behind George Washington's Headquarters, and trash under the bridge on the Potomac. He asked if it could be cleaned up by the City, and if not, he would volunteer to do it. He gave kudos to Lee Borror, who he said invited him to a task force that is seeking to address both the homeless and the vagrant problem. Mr. Biser also provided results from a poll he did, asking what is Cumberland's biggest problem? His poll showed 49% said drugs; 22% unemployment; 15% shopping choices; 9% lack of input by citizens, and 5% homeless. He stated that there is a lot going on in the community to address problems, that not everyone knows about. He said this is an epidemic and the community needs to step up and help.

Mayor Morriss stated that Mr. Biser brought up some good points, and advised that the City has a lot of people working on projects to make things better – namely regarding homelessness and vagrancy. He agreed that they need to do a better job of letting the community know what is being done, and said he appreciates Mr. Biser's volunteering to clean up. He said M&CC will figure out a way to help him.

Erin Delong, 21 N. Allegany Street, spoke about Fayette Street utility work by Columbia Gas, keeping citizens informed, and bridges. She stated that with the work on the road 2 years ago, and now the street is torn up again with dust everywhere. She said there doesn't seem to be much progress.

Mayor Morriss explained that the work she's referring to is the 24" water main project that is being done by the City, with its own workforce. He said they will get with the City Engineer and give Ms. Delong a time frame for when the work will be done.

Ms. Delong stated that she was grateful to hear that progress is being made on the potential for the Fayette Street Bridge to open, noting that it's been at least 5 years since it closed. She talked about the structure that was put up at the time to address the emergency, and suggested taking a look at it to make it look better – closed, but better. She said it looks very bad, and challenged M&CC to look and see if a small project, maybe art-related, to visually lift the bridge as it is now.

Mayor Morriss advised that working through the federal funding takes a lot of time, but agreed with her that the City can make it look better than it does now, and said they will look into that.

Ms. Delong also advised that she is a member of the Upper Valley Kennel Club, which is in the process of partnering with the Allegany Arts Council on an upcoming project that's county-wide, that they hope to get grants for.

All public comments are limited to 5 minutes per person

XII. Adjournment

With no further business at hand, the meeting adjourned at 7:32 p.m.

Minutes approved on _____

Raymond M. Morriss, Mayor _____

ATTEST: Allison K. Layton, City Clerk _____

Mayor and City Council of Cumberland

WORK SESSION

City Hall Council Chambers
57 N. Liberty Street
Cumberland, MD 21502

Tuesday, July 19, 2022
4:14 p.m.

PRESENT: Raymond M. Morriss, President; Council Members: Richard Cioni, Eugene Frazier, Joseph George (via Zoom), and Laurie Marchini.

ALSO PRESENT: Jeffrey Silka, City Administrator; Marjorie Woodring, City Clerk; Mark Gandolfi, City Comptroller; Ken Tressler, Director of Administrative Services; Chuck Ternent, Chief of Police; Shannon Adams, Fire Chief; Brooke Cassell, Public Works Operations Manager;

Greg Larry, Cumberland Times-News

I. AGENDA REVIEW

Mr. Silka asked if anyone had any issues with the agenda that they wanted clarified.

Councilman Cioni asked about Casey Smith, dba ServicePro regarding the grass-mowing Order Nos. 27042 and 27043, and if his company was local. Mr. Silka advised that they are local, they were the low bidder, and have been doing the mowing for the City for several years.

Councilman Frazier inquired if he would need to abstain from Order No. 27045. Mr. Silka advised that there was no conflict.

II. DEPARTMENTAL UPDATES - PUBLIC WORKS

Brooke Cassell, Public Works Operations Manager, provided handouts as well as a PowerPoint presentation, and advised on spring and summer operations, which involve repairs to streets and sidewalks, street sweeping, tree and brush work, mowing, and hydrant flushing.

Ms. Cassell reviewed completed and ongoing projects, including Fayette Street water main, Decatur Street water main, Public Works building IT room, City Hall Conference Room and upgrades to Giarritta Park. She also reviewed work done by the Sewer Department and Street Department.

Ms. Cassell provided information for upcoming projects, which include locating sewer main, taps, and service lines for Avondale Avenue, along with a water line upgrade there; Flood Control work involving seepage control boxes, removing debris from the flood channel and inspecting flow outlets; building a new office in the Engineering Department, and upgrades to Constitution Park and the Mason Rec Sports Complex.
Ms. Cassel reviewed staffing updates, advising that they have hired 2 new employees at Streets and Public Properties, with 2 open positions remaining. She also advised that the Sewer Department has 1 open position, with all other departments fully staffed.

Ms. Cassell provided an equipment update, advising that the Sewer Department received a new cameral van, and that the Street Department received a new F550 Dump Truck with plow and spreader, replacing the 2008 vehicle.

III. POLICE DEPARTMENT UPDATES

Police Chief Chuck Ternent provided a PowerPoint presentation detailing the department's 2022 statistics and reviewed the main topics. He advised that overall, the department is doing pretty well, and went over crime statistics in a comparison from 2021 to 2022. He said the bottom line is that crime is down pretty significantly. He advised that arrests are up a little bit from last year, and said traffic enforcement is down a little bit. The Chief also reviewed drug arrests and overdose data, and discussed mental health issues, comparing Covid years with pre-Covid years, and said the City is still a bit below the pre-Covid mental health incidents. He added that overdoses are down significantly.

Chief Ternent advised on personnel and staffing, and said sworn manpower is currently at 46 out of 51 allocations, with 5 sworn openings, which he said with training and sick-leave, etc., there are actually 40 out of 51 officers on the street right now. He said there's still a personnel problem going on, especially with 80 calls a day. He discussed recruitment and retention, and advised that they have been actively promoting their advertising and publicizing recruitment incentives. Captain Jim Burt, CPD Administrative Services, stated that the lack of recruits is not unique to Cumberland, it's all over, and said it has become an epidemic for law enforcement in America.

The Chief moved on to vehicles, advising that their equipment and fleet has never looked better, and repair costs have gone way down. He said as of right now, they are only 11 vehicles away from every officer getting a car.

Chief Ternent touched on their special units, which are Canine, Swat Team (CERT), SRO, C3I, ACNTF, CNT, Clandestine (meth) Lab, and Accident Reconstruction. He stated that 2 of the canines are imprinted for marijuana, and said if the new law is passed, they will have to retire them and figure out what to do with them. He advised that CERT is down to 6 operators, which is not enough, and explained that on several occasions they would have to call State Police in to help. He added that the department needs more narcotics detectives.

There was discussion about the recent tragedy in Texas, and if current response plans have been reviewed with other units in the state. Chief Ternent advised that the in-house policy is to go straight in and find and kill the bad guy, and added that the FBI has trained them in ALERT STYLE. He added that they have done live training at ACM, and stated that they do have a policy review annually.

The Chief discussed National Night Out planned for August 2nd, Kids Camp, and the August Baker new memorial ceremony at Greenmount Cemetery.

Chief Ternent explained that as Covid restrictions have lifted, there are more events, which puts stress on the department's manpower. He said he has to order people to come out and work events sometimes, which creates morale problems.

There was discussion about community groups and community policing, and the Neighborhood Advisory Commission that the City once had. He stated that now there are no community groups operating in the City. He said people are trying to get some started up here and there, and said he

thinks it's important to reach out to the community. He suggested that whatever M&CC can do to get some groups restarted would be appreciated.

The Chief discussed body cameras, and said they have a county-wide committee to working on that, and said Captain Burt is heading that up for the CPD. He said they have been looking at quotes, and stated that body-cams need to be in place by 2025. He discussed funding and grants for purchasing, and also suggested maybe partnering with the County. He added that it's an expense that will have to be made eventually.

Chief Ternent discussed new legislation and new disciplinary laws going into effect, as well as new physical fitness testing. He also mentioned a new juvenile law in effect that is an issue.

He talked about new community boards being established by the County for any complaints, that will tell the department how to discipline. He also mentioned new ARPA patrol remodels to help isolate prisoners from officers.

The Chief discussed personal cell phone issues, and advised that the States Attorney warns that all officers need work cell phones. He stated that it will cost about $2000/month for everyone right now.

He also discussed a new report management system, which has a policy reporting system attached, and said the County is allowing them to use it for free, and maybe switch over from the old system. He said the consensus is to stay with the old system, due to issues with interaction and transfer of data.

IV. FIRE DEPARTMENT UPDATES

Chief Adams provided a handout, and stated that for the CFD, it has been a busy and hectic year. He advised on personnel, and said they are down 2 positions, with 3 off for long-term illness. He advised that Covid has not been an issue in their department since February 2022. He stated that there are 16 per shift along with 4 daylight personnel, and said they will be adding a new Deputy Chief next Monday, to bridge the gap between training, vehicle maintenance, etc. He said as far as stats, their numbers are in correlation with the CPD. He said in 2021, Covid gave them a lot of calls.

He discussed the multiple incidents of arson over the past several weeks, and said all investigations have been closed out and arrests have been made.

Chief Adams discussed vehicles, and advised on the new Ladder Truck, new Command Unit, and a new Fire Marshal Unit (in service waiting to be lettered). He advised that the old Fire Chief vehicle is being changed over to Car 3.

There was discussion on recruits and testing, with the Chief advising that 1 new recruit just finished training and has started with the crew. He stated that the testing on May 21st had 13 people applying, with 8 showing up and 6 passing the test. He said they are currently conducting medical exams and background checks.

The Chief advised on 2 recent promotions – Steve Grogg promoted to Deputy Chief, and Steve Adams promoted to Equipment Operator. He talked about training, saying that 8 have completed Fire Officer 2 training, and 2 have completed Fire Officer 3 training. He stated that driver training has been continuous, getting younger members cleared to drive fire apparatus.

He discussed Instructor Training at the academy, and said 5 members are currently in the process, which takes almost 2 years to become MICRB certified. He said this is a current issue for their department. He also discussed Special Operations Training.

Chief Adams talked about their new Fire Reporting system, started January 2022, and said there have been no issues. He added that the EMS Reporting system is on tablets now to streamline patient care reporting, and advised that there are no issues with this either.

The Chief discussed officer standards and response policies. He advised that the CFD officers exceed the standard set by the County. He stated that their response policy is having a minimum of 3 people on engine/truck on structure calls. As an update, he stated that they implemented this concept on June 1, 222 with minor issues at first, but everything is worked out and running smoothly.

V. UPDATE FROM CITY ADMINISTRATOR

Mr. Silka advised that the MPA is not trending in a good direction, and discussed revenue issues. He added that the equipment is coming out of service and won't be supported anymore, so basically the software is dead. He stated that they are at the point that they're harvesting parts from non-critical areas to make the machinery work.

He discussed complaints about parking zones/areas, and said they are looking at fees, fines and enforcement. He said that probably in a month or two their team will come back with a comprehensive recommendation. He added that in order to capture revenue, the City needs the right technology, and said they are looking at partners like the CPPDA in order to standardize hardware.

There was discussion about the George Street Garage, and if there were improvements from the renovations. Mr. Silka stated that the problem is the equipment not working consistently. He said this will be part of their team's recommendation.

There was discussion about a decline in parking due to more people working from home. Mr. Silka stated that it is down; less people are coming in, and said they need to revise their expectations.

There was discussion about the cost of staff and equipment. Mr. Silka stated that he didn't have a number off the top of his head, but said that it's a significant amount considering it's a small department because of equipment costs.
Free parking downtown was discussed. Mr. Silka advised that's something you don't want to do, because there will be residents and employees taking up the spaces. He added that pay-to-park works to circulate people through, and said if it were free, parking expenses would have to be subsidized out of the GF.

Mr. Silka advised about the evaluation process for employees, and said it is being revamped to be more narrative, subjective and interactive. He added that it sets up goals and gives people a more impactful evaluation, that also focuses on a more "interactive through the year" approach to employee management.

He advised that an action plan for employees with consistent problems - not quite disciplinary - has been introduced, just to get them to the level of expectation for their positions. He added that it's a proactive way to set people up for success.

Mr. Silka discussed working on a grant for the skatepark from the National Foundation of Skate Parks. He advised that it will be in by the end of the week, and if they choose the project to go to the next level they will take a more comprehensive evaluation. He said if the grant is received it will help offset the cost of the project.

Mr. Silka advised that on a personal note, he was elected secretary for MCCMA, and stated that it's a 4-year process to get to president.

VI. ECONOMIC DEVELOPMENT STRATEGIC PLAN DISCUSSION

Mr. Silka reviewed the Plan that was presented in a work session last week. With the CEDC asking for M&CC to adopt the plan, Mr. Silka asked if they had had a chance to read the Plan, and called for any questions or concerns.

Mr. Silka stated that his take on it is that there is a lot of information that doesn't apply and said there is a lot of consultant-based fluff and said it doesn't give any strategic economic development action. He stated that it read more like a CEDC wish-list, and said its main goals are the same as on the MOU. He added that if it is adopted it would need to be used with interaction between the City and the CEDC for an implementation plan. He added further that it's a good starting-off plan, but said it needs to develop an action plan on how to go about this.

Mayor Morriss agreed, and said as far as "strategic," it's pretty basic – just an upgrade of the strategic plan they had before. He also stated that there needs to be a serious conversation about the staffing that is recommended in the Plan. He added that what's needed now are discussions between the City and the CEDC.

Mr. Silka advised that he will probably set up a standing meeting with Mr. Miller, so that they all don't find out about the projects through emails which he said will make for more information sharing and strategic thinking.

Council agreed that would be a great idea. Mr. Silka said it will start in a couple of weeks.

There was discussion on recommendations for the Grant Writer position. Mr. Silka stated that he has reservations about that due to it being a specialized position and having to worry about work capacity. He stated that consultants can be engaged cost-effectively to do grant writing – they have experience, they have contacts in the state, and they will do it professionally. He stated that he is also looking at the position of full-time Forester, and if the City has the capacity for that, or should a consultant be engaged, as in the Grant Writer position.

Mr. Silka advised that the Plan will be on the next meeting for adoption, but said it will be used as a working document to kind of hammer down on specifics.

VII. ADJOURNMENT

With no further business at hand, the meeting adjourned at 6:00 p.m.

Respectfully submitted,

Allison K. Layton
City Clerk

Minutes approved on:_____

Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini

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

MINUTES

M&CC Special Public Meeting
City Hall

DATE: August 04, 2022

I. OPEN SESSION – 2:00 p.m.

II. Pledge of Allegiance

III. Roll Call

PRESENT:

Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini
President Raymond M. Morriss

Councilman Richard Cioni was absent

Also Present: Jeffrey F. Silka, City Administrator; Marjorie Woodring, City Clerk; Chuck Ternent, Chief of Police

IV. New Business

(B) Orders (Consent Agenda)

Mr. Silka reviewed each item on the Consent Agenda, and Mayor Morriss called for questions or comments. **Motion** to approve all items on the Consent Agenda was made by Councilman Frazier, seconded by Councilwoman Marchini, and was passed on a vote of 4-0.

Order 27,047 - lifting Section 11-113 of the City Code on August 12, September 9, and October 14, 2022, from 5:00 p.m. until 10:00 p.m., to allow for the use of open containers of alcohol within certain areas of the downtown during "Friday After Five" events; notwithstanding that open glass containers shall not be permitted.

Order 27,048 - lifting Section 11-113 of the City Code on October 8, 2022, from 12:00 p.m. until 9:00 p.m. to allow open containers of alcohol within the area of North Centre Street between Baltimore Street and Frederick Street for the North Centre Street Festival; notwithstanding that open glass containers shall not be permitted.

Order 27,049 - declaring a 2015 Jeep Grand Cherokee (VIN #1C4RJFAG8FC168334) to be a surplus vehicle and authorizing it for sale or trade-in.

Order 27,050 - authorizing execution of a Lease Agreement with Ristorante Ottaviani, LLC, regarding terms for the installation and use of a pizza oven in the Maze Parklet, adjacent to the restaurant at 25 N. Centre Street, and for the use of said Parklet and the building's adjacent public right of way for outside dining for a 3-year term effective June 1, 2022, through May 31, 2025, for the amount of $1,200 for the first year and $1,500 for each subsequent year.

Councilwoman Marchini brought a suggestion to Council to include certain areas for open containers on Order 27,047. Council reviewed the map, and it was agreed that the area designated was okay.

V. Public Comments

No Comments

All public comments are limited to 5 minutes per person

VI. Adjournment

With no further business at hand, the meeting adjourned at 2:05 p.m.

Minutes approved on _____

Raymond M. Morriss, Mayor _____

ATTEST: Allison K. Layton, City Clerk _____

Mayor and City Council of Cumberland

Closed Session Minutes

City Hall, 57 N. Liberty Street, Cumberland, MD 21502
2nd Floor Conference Room
Tuesday, August 16, 2022; 5:00 p.m.

The Mayor and City Council convened in public session followed immediately by a motion to close the meeting pursuant to Section 3-305 (b) (3) of the General Provisions Article of the Annotated Code of Maryland to discuss a real estate matter.

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

PRESENT: Raymond M. Morriss, President; Council Members Richard Cioni, Eugene Frazier, Joseph George, and Laurie Marchini.

ALSO PRESENT: Jeffrey Silka, City Administrator; Michael S. Cohen, City Solicitor; Marjorie Woodring, City Clerk

Mayor and City Council of Cumberland

WORK SESSION

City Hall Council Chambers
57 N. Liberty Street
Cumberland, MD 21502

Tuesday, August 16, 2022, 5:30 p.m.

PRESENT: Raymond M. Morriss, President; Council Members: Richard Cioni, Eugene Frazier, Joe George, and Laurie Marchini.

ALSO PRESENT: Jeffrey Silka, City Administrator; Michael Cohen, City Solicitor; Marjorie Woodring, City Clerk

Media: Bryan Gowans – WCBC Radio

I. PUBLIC MEETING AGENDA REVIEW-AUGUST 16, 2022

Mr. Silka touched on some of the orders for tonight's public meeting. He advised on the Sole Source purchase of water meters. He stated that the City is buying all the allotment of water meters for the year in one order, so as to not get caught up in supply chain issues. He added that they are handling the 6" PVC water pipe order somewhat the same way, since the price has gone up due to most of the components being shipped from Russia and Ukraine.

Mr. Silka reviewed Change Order No. 2 for the Decatur Street Project, saying it's a time extension as well as a contract price increase due to problems with pipe fittings.

Mr. Silka advised on the Letter of Agreement for the African-American Heritage Grant, and stated that the City is going to assign the grant, that was originally assigned to the City in April 2021, to the Carver Center, pending state approval. Mr. Cohen stated that the Carver Board has already said that the Letter was satisfactory for their purposes.

Mr. Silka explained that for the $30K forgivable loan for 432 N. Centre Street, the City is partnering with the County with Invest Allegany in a joint project for the renovation of that building to a mixed residential and commercial space.

Bryan Gowans inquired about the Quitclaim Bill of Sale transferring ownership of the Fayette Street Bridge from CSX to the City. Mayor Morriss advised that this was being done so that they can start winding their way through the federal process. He also stated that demolition has begun on 304 and 306 Fayette Street, and advised that federal cost is 80%, with the other 20% divided out.

Councilman George advised that he will recuse himself from the vote on Order No. 27062, since his wife serves as Treasurer of the Family Crisis Resource Center, and added that as a former employee of CBIZ, he will also be recusing himself from Order Nos. 27066, 27068, and 27072.

Councilwoman Marchini mentioned that she, too, will be recusing herself from each of the CBIZ Orders, as her husband is affiliated with CBIZ.

II. BOB KIRK INVITATIONAL SHOWCASE SPONSORSHIP

Mr. Silka advised that because of this sponsorship opportunity, the City had budgeted $20K, but said he wanted to have a discussion with M&CC to see what level they are comfortable with. Mayor Morriss stated that since it's on ESPNU they should sponsor to the greatest extent they can because it's unusual for the City to have this kind of opportunity.

Councilwoman Marchini stated that she is not comfortable with $20K because the City also supports ACIT and BW Girls. She said wants to support because of the support the City gives the other tournaments, but stated that she thinks $20K is a reach.

There was discussion about advertising and recognition that the higher level would bring. Councilman George suggested maybe sharing with Mountain Maryland and Allegany County, through their tourism, by splitting the ads. Councilwoman Marchini stated that last year there was no interest from the County The rest of Council seemed to think that $20K was too much, but liked the idea of partnerships to help cover the cost. Mayor Morriss stated he will reach out to ESPNU for additional statistics regarding viewership.

It was noted ESPNU needs to wrap things up, so there is a time constraint. Mr. Silka advised that he would reach out to the County, while Mayor Morriss stated that he will make some phone calls to the County, as well.

III. MAYOR AND CITY COUNCIL UPDATES

Mayor Morriss advised that tonight they will be doing the awards for all the organizations, and provided a handout of all the recent events up for recognition. He discussed details of the ceremony, saying the hope was to not make it too long, and added that at the end they would take one big photo of everyone.

There was discussion about all of Council receiving complaints about Breezeline, particularly about their 800-phone line. It was suggested to send a letter to the local contact and the CEO indicating the City's dissatisfaction with their current service. Mr. Cohen advised that their franchise expired and negotiations did not end up in the contract.

The Mayor stated that without a service center in the City, service levels for the customers are basically non-existent. He said that everything M&CC can do, from letters to phone calls, needs to be done.

There was also discussion about telling Breezeline that the City is considering inviting in competitors. It was noted that there is nothing stopping competitors from coming in because it's non-exclusive, but demographics and the number of households in the area causes others to stay out of the market. Mayor Morriss stated that the City has to do anything in its power to let them know they are providing unacceptable service to the citizens of Cumberland.

Council discussed having Breezeline expand and establish a local service center. Mr. Silka advised that the cable industry as a whole is not expanding anywhere – it's not just small communities that are feeling it. He added that Verizon has actually stopped their expansions of Fios.

Mr. Cohen advised that the one big deterrent to having some other company come in is actually the non-exclusivity, because of competitors not wanting to share the market with Breezeline. He

explained that the lack of a current franchise is a big bargaining chip, and said the City can remove their lines out of the City's conduits and offer the franchise to another company.

Councilwoman Marchini advised on recent and upcoming downtown music and events, and mentioned the Whiskey Rebellion and Heritage Days coming up on September 9th, a new program highlighting a local business once a month, and a winter-themed window contest.

There was discussion about Heritage Days and the new format of bringing history back and how it adds a lot to the event.

Councilwoman Marchini advised that Ruth Davis-Rogers has been working hard trying to get Preservation Maryland here, and stated that there are two grants available in the historic district. She added that Ms. Davis-Rogers is planning a seminar with property owners to explain tax credits. Mayor Morriss gave kudos to Ms. Davis-Rogers for all her work and said it's creating a new perception for historic preservation in the City.

III. ADJOURNMENT

With no further business at hand, the meeting adjourned at 5:59 p.m.

Respectfully submitted,

Allison K. Layton
City Clerk

Minutes approved _____

Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini

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

MINUTES

M&CC Public Meeting
City Hall, Cumberland, MD

DATE: August 16, 2022

I. OPEN SESSION - 6:15 p.m.

II. Pledge of Allegiance

III. Roll Call

PRESENT:

Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini
President Raymond M. Morriss

Also Present: Jeffrey F. Silka, City Administrator; Michael S. Cohen, City Solicitor; Marjorie Woodring, City Clerk

IV. Statement of Closed Meeting

1. Statement of closed meeting held August 16, 2022

Mayor Morriss announced that a closed meeting had been held on August 16, 2022 at 5:00 p.m. and read into the record a summary of that meeting which is attached hereto and made a part of these minutes as required under Section 3-306 (c)(2) of the General Provisions Article of the Annotated Code of Maryland.

V. Presentations

1. Certificates of Recognition presented to organizations who supported and unified the community through festivals and events.

Mayor Morriss read the list of recipients and events they were responsible for and certificates were presented. He stated that there have been so many positive things

happening in the City, and said that M&CC truly appreciate what these organizations bring to the community:

John Hedrick	Taco De Mayo
Renee Mason	Chalk It Up to Civility
Sonia Cooper Lathrop	For the Kids
Dave Williams	Delville Pub Crawl and Heritage Days

(Barb Buehl, co-coordinator, was not able to attend)

Dave Love	North Centre Street Festival
Tifani Fisher	Juneteenth
Ethan Romaine	Lovers Leap Documentary (filmed in Allegany County)
Matt Miller	Tri-State Wing Off
Heidi Gardner	Pride Festival

VI. Director's Reports

Motion to approve the reports was made by Councilman George, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.

(A) Public Works

1. Maintenance Division monthly report for July 2022

(B) Fire

1. Fire Department monthly report for July, 2022

(C) Police

1. Police Department monthly report for July, 2022

(D) Utilities - Flood, Water, Sewer

1. Utilities Division Flood/Water/Sewer monthly report for June, 2022

VII. Approval of Minutes

Motion to approve the minutes was made by Councilman Frazier, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.

1. Approval of the Closed and Work Session Minutes of April 5, 2022, the Closed and Work Session Minutes of April 12, 2022, and the Work and Regular Session Minutes of April 19, 2022

VIII. Unfinished Business

(A) Ordinances

1. **Ordinance No. 3922** ***(2nd and 3rd readings)*** - (ZTA #22-02) to amend the definition for the Residential-Office (R-O) Zoning District set forth in Section 25-101(b)(5) of the City Code and amend the Use Regulations Table set forth in Section 25-143 to include "Dwelling Units / Mixed Uses" as a permitted use in the R-O District.

SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the reading and move to the third after comment was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

Mayor Morris called for questions or comments. Being none, the ordinance moved to its third reading.

THIRD READING: The ordinance was presented in title only for its third reading and was passed on a vote of 5-0.

2. **Ordinance No. 3923** ***(2nd and 3rd readings)*** - accepting the bid from Kevin and Anita Thacker for the purchase of surplus properties at 7 and 9 Arch Street for the amount of $100.00 and authorizing execution of a deed to effect the conveyance.

   SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the reading and move to the third after comment was made by Councilwoman Marchini, seconded by Councilman George, and was passed on a vote of 5-0.

   Mayor Morris called for questions or comments. Being none, the ordinance moved to its third reading.

   THIRD READING: The ordinance was presented in title only for its third reading and was passed on a vote of 5-0.

3. **Ordinance No. 3924** ***(2nd and 3rd readings)*** - accepting the bid from Kevin and Anita Thacker for the purchase of surplus property at 105 Grand Avenue for the amount of $100.00 and authorizing execution of a deed to effect the conveyance.

   SECOND READING: The ordinance was presented in title only for its second reading. **Motion** to accept the reading and move to the third after comment was made by Councilman Cioni, seconded by Councilman George, and was passed on a vote of 5-0.

Mayor Morris called for questions or comments. Being none, the ordinance moved to its third reading.

THIRD READING: The ordinance was presented in title only for its third reading and was passed on a vote of 5-0.

IX. New Business

(A) Resolutions

1. **Resolution No. 2022-06** ***(1 reading)*** - granting the Cumberland Outdoor Club a property tax credit for tax years 2022-2023 pursuant to Section 9-302(f) of the Tax Property Article of the Annotated Code of Maryland.

   ONE READING ONLY: The resolution was submitted in title only for its reading. **Motion** to accept the reading was made by Councilman Frazier, seconded by Councilwoman Marchini, and was passed on a vote of 5-0.

(A) Ordinances

1. **Ordinance 3925** ***(1st reading)*** - accepting the bid from Floyd F. Gregory for the purchase of surplus property located at 728 Baker Street for the amount of $500.00.

   FIRST READING: The ordinance was presented in title only for its first reading. **Motion** to accept the reading and table until next meeting was made by Councilman George, seconded by Councilman Cioni, and was passed on a vote of 5-0.

(B) Orders (Consent Agenda)

Mr. Silka advised reviewed each item on the Consent Agenda, and Mayor Morriss called for questions or comments. **Motion** to approve Order Nos. 27,051 – 27,061; 27,067; 27,069 – 27,071; and 27,073 was made by Councilman Frazier, seconded by Councilman Cioni, and was passed on a vote of 5-0. **Motion** to approve Order No. 27,062 was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 4-0, with Councilman George abstaining from the vote. **Motion** to approve Order Nos. 27,066, 27,068, and 27,072 was made by Councilman Frazier, seconded by Councilman Cioni, and was passed on a vote of 3-0, with Councilman George and Councilwoman Marchini both abstaining from the vote.

Order 27,051 - authorizing the Chief of Police to enter into a Memorandum of Understanding (MOU) with the Allegany County Health Department to receive grant funding in the amount of $14,241 for overtime for officers to conduct drug interdiction events with the goal of reducing the illicit supply of opioids in Cumberland and Allegany County.

Order 27,052 - authorizing the Chief of Police to enter into a Memorandum of Understanding (MOU) with the Allegany County Health Department to receive grant funding in the amount of $3,000 for officers to work medication pickup and takeback events in an attempt to prevent opioid misuse.

Order 27,053 - authorizing Special Taxing District residential exemptions for 45 N. Centre Street ($681.87); 43-45 N. Liberty Street ($203.99); 50-52 N. Centre Street ($300.73); 107 S. Centre St. (668.21); and 47 Baltimore Street ($372.59).

Order 27,054 - authorizing the Chief of Police to accept a FY23 MCIN Grant in the amount of $256,878 to be used for overtime to support crime reduction patrols, targeted enforcement, intelligence gathering, apprehension of violent criminals, and streamlining information sharing to address gang and drug trafficking.

Order 27,055 - authorizing the Sole Source purchase of water meters and smartpoints from L/B Water Service in the amount not-to-exceed $170,000 for FY23.

> Mr. Silka advised that they are purchasing all of the City's anticipated stock in one order to avoid any supply chain issues.

Order 27,056 - authorizing the purchase of 2K feet of 6" C900 PVC water pipe from L/B Water Service, Inc. for the Avondale Avenue Water Line Project in the not-to-exceed amount of $33,280 for FY23.

Order 27,057 - accepting the proposal of Bennett, Brewer & Associates for the "Final Design of the South End Water Main Replacement Project" (2-22-W) in the not-to-exceed lump sum amount of $221,664 to include additional coordination and field investigation, permitting, base mapping and finalization of plans and specs.

Order 27,058 - authorizing the execution of a Quitclaim Bill of Sale to transfer ownership of the Fayette Street Bridge from CSX to the City.

Mr. Silka advised that this will allow the City to access federal highway funds for the bridge.

Order 27,059 - authorizing the execution of a Construction Agreement with CSX outlining the terms for the removal and replacement of the Fayette St. Bridge (43-18-BR).

Order 27,060 - authorizing the execution of Change Order No. 2 with Carl Belt, Inc. for the "Decatur Street 24" Crosstown Water Main Replacement Project (31-17-W)" adding 51 calendar days for final completion, setting the final completion date at September 30, 2022, and increasing the contract price to the not-to-exceed amount of $79,966.60 due to additional materials and needed work. This brings the new total contract price to $3,192,852.55.

Order 27,061 - authorizing the execution of Change Order No. 1 to the Non-Residential Mowing Contract (2022-15-M) to add and remove properties recently acquired or sold by the City at various locations within City limits for the not-to-exceed cost of $1,500, bringing the new contract amount to $42,500.

Order 27,062 - authorizing the Chief of Police to enter into a Memorandum of Understanding (MOU) with the Family Crisis Resource Center for the reimbursement of police overtime costs not to exceed $8,000 to provide Domestic Violence Response Team (DVRT) follow-ups.

Order 27,063 - authorizing the City Administrator to execute a Letter of Agreement with Carver Community Center, Inc., stating that Carver accepts the assignment of the African-American Heritage Preservation Program Grant Agreement that was originally assigned to the City effective April 28, 2021, and that the City agrees to provide matching funds for the grant in the amount of $100,000 as well as construction management and grant administration services.

Order 27,064 - adopting the Strategic Economic Development Plan dated February, 2022, prepared by RKG Associates, Inc.

Order 27,065 - accepting the proposal from Local Government Insurance Trust (LGIT) to provide insurance coverages for FY23 for property, general and excess liability, police legal liability, auto comprehensive and liability, and boiler/machinery for the amount not-to-exceed $341,434.

Order 27,066 - accepting the proposal from CBIZ Insurance Services, Inc. to provide Public Officials Liability coverage for FY23 through Ace American Insurance for the amount not-to-exceed $25,067.

Order 27,067 - accepting the Sole Source proposal of Belt Paving, Inc., to pave Footer Place and the Decatur Street cross-streets, to include Davidson, Charles, Fulton, and Glenn, for the not-to-exceed lump sum cost of $147,767.

Mr. Silka advised that this is being done as a Sole Source due to Paving, Inc.

Order 27,068 - accepting the proposal from CBIZ Insurance to provide general and excess liability coverage through Northland Casualty Co. for the Cedar Street CSO Underground Sewage Line with a rider for the Industrial Boulevard / RT 51 Water Line, effective July 28, 2022 to July 28, 2023, for the amount not-to-exceed $26,559.

Order 27,069 - approving a $30,000 forgivable loan through the Revolving Loan Fund to Dominic Dearcangelis to supplement Allegany County funding for a renovation project at 432 N. Centre Street.

Order 27,070 - accepting the proposal from PMA Companies to provide Workers Compensation Insurance for Fiscal Year 2023 for the estimated amount of $1,005,788 and authorizing execution of a Prefund Deductible Reimbursement and Security Agreement to effect the coverage.

Order 27,071 - accepting the sole source proposal from Amazon Web Services to provide server hosting and support services for FY23 for the amount not-to-exceed $30,000.

Order 27,072 - accepting the proposal from CBIZ Insurance Services, Inc. to provide risk management services for FY23 for the amount not-to-exceed $34,125.

Order 27,073 – appointing individuals to various boards and commissions of the City.

X. Public Comments

Carolyn Morris, 108 Altamont Terrace, advised M&CC of a home next door to her that is in poor condition and falling apart. She stated that she would like the City to have it demolished, and provided photos of the structure. She stated that the house has been this way for the last 3 years, and said she moved here from Baltimore to get away from crime. She said she loves it here in Cumberland, but explained that the house next door is a problem.

Mayor Morriss advised that he will investigate this issue, and get with Code Enforcement. He stated that he will get back to Ms. Morris and said they will see what can be done.

A lady that was in attendance stated that 106 and 104 Altamont Terrace are also in bad shape. Mayor Morriss advised that there may be legal issues involved.

All public comments are limited to 5 minutes per person

XI. 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 _____

File Attachments for Item:

1. Ordinance 3935 *(2nd and 3rd readings)* - authorizing the amendment of Sections 16-1 through 16-6 of the Code of the City of Cumberland for the purpose of updating pay grades

ORDINANCE NO. 3935

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED, "AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS SECTIONS 16-1 THROUGH 16-6 OF THE CODE OF THE CITY OF CUMBERLAND (1991 EDITION), FOR THE PURPOSE OF UPDATING EMPOYEE PAY GRADES."

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that Sections 16-1 of the Code of the City of Cumberland (1991 Edition) be and are hereby repealed and reenacted as follows:

16-1. Pay Grades - AFSCME Employees

The following pay grades shall apply for all City employees who are, as of the effective date of this section, represented by the American Federation of State, County and Municipal Employees (AFSCME) No. 553:

(a). General Trades and Labor

Arborist I	7
Arborist II	8
Auto Technician – Entry Level	7
Auto Technician I	8
Auto Technician II	9
Facilities Technician – Entry Level	6
Facilities Technician I	7
Facilities Technician II	8
HVAC Mechanic	11
Journeyman Electrician	11
Plant Electrician	11
Lead Utilities Technician	9
Meter Technician Coordinator	8
Parking Meter Supervisor	8
Pipe Technician - Entry Level	6

Pipe Technician I	7
Pipe Technician II	8
Pipe Technician III	9
Plant Technician - Entry Level	6
Plant Technician I	7
Plant Technician II	8
Plant Technician III	10
Public Works Technician - Entry Level	6
Public Works Technician I	7
Public Works Technician II	8
Service Technician - Entry level	6
Service Technician I	7
Service Technician II	8

(b). Clerical, IT, and Administrative

Accounting Associate I	6
Accounting Associate II	7
Accounting Associate III	8
Accounting Clerk	8
Accounting Specialist	9
Administrative Associate I	7
Administrative Associate II	9
Codes Technician	9
Contracts Administration Officer	10
Engineering Technician I	9
Fire Administrative Officer	9
Laboratory Technician, Water Reclamation	9
Police Records Specialist	7

16-2. Pay Grades - UFCW Employees / Law Enforcement Officers

The following pay grades shall apply for all City employees who are, as of the effective date of this section, represented by the United Food and Commercial Workers (UFCW), Local 1994 and/or who are law enforcement officers:

Police Patrolman Entry	9
Police Officer	9
Police Corporal	11
Police Sergeant	12

16.3 Pay Grades - International Association of Fire Fighters (IAFF) Local #1715 / Firefighters

*(*Denotes an FLSA-exempt position unless covered by a collective bargaining agreement)*

Firefighter / EMT - B/I/P	9
Fire Equipment Operator / EMT - B/I/P	10
Fire Lieutenant / EMT - B/I/P	12

16.4 Pay Grades - Employees Not Represented by a Collective Bargaining Unit

*(*Denotes an FLSA-exempt position unless covered by a collective bargaining agreement)*

Accountant	11*
Accounting Supervisor	13*
Administrative Associate I	7
Administrative Associate II	9
Assistant to the City Clerk	7
Central Services Maintenance Coordinator	15*
Citizen Service Representative	10*
City Comptroller	18*
Codes Compliance Manager	14*

Codes Compliance Officer	11*
Community Development Generalist	10*
Community Development Specialist - Senior	14*
Downtown Development Commission - Executive Director	12*
Fire Deputy Chief	16*
Fire Battalion Chief	15
Fire Captain	14
Fire Marshall	15
Economic Development Specialist	12
Economic Development Corporation Executive Director	17*
Engineering – Director of Engineering and Utilities	18*
Engineering - GIS Specialist	11
Engineering – Senior Engineer	14*
Engineering – Project Engineer	13*
Engineering – Deputy Director	16*
Engineering - Specialist	12
Environmental Specialist	14*
GIS Specialist	11
Historic Planner / Preservation Coordinator	14*
Human Resources Associate	10
Human Resources Officer	12*
Information Technologies Director	17*
Cybersecurity Manager	15*
Information Technologies Specialist	13*
Mall Maintenance Manager	7
Parks and Recreation Director	14*
Police Captain	16*
Police Lieutenant	14*
Vehicle Maintenance - Fleet Manager	13*

Public Works Director	17*
Sewer and Flood Control Coordinator	12*
Sewer and Flood Superintendent	15*
Streets and Public Properties Maintenance Coordinator	12*
Streets and Public Properties Superintendent	15*
Utilities - Deputy Director	16*
Water Reclamation Facility Superintendent	15*
Water Distribution and Technical Services Coordinator	12*
Water Distribution and Technical Services Superintendent	15*
Water Filtration Plant Coordinator	12*
Water Filtration Plant Superintendent	15*
Water Reclamation Facility Coordinator	12*

Section 16.5 Compensation Plan Generally

(a) The City Administrator shall, when necessary, make recommendations to the Mayor and City Council for changes in base and maximum salaries for each class or position in the Classified Service, as established by the compensation plan adopted by the Mayor and City Council and set out in this Chapter. Provisions shall be made for in-grade salary increases for each class or position until the maximum salary is attained. The supervisor and the appointing authority of the employee concerned shall certify to the City Administrator, through the Human Resources Officer, that the employee has performed his duties satisfactorily for the preceding year.

(b) No employee in the Classified Service shall be paid a salary less than the established minimum nor greater than the maximum rates fixed in the compensation plan for the position they hold.

(c) The compensation plan shall take effect by Ordinance of the Mayor and City Council. The Mayor and City Council shall not increase or decrease salaries of individual employees but shall fix salaries only by amendment to the compensation plan by Ordinance.

(d) The following compensation plan shall be effective from the date of its passage and shall constitution the compensation plan applicable to all employees identified in the preceding section of this chapter. It shall remain in force and effect until such time as it is amended by Ordinance of the Mayor and City Council.

Grade	Base/Minimum Salary	Midpoint	Maximum Salary
18			
17			
16			
15			
14			
13			
12			
11			
10			
9			
8			
7			
6			

Grade	Base/Minimum Salary	Midpoint	Maximum Salary
18	$86,499	$119,801	$153,153
17	$78,635	$108,910	$139,184
16	$71,486	$99,008	$126,530
15	$64,987	$90,007	$115,027
14	$59,059	$81,825	$104,570
13	$53,708	$74,386	$95,063

12	$48,825	$67,623	$86,420
11	$44,386	$61,475	$78,563
10	$40,351	$55,886	$71,421
9	$36,683	$50,806	$64,929
8	$33,348	$46,187	$59,026
7	$30,316	$41,988	$53,659
6	$27,560	$38,171	$48,781

(e) Full-time, Seasonal, temporary and part-time employees shall receive pay in accordance with the greater of the State or Federal minimum rate or other rates established by the fiscal year budget.

Section 16-6. Compensation of Board of Zoning Appeals, Officers.

(a) The Mayor and City Council may compensate the members of the Board of Zoning Appeals at such rates as established by the order.

(b) The compensation for the City Administrator, City Clerk/Assistant City Administrator, Director of Administrative Services, Chief of the Fire Department and Chief of the Police Department shall be as is set forth in their respective employment contracts or by Order passed by the Mayor and City Council.

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

Passed this _____ day of _____, 2021

_____

MAYOR

ATTEST:

_____

CITY CLERK

File Attachments for Item:

. Resolution 2022-10 (*one reading only*) - adopting an employer money purchase retirement plan with MissionSquare

RESOLUTION NO. R2022-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION ADOPTING A MONEY PURCHASE RETIRMENT PLAN (THE PLAN) WITH MISSIONSQUARE RETIREMENT.

RECITALS

1. WHERAS, the Mayor and City Council of Cumberland, Maryland ("Employer") has considered the establishment of a Money Purchase Retirement Plan pursuant to Section 401 of the Internal Revenue Code permitting such plan; and

2. WHEREAS, the Employer has employees rendering valuable service; and

3. WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

4. WHEREAS, the Employer desires that its money purchase retirement plan be administered by MissionSquare Retirement and that some of or all of the funds held under such a plan be invested in VantageTrust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

SECTION 1.

(a) The Recitals to this Resolution are deemed a substantive part of this Resolution and are incorporated by reference herein; and

(b) References in this Resolution to the plan shall be deemed to include any changes made by the City in accordance with applicable budgetary or other law, including (without limitation) in future fiscal years.

SECTION 2.

(a) The Employer herby establishes or has established a money purchase retirement plan (the "Plan") in the form of The MissionSquare Retirement Governmental Money Purchase Plan, pursuant to the specific provisions of the Adoption Agreement titled, Administrative Services Agreement for City of Cumberland (attached hereto). The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

(b) The Employer hereby adopts the Declaration of Trust of VantageTrust, attached hereto on pages 28-30 as Appendix A, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in the trust created by such Declaration of Trust ("VantageTrust") that provides for the commingles investment of retirement funds; and

(c) The Employer herby agrees to serve as trustee under the Plan and to invest funds held under the Plan in VantageTrust or in any other qualified investment options for the Plan; and

SECTION 3. The City Administrator shall be the coordinator for this program; shall receive necessary reports, notices, etc. from MissionSquare Retirement or VantageTrust; shall cast, on behalf of the Employer, any required votes under VantageTrust; Administrative duties to carry out the plan may be assigned to the appropriate departments; is authorized to execute all necessary agreements and contracts incidental to the administration of the plan.

SECTION 4. This Resolution shall take effect from the date of its adoption.

MAYOR AND CITY COUNCIL

OF CUMBERLAND

(SEAL)

_____
Raymond M. Morriss, Mayor

ATTEST:

_____
Allison Layton
City Clerk

Introduced: _____, 2022

Adopted: _____, 2022

Votes for adoption:_____
Votes against adoption:_____
Abstentions:_____

Effective: _____, 2022

#2200189;10002.073

Council Agenda Summary

Meeting Date: December 6, 2022

Key Staff Contact: Ken Tressler and Mark Gandolfi

Item Title:

City of Cumberland – 457(b) & 401(a) Change to MissionSquare from Nationwide

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

A migration from Nationwide as plan administrator and CBIZ as financial advisor of the City's deferred compensation plans to MissionSquare and Mesirow Financial. The City is the public plan sponsor of a 457(b) and 401(a) retirement plan, and in that capacity, has responsibility to obtain administrative services and investment alternatives for the plans. Several plans were examined leading to MissionSquare and Mesirow Financial as the lowest cost provider of similar services and investment options.

The main aspects of this change include:

Cost Savings:

- Compared to current fees at Nationwide and CBIZ, participants are expected to pay lower fees.
  - Mission Square's record keeping cost is lower.
  - Mesirow Financial advisory cost is lower
- Administration is expected to become much easier in terms of online loans/distributions that should save Human Resource staff time.

Improved Investments:

- At Nationwide, the City has some restrictions in terms of investment availability.
- At MissionSquare, the City has access to virtually every mutual fund; allowing the plan advisor more latitude to craft a fund lineup.
- At MissionSquare, the fixed value option is higher.

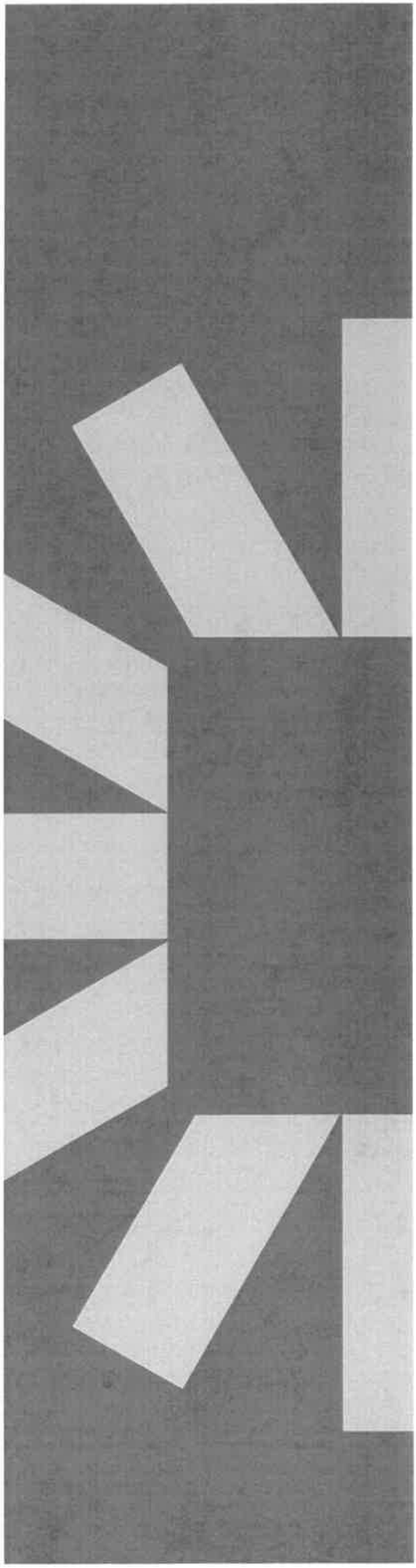
	Mission Square	**Nationwide**	**Voya**
Recordkeeping Cost	0.25%	0.41%	0.36%
Advisory Fee:			
CBIZ **or**	0.25%	0.25%	0.25%
Mesirow Financial	0.02%		
Annual Fee	$ -	$ 2,670	$ -
Fixed/Stable Value Option	1.91%	1.68%	1.00%

When moving away from Nationwide, there is approximately $600K invested in the fixed/stable value option. These funds would be transferred from Nationwide to Mission Square over 5 years at 20% per year. The participants in these funds would receive a separate statement from Nationwide on those values until fully transferred to Mission Square.

MissionSquare
RETIREMENT

ICMA Retirement Corporation
doing business as

MissionSquare Retirement Governmental 457 Deferred Compensation Plan



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457 GOVERNMENTAL DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated

Article I. Purpose

The Employer identified in Article 2.09 hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Employer is a State, political subdivision of a State, or an agency or instrumentality of a State or political subdivision, as described in Section 457(e)(1)(A) of the Internal Revenue Code ("the Code").

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Code.

The Employer has determined that the establishment of a deferred compensation plan for the Employees of the Employer serves the interests of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

The Employer adopts the Group Trust created by the Declaration of Trust of VantageTrust Company.

Article II. Definitions

2.01 **Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 **Accounting Date.** For valuing the Trust's assets, as provided in Section 6.06, each business day that the New York Stock Exchange is open for trading.

2.03 **Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon seventy-five (75) days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon seventy-five (75) days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator. Unless otherwise provided in the Plan, the Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction. The Employer may enter into a separate agreement with the Administrator detailing features of the Plan and any elections as to the administration of the Plan.

2.04 Automatic Distribution Date. April 1 of the calendar year after the year the Participant attains age 70½ or, if later, has a Severance Event.

2.05 Beneficiary. The person or persons named by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no Beneficiary is named in the Joinder Agreement, if the named Beneficiary predeceases the Participant, or if the named Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant names someone other than his or her spouse as Beneficiary; provided, however that solely for purposes of this sentence, the term "spouse" shall have the meaning determined by the Employer.

For purposes of Section 7.09(c), relating to unforeseeable emergency withdrawals, the term Primary Beneficiary means an individual who is named as a Beneficiary under the Plan and who would have an unconditional right to all or a portion of the Participant's account balance under the Plan upon the death of the Participant (or Beneficiary who has inherited an account balance).

2.06 Deferred Compensation. The amount of Includible Compensation otherwise payable to the Participant that the Participant and the Employer mutually agree to defer hereunder (including pursuant to automatic enrollment in Section 4.03), any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount the Employer agrees to credit to a Participant's Account.

2.07 Dollar Limitation. The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

2.08 Employee. Any individual who provides services for the Employer, whether as an employee of the Employer, as defined by state law, or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.09 Employer. _____ which is a State, political subdivision of a State, or agency or instrumentality of a State, as described in Section 457(e)(1)(A) of the Code.

2.10 457 Catch-Up Dollar Limitation. Twice the Dollar Limitation.

2.11 Includible Compensation. Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.

2.12 Joinder Agreement. An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof, that fixes the amount of Deferred Compensation, specifies a preference among the investment alternatives designated by the Employer, names the Employee's Beneficiary or Beneficiaries, and incorporates the terms, conditions, and provisions of the Plan by reference. A Joinder Agreement includes amounts that an Employer agrees to credit to the Employee's account as "employer contributions."

2.13 Normal Limitation. The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).

2.14 Normal Retirement Age. Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the additional catch-up dollar limitation of Section 5.02(b) hereunder and determines the right to receive certain tax free distributions described in Section 7.14. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan of the Employer in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan of the Employer), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½ (except as provided in the next paragraph). Solely for purposes of the prior two sentences, a plan of the Employer includes a plan maintained by the state (or a political subdivision or agency or instrumentality of the state) in which the Employer is located. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

2.15 Participant. Any Employee who has joined the Plan pursuant to the requirements of Article IV. Unless the context requires otherwise, the term Participant includes an Employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.

2.16 Percentage Limitation. 100 percent of the Participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

2.17 Plan Year. The calendar year, unless otherwise elected by the Employer.

2.18 Severance Event. A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. If the Plan does not allow participation by independent contractors of the Employer, a Participant shall also be deemed to have experienced a Severance Event for purposes of the Plan when, in accordance with the established practices of the Employer, the Participant ceases to be an employee and becomes an independent contractor. If the Plan allows participation by independent contractors of the Employer, then in the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new

contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

2.19 Trust. The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

3.01 Duties of the Employer. The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants that may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 Duties of Administrator. The Administrator, as agent for the Employer and subject to oversight by the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

4.01 Initial Participation. An Employee that the Employer elects to be eligible for the Plan may become a Participant by entering into a Joinder Agreement (or by being treated as entering into a Joinder Agreement pursuant to Section 4.03) prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet paid or made available, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

4.02 Amendment of Joinder Agreement. A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet paid or made available that is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the Beneficiary or specify investments, and such amendment shall become effective immediately.

4.03 Automatic Enrollment.

(a) *If elected by the Employer, the Plan will provide for automatic enrollment.* In this case, an Employee will become a Participant, shall be treated as entering into a Joinder Agreement, and shall have compensation deferred, at the amount equal to the percentage of compensation specified by the Employer, unless the Employee affirmatively elects a different amount (or elects not to enter into a Joinder Agreement) within the initial "opt-out" period specified by the Employer. The "opt-out" period shall be no less than thirty (30) days and no more than ninety (90) days. The Participant will be treated as having entered into a Joinder Agreement at the end of such opt-out period and Default Elective Deferrals shall begin on the first pay period of the following calendar month. Unless otherwise elected by the Employer, these automatic enrollment provisions will also apply when an Employee is rehired. An Employee who becomes a Participant pursuant to this Section 4.03 may amend the Joinder Agreement as provided in Section 4.02.

(b) **Definitions.** *The following definitions shall apply for this Section 4.03:*

(1) **Eligible Automatic Contribution Arrangement ("EACA").** An automatic contribution arrangement that satisfies the uniformity and notice requirements of this Section 4.03.

(2) **Automatic Contribution Arrangement.** An arrangement under which, in the absence of an affirmative election by a Covered Employee, a specified percentage of compensation will be withheld from the Covered Employee's pay and contributed to the Plan as Deferred Compensation.

(3) **Covered Employee.** A Participant identified by the Employer as being covered under the EACA. An independent contractor cannot be a Covered Employee.

(4) **Default Elective Deferrals.** The Deferred Compensation contributed to the Plan under the EACA on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation.

(5) **Default Rate.** The percentage of a Covered Employee's compensation contributed to the Plan as a Default Elective Deferral, per pay period, for a given Plan Year. The Default Rate is specified by the Employer.

(c) **Rules of Application**

(1) Default Elective Deferrals will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation. The amount of Default Elective Deferrals made for a Covered Employee each pay period is equal to the Default Rate multiplied by the Covered Employee's compensation for that pay period. If the Employer elects, a Covered Employee's Default Elective Deferrals will increase each Plan Year by a designated percentage, per pay period, beginning with the second Plan Year that begins after the Default Rate first applies to the Covered Employee. The increase will be effective beginning with the first pay period that begins in such Plan Year.

(2) A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 4.03(e) to make an affirmative election regarding Deferred Compensation (either to have no Deferred Compensation contributed or to have a different amount of Deferred Compensation contributed) before Default Elective Deferrals are made on the Covered Employee's behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election. An affirmative election to have no Deferred Compensation contributed, made no later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee's pay, shall be deemed a request for distribution of the Covered Employee's Default Elective Deferrals under Section 4.03(f) of the Plan, unless the Covered Employee affirmatively elects otherwise.

(d) **Uniformity Requirement**

(1) Except as provided in (2), below, if the Employer has elected to have Covered Employees' Default Elective Deferrals increase each Plan Year by a designated percentage, the same percentage of compensation will be withheld as a Default Elective Deferral from all Covered Employees subject to the Default Rate.

(2) Default Elective Deferrals will be reduced or stopped to meet the limitations under Section 457(b) of the Code, and to satisfy any suspension period required after a hardship distribution from another plan maintained by the Employer.

(e) **Notice Requirement**

(1) At least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the EACA, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than ninety (90) days before the employee becomes a Covered Employee but no later than the date the employee becomes a Covered Employee.

(2) The notice must accurately describe:

(i) the amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;

(ii) the Covered Employee's right to elect to have no Deferred Compensation deferred on his or her behalf or to have a different amount of Deferred Compensation deferred;

(iii) how Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions; and

(iv) the Covered Employee's right to make a withdrawal of Default Elective Deferrals and procedures for making such a withdrawal.

(f) **Withdrawal of Default Elective Deferrals**

(1) No later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee's pay, the Covered Employee may request a distribution of his or her Default Elective Deferrals. No spousal consent is required for withdrawal under this provision.

(2) The amount distributed from the Plan upon the Covered Employee's request is equal to the amount of Default Elective Deferrals made through the earlier of (a) the pay date for the second payroll period that begins after the Covered Employee's withdrawal request and (b) the first pay date that occurs after thirty (30) days following the Covered Employee's request, plus attributable earnings through the date of distribution. Any fee charged to the Covered Employee for the withdrawal may not be greater than any other fee charged for a cash distribution.

(3) Unless the Covered Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Deferred Compensation deferred on the Covered Employee's behalf as of the date specified in Section 4.03(f)(2) above.

(4) Default Elective Deferrals distributed pursuant to this Section 4.03(f) are not counted towards the dollar limitation on Deferred Compensation contained in Section 457(b) of the Code. Matching contributions that might otherwise be allocated to a Covered Employee's account on behalf of Default Elective Deferrals will not be allocated to the extent the Covered Employee withdraws such Deferred Compensation pursuant to this Section 4.03(f) and any

matching contributions already made on account of Default Elective Deferrals that are later withdrawn pursuant to this Section 4.03(f) will be forfeited.

4.04 Vesting of Employer Contributions. If a Participant's Joinder Agreement provides for the Employer to credit Deferred Compensation to a Participant's Account in the form of "employer contributions," such credits shall be immediately vested, except as provided in Section 4.03(f)(4).

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

(a) Catch-up Contributions for Participants Age 50 and Over: A Participant who has attained the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:

(1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or

(2) The excess (if any) of:

(i) The Participant's Includible Compensation for the year, or

(ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section
5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

(b) Last Three Years Catch-up Contribution: For each of the last three (3) taxable years for a Participant ending the year before the year he or she attains (or will attain) Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:

(1) The 457 Catch-Up Dollar Limitation, or

(2) The sum of

(i) The Normal Limitation for the taxable year, and
(ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

Should the maximum Deferred Compensation under this Section 5.02(b) be lower in any of the three (3) years than the maximum Deferred Compensation under Section 5.02(a), the Participant may instead defer amounts under 5.02(a) if otherwise permitted and no further deferrals under Section 5.02(b) will be permitted.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any catch-up dollar limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections 457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

5.04 Other Plans. Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 Excess Deferrals. Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable catch-up dollar limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed to the Participant in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.

5.06 Protection of Person Who Serves in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

5.07 Benefit Accruals with Respect to Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, if the Employer so elects, Participants who die or become Disabled while performing qualified military service (as defined in Code Section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code Section 414(u)(9).

5.08 Benefit Accruals with Respect to Differential Wage Payments. Unless otherwise elected by the Employer, Plan contributions shall be made based on differential wage payments (as such term is defined in Section 3401(h)(2) of the Code).

Article VI. Trust and Investment of Accounts

6.01 Investment of Deferred Compensation. A Trust described in Section 457(g) of the Code is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees with the consent of the Employer to act in that capacity hereunder.

6.02 Investment Powers. The trustee shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.

(a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans, the declaration of trust of such commonly collective, or commingled, trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books

and records of the Plan shall at all times show that all such investments are part of the Trust.

(f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.

(i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

The trustee may authorize the Administrator to exercise these powers as an agent for the trustee, subject to the oversight of the trustee.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan (including a fund or investment that consists of or is available through an open brokerage window); provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all

Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts. The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

(a) Incoming Transfers: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;

(2) The other employer's plan provides that such transfer will be made; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

(b) *Outgoing Transfers*: An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:

(1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;

(2) The other employer's plan provides that such transfer will be accepted;

(3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

(4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate

the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

(a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be made;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.

(b) *Outgoing Transfers.* An amount may be transferred to another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be accepted;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

(a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one (1) or more separate accounts) for eligible rollover distributions from any eligible retirement plan.

(b) *Outgoing Rollovers:* Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(c) *Definitions:*

(1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or

any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's named beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. Subject to Section 9.04 (related to rollovers of Roth amounts), for purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

(2) Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Section 408A of the Code. Such a direct payment, as a qualified rollover distribution described in Section 408A(e)(1) of the Code, would be taxable to the Participant to the extent required by Section 408A(d)(3) of the Code.

(3) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless the Employer elected a different effective date in a prior plan document, a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary, in the Participant's name, for the purpose of receiving the distribution.

(4) Direct Rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(d) *Rollover by a Non-Spouse Designated Beneficiary*

(1) Unless otherwise elected by the Employer, for distributions in Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(2) Notwithstanding subsection (1), for distributions in Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an

inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code Section 401(a)(9).

(4) If the dates noted above are modified by the Employer's prior plan document, the December 31, 2009 dates in subsections (1) and (2), above, will be modified, as applicable, by the Employer's prior plan document.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

(a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April I of the year following the year of the Participant's retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed for those benefits administered by Administrator.

(b) *Loans:* Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01 and 7.04, a Participant may elect to have the value of

the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One (1) lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;

(d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;

(g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in **periodic payment checks beginning the following January.**

7.03 Limitation on Options. A Participant may not select a payment option under subsections 7.02(a) or (c) if the amount of any such periodic payment is less than $100. No payment option may be selected by a Participant under Sections 7.02 or 7.04 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including the requirement that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

(a) *Application of Minimum Distribution Requirements:* The minimum distribution requirements of Section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

(b) *Special Rule for Scheduled Installment Payments:* All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code Section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for

purposes of this Section 7.04(b), the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

7.05 Time and Manner of Distribution.

(a) *Automatic Distribution Date.* The Automatic Distribution Date is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70½ or (2) retires due to a Severance Event. If the Participant postpones the required distribution due in the calendar year he or she attains age 70½ or severs employment, to the Automatic Distribution Date, the second required minimum distribution must be taken by the end of that year. The Participant's Account will be distributed, or begin to be distributed to the Participant no later than the Participant's Automatic Distribution Date.

(b) *Death of Participant Before Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies before distributions begin, the Participant's Account will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Account will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph 7.05(b), other than subsection 7.05(b)(1), will apply as if the surviving spouse were the Participant.

Distributions are considered to begin on the Participant's Automatic Distribution Date for purposes of this Section 7.05 and Section 7.07, unless Section 7.05(b)(4) applies. If Section 7.05(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Automatic Distribution Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) *Death of Participant On or After Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies on or after distributions begin and before depleting his or her Account, distributions must commence to the Designated Beneficiary by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(d) *Forms of Distribution.* Unless the Participant's Account is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the Automatic Distribution Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 7.06 and 7.07. If the Participant's Account is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Income Tax Regulations.

7.06 Required Minimum Distributions During Participant's Lifetime.

(a) *Amount of Required Minimum Distribution for Each Distribution Calendar Year.* During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Income Tax Regulations using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Income Tax Regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) *Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.* Required minimum distributions will be determined under this Section 7.06 beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

7.07 Required Minimum Distributions After Participant's Death.

(a) *Death On or After Date Distributions Begin.*

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) *Death Before Date Distributions Begin.*

(1) Participant Survived by Designated Beneficiary. Except as permitted by Section 401(a)(9) of the Code, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 7.07(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire Account will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.05(b)(1), this Section 7.07(b) will apply as if the surviving spouse were the Participant.

7.08 Definitions.

(a) *Designated Beneficiary.* The individual who is a designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Income Tax Regulations.

(b) *Distribution Calendar Year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Automatic Distribution Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Sections 7.05(b) and (c). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Automatic Distribution Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Automatic Distribution Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(c) *Life Expectancy.* Life Expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Income Tax Regulations.

(d) *Participant's Account Balance.* The Account Balance as of the last Accounting Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contribution made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

7.09 Unforeseeable Emergencies.

(a) In the event an unforeseeable emergency occurs, a Participant, or a Beneficiary with a current unconditional right to all or a portion of the Participant's account balance under the Plan following the death of the Participant, may, unless otherwise elected by the Employer, apply to the Employer (or the Administrator, acting on behalf of the Employer) to receive that part of the value

of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer (or the Administrator, acting on behalf of the Employer), the Participant or Beneficiary shall be paid only such amount as the Employer or Administrator deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. In addition, loss of property due to theft, legal bills involving criminal charges, and lost or reduced wages of the Participant's or Beneficiary's household may constitute an unforeseeable emergency if extraordinary, unforeseeable, and arising as a result of events beyond the control of the Participant or Beneficiary and otherwise meeting the conditions described in Section 7.09(a). Except as otherwise specifically provided in this Section 7.09(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

(c) Unless otherwise elected by the Employer, the determination of any unforeseeable emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.

7.10 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.11 In-Service Distribution to Participants Age 70½ or Older. Unless otherwise elected by the Employer, a Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account.

7.12 Distribution of De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

(a) *Mandatory Distribution:* If the value of a Participant's Account is less than $1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:

(1) No amount has been deferred under the Plan with respect to the Participant during the

2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

Notwithstanding any other provisions of the Plan to the contrary, if the amount of a Beneficiary's Account following notification of a Participant's death is less than $1,000, the Beneficiary's Account may be paid to the Beneficiary in a single lump sum distribution.

(b) *Voluntary Distribution:* If the value of the Participant's Account is at least $1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:

(1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

7.13 Deemed Severance from Employment.

(a) Unless otherwise elected by the Employer, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than thirty (30) days.

(b) If a Participant receives a distribution pursuant to Section 7.13(a), then during the six-month period beginning on the date of the distribution the Participant shall not be permitted to defer compensation.

(c) If a Participant receives a distribution which could be attributable to: (i) a deemed severance from employment described in subsection (a); or (ii) another distribution event under the Plan, then the distribution shall be considered made pursuant to the distribution event referenced in (ii), and the Participant shall not be subject to the limitation on elective deferrals or Voluntary Employee Contributions set forth in subsection (b).

7.14 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

(a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to $3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.

(b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

(c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible

Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code Section 7702B).

7.15 EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in Section 702 of the Emergency Economic Stabilization Act of 2008 ("EESA") shall apply to the Plan.

7.16 KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in Section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code Section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 ("KETRA") and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

(a) If elected by the Employer, loans will be available to Participants in this Plan. A Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.

(b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

(a) *Availability.* Loans shall be made available to all Participants who are active employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.

(b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.

(c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.

(d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.

(e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.

(f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in Section 457(b) of the Code or qualified employer

plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

(1) $50,000, reduced by the excess (if any) of

(i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; over

(ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer under Code Section 72(p)(4) are aggregated.

(g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any twelve-month period, unless a different period is elected by the Employer. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

(h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

(i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

(j) Promissory Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

(k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.

(l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.

(m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the eligibility of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:

(1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect loans issued after December 31, 2012, that the loan program shall

not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;

(2) rules relating to reamortization of loans; and

(3) rules relating to refinance of loans.

8.03 Participant Loan Accounts.

(a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

(b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.

(c) Repayment of principal and payment of interest shall be made by payroll deduction or, Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account. A payment intended to be a prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.

(d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Roth Provisions

This Article IX has no effect unless and until the Employer affirmatively elects to offer Designated Roth Accounts.

9.01 Definitions. The following definitions shall apply for purposes of this Article IX.

(a) *Designated Roth Account.* A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth account under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.

(b) *In-Plan Roth Conversion.* (1) A distribution from a Participant's Pre-Tax Account that is rolled over to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c)(4)(B); or (2) A transfer from an amount in the Participant's Pre-Tax Account not otherwise distributable from the Plan to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c)(4)(E), to the extent permitted by Section 9.05(e).

(c) *Pre-Tax Account.* A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan

Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.

(d) *Qualified Roth Contribution Program.* A program described in paragraph (1) of Code Section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.

(e) *Roth Elective Deferrals.* Deferred Includible Compensation contributed pursuant to Section 9.02 by a Participant, which amounts are:

(1) designated irrevocably by the Participant at the time of the deferral election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

(2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

9.02 Permitted Roth Elective Deferrals

(a) If the Employer elects to offer Designated Roth Accounts, as of the effective date of such election, a Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the Joinder Agreement. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 9.01(a) above.

(b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.

9.03 Separate Accounting

(a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.

(b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and Pre-Tax Account under the Plan.

(d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable earnings thereon will be credited to each Participant's Designated Roth Account.

9.04 Direct Rollovers

(a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the

rules of Section 402(c) of the Code.

(b) Notwithstanding anything to the contrary in the Plan, unless otherwise elected by the Employer, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code, or if the rollover is an In-Plan Roth Conversion defined in Section 10.05.

(c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds $1,000 for purposes of mandatory distributions from the Plan.

9.05 In-Plan Roth Conversions. Unless otherwise elected by the Employer, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

(a) *Tax Treatment.* The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.

(b) *Irrevocability.* Any election made by the Participant pursuant to Section 9.05(a) to do an In-Plan Roth Conversion shall be irrevocable.

(c) *Treatment of Loans.* Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.

(d) *Spousal Consent.* Notwithstanding anything herein to the contrary, if the Plan requires spousal consent for a distribution, a married Participant shall not be required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion.

(e) *In-Plan Roth Conversions of Non-Distributable Amounts.* Effective January 1, 2013, a Participant may transfer, as part of an In-Plan Roth Conversion, an amount that is not otherwise distributable from the Participant's Pre-Tax Account to the Participant's Designated Roth Account. Such transfer shall be treated as a distribution which was contributed in a qualified rollover contribution within the meaning of Code Section 408A(e). Any distribution restrictions that were applicable to the amount before the In-Plan Roth Conversion shall apply to such amount (and earnings and losses thereon) in the Participant's Designated Roth Account. If the Participant's Account or a portion of the Account is subject to a vesting schedule, an In-Plan Roth Conversion is available only if the Account or portion of the Account is fully vested. The Participant may not transfer under this Section 9.05(e) any portion of the Account that is partially vested.

9.06 Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can be included to determine a Participant loan amount under Article VIII. However, unless the Employer elects otherwise, Designated Roth Accounts will not be available as a source for loans under the Plan.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non- transferable.

10.02 Domestic Relations Orders.

(a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.02(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding. An Account maintained by the Alternate Payee shall otherwise be treated as if it were a Participant Account.

(b) *Release from Liability to Participant:* The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

(c) *Participation in Legal Proceedings:* The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

(d) *Determination of Validity of Domestic Relations Orders:* The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an

unpaid tax assessment against the Participant or Beneficiary.

10.04 **Mistaken Contribution.** To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable if giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person to the extent consistent with applicable law.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least thirty (30) days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer. Such amendment shall become effective unless, within the 30-day period beginning on the date the Administrator transmits such amendment, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as

Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan. In addition, unless otherwise prohibited by applicable law, with respect to Participants or Beneficiaries who cannot be located or who do not elect otherwise, the assets held in the accounts of such Participants or Beneficiaries may be transferred to an individual retirement plan (as defined in Section 7701(a)(37) of the Code) selected by the Employer.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Miscellaneous Items

14.01 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

14.02 Electronic Communication and Consent. Unless expressly required otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a

copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

(a) Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and

2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.

(b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.

(c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.

(d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

MISSIONSQUARE RETIREMENT

777 NORTH CAPITOL STREET, NE
WASHINGTON, DC 20002-4240

800-669-7400
WWW.MISSIONSQ.ORG

55108-1121-454

File Attachments for Item:

. Resolution 2022-11 (*one reading only*) - adopting an employee deferred compensation plan with MissionSquare

RESOLUTION NO. R2022-11

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION ADOPTING A DEFERRED COMPENSATION PLAN (THE PLAN) WITH MISSIONSQUARE RETIREMENT DEFERRED COMPENSATION PLAN AND TRUST FOR THE VOLUNTARY PARTICIATION OF ELIGIBLE EMPLOYEEES AND ELECTED OFFICALS OF THE CITY OF CUMBERLAND.

RECITALS

1. WHERAS, the Mayor and City Council of Cumberland, Maryland ("Employer") has considered the establishment of a Deferred Compensation Plan to be made available to all eligible employees and elected officials pursuant to Section 457 of the Internal Revenue Code permitting such plan; and

2. WHEREAS, certain tax benefits could accrue to eligible employees and elected officials participating in said Deferred Compensation Plan; and

3. WHEREAS, such benefits will act as incentives to employees to voluntarily set aside and invest portions of their current income to meet their future financial requirements and supplement their retirement and Social Security (if applicable); and

4. WHEREAS, the Employer has established a Master Deferred Compensation program for its employees, permitting employees to enjoy the advantages of this program; and 5.

WHEREAS, the establishment of a deferred compensation plan for such employees serves the interest of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system and by assisting in attraction and retention of competent personnel; and

6. WHEREAS, the Employer has determined that the establishment of a deferred compensation plan to be administered by MissionSquare Retirement services the above objectives; and

7. WHEREAS, the Employer desires that its deferred compensation plan be administered by MissionSquare Retirement, and that some of or all of the funds held under such a plan be invested in VantageTrust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

SECTION 1.

(a) The Recitals to this Resolution are deemed a substantive part of this Resolution and are incorporated by reference herein; and

(b) References in this Resolution to the plan shall be deemed to include any changes made by the City in accordance with applicable budgetary or other law, including (without limitation) in future fiscal years.

SECTION 2.

(a) The Employer herby adopts the deferred compensation plan in the form of the MissionSquare Retirement Deferred Compensation Plan and Trust, referred to as Appendix A; and

(b) The Employer hereby adopts the Declaration of Trust of VantageTrust, attached hereto on pages 28-30 of Appendix A, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the plan are to be invested in VantageTrust; and

(c) The assets of the Plan shall be held in trust, with the Employer serving as trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose; and

(d) The employer hereby agrees to serve as trustee under the Plan.

SECTION 3. The City Administrator shall be the coordinator for this program; shall receive necessary reports, notices, etc. from MissionSquare Retirement or VantageTrust; shall cast, on behalf of the Employer, any required votes under VantageTrust; Administrative duties to carry out the plan may be assigned to the appropriate departments, is authorized to execute all necessary agreements and contracts incidental to the administration of the plan, and is authorized to execute for the Employer, individual participation agreements with each said employee requesting same.

SECTION 4. This Resolution shall take effect from the date of its adoption.

MAYOR AND CITY COUNCIL
OF CUMBERLAND

(SEAL)

_____
Raymond M. Morriss, Mayor

ATTEST:

_____
Allison Layton
City Clerk

Introduced: _____, 2022

Adopted: _____, 2022

Votes for adoption:_____
Votes against adoption:_____
Abstentions:_____

Effective: _____, 2022

#2200189;10002.073

Council Agenda Summary

Meeting Date: December 6, 2022

Key Staff Contact: Ken Tressler and Mark Gandolfi

Item Title:

City of Cumberland – 457(b) & 401(a) Change to MissionSquare from Nationwide

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

A migration from Nationwide as plan administrator and CBIZ as financial advisor of the City's deferred compensation plans to MissionSquare and Mesirow Financial. The City is the public plan sponsor of a 457(b) and 401(a) retirement plan, and in that capacity, has responsibility to obtain administrative services and investment alternatives for the plans. Several plans were examined leading to MissionSquare and Mesirow Financial as the lowest cost provider of similar services and investment options.

The main aspects of this change include:

Cost Savings:

- Compared to current fees at Nationwide and CBIZ, participants are expected to pay lower fees.
  - Mission Square's record keeping cost is lower.
  - Mesirow Financial advisory cost is lower
- Administration is expected to become much easier in terms of online loans/distributions that should save Human Resource staff time.

Improved Investments:

- At Nationwide, the City has some restrictions in terms of investment availability.
- At MissionSquare, the City has access to virtually every mutual fund; allowing the plan advisor more latitude to craft a fund lineup.
- At MissionSquare, the fixed value option is higher.

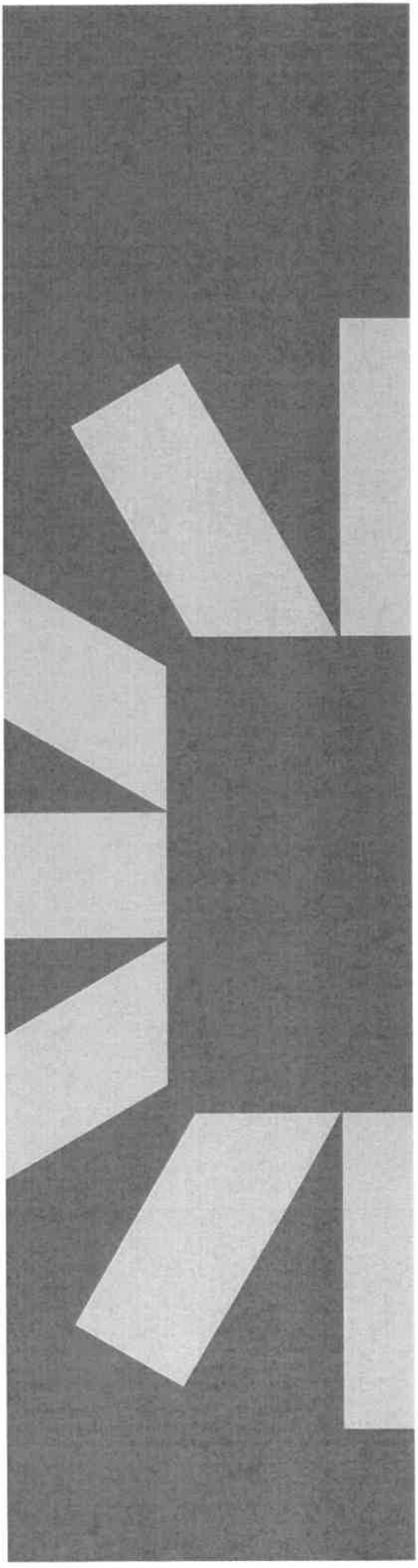
	Mission Square	**Nationwide**	**Voya**
Recordkeeping Cost	0.25%	0.41%	0.36%
Advisory Fee:			
CBIZ **or**	0.25%	0.25%	0.25%
Mesirow Financial	0.02%		
Annual Fee	$ -	$ 2,670	$ -
Fixed/Stable Value Option	1.91%	1.68%	1.00%

When moving away from Nationwide, there is approximately $600K invested in the fixed/stable value option. These funds would be transferred from Nationwide to Mission Square over 5 years at 20% per year. The participants in these funds would receive a separate statement from Nationwide on those values until fully transferred to Mission Square.

MissionSquare
RETIREMENT

ICMA Retirement Corporation
doing business as

MissionSquare Retirement Governmental 457 Deferred Compensation Plan



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457 GOVERNMENTAL DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated

Article I. Purpose

The Employer identified in Article 2.09 hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Employer is a State, political subdivision of a State, or an agency or instrumentality of a State or political subdivision, as described in Section 457(e)(1)(A) of the Internal Revenue Code ("the Code").

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Code.

The Employer has determined that the establishment of a deferred compensation plan for the Employees of the Employer serves the interests of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

The Employer adopts the Group Trust created by the Declaration of Trust of VantageTrust Company.

Article II. Definitions

2.01 **Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.02 **Accounting Date.** For valuing the Trust's assets, as provided in Section 6.06, each business day that the New York Stock Exchange is open for trading.

2.03 **Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon seventy-five (75) days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon seventy-five (75) days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator. Unless otherwise provided in the Plan, the Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction. The Employer may enter into a separate agreement with the Administrator detailing features of the Plan and any elections as to the administration of the Plan.

2.04 Automatic Distribution Date. April 1 of the calendar year after the year the Participant attains age 70½ or, if later, has a Severance Event.

2.05 Beneficiary. The person or persons named by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no Beneficiary is named in the Joinder Agreement, if the named Beneficiary predeceases the Participant, or if the named Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant names someone other than his or her spouse as Beneficiary; provided, however that solely for purposes of this sentence, the term "spouse" shall have the meaning determined by the Employer.

For purposes of Section 7.09(c), relating to unforeseeable emergency withdrawals, the term Primary Beneficiary means an individual who is named as a Beneficiary under the Plan and who would have an unconditional right to all or a portion of the Participant's account balance under the Plan upon the death of the Participant (or Beneficiary who has inherited an account balance).

2.06 Deferred Compensation. The amount of Includible Compensation otherwise payable to the Participant that the Participant and the Employer mutually agree to defer hereunder (including pursuant to automatic enrollment in Section 4.03), any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount the Employer agrees to credit to a Participant's Account.

2.07 Dollar Limitation. The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

2.08 Employee. Any individual who provides services for the Employer, whether as an employee of the Employer, as defined by state law, or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

2.09 Employer. _____ which is a State, political subdivision of a State, or agency or instrumentality of a State, as described in Section 457(e)(1)(A) of the Code.

2.10 457 Catch-Up Dollar Limitation. Twice the Dollar Limitation.

2.11 Includible Compensation. Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.

2.12 Joinder Agreement. An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof, that fixes the amount of Deferred Compensation, specifies a preference among the investment alternatives designated by the Employer, names the Employee's Beneficiary or Beneficiaries, and incorporates the terms, conditions, and provisions of the Plan by reference. A Joinder Agreement includes amounts that an Employer agrees to credit to the Employee's account as "employer contributions."

2.13 Normal Limitation. The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).

2.14 Normal Retirement Age. Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the additional catch-up dollar limitation of Section 5.02(b) hereunder and determines the right to receive certain tax free distributions described in Section 7.14. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan of the Employer in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan of the Employer), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½ (except as provided in the next paragraph). Solely for purposes of the prior two sentences, a plan of the Employer includes a plan maintained by the state (or a political subdivision or agency or instrumentality of the state) in which the Employer is located. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

2.15 Participant. Any Employee who has joined the Plan pursuant to the requirements of Article IV. Unless the context requires otherwise, the term Participant includes an Employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.

2.16 Percentage Limitation. 100 percent of the Participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

2.17 Plan Year. The calendar year, unless otherwise elected by the Employer.

2.18 Severance Event. A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. If the Plan does not allow participation by independent contractors of the Employer, a Participant shall also be deemed to have experienced a Severance Event for purposes of the Plan when, in accordance with the established practices of the Employer, the Participant ceases to be an employee and becomes an independent contractor. If the Plan allows participation by independent contractors of the Employer, then in the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new

contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

2.19 Trust. The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

3.01 Duties of the Employer. The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants that may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 Duties of Administrator. The Administrator, as agent for the Employer and subject to oversight by the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

4.01 Initial Participation. An Employee that the Employer elects to be eligible for the Plan may become a Participant by entering into a Joinder Agreement (or by being treated as entering into a Joinder Agreement pursuant to Section 4.03) prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet paid or made available, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

4.02 Amendment of Joinder Agreement. A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet paid or made available that is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the Beneficiary or specify investments, and such amendment shall become effective immediately.

4.03 Automatic Enrollment.

(a) *If elected by the Employer, the Plan will provide for automatic enrollment.* In this case, an Employee will become a Participant, shall be treated as entering into a Joinder Agreement, and shall have compensation deferred, at the amount equal to the percentage of compensation specified by the Employer, unless the Employee affirmatively elects a different amount (or elects not to enter into a Joinder Agreement) within the initial "opt-out" period specified by the Employer. The "opt-out" period shall be no less than thirty (30) days and no more than ninety (90) days. The Participant will be treated as having entered into a Joinder Agreement at the end of such opt-out period and Default Elective Deferrals shall begin on the first pay period of the following calendar month. Unless otherwise elected by the Employer, these automatic enrollment provisions will also apply when an Employee is rehired. An Employee who becomes a Participant pursuant to this Section 4.03 may amend the Joinder Agreement as provided in Section 4.02.

(b) **Definitions.** *The following definitions shall apply for this Section 4.03:*

(1) **Eligible Automatic Contribution Arrangement ("EACA").** An automatic contribution arrangement that satisfies the uniformity and notice requirements of this Section 4.03.

(2) **Automatic Contribution Arrangement.** An arrangement under which, in the absence of an affirmative election by a Covered Employee, a specified percentage of compensation will be withheld from the Covered Employee's pay and contributed to the Plan as Deferred Compensation.

(3) **Covered Employee.** A Participant identified by the Employer as being covered under the EACA. An independent contractor cannot be a Covered Employee.

(4) **Default Elective Deferrals.** The Deferred Compensation contributed to the Plan under the EACA on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation.

(5) **Default Rate.** The percentage of a Covered Employee's compensation contributed to the Plan as a Default Elective Deferral, per pay period, for a given Plan Year. The Default Rate is specified by the Employer.

(c) **Rules of Application**

(1) Default Elective Deferrals will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation. The amount of Default Elective Deferrals made for a Covered Employee each pay period is equal to the Default Rate multiplied by the Covered Employee's compensation for that pay period. If the Employer elects, a Covered Employee's Default Elective Deferrals will increase each Plan Year by a designated percentage, per pay period, beginning with the second Plan Year that begins after the Default Rate first applies to the Covered Employee. The increase will be effective beginning with the first pay period that begins in such Plan Year.

(2) A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 4.03(e) to make an affirmative election regarding Deferred Compensation (either to have no Deferred Compensation contributed or to have a different amount of Deferred Compensation contributed) before Default Elective Deferrals are made on the Covered Employee's behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election. An affirmative election to have no Deferred Compensation contributed, made no later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee's pay, shall be deemed a request for distribution of the Covered Employee's Default Elective Deferrals under Section 4.03(f) of the Plan, unless the Covered Employee affirmatively elects otherwise.

(d) **Uniformity Requirement**

(1) Except as provided in (2), below, if the Employer has elected to have Covered Employees' Default Elective Deferrals increase each Plan Year by a designated percentage, the same percentage of compensation will be withheld as a Default Elective Deferral from all Covered Employees subject to the Default Rate.

(2) Default Elective Deferrals will be reduced or stopped to meet the limitations under Section 457(b) of the Code, and to satisfy any suspension period required after a hardship distribution from another plan maintained by the Employer.

(e) **Notice Requirement**

(1) At least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the EACA, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than ninety (90) days before the employee becomes a Covered Employee but no later than the date the employee becomes a Covered Employee.

(2) The notice must accurately describe:

(i) the amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;

(ii) the Covered Employee's right to elect to have no Deferred Compensation deferred on his or her behalf or to have a different amount of Deferred Compensation deferred;

(iii) how Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions; and

(iv) the Covered Employee's right to make a withdrawal of Default Elective Deferrals and procedures for making such a withdrawal.

(f) **Withdrawal of Default Elective Deferrals**

(1) No later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee's pay, the Covered Employee may request a distribution of his or her Default Elective Deferrals. No spousal consent is required for withdrawal under this provision.

(2) The amount distributed from the Plan upon the Covered Employee's request is equal to the amount of Default Elective Deferrals made through the earlier of (a) the pay date for the second payroll period that begins after the Covered Employee's withdrawal request and (b) the first pay date that occurs after thirty (30) days following the Covered Employee's request, plus attributable earnings through the date of distribution. Any fee charged to the Covered Employee for the withdrawal may not be greater than any other fee charged for a cash distribution.

(3) Unless the Covered Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Deferred Compensation deferred on the Covered Employee's behalf as of the date specified in Section 4.03(f)(2) above.

(4) Default Elective Deferrals distributed pursuant to this Section 4.03(f) are not counted towards the dollar limitation on Deferred Compensation contained in Section 457(b) of the Code. Matching contributions that might otherwise be allocated to a Covered Employee's account on behalf of Default Elective Deferrals will not be allocated to the extent the Covered Employee withdraws such Deferred Compensation pursuant to this Section 4.03(f) and any

matching contributions already made on account of Default Elective Deferrals that are later withdrawn pursuant to this Section 4.03(f) will be forfeited.

4.04 Vesting of Employer Contributions. If a Participant's Joinder Agreement provides for the Employer to credit Deferred Compensation to a Participant's Account in the form of "employer contributions," such credits shall be immediately vested, except as provided in Section 4.03(f)(4).

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

(a) Catch-up Contributions for Participants Age 50 and Over: A Participant who has attained the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:

(1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or

(2) The excess (if any) of:

(i) The Participant's Includible Compensation for the year, or

(ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section
5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

(b) Last Three Years Catch-up Contribution: For each of the last three (3) taxable years for a Participant ending the year before the year he or she attains (or will attain) Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:

(1) The 457 Catch-Up Dollar Limitation, or

(2) The sum of

(i) The Normal Limitation for the taxable year, and
(ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

Should the maximum Deferred Compensation under this Section 5.02(b) be lower in any of the three (3) years than the maximum Deferred Compensation under Section 5.02(a), the Participant may instead defer amounts under 5.02(a) if otherwise permitted and no further deferrals under Section 5.02(b) will be permitted.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any catch-up dollar limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections 457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

5.04 Other Plans. Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 Excess Deferrals. Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable catch-up dollar limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed to the Participant in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.

5.06 Protection of Person Who Serves in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

5.07 Benefit Accruals with Respect to Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, if the Employer so elects, Participants who die or become Disabled while performing qualified military service (as defined in Code Section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code Section 414(u)(9).

5.08 Benefit Accruals with Respect to Differential Wage Payments. Unless otherwise elected by the Employer, Plan contributions shall be made based on differential wage payments (as such term is defined in Section 3401(h)(2) of the Code).

Article VI. Trust and Investment of Accounts

6.01 Investment of Deferred Compensation. A Trust described in Section 457(g) of the Code is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees with the consent of the Employer to act in that capacity hereunder.

6.02 Investment Powers. The trustee shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.

(a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans, the declaration of trust of such commonly collective, or commingled, trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books

and records of the Plan shall at all times show that all such investments are part of the Trust.

(f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.

(i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

The trustee may authorize the Administrator to exercise these powers as an agent for the trustee, subject to the oversight of the trustee.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan (including a fund or investment that consists of or is available through an open brokerage window); provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all

Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts. The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

(a) Incoming Transfers: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;

(2) The other employer's plan provides that such transfer will be made; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

(b) *Outgoing Transfers*: An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:

(1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;

(2) The other employer's plan provides that such transfer will be accepted;

(3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

(4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate

the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

(a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be made;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.

(b) *Outgoing Transfers.* An amount may be transferred to another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:

(1) The Employer's other plan provides that such transfer will be accepted;

(2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and

(3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

(a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one (1) or more separate accounts) for eligible rollover distributions from any eligible retirement plan.

(b) *Outgoing Rollovers:* Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(c) *Definitions:*

(1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or

any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's named beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. Subject to Section 9.04 (related to rollovers of Roth amounts), for purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

(2) Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Section 408A of the Code. Such a direct payment, as a qualified rollover distribution described in Section 408A(e)(1) of the Code, would be taxable to the Participant to the extent required by Section 408A(d)(3) of the Code.

(3) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless the Employer elected a different effective date in a prior plan document, a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary, in the Participant's name, for the purpose of receiving the distribution.

(4) Direct Rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(d) *Rollover by a Non-Spouse Designated Beneficiary*

(1) Unless otherwise elected by the Employer, for distributions in Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(2) Notwithstanding subsection (1), for distributions in Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an

inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code Section 401(a)(9).

(4) If the dates noted above are modified by the Employer's prior plan document, the December 31, 2009 dates in subsections (1) and (2), above, will be modified, as applicable, by the Employer's prior plan document.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

(a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April I of the year following the year of the Participant's retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed for those benefits administered by Administrator.

(b) *Loans:* Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01 and 7.04, a Participant may elect to have the value of

the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One (1) lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;

(d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;

(g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in **periodic payment checks beginning the following January.**

7.03 Limitation on Options. A Participant may not select a payment option under subsections 7.02(a) or (c) if the amount of any such periodic payment is less than $100. No payment option may be selected by a Participant under Sections 7.02 or 7.04 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including the requirement that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

(a) *Application of Minimum Distribution Requirements:* The minimum distribution requirements of Section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

(b) *Special Rule for Scheduled Installment Payments:* All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code Section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for

purposes of this Section 7.04(b), the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

7.05 Time and Manner of Distribution.

(a) *Automatic Distribution Date.* The Automatic Distribution Date is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70½ or (2) retires due to a Severance Event. If the Participant postpones the required distribution due in the calendar year he or she attains age 70½ or severs employment, to the Automatic Distribution Date, the second required minimum distribution must be taken by the end of that year. The Participant's Account will be distributed, or begin to be distributed to the Participant no later than the Participant's Automatic Distribution Date.

(b) *Death of Participant Before Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies before distributions begin, the Participant's Account will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Account will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph 7.05(b), other than subsection 7.05(b)(1), will apply as if the surviving spouse were the Participant.

Distributions are considered to begin on the Participant's Automatic Distribution Date for purposes of this Section 7.05 and Section 7.07, unless Section 7.05(b)(4) applies. If Section 7.05(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Automatic Distribution Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) *Death of Participant On or After Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies on or after distributions begin and before depleting his or her Account, distributions must commence to the Designated Beneficiary by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(d) *Forms of Distribution.* Unless the Participant's Account is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the Automatic Distribution Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 7.06 and 7.07. If the Participant's Account is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Income Tax Regulations.

7.06 Required Minimum Distributions During Participant's Lifetime.

(a) *Amount of Required Minimum Distribution for Each Distribution Calendar Year.* During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Income Tax Regulations using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Income Tax Regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) *Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.* Required minimum distributions will be determined under this Section 7.06 beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

7.07 Required Minimum Distributions After Participant's Death.

(a) *Death On or After Date Distributions Begin.*

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) *Death Before Date Distributions Begin.*

(1) Participant Survived by Designated Beneficiary. Except as permitted by Section 401(a)(9) of the Code, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 7.07(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire Account will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.05(b)(1), this Section 7.07(b) will apply as if the surviving spouse were the Participant.

7.08 Definitions.

(a) *Designated Beneficiary.* The individual who is a designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Income Tax Regulations.

(b) *Distribution Calendar Year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Automatic Distribution Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Sections 7.05(b) and (c). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Automatic Distribution Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Automatic Distribution Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(c) *Life Expectancy.* Life Expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Income Tax Regulations.

(d) *Participant's Account Balance.* The Account Balance as of the last Accounting Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contribution made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

7.09 Unforeseeable Emergencies.

(a) In the event an unforeseeable emergency occurs, a Participant, or a Beneficiary with a current unconditional right to all or a portion of the Participant's account balance under the Plan following the death of the Participant, may, unless otherwise elected by the Employer, apply to the Employer (or the Administrator, acting on behalf of the Employer) to receive that part of the value

of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer (or the Administrator, acting on behalf of the Employer), the Participant or Beneficiary shall be paid only such amount as the Employer or Administrator deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. In addition, loss of property due to theft, legal bills involving criminal charges, and lost or reduced wages of the Participant's or Beneficiary's household may constitute an unforeseeable emergency if extraordinary, unforeseeable, and arising as a result of events beyond the control of the Participant or Beneficiary and otherwise meeting the conditions described in Section 7.09(a). Except as otherwise specifically provided in this Section 7.09(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

(c) Unless otherwise elected by the Employer, the determination of any unforeseeable emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.

7.10 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.11 In-Service Distribution to Participants Age 70½ or Older. Unless otherwise elected by the Employer, a Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account.

7.12 Distribution of De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

(a) *Mandatory Distribution:* If the value of a Participant's Account is less than $1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:

(1) No amount has been deferred under the Plan with respect to the Participant during the

2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

Notwithstanding any other provisions of the Plan to the contrary, if the amount of a Beneficiary's Account following notification of a Participant's death is less than $1,000, the Beneficiary's Account may be paid to the Beneficiary in a single lump sum distribution.

(b) *Voluntary Distribution:* If the value of the Participant's Account is at least $1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:

(1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and

(2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

7.13 Deemed Severance from Employment.

(a) Unless otherwise elected by the Employer, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than thirty (30) days.

(b) If a Participant receives a distribution pursuant to Section 7.13(a), then during the six-month period beginning on the date of the distribution the Participant shall not be permitted to defer compensation.

(c) If a Participant receives a distribution which could be attributable to: (i) a deemed severance from employment described in subsection (a); or (ii) another distribution event under the Plan, then the distribution shall be considered made pursuant to the distribution event referenced in (ii), and the Participant shall not be subject to the limitation on elective deferrals or Voluntary Employee Contributions set forth in subsection (b).

7.14 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

(a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to $3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.

(b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

(c) The term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible

Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code Section 7702B).

7.15 EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in Section 702 of the Emergency Economic Stabilization Act of 2008 ("EESA") shall apply to the Plan.

7.16 KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in Section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code Section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 ("KETRA") and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

(a) If elected by the Employer, loans will be available to Participants in this Plan. A Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.

(b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

(a) *Availability.* Loans shall be made available to all Participants who are active employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.

(b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.

(c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.

(d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.

(e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.

(f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in Section 457(b) of the Code or qualified employer

plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

(1) $50,000, reduced by the excess (if any) of

(i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; over

(ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer under Code Section 72(p)(4) are aggregated.

(g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any twelve-month period, unless a different period is elected by the Employer. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

(h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

(i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

(j) Promissory Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

(k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.

(l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.

(m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the eligibility of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:

(1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect loans issued after December 31, 2012, that the loan program shall

not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;

(2) rules relating to reamortization of loans; and

(3) rules relating to refinance of loans.

8.03 Participant Loan Accounts.

(a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

(b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.

(c) Repayment of principal and payment of interest shall be made by payroll deduction or, Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account. A payment intended to be a prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.

(d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Roth Provisions

This Article IX has no effect unless and until the Employer affirmatively elects to offer Designated Roth Accounts.

9.01 Definitions. The following definitions shall apply for purposes of this Article IX.

(a) *Designated Roth Account*. A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth account under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.

(b) *In-Plan Roth Conversion*. (1) A distribution from a Participant's Pre-Tax Account that is rolled over to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c)(4)(B); or (2) A transfer from an amount in the Participant's Pre-Tax Account not otherwise distributable from the Plan to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c) (4)(E), to the extent permitted by Section 9.05(e).

(c) *Pre-Tax Account*. A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan

Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.

(d) *Qualified Roth Contribution Program.* A program described in paragraph (1) of Code Section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.

(e) *Roth Elective Deferrals.* Deferred Includible Compensation contributed pursuant to Section 9.02 by a Participant, which amounts are:

(1) designated irrevocably by the Participant at the time of the deferral election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

(2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

9.02 Permitted Roth Elective Deferrals

(a) If the Employer elects to offer Designated Roth Accounts, as of the effective date of such election, a Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the Joinder Agreement. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 9.01(a) above.

(b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.

9.03 Separate Accounting

(a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.

(b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and Pre-Tax Account under the Plan.

(d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable earnings thereon will be credited to each Participant's Designated Roth Account.

9.04 Direct Rollovers

(a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the

rules of Section 402(c) of the Code.

(b) Notwithstanding anything to the contrary in the Plan, unless otherwise elected by the Employer, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code, or if the rollover is an In-Plan Roth Conversion defined in Section 10.05.

(c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds $1,000 for purposes of mandatory distributions from the Plan.

9.05 In-Plan Roth Conversions. Unless otherwise elected by the Employer, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

(a) *Tax Treatment.* The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.

(b) *Irrevocability.* Any election made by the Participant pursuant to Section 9.05(a) to do an In-Plan Roth Conversion shall be irrevocable.

(c) *Treatment of Loans.* Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.

(d) *Spousal Consent.* Notwithstanding anything herein to the contrary, if the Plan requires spousal consent for a distribution, a married Participant shall not be required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion.

(e) *In-Plan Roth Conversions of Non-Distributable Amounts.* Effective January 1, 2013, a Participant may transfer, as part of an In-Plan Roth Conversion, an amount that is not otherwise distributable from the Participant's Pre-Tax Account to the Participant's Designated Roth Account. Such transfer shall be treated as a distribution which was contributed in a qualified rollover contribution within the meaning of Code Section 408A(e). Any distribution restrictions that were applicable to the amount before the In-Plan Roth Conversion shall apply to such amount (and earnings and losses thereon) in the Participant's Designated Roth Account. If the Participant's Account or a portion of the Account is subject to a vesting schedule, an In-Plan Roth Conversion is available only if the Account or portion of the Account is fully vested. The Participant may not transfer under this Section 9.05(e) any portion of the Account that is partially vested.

9.06 Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can be included to determine a Participant loan amount under Article VIII. However, unless the Employer elects otherwise, Designated Roth Accounts will not be available as a source for loans under the Plan.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non- transferable.

10.02 Domestic Relations Orders.

(a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.02(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding. An Account maintained by the Alternate Payee shall otherwise be treated as if it were a Participant Account.

(b) *Release from Liability to Participant:* The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

(c) *Participation in Legal Proceedings:* The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

(d) *Determination of Validity of Domestic Relations Orders:* The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an

unpaid tax assessment against the Participant or Beneficiary.

10.04 **Mistaken Contribution.** To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable if giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person to the extent consistent with applicable law.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least thirty (30) days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer. Such amendment shall become effective unless, within the 30-day period beginning on the date the Administrator transmits such amendment, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as

Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan. In addition, unless otherwise prohibited by applicable law, with respect to Participants or Beneficiaries who cannot be located or who do not elect otherwise, the assets held in the accounts of such Participants or Beneficiaries may be transferred to an individual retirement plan (as defined in Section 7701(a)(37) of the Code) selected by the Employer.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Miscellaneous Items

14.01 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

14.02 Electronic Communication and Consent. Unless expressly required otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a

copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

(a) Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and

2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.

(b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.

(c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.

(d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

MISSIONSQUARE RETIREMENT

777 NORTH CAPITOL STREET, NE
WASHINGTON, DC 20002-4240

800-669-7400
WWW.MISSIONSQ.ORG

55108-1121-454

File Attachments for Item:

. Ordinance 3936 *(1st reading)* - an ordinance to repeal and re-enact with amendments sections 19-2 to 19-5 of Chapter 19 of the Code of the City entitled "Public Ethics" for the purpose of complying with state law

ORDINANCE NO. 3936

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO REPEAL AND RE-ENACT WITH AMENDMENTS SECTIONS 19-2 TO 19-5, INCLUSIVE, OF CHAPTER 19 OF THE CODE OF THE CITY OF CUMBERLAND ENTITLED 'PUBLIC ETHICS', WITH RESPECT TO SECTIONS 19-2, 19-4 AND 19-5, FOR THE PURPOSE OF COMPLYING WITH STATE LAW REQUIRING THAT LOCAL ETHICS LAWS PERTAINING TO ELECTED LOCAL OFFICIALS, CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE BE EQUIVALENT TO OR EXCEED THE REQUIREMENTS OF APPLICABLE STATE LAW, AND, WITH RESPECT TO SECTION 19-3, FOR THE PURPOSE OF MAKING CHANGES IN THE DISCRETION OF THE MAYOR AND CITY COUNCIL."

WHEREAS, the City of Cumberland Public Ethics Law, Chapter 19 of the Code of the City of Cumberland, sets forth the City of Cumberland's laws relative to public ethics;

WHEREAS, the Maryland General Assembly passed legislation effective October 1, 2011 (Md. State Govt. Code Ann. §§ 15-804(b) & 15-805(b)(2) requiring that local governments enact public ethics regulations for elected local officials relative to conflicts of interest and financial disclosure that are equivalent to or exceed State law standards;

WHEREAS, the Maryland General Assembly passes legislation from time to time that amends State law standards pertaining to ethics, which in turn, requires that local governments amend their ethics laws to meet or exceed the amended State law standards;

WHEREAS, as required on account of changes in State law, this Ordinance provides for the amendment of Sections 19-2, 19-4 and 19-5 so that their terms will meet or exceed State law standards;

WHEREAS, the changes to Section 19-3 are not required by State law but are being made to allow the City Solicitor discretion to recuse himself from his obligation to advise the Administrative

Appeals Board from time to time, as there are occasions where such recusal is appropriate;

WHEREAS, State law requires that local governments obtain the State Ethics Commission's approval for changes made to their public ethics laws; and

WHEREAS, in accordance with the aforesaid State law, the City provided the State Ethics Commission with documentation showing the changes to the Public Ethics Law that would be effected by this Ordinance, and by correspondence dated November 17, 2022, the State Ethics Commission notified the City Solicitor that it approved of such changes.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND:

SECTION 1. That Sections 19-2 to 19-5, inclusive, of the Code of the City of Cumberland (1991 Edition), be and they are hereby repealed and reenacted, the said reenacted provisions being set forth in the Exhibit A attached hereto and a text-edited version showing the changes made to existing law upon the passage of this Ordinance is attached hereto and incorporated by reference herein as Exhibit B:

SECTION 2: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this _____ day of December, 2022.

_____
Raymond M. Morriss, Mayor

ATTEST:

_____
Allison K. Layton, City Clerk

EXHIBIT A

Sec. 19-2. - Definitions.

Designated second home means:

(1) If an individual owns one second home, the individual's second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the board as the individual's designated second home.

Home address means the address of an individual's:

(1) Principal home; and

(2) Designated second home, if any.

Interest means:

(1) A legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of this chapter, interest includes any interest held at any time during the reporting period.

(3) Interest does not include:

a. An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

b. An interest in a time or demand deposit in a financial institution;

c. An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

d. A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code;

e. A college savings plan under the Internal Revenue Code; or

f. A mutual fund or exchange-traded fund that is publicly traded on a national scale unless the mutual fund or exchange-traded fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit.

Principal home means the sole residential property that an individual occupies as the individual's primary residence, whether owned or rented by the individual.

Qualified relative means a spouse, parent, child, brother, or sister.

Quasi-governmental entity means an entity that is created by state statute, that performs a public function, and that is supported in whole or in part by the state but is managed privately.

Second home means a residential property that:

(1) An individual occupies for some portion of the filing year; and

(2) Is not a rental property or a time share.

Sec. 19-3. - Administrative appeals board.

(a) There is an administrative appeals board (the "board") created under section 238 of the Charter that consists of five (5) members appointed by the mayor and city council. The board shall be the advisory body responsible for interpreting this chapter and advising persons subject to it as to its application.

(b) The board shall:

(1) Devise, receive, and maintain all forms required by this chapter;

(2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;

(3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and

(4) Conduct a public information program regarding the purposes and application of this chapter.

(c) The city solicitor shall advise the board. The city solicitor shall have the right to recuse himself from this obligation, in which event, the city administrator may retain the services of outside counsel.

(d) The board shall certify to the state ethics commission on or before October 1 of each year that the city is in compliance with the requirements of General Provisions Article, Ann. Code of Md. tit. 5 subtit. 8, for elected local officials.

(e) The board shall determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Ann. Code of Md. tit. 5 subtit. 8, and shall forward any recommended changes and amendments to the mayor and city council for enactment.

(f) Any official or other person subject to the provisions of this chapter may request the board for an advisory opinion concerning the application of this chapter. The board shall respond promptly to these requests, providing interpretations of this chapter based on the facts provided or reasonably available to it. Copies of these interpretations shall be made available to the public upon request.

(g) Any person may file with the board a complaint alleging a violation of any of the provisions of this chapter. These complaints shall be written and under oath, and may be referred to the city solicitor, or other legal counsel if appropriate, for investigation and review. If, after receiving an investigative report, the board determines that there are insufficient facts upon which to base a determination of a violation, it may dismiss the complaint. If there is a reasonable basis for believing a violation has occurred, then the subject of the complaint shall be afforded an opportunity for a hearing conducted in accordance with the board's applicable rules of procedure for actions taken on the record. Any final determination resulting from the hearing shall include findings of fact and conclusions of law. Upon a finding of a violation, the board may take any enforcement action provided for in accordance with section 19-9.

(h) The board may adopt other policies and procedures to assist in the implementation of the board's programs established in this chapter.

Sec. 19-4. - Conflicts of interest.

(a) *Applicability.* All city elected officials, officials appointed to city boards and commissions subject to this chapter, and employees are subject to this section.

(b) *Participation prohibitions.* Except as permitted by board regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the city, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

a. The disqualification leaves a body with less than a quorum capable of acting;

b. The disqualified official or employee is required by law to act; or

c. The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of paragraph (1) and (2) of this subsection do not apply if participation is allowed by regulation or opinion of the board.

(5) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(c) *Employment and financial interest restrictions.*

(1) Except as permitted by regulation of the board when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

a. Be employed by or have a financial interest in any entity:

1. Subject to the authority of the official or employee or the city agency, board, commission with which the official or employee is affiliated; or

2. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated.

b. Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

c. Hold any outside employment that impairs the employee's ability to perform or availability for the performance of the employee's job duties with the City,

d. Wear the uniform of another employer or any other clothing with the name, logo or any other reference to the other employer.

e. Solicit work for the employee's outside employer.

(2) This prohibition does not apply to:

a. An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

b. Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the board;

c. An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the board; or

d. Employment or financial interests allowed by regulation of the board if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(d) *Post-employment limitations and restrictions.*

(1) A former official or employee may not assist or represent any party other than the city for compensation in a case, contract, or other specific matter involving the city if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(e) *Contingent compensation.* Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the city.

(f) *Use of prestige of office.*

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another, or to influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(2) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(3) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.

(4) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(5) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(g) *Solicitation and acceptance of gifts.*

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

a. Is doing business with or seeking to do business with the city office, agency, board, or commission with which the official or employee is affiliated;

b. Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

c. Is engaged in an activity regulated or controlled by the official's or employee's governmental unit

d. Is a lobbyist with respect to matters within the jurisdiction of the official or employee; or

e. Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

(4) Paragraph (5) of this subsection does not apply to a gift:

a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

a. Meals and beverages consumed in the presence of the donor or sponsoring entity;

b. Ceremonial gifts or awards that have insignificant monetary value;

c. Unsolicited gifts of nominal value that do not exceed twenty dollars ($20.00) in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the board exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the city and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in not related in any way to the official's or employee's official position.

(h) *Disclosure of confidential information.* Other than in the discharge of official duties, an official, employee, or former official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the individual’s public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(i) *Participation in procurement.*

(1) An individual or a person that employs an individual who assists a city agency in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The board may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

(j) *Retaliation prohibited.* An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.

Sec. 19-5. - Financial disclosure—Local elected officials and candidates to be local elected officials.

(a) *Applicability/financial disclosure statements.*

(1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

a. On a form provided by the board;

b. Under oath or affirmation; and

c. With the board.

(3) Deadlines for filing statements.

a. An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

b. An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within thirty (30) days after appointment.

c. 1. An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within sixty (60) days after leaving the office.

2. The statement shall cover:

i. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

ii. The portion of the current calendar year during which the individual held the office.

(b) *Candidates to be local elected officials.*

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

a. In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

b. In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

c. In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official shall file the statements required under subsection (b) with the city clerk.

(4) If a statement required to be filed by a candidate is overdue and not filed within eight (8) days after written notice of the failure to file is provided by the city clerk, the candidate shall be deemed to have withdrawn the candidacy.

(5) The city clerk may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within thirty (30) days of the receipt of a statement required under this section, the city clerk shall forward the statement to the board or the office designated by the board.

(c) *Public record.*

(1) The city clerk shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the board or the city.

(3) If an individual examines or copies a financial disclosure statement, the city clerk shall record:

a. The name and home address of the individual reviewing or copying the statement; and

b. The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the city clerk shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

(5) For statements filed after January 1, 2019, the city clerk may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(6) The City Administrator shall not provide public access to information related to consideration received from:

1. The University of Maryland Medical System;

2. A governmental entity of the State or a local government in the State; or

3. A quasi-governmental entity of the State or local government in the State.

(7) An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

(d) *Retention requirements.* The city clerk shall retain financial disclosure statements for four (4) years from the date of receipt.

(e) *Contents of statement.*

(1) *Interests in real property.*

a. A statement filed under this section shall include a schedule of all interests in real property wherever located.

b. For each interest in real property, the schedule shall include:

1. The nature of the property and the location by street address, mailing address, or legal description of the property;

2. The nature and extent of the interest held, including any conditions and encumbrances on the interest;

3. The date when, the manner in which, and the identity of the person from whom the interest was acquired;

4. The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

5. If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

6. The identity of any other person with an interest in the property.

(2) *Interests in corporations and partnerships.*

a. A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the city.

b. For each interest reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

2. The nature and amount of the interest held, including any conditions and encumbrances on the interest;

3. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

4. With respect to any interest acquired during the reporting period:

i. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

ii. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

c. An individual may satisfy the requirement to report the amount of the interest held under item b.2. of this paragraph by reporting, instead of a dollar amount:

1. For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

2. For an equity interest in a partnership, the percentage of equity interest held.

(3) *Interests in business entities doing business with the city.*

a. A statement filed under this section shall include a schedule of all interests in any business entity that does business with the city, other than interests reported under paragraph (2) of this subsection.

b. For each interest reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the business entity;

2. The nature and amount of the interest held, including any conditions to and encumbrances in the interest;

3. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

4. With respect to any interest acquired during the reporting period:

i. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

ii. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) *Gifts.*

a. A statement filed under this section shall include a schedule of each gift in excess of twenty dollars ($20.00) in value or a series of gifts totaling one hundred dollars ($100.00) or more received during the reporting period from or on behalf of, directly or indirectly, any one (1) person who does business with or is regulated by the city or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations. For each gift reported, the schedule shall include:.

b. For each gift reported, the schedule shall include:

1. A description of the nature and value of the gift; and

2. The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) *Employment with or interests in entities doing business with the city.*

a. A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the city.

b. For each position reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the business entity;

2. The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

3. The name of each city agency with which the entity is involved.

(6) *Indebtedness to entities doing business with or regulated by the individual's city unit or department.*

a. A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons or entities doing business with or regulated by the individual's city unit or department owed at any time during the reporting period:

1. By the individual; or

2. By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

b. For each liability reported under this paragraph, the schedule shall include:

1. The identity of the person to whom the liability was owed and the date the liability was incurred;

2. The amount of the liability owed as of the end of the reporting period;

3. The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

4. The security given, if any, for the liability.

(7) *Employment of immediate family members.* A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the city in any capacity at any time during the reporting period.

(8) *Sources of earned income.*

a. A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

b. A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

c. For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the city, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

(9) *Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.*

a. An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

1. The University of Maryland Medical System;

2. A governmental entity of the State or a local government in the State; or

3. A quasi-governmental entity of the State or local government in the State.

b. For each financial or contractual relationship reported, the schedule shall include:

1. A description of the relationship;

2. The subject matter of the relationship; and

3. The consideration.

(10) *Schedule of additional interests or information.* A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(f) *Interests of individual making statement.* For the purposes of subsections (e)(1), (2), and (3) of this section, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held, at any time during the applicable period, by:

a. A business entity in which the individual held a 10% or greater interest;

b. A business entity described in item (i) of this subsection in which the business entity held a 25% or greater interest;

c. A business entity described in item (ii) of this subsection in which the business entity held a 50% or greater interest; and

d. A business entity in which the individual directly or indirectly, though an interest in one or a combination of other business entities, holds a 10% or greater interest.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

a. The individual held a reversionary interest or was a beneficiary; or

b. If a revocable trust, the individual was a settlor.

(g) *Compliance.*

(1) The board shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The board may take appropriate enforcement action to ensure compliance with this section.

EXHIBIT B

Sec. 19-2. - Definitions.

Designated second home means:

(1) If an individual owns one second home, the individual's second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the board as the individual's designated second home.

Home address means the address of an individual's:

(1) Principal home; and

(2) Designated second home, if any.

Interest means:

(1) A legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of this chapter, interest includes any interest held at any time during the reporting period.

(3) Interest does not include:

a. An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

b. An interest in a time or demand deposit in a financial institution;

c. An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

d. A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code;

e. A college savings plan under the Internal Revenue Code; or

f. A mutual fund or exchange-traded fund that is publicly traded on a national scale unless the mutual fund or exchange-traded fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit.

Principal home means the sole residential property that an individual occupies as the individual's primary residence, whether owned or rented by the individual.

Qualified relative means a spouse, parent, child, brother, or sister.

Quasi-governmental entity means an entity that is created by state statute, that performs a public function, and that is supported in whole or in part by the state but is managed privately.

Second home means a residential property that:

(1) An individual occupies for some portion of the filing year; and

(2) Is not a rental property or a time share.

Sec. 19-3. - Administrative appeals board.

(a) There is an administrative appeals board (the "board") created under section 238 of the Charter that consists of five (5) members appointed by the mayor and city council. The board shall be the advisory body responsible for interpreting this chapter and advising persons subject to it as to its application.

(b) The board shall:

(1) Devise, receive, and maintain all forms required by this chapter;

(2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;

(3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and

(4) Conduct a public information program regarding the purposes and application of this chapter.

(c) The city solicitor shall advise the board. The city solicitor shall have the right to recuse himself from this obligation, in which event, the city administrator may retain the services of outside counsel.

(d) The board shall certify to the state ethics commission on or before October 1 of each year that the city is in compliance with the requirements of General Provisions Article, Ann. Code of Md. tit. 5 subtit. 8, for elected local officials.

(e) The board shall determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Ann. Code of Md. tit. 5 subtit. 8, and shall forward any recommended changes and amendments to the mayor and city council for enactment.

(f) Any official or other person subject to the provisions of this chapter may request the board for an advisory opinion concerning the application of this chapter. The board shall respond promptly to these requests, providing interpretations of this chapter based on the facts provided or reasonably available to it. Copies of these interpretations shall be made available to the public upon request.

(g) Any person may file with the board a complaint alleging a violation of any of the provisions of this chapter. These complaints shall be written and under oath, and may be referred to the city solicitor, or other legal counsel if appropriate, for investigation and review. If, after receiving an investigative report, the board determines that there are insufficient facts upon which to base a determination of a violation, it may dismiss the complaint. If there is a reasonable basis for believing a violation has occurred, then the subject of the complaint shall be afforded an opportunity for a hearing conducted in accordance with the board's applicable rules of procedure for actions taken on the record. Any final determination resulting from the hearing shall include findings of fact and conclusions of law. Upon a finding of a violation, the board may take any enforcement action provided for in accordance with section 19-9.

(h) The board may adopt other policies and procedures to assist in the implementation of the board's programs established in this chapter.

Sec. 19-4. - Conflicts of interest.

(a) *Applicability.* All city elected officials, officials appointed to city boards and commissions subject to this chapter, and employees are subject to this section.

(b) *Participation prohibitions.* Except as permitted by board regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

e. An entity, doing business with the city, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

f. A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

a. The disqualification leaves a body with less than a quorum capable of acting;

b. The disqualified official or employee is required by law to act; or

c. The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of paragraph (1) and (2) of this subsection do not apply if participation is allowed by regulation or opinion of the board.

(5) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(c) *Employment and financial interest restrictions.*

(1) Except as permitted by regulation of the board when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

a. Be employed by or have a financial interest in any entity:

1. Subject to the authority of the official or employee or the city agency, board, commission with which the official or employee is affiliated; or

2. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated~~; or~~.

b. Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

c. Hold any outside employment that impairs the employee's ability to perform or availability for the performance of the employee's job duties with the City.

d. Wear the uniform of another employer or any other clothing with the name, logo or any other reference to the other employer.

e. Solicit work for the employee's outside employer.

(2) This prohibition does not apply to:

a. An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

b. Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the board;

c. An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the board; or

d. Employment or financial interests allowed by regulation of the board if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(d) *Post-employment limitations and restrictions.*

(1) A former official or employee may not assist or represent any party other than the city for compensation in a case, contract, or other specific matter involving the city if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(e) *Contingent compensation.* Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the city.

(f) *Use of prestige of office.*

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another, or to influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(2) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(3) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.

(4) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(5) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(g) *Solicitation and acceptance of gifts.*

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

a. Is doing business with or seeking to do business with the city office, agency, board, or commission with which the official or employee is affiliated;

b. Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

c. Is engaged in an activity regulated or controlled by the official's or employee's governmental unit~~; or~~

d. Is a lobbyist with respect to matters within the jurisdiction of the official or employee.; or

e. Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

(4) Paragraph (5) of this subsection does not apply to a gift:

a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

a. Meals and beverages consumed in the presence of the donor or sponsoring entity;

b. Ceremonial gifts or awards that have insignificant monetary value;

c. Unsolicited gifts of nominal value that do not exceed twenty dollars ($20.00) in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the board exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the city and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in not related in any way to the official's or employee's official position.

(h) *Disclosure of confidential information.* Other than in the discharge of official duties, an official, employee, or former official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the ~~official's or employee~~'sindividual's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(i) *Participation in procurement.*

(1) An individual or a person that employs an individual who assists a city agency in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The board may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

(j) *Retaliation prohibited.* An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.

Sec. 19-5. - Financial disclosure—Local elected officials and candidates to be local elected officials.

(a) *Applicability/financial disclosure statements.*

(1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

a. On a form provided by the board;

b. Under oath or affirmation; and

c. With the board.

(3) Deadlines for filing statements.

a. An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

b. An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within thirty (30) days after appointment.

c. 1. An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within sixty (60) days after leaving the office.

2. The statement shall cover:

i. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

ii. The portion of the current calendar year during which the individual held the office.

(b) *Candidates to be local elected officials.*

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

a. In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

b. In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

c. In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official shall file the statements required under subsection (b) with the city clerk.

(4) If a ~~candidate fails to file a~~ statement required to be filed by ~~this section~~ a candidate is overdue and not filed within eight (8) days after written notice of the failure to file is provided by the city clerk ~~at least twenty (20) days before the last day for the withdrawal of candidacy~~, the candidate ~~is~~shall be deemed to have withdrawn the candidacy.

(5) The city clerk may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within thirty (30) days of the receipt of a statement required under this section, the city clerk shall forward the statement to the board or the office designated by the board.

(c) *Public record.*

(1) The city clerk shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the board or the city.

(3) If an individual examines or copies a financial disclosure statement, the city clerk shall record:

a. The name and home address of the individual reviewing or copying the statement; and

b. The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the city clerk shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

(5) For statements filed after January 1, 2019, the city clerk may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(6)The City Administrator shall not provide public access to information related to consideration received from:

1.The University of Maryland Medical System;

2.A governmental entity of the State or a local government in the State; or 3.

A quasi-governmental entity of the State or local government in the State.

(7) An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

(d) *Retention requirements.* The city clerk shall retain financial disclosure statements for four (4) years from the date of receipt.

(e) *Contents of statement.*

(1) *Interests in real property.*

a. A statement filed under this section shall include a schedule of all interests in real property wherever located.

b. For each interest in real property, the schedule shall include:

1. The nature of the property and the location by street address, mailing address, or legal description of the property;

2. The nature and extent of the interest held, including any conditions and encumbrances on the interest;

3. The date when, the manner in which, and the identity of the person from whom the interest was acquired;

4. The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

5. If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

6. The identity of any other person with an interest in the property.

(2) *Interests in corporations and partnerships.*

a. A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the city.

b. For each interest reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

2. The nature and amount of the interest held, including any conditions and encumbrances on the interest;

3. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

4. With respect to any interest acquired during the reporting period:

i. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

ii. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

c. An individual may satisfy the requirement to report the amount of the interest held under item b.2. of this paragraph by reporting, instead of a dollar amount:

1. For an equity interest in a corporation, the number of shares held and, unless the ~~corporation's~~corporation’s stock is publicly traded, the percentage of equity interest held; or

2. For an equity interest in a partnership, the percentage of equity interest held.

(3) *Interests in business entities doing business with the city.*

a. A statement filed under this section shall include a schedule of all interests in any business entity that does business with the city, other than interests reported under paragraph (2) of this subsection.

b. For each interest reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the business entity;

2. The nature and amount of the interest held, including any conditions to and encumbrances in the interest;

3. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

4. With respect to any interest acquired during the reporting period:

i. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

(4) *Gifts.*

ii. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

a. A statement filed under this section shall include a schedule of each gift in excess of twenty dollars ($20.00) in value or a series of gifts totaling one hundred dollars ($100.00) or more received during the reporting period from or on behalf of, directly or indirectly, any one (1) person who does business with or is regulated by the city. or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations. For each gift reported, the schedule shall include:.

b. For each gift reported, the schedule shall include:

1. A description of the nature and value of the gift; and

2. The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) *Employment with or interests in entities doing business with the city.*

a. A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the city.

b. For each position reported under this paragraph, the schedule shall include:

1. The name and address of the principal office of the business entity;

2. The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

3. The name of each city agency with which the entity is involved.

(6) *Indebtedness to entities doing business with or regulated by the individual's city. unit or department.*

a. A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons or entities doing business with ~~the city~~ or regulated by the individual's city unit or department owed at any time during the reporting period:

1. By the individual; or

2. By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

b. For each liability reported under this paragraph, the schedule shall include:

1. The identity of the person to whom the liability was owed and the date the liability was incurred;

2. The amount of the liability owed as of the end of the reporting period;

3. The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

4. The security given, if any, for the liability.

(7) ~~*Schedule*~~ *Employment of immediate family members ~~of the individual employed by the city~~.* A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the city in any capacity at any time during the reporting period.

(8) *Sources of earned income.*

a. A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

b. A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

c. For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the city, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

~~(9)~~(9) *Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.*

a. An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

1. The University of Maryland Medical System;

2. A governmental entity of the State or a local government in the State; or

3. A quasi-governmental entity of the State or local government in the State.

b. For each financial or contractual relationship reported, the schedule shall include:

1. A description of the relationship;

2. The subject matter of the relationship; and

3. The consideration.

(10) *Schedule of additional interests or information.* A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(f) *Interests of individual making statement.* For the purposes of subsections (e)(1), (2), and (3) of this section, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held, at any time during the applicable period, by :

a. A business entity in which the individual held a ~~thirty (30) perce~~nt10% or greater interest ~~at any time during the reporting period.~~ ;

b. A business entity described in item (i) of this subsection in which the business entity held a 25% or greater interest;

c. A business entity described in item (ii) of this subsection in which the business entity held a 50% or greater interest; and

d. A business entity in which the individual directly or indirectly, though an interest in one or a combination of other business entities, holds a 10% or greater interest.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

a. The individual held a reversionary interest or was a beneficiary; or

b. If a revocable trust, the individual was a settlor.

(g) *Compliance.*

(1) The board shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The board may take appropriate enforcement action to ensure compliance with this section.

File Attachments for Item:

. Ordinance 3937 (*1st reading*) - an ordinance to approve the petition to amend the official zoning map zoning map to rezone property located at the intersection of Seton Drive and Pinecrest Drive from R-S (Suburban Residential) to B-L (Local Business)

ORDINANCE NO. 3937

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE APPROVING THE PETITION TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF CUMBERLAND (REFERRED TO IN SECTION 25-1 OF THE CODE OF THE CITY OF CUMBERLAND (1991 EDITION)) TO REZONE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SETON DRIVE AND PINECREST DRIVE FROM THE R-S (SUBURBAN RESIDENTIAL) ZONING CLASSIFICATION TO THE B-L (LOCAL BUSINESS) ZONING CLASSIFICATION."

WHEREAS, the property which is the subject of this Ordinance (the "Property"), 6.02 acres, more or less, located at the southeast corner of Seton Drive and Pinecrest Drive, identified as Tax ID No. 06-010776, and more particularly described in the deed from Cumberland Real Estate Corporation to Mary Lane Real Estate Corporation dated December 30, 2009 and recorded among the Land Records of Allegany County, Maryland Book 1680, Page 369, is owned by Mary Lane Real Estate Corporation.

WHEREAS, MVP Counseling Services (the "Applicant") filed a Petition for Zoning Map Amendment (the "Petition"), requesting that the Property be rezoned from the Suburban Residential (R-S) Zoning District to the Local Business (B-L) Zoning District.

WHEREAS, if the Petition is granted, the Applicant will purchase the Property and construct an office building designed to house a counseling practice.

WHEREAS, the Cumberland Planning Commission Staff issued a Staff Report dated September 2, 2022 (the "Staff Report"), a copy of which is attached hereto and incorporated by reference herein as Exhibit 1, recommending that the proposed zoning map amendment be approved.

WHEREAS, among other things, the Staff Report includes Staff's findings relative to the required considerations set forth in Section 4-204(b)(1) of the Land Use Article of the Annotated Code of Maryland, i.e., population change, the availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, and the relationship of the proposed amendment to the local jurisdiction's plan.

WHEREAS, the Petition included analysis relative to the Change-Mistake Rule and why the proposed change in the zoning classification of the Property meets its requirements

WHEREAS, the Planning Commission held a hearing on September 26, 2022 for the purpose of considering the Petition, voting 2-0 to recommend that the Mayor and City Council grant the Zoning Map amendment requested therein.

WHEREAS, as required by Section 25-439(e) of the City Code, the Planning Commission forwarded its recommendation to the Mayor and City Council for action.

WHEREAS, as required by Section 4-203(b) of the Land Use Article and Section 25-439(f) of the City Code, the Mayor and City Council published notice of the time and place of the public hearing before it on the matter of the rezoning which is the subject of this Ordinance together with a summary of the proposed rezoning in *The Cumberland Times News*, a newspaper of general circulation in Allegany County and the City of Cumberland, once each week for 2 successive weeks with the first notice being provided at least 14 days before the hearing. The notices were published on October 19, 2022 and October 26, 2022.

WHEREAS, in anticipation of the hearing, staff issued a Supplement to Staff Report dated October 19, 2022, a copy of which is attached hereto and incorporated by reference herein as Exhibit 2, for the purpose of confirming that they agree with the Applicant's analysis relative to the Change-Mistake Rule and its conclusion that the proposed zoning change satisfies its requirements.

WHEREAS, as required by Section 4-203(b) of the Land Use Article and Section 25-439(e) of the City Code, a public hearing on the proposed rezoning was held before the Mayor

and City Council on November 15, 2022, at which public hearing all parties in interest and citizens of the City of Cumberland wishing to be heard were afforded the opportunity to have their say.

WHEREAS, having considered the Staff Report and the attachments thereto and the Supplement to Staff Report, the Mayor and City Council decided to adopt as its own findings those which are set forth in the Staff Report and the attachments thereto and the Supplement to Staff Report.

WHEREAS, based upon the foregoing, the Mayor and City Council determined that they would accept the recommendation of the Planning Commission and that they would rezone the Property as requested in the Petition.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that the relief sought in the Petition is granted. The Property shall be rezoned from R-S to B-L is granted. The Official Zoning Map referred to in Section 25-1 of the Code of the City of Cumberland (1991 Edition) be and is hereby amended to rezone the Property accordingly.

SECTION 2: BE IT FURTHER ORDAINED, that the said change shall be made on the Official Zoning Map immediately by inserting an entry on said Map stating:

On December 6, 2022, by official action of the Mayor and City Council of Cumberland, the following changes were made on the Official Zoning Map:

The 6.02, more or less, acre parcel of property located at the southeast corner of Seton Drive and Pinecrest Drive, identified as Tax ID No. 06-010776, and more particularly described in the deed from Cumberland Real Estate Corporation to Mary Lane Real Estate Corporation dated December 30, 2009 and recorded among the Land Records of Allegany County, Maryland Book 1680, Page 369, was zoned B-L (Local Business)

SECTION 3: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect on the eleventh day following its passage.

PASSED this _____ day of December, 2022.

_____
Raymond M. Morriss,
Mayor

ATTEST:

_____
Allison Layton
City Clerk

EXHIBIT 1

CUMBERLAND PLANNING COMMISSION STAFF REPORT

ZMA #22-000002: Seton Drive – Proposed Zoning Classification Change

September 2, 2022

Overview:

On August 31, 2022, Andrea Emerick, on behalf of MVP Counseling Services, filed an application to rezone property at the southeast corner of Seton Drive and Pinecrest Drive (Tax Account ID # 01-06010776) from the current R-S, Suburban Residential Zoning Designation to B-L, Local Business. A copy of the application and maps showing the location and boundaries of the property is attached to this report.

The subject property lies immediately adjacent to property owned by UPMC Western Maryland and is currently zoned B-L, Local Business. The property also lies adjacent to property owned by Barbara Bingham and us currently zoned as R-U, Urban Residential. The property is currently owned by Mary Lane Real state Corporation, but it is the intent of the contract purchaser, in the event that the proposed zoning change is granted, to construct an office building designed to house the counseling facilities to be operated by the contract purchaser.

Procedural Status:

The applicant submitted the petition (ZMA 22-02) to rezone the property at Seton Drive & Pinecrest Drive to B-L, Local Business. A copy of that application form and all accompanying attachments is provided at the end of this report. The applicant was informed that the rezoning petition would be presented to the Planning Commission at a formal public hearing on Monday September 26, 2022 at 4:30 PM.

Staff Review:

In support of the requested rezoning, per the requirements outlined in Section 25-144 (Zoning Chapter) of the Cumberland City Code, the applicant has submitted a map and description of the property, and written justification as to why the property should be rezoned and how it meets the criteria as outlined in the Land Use Article of the Annotated Code of Maryland.

Staff Recommendation:

Under the provisions of the Land Use Article of the Annotated Code of Maryland, the Mayor and City Council must make a series of specific findings in making its decision regarding the proposed zoning. A recommendation regarding these findings must be made by the Planning Commission. The specific findings are outlined in Section 4-204(b)(1) of the Land Use Article, and are as follows:

1. **Population Change:**

   Staff notes the findings in the 2013 Comprehensive Plan that the population of the City of Cumberland has been in decline since the 1940's. The Plan further notes that the city desires to reverse that trend and support the future growth and economic development of the city. The proposed zoning would provide for limited future economic expansion of the city's commercial base, thereby expanding the City's tax base, and promoting population growth that could be consistent with the recommendations of the City's Comprehensive Plan.

2. **The Availability of Public Facilities:**

   The property in question is currently served by all city services. Change in Zoning will not affect the availability or adequacy of existing public services and facilities.

3. **Present & Future Transportation Patterns:**

   Staff finds that the proposed map amendment/zoning change will not affect present or future transportation patterns in the area.

4. **Compatibility with Existing and Proposed Development for the Area:**

   The area in question is currently zoned R-S, Suburban Residential. However, as mentioned previously in this report, there are adjacent parcels zoned B-L (Local Business). Staff finds that the rezoning of the parcel in question would provide continuity with the neighboring zoning of B-L (Local Business) and R-U (Urban Residential).

5. **Relationship of the Proposed Amendment to the Local Jurisdiction's Plan:**

   The proposed zoning change is consistent with the current and future uses contemplated by the 2013 Comprehensive Plan for the area. Supporting Local Businesses is a key factor in supporting Economic Development in the region, as dictated in the City's Comprehensive Plan.

Planning Commission Action:

[X] Recommend adoption of the requested Zoning Map Amendment for the affected property at Seton Drive & Pinecrest Drive to the Mayor and City Council in accordance with the following findings of fact and recommended conditions:

The Planning Commission accepts the findings, recommendations, and conditions set forth in the Staff Report.

[ ] Recommend denial of requested Zoning Map Amendment for the affected property Seton Drive & Pinecrest Drive to the Mayor and City Council, based on the following findings:

Motion by: Vic Rezendez

Seconded by: Ally Litten

Vote:

In favor of motion: 2 Opposed: 0 Abstained: _____

Number of voting members present: 3

Signed:

John Jacobs
Chair, Cumberland Planning Commission

Date: 9/26/2022

Secretary, Cumberland Planning Commission

Date: 9/26/2022

Appendix A

Permit Applications & Documentation

ZMA22-000002

□ ZMA □ ZTA □ SRA #_____

City of Cumberland

Department of Community Development • 57 N. Liberty Street • Cumberland, MD 21502 • www.cumberlandmd.gov
301-722-2000, ext. 5600 • Fax 301-759-6432 • complaints@cumberlandmd.gov

Petition for ZONING MAP AMENDMENT / ZONING TEXT AMENDMENT and SUBDIVISION REGULATIONS TEXT AMENDMENT

Requires Municipal Planning & Zoning Commission Review

Project Location: Seton Drive Property ID # : 010 06010776

found on deed or view: www.dat.state.md.us, Real Property Search

Applicant MVP Counseling Services, LLC Phone

Address P. O. Box 826, Frostburg, Maryland 21532

Fax (724) 803-0592 Email anemerick@mvp-changebeginswithone.com

Contact Name Andrea Emerick Phone (301) 777-0012

Short Description of Project Construction of a freestanding building for location of counseling services. Project includes ancillary parking, supporting utilities and stormwater management.

Attach detailed maps indicating **Present** Zoning and **Proposed** Zoning

Attach written description of Proposed Rezoning including Reasons for Change

For a Zoning Text Amendment - *Reference: Municipal Code Chapter 25 – Zoning, Article XV.*
Submit a copy of the actual zoning text changes in proper legal form including the original text of the zoning with the wording to be removed indicated in strikethrough text and any new language highlighted in bold-faced type. All section numbers and headings must be included.

For a Zoning Map Amendment – *Reference: Municipal Code Chapter 25 – Zoning, Article VI and Article XV.*
(note the three floating zone special requirements):

- Rehabilitation and Redevelopment Floating Zone
- Adaptive Reuse Floating Zone
- Planned Development Floating Zone
- All other Zoning Map Amendments

For a Subdivision Regulations Text Amendment – *Reference: Municipal Code Chapter 25 – Zoning, Article VI.*

For all Non-Floating Zone changes, provide a legal justification for the statutory "Change or Mistake Rule." This requires attorney representation before the Planning Commission and the Mayor and Council.

The detailed requirements of applications for specific uses can vary and additional information may be required.

A review fee is payable at time of application

- **Zoning Map Amendment** - $500.00
- **Zoning Text Amendment** - $200.00
- **Subdivision Regulations Text Amendment** - $50.00

A Planning & Zoning Commission brochure is available.

Applicant's signature: Andrea M. Emerick Date: 8/29/2022

To apply online go to citizenserve.com/Cumberland

DESCRIPTION OF PROPOSED REZONING

The Applicant is the contract purchaser of property located on Seton Drive. The property is currently owned by Mary Lane Real Estate Corporation, 1121 Buxton Drive, Knoxville, Tennessee 37922. The property is located at the southeast corner of Seton Drive and Pinecrest Drive. It is identified as Tax Account ID: 010-06010776 (the "Subject Property").

The Subject Property lies immediately adjacent to property owned by Western Maryland Health System, Inc. (the "Health System Property"). The Health System Property is currently zoned "Local Business." The Subject Property also lies adjacent to property owned by Barbara D. Bingman, Tax Account ID: 010-06002765, Bauer Development of Cumberland, Tax Account ID: 010-06002625, and property owned by the Mayor & City Council of Cumberland, Maryland, Tax Account ID: 010-06049699. The Bingman, Bauer and City properties are currently zoned "Urban Residential."

The development of property in the neighborhood of the Subject Property includes two high schools: Allegany and Bishop Walsh, numerous office buildings on both Seton Drive and Bishop Walsh Road, and a commercial complex at the corner of Seton Drive and Bishop Walsh Road. The commercial complex lies adjacent to the Health System Property and is owned by CSB, LLC, Tax Account ID: 010-06046584. The commercial complex, like the Health System Property, is zoned "Local Business."

It is the intent of the contract purchaser, in the event that the proposed zoning change can occur, to construct an office building designed to house counseling facilities to be operated by the contract purchaser. The term "office," under the Zoning Ordinance (Chapter 25, Article 2, Definitions Section 25-23) includes location where professional services are performed.

The Subject Property is currently classified as a part of a "Suburban Residential" district, which is designed to provide for the continuation of low density, single-family development in areas where existing and most recent single-family development has occurred and to stabilize and protect these areas. While the purpose of the "Suburban Residential" district is set forth in the Zoning Ordinance, since adoption, the Subject Property, located on the east side of Seton Drive, has not realized any single-family development and the Subject Property lies immediately adjacent to property which would support the proposed use. As a local business, professional services are specifically permitted in that district and the proposed services would be consistent with the established zoning policies of supporting the needs of area residents.

The "Suburban Residential" zoning district in which the Subject Property lies has not realized residential development for many years. The neighborhood has changed by the elimination of Sacred Heart Hospital and the relocation of Allegany High School, but

the residential population has remained relatively static. The change in the neighborhood of the Subject Property has made it more important for professional services to be made available to the adjacent residential area and those factors support a change in the zoning classification of the Subject Property from "Suburban Residential" to "Local Business."

LEGAL JUSTIFICATION FOR APPLICATION OF "CHANGE OR MISTAKE RULE"

MVP Counseling Services, LLC (the "Applicant") has prepared and filed a Rezoning Application with respect to property that it has contracted to purchase located on Seton Drive near the intersection of Seton Drive and Bishop Walsh Road in the City of Cumberland, Allegany County, Maryland (the "Subject Property"). The Subject Property is currently zoned "Suburban Residential." The Applicant believes that there has been a change in the neighborhood of the Subject Property that demonstrates that the proper zoning for the Subject Property should be "Local Business."

In Maryland, regulation of land use is a creation of the Legislature. The State has delegated to local governments the authority to zone (Land Use Article 4-305) and specifically authority to amend or repeal zoning regulations and boundaries. (Land Use Article 4-204(a)). Along with this grant of authority, the local legislative body (the "City") has authority to change the zoning classification of property on a finding that there has been a substantial change in the neighborhood where the property is located. (Land Use Article 4-204(B)(2)(i)). This is what the courts refer to as the "change" portion of the change and mistake rule. (See: *von Lusch v. Board of County Commissioners*, 24 Md. App. 383,, 330 A.2d 738, cert denied, 275 Md. 757 (1975). Changes in condition may justify the amendment of an existing zoning ordinance. *Furnace Branch Land Company v. Board of County Commissioners*, 232 Md. 536, 194 A.2d 640 (1963).

In the process of an application for rezoning, the applicant must demonstrate what particular area reasonably constitutes the "neighborhood" of the subject property, must establish the changes that have occurred since the last comprehensive zoning, and must demonstrate that the changes resulted in a change in the character of the neighborhood itself. *Mayor of Baltimore v. Stone*, 271 Md. 655, 319 A.2d 536 (1974). Consistent with Maryland law, the Applicant submits the following information in respect to a delineation of the area that reasonably constitutes the neighborhood of the Subject Property, outlines the changes that have occurred since the last comprehensive zoning, and seeks to demonstrate that the changes have resulted in a change in the character of the neighborhood where the Subject Property is located.

The Neighborhood

The burden is on the applicant to demonstrate the neighborhood where the property is located, *Pattey v. Board of County Commissioners*, 271 Md. 352, 317 A.2d 142 (1974), and what constitutes the neighborhood is one of the basic facts to be established in a rezoning process. *Iverson v. Zoning Board*, 22 Md. App. 265, 322 A.2d 569 (1974). The concept of a neighborhood is flexible and varies according to the geographic location involved. *Pattey v. Board of County Commissioners, supra.*

The Applicant represents that the "neighborhood," for purposes of its Application, is an area that is bounded by the limits of the City of Cumberland to the west and extends to and includes the area of Allegany High School and Bishop Walsh High School to the

north and east. Since the last comprehensive zoning, the Subject Property has been undeveloped, has been classified as a part of a "Suburban Residential" district, but that district has not realized any significant residential growth. That district has realized, on properties immediately adjacent to the Subject Property, development in the context of local businesses (the CSB Property), as well as the opportunity for local business development on the property owned by Western Maryland Health System. At the time of the last comprehensive zoning, the Subject Property was not included in the "Local Business" classification but, rather, included in the "Suburban Residential" district despite the fact that it fronts on Seton Drive where local businesses were located.

Since the last comprehensive zoning, not only have no residences been constructed on the adjacent Suburban Residential zoned district, but overall residential development has remained relatively stagnant. In looking forward, it is not reasonable to expect that the Subject Property, fronting as it does on Seton Drive and immediately adjacent to local businesses, will be the subject of residential development. While the Subject Property may have been properly zoned as "Suburban Residential" at the time of the last rezoning, to accommodate its then expected development, the change that has occurred within the defined neighborhood demonstrates that a Local Business designation for the Subject Property is most appropriate.

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 06 **Account Number -** 010776

Owner Information

Owner Name:	MARY LANE REAL ESTATE CORP	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	1121 BUXTON DR KNOXVILLE TN 37922-	**Deed Reference:**	/01680/ 00369

Location & Structure Information

Premises Address:	SETON DR CUMBERLAND 21502-0000	**Legal Description:**	6.02A SE COR SETON DR & PINECREST DR

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0009	5001	6080001.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			6.0200 AC	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	76,300	66,700		
Improvements	0	0		
Total:	76,300	66,700	66,700	66,700
Preferential Land:	0	0		

Transfer Information

Seller: CUMBERLAND REAL ESTATE CORP, THE	**Date:** 04/13/2010	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01680/ 00369	**Deed2:**
Seller: CUMBERLAND REAL ESTATE CORP, THE	**Date:**	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01867/ 00028	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None
Account Identifier: District - 06 **Account Number -** 046584

Owner Information

Owner Name:	CSB LLC	**Use:**	COMMERCIAL CONDOMINIUM
		Principal Residence:	NO
Mailing Address:	157 BALTIMORE ST CUMBERLAND MD 21502-	**Deed Reference:**	/00675/ 00720

Location & Structure Information

Premises Address:	SETON DR CUMBERLAND 21502-0000	**Legal Description:**	SETON DRIVE CONDOMINIUM UNIT 101

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0012	2360	10003.01	0000			101	2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1974	1,380 SF		30,065 SF	

StoriesBasementType		ExteriorQuality	Full/Half Bath	Garage	Last Notice of Major Improvements
MEDICAL OFFICE BUILDING	/	C4			

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	14,800	14,800		
Improvements	74,100	70,700		
Total:	88,900	85,500	85,500	85,500
Preferential Land:	0	0		

Transfer Information

Seller: HAYSTACK HOLDING CO	**Date:** 10/04/1999	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00675/ 00720	**Deed2:**
Seller: DOLLY, JAMES	**Date:** 12/11/1986	**Price:** $65,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /00560/ 00974	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 06 **Account Number** - 002625

Owner Information

Owner Name:	BAUER DEVELOPMENT OF CUMBERLAND	**Use:**	RESIDENTIAL/COMMERCIAL
		Principal Residence:	NO
Mailing Address:	11307 EASTMAN RD NE CUMBERLAND MD 21502-8200	**Deed Reference:**	/00465/ 00367

Location & Structure Information

Premises Address:	PINECREST DR CUMBERLAND 21502-0000	**Legal Description:**	1.098A OFF PINECREST DR HAYSTACK MT

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0018	2358	6080001.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			1.0900 AC	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	24,900	24,900		
Improvements	0	0		
Total:	24,900	24,900	24,900	24,900
Preferential Land:	0	0		

Transfer Information

Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None
Account Identifier: District - 06 Account Number - 049699

Owner Information

Owner Name: MAYOR-CITY COUNCIL OF CUMBERLAND
Use: EXEMPT
Principal Residence: NO
Mailing Address: CITY HALL
CUMBERLAND MD 21502
Deed Reference: /00635/ 00540

Location & Structure Information

Premises Address: PINECREST DR
CUMBERLAND 21502-0000
Legal Description: 20332 SF TRI
PINECREST DR

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0010	2358	6080001.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			20,332 SF	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	5,000	5,000		
Improvements	0	0		
Total:	5,000	5,000	5,000	5,000
Preferential Land:	0	0		

Transfer Information

Seller: BAUER DEVELOPMENT OF CUMB	**Date:** 03/14/1996	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00635/ 00540	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

	Class	07/01/2022	07/01/2023
Partial Exempt Assessments:			
County:	670	5,000.00	5,000.00
State:	670	5,000.00	5,000.00
Municipal:	670	5,000.00|5,000.00	5,000.00|5,000.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 06 Account Number - 002765

Owner Information

Owner Name:	BINGMAN BARBARA D	**Use:**	RESIDENTIAL CONDOMINIUM
		Principal Residence:	YES
Mailing Address:	935 PINECREST DR APT B1 CUMBERLAND MD 21502-3170	**Deed Reference:**	/01363/ 00542

Location & Structure Information

Premises Address:	935 PINECREST DR CUMBERLAND 21502-0000 UNIT: B1	**Legal Description:**	935 PINECREST DR UNIT B-1 PINECREST CONDO HAYSTACK MTN

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0009	2346	6080001.01	0000			1	2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1987		YES		

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
		CONDO GARDEN	/	3			

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	14,000	14,000		
Improvements	65,600	68,000		
Total:	79,600	82,000	81,200	82,000
Preferential Land:	0	0		

Transfer Information

Seller: DONELSON, DIANE	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01363/ 00542	**Deed2:**
Seller: TATE, JAMES HOWARD	**Date:** 07/11/2001	**Price:** $67,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /00695/ 00232	**Deed2:**
Seller: STAKEM, WILLIAM-MARY SUSAN	**Date:** 10/13/1999	**Price:** $71,500
Type: ARMS LENGTH IMPROVED	**Deed1:** /00676/ 00083	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

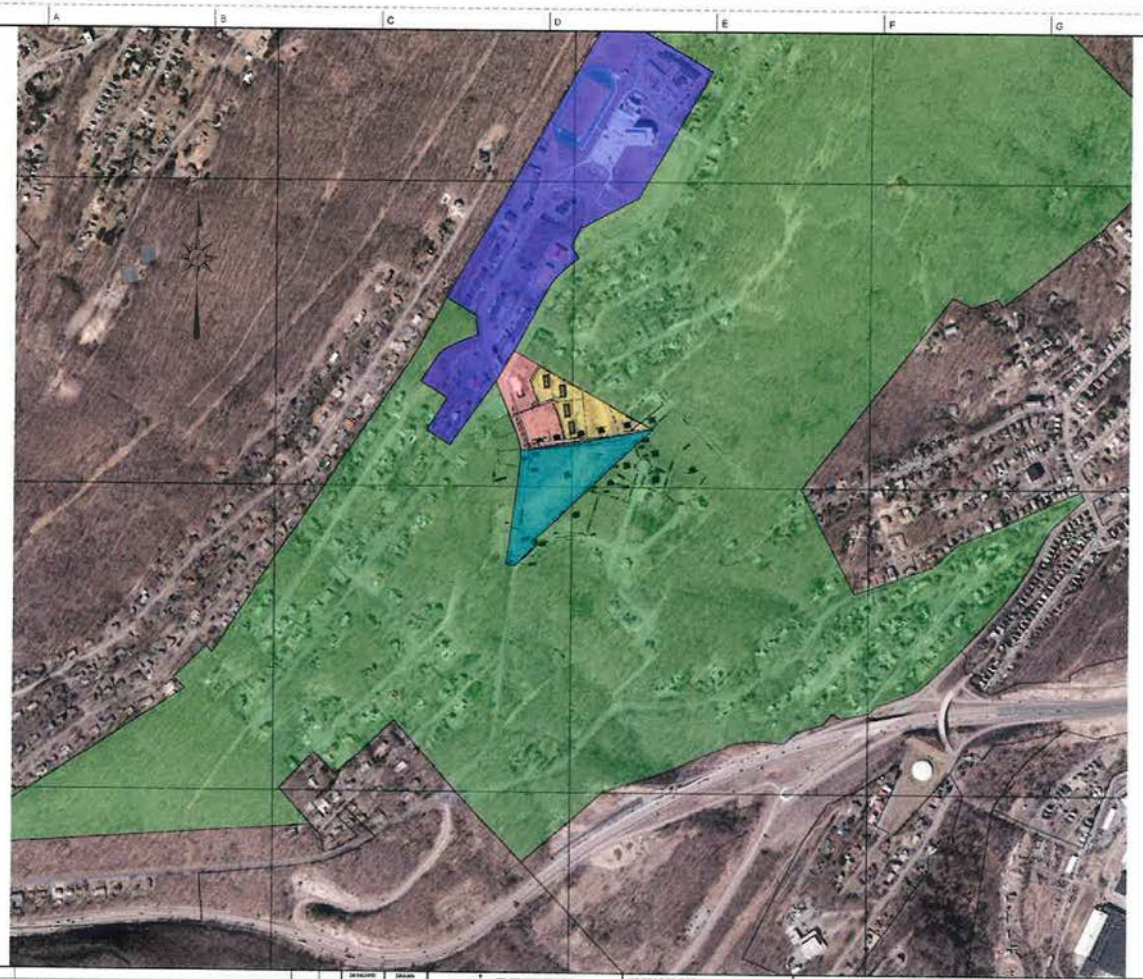
Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 02/14/2012

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**



NOTES:

1. 2' CONTOURS FROM MID MAP HEIGHTED FROM THIS LIDAR. SUPPLEMENTED WITH FIELD RUN FOTO.
2. THIS MAP WAS CREATED USING THE CITY OF CUMBERLAND DEDICATING INFORMATION SYSTEM DIGITAL DATA. BUT THIS IS A SECONDARY PRODUCT AND HAS NOT BEEN VERIFIED AND IS NOT AUTHORIZED BY THE CITY OF CUMBERLAND.
3. BACKGROUND MAGERY FROM MID MAP 2020 MAGERY

0 200 400 600

ZONING LEGEND:

- SUBURBAN RESIDENTIAL
- URBAN RESIDENTIAL
- LOCAL BUSINESS
- RESIDENTIAL OFFICE
- SUBJECT PROPERTY (CA: SUBURBAN RESIDENTIAL)

DESIGNED R.C.R.	DRAWN C.L.W.	SPECS CONSULTING ENGINEERS ASSOCIATES 100 SOUTH COVINE STREET, SUITE 100 CUMBERLAND, MD 21502 301.777.2510 FAX 301.777.4415	PREPARED FOR: MVP PROPERTY, LLC 5525 HYNDMAN ROAD BUFFALO MILLS, PENNSYLVANIA 11534 (301) 334-8906
CHECKED R.C.R.	APPROVED J.F.H.		

PROPERTY SURVEY
PINECREST AND SETON DRIVE
OVERALL ZONING

JOB No. 5479	SHEET No. C2.0
DATE OCTOBER 2021	DRAWING No. X of X

EXHIBIT 2

SUPPLEMENT TO STAFF REPORT

ZMA 22-02

SETON DRIVE & PINECREST DRIVE

To: **Mayor and City Council**

From: **Morgan Alban**

Re: **Supplement to Staff Report for Zoning Map Amendment 22-02 – Seton Drive & Pinecrest Drive**

Date: **10/19/22**

Staff prepared a Cumberland Planning Commission Staff Report (the "Report") dated September 2, 2022 in regard to the above-referenced matter. The Report did not address the Change-Mistake Rule and how it applies to the Applicant's proposed amendment of the City's Official Zoning Map (the "Map").

The Change-Mistake Rule is set forth in Section 25-440 of the City Code. Subsections (b) and (c) set forth the criteria which must be considered in determining whether the Map should be amended, stating as follows:

> (b) Except for a comprehensive zoning map amendment, the application shall include either a finding that there has been a substantial change in the character of the neighborhood where the property is located since the last comprehensive zoning map amendment which supports the proposed amendment, or a finding that existing zoning classification of the property is a mistake.
>
> (c) If a finding is made that there has been a "change in the character of the neighborhood," in accordance with subsection (b), the area comprising that neighborhood shall be defined by the applicant. The planning commission may modify these neighborhood boundaries, in whole or in part.

The Application for the Map amendment (see Appendix A attached to the Report) includes analysis relative to how the Applicant's proposed Map amendment satisfies the Change-Mistake Rule. That analysis is incorporated by reference herein. The Applicant has defined the applicable neighborhood and shown how it has changed since the last comprehensive rezoning. Staff accepts the Applicant's analysis and agrees that the requirements of the Change-Mistake Rule have been satisfied.

File Attachments for Item:

. Order 27,136 - lifting Section 11-113 of the City Code from 9:00 PM on December 31, 2022 through 2:00 AM on January 1, 2023., to allow for the use of open containers of alcohol within certain areas of the downtown during the "New Years Eve" event; notwithstanding that open glass containers shall not be permitted

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. **27,136** **DATE:** December 6, 2022

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

THAT, the provisions of Section 11-113 of the City Code, entitled "Open Containers of Alcohol," be and are hereby lifted for the "New Years Eve" event to be held December 31, 2022 from 9:00 PM until 2:00 AM on January 1, 2023 within the confines of the following area:

- Mechanic at Bedford Street south to Harrison Street;
- Harrison Street east to Queen City Drive;
- Queen City Drive north to Baltimore Street;
- Baltimore Street west to George Street;
- George Street north to Butler Alley;
- Butler Alley to Frederick and Bedford Streets by way of Centre Street;

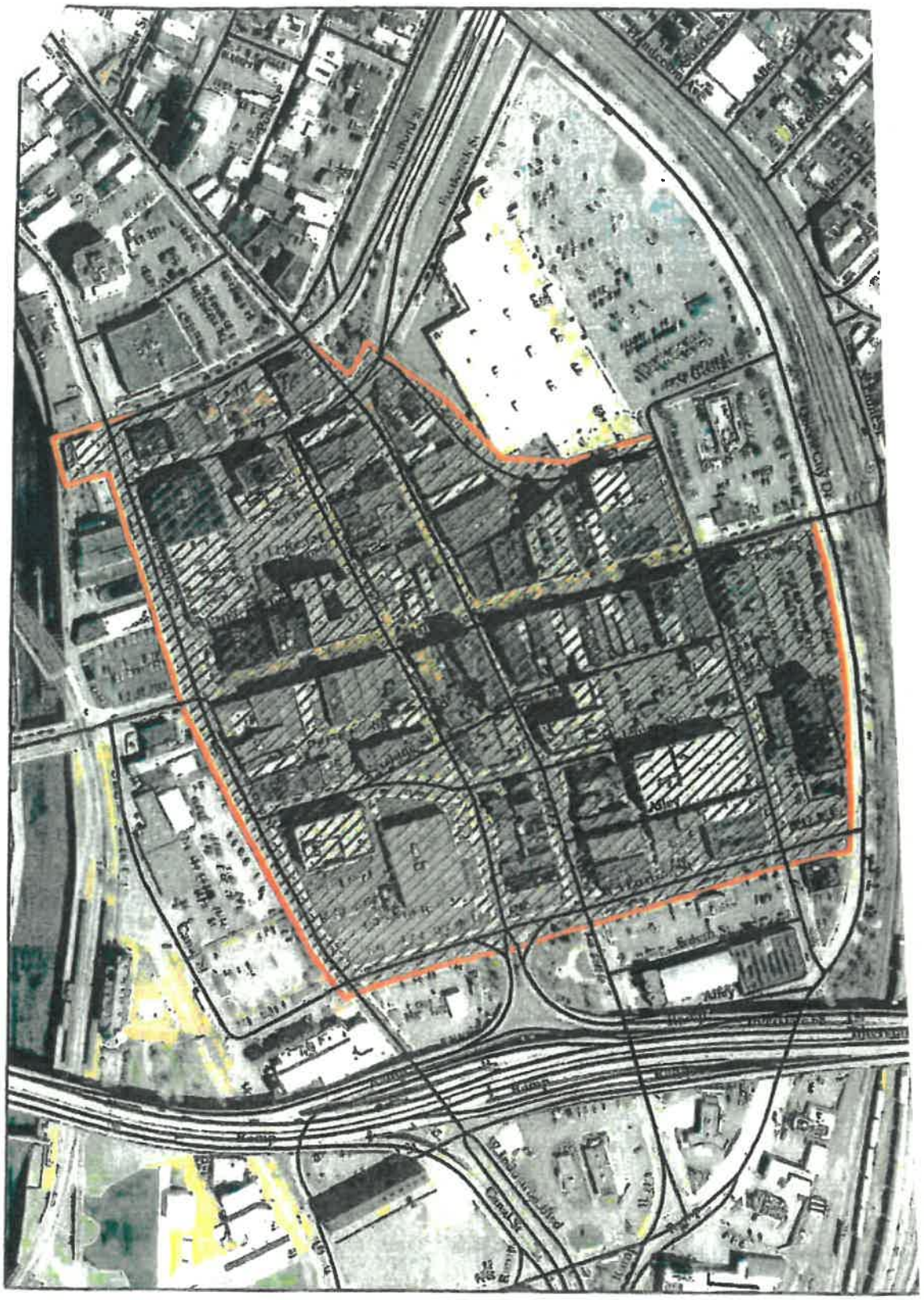
BE IT FURTHER ORDERED, that, notwithstanding the foregoing, open glass containers shall not be permitted in the area defined above and Section 11-113 (a) of the City Code shall remain in force and effect as to glass open containers of alcoholic beverages in that area.

_____

Raymond M. Morriss, Mayor

Map attached

Open Container Area



File Attachments for Item:

. Order 27,137 - accepting the proposal from Carl Belt, Inc. for the Constitution Park Splash Pad Project (14-21-RE) in an amount not to exceed $499,020.91

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,137 **DATE:** December 6, 2022

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

THAT, the proposal from Carl Belt, Inc., 11521 Milnor Avenue, Cumberland, MD, 21502 for "Constitution Park Splash Pad Project" (14-21-RE) in the estimated cost not-to-exceed Four Hundred Ninety-Nine Thousand, Twenty Dollars and Ninety-One Cents ($499,020.91) be and is hereby accepted; and

BE IT FURTHER ORDERED, that this project was procured through Gordian EZ IQC using NJPA pricing to solicit a competitive bid.

_____

Raymond M. Morriss, Mayor

Budget: 111.410.2021.63000, 111.410.2022-63000

Council Agenda Summary

Meeting Date: 12/6/2022

Key Staff Contact: Matt Idleman, PE

Item Title:

Constitution Park Splash Pad Contract, City Project 14-21-RE

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

Accepting the proposal from Carl Belt, Inc. for City Project 14-21-RE for the estimated unit cost of $499,020.91. This project was procured through Gordian EZ IQC using NJPA pricing to solicit a competitive bid. The contractor will perform the demolition of the existing wooden deck, from and pour a new retaining wall, excavate, backfill, and pour slap which are detailed in the scope of work.

The project is funded between CDBG and ARPA funds.

Amount of Award: $499,020.91

Budget number: 111.410.2021.63000, 111.410.2022-63000

Grant, bond, etc. reference: CDBG, ARPA

Work Order Signature Document

EZIQC Contract No.: MD-WMA-GC03-042419-CBI

[X] **New Work Order** [ ] **Modify an Existing Work Order**

Work Order Number:	110887.00	Work Order Date:	11/16/2022
Work Order Title:	CUMBERLAND - Splash Pad Project		
Owner Name:	MID ATLANTIC - City of Cumberland	Contractor Name:	Carl Belt, Inc.
Contact:	Matt Idleman	Contact:	Tristan Kimble
Phone:	301-759-6503	Phone:	301-729-8900

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of EZIQC Contract No MD-WMA-GC03-042419-CBI.

Brief Work Order Description:

Demolish the existing wooden deck. Form and pour a new retaining wall. Excavate, backfill, and pour slab.
All work to be performed per the specific scope of work. No changes shall occur without approval from the City of Cumberland.

Time of Performance ***See Schedule Section of the Detailed Scope of Work***

Liquidated Damages Will apply: [ ] Will not apply: [X]

Work Order Firm Fixed Price: $499,020.91

Owner Purchase Order Number:

Approvals

Owner _____ Date _____

Contractor _____ Date _____

Detailed Scope of Work

To: Tristan Kimble
Carl Belt, Inc.
11521 Milnor Ave
Cumberland, MD 21502
301-729-8900

From: Matt Idleman
MID ATLANTIC - City of Cumberland

301-759-6503

Date Printed: November 16, 2022

Work Order Number: 110887.00

Work Order Title: CUMBERLAND - Splash Pad Project

Brief Scope: Demolish the existing wooden deck. Form and pour a new retaining wall. Excavate, backfill, and pour slab.
All work to be performed per the specific scope of work. No changes shall occur without approval from the City of Cumberland.

☐ **Preliminary**	☐ **Revised**	☒ **Final**

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

- Demolish wooden deck. Contractor to remove all demolished materials from the job site.
- Protect all existing structures that are scheduled to remain during demolition.
- Excavate as specified. The contractor shall establish benchmarks to refer to during excavation.
- Import clean fill. All imported fill must be in compliance with the project's specifications.
- Compact backfill in lifts per the specifications.
- Construct cast in place retaining wall.
- All concrete mix designs to be in accordance with the project's specifications.
- Furnish and install all PVC pipe for drainage in specified locations.
- Furnish all materials to erect an 8' perimeter fence.
- Furnish all materials to erect a 4' safety fence.
- All fencing materials and accessories to be in accordance with the project's specifications.
- Repair the existing concrete retaining wall.
- Form and pour a 5" reinforced concrete slab per plans and specifications.
- Form and pour 5" concrete sidewalk.

Detailed Scope of Work Continues..

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Contractor Date

Owner Date

Contractor's Price Proposal - Summary

Date: November 16, 2022

IQC Master Contract #: MD-WMA-GC03-042419-CBI
Work Order Number: 110887.00
Owner PO #:
Work Order Title: CUMBERLAND - Splash Pad Project
Contractor: Carl Belt, Inc.
Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

01 - General Requirements	**$292,114.32**
02 - Site Work	**$42,961.46**
03 - Concrete	**$74,171.28**
22 - Plumbing	**$5,271.05**
31 - Earthwork	**$24,522.39**
32 - Exterior Improvements	**$55,234.84**
34 - Transportation	**$4,745.57**
Proposal Total	**$499,020.91**

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

Contractor's Price Proposal - Detail

Date: November 16, 2022

IQC Master Contract #: MD-WMA-GC03-042419-CBI
Work Order Number: 110887.00
Owner PO #:
Work Order Title: CUMBERLAND - Splash Pad Project
Contractor: Carl Belt, Inc.
Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

01 - General Requirements

1 01 22 20 00-0006 HR CarpenterFor tasks not included in the Construction Task Catalog® and as directed by owner only. $22,205.94

	Quantity		Unit Price		Factor		Total
Installation	360.00	x	49.39	x	1.2489	=	$22,205.94

Union representative.

2 01 22 20 00-0006 0001 For Foreman, Add $1,110.52

	Quantity		Unit Price		Factor		Total
Installation	360.00	x	2.47	x	1.2489	=	$1,110.52

3 01 22 20 00-0006 HR CarpenterFor tasks not included in the Construction Task Catalog® and as directed by owner only. $22,205.94

	Quantity		Unit Price		Factor		Total
Installation	360.00	x	49.39	x	1.2489	=	$22,205.94

Site superintendent.

4 01 22 20 00-0006 0001 For Foreman, Add $1,110.52

	Quantity		Unit Price		Factor		Total
Installation	360.00	x	2.47	x	1.2489	=	$1,110.52

5 01 22 20 00-0006 HR CarpenterFor tasks not included in the Construction Task Catalog® and as directed by owner only. $9,869.31

	Quantity		Unit Price		Factor		Total
Installation	160.00	x	49.39	x	1.2489	=	$9,869.31

Labor for retaining wall formwork. 4 workers at 40 hours each.

6 01 22 20 00-0006 0001 For Foreman, Add $123.39

	Quantity		Unit Price		Factor		Total
Installation	40.00	x	2.47	x	1.2489	=	$123.39

7 01 22 20 00-0008 HR Cement MasonFor tasks not included in the Construction Task Catalog® and as directed by owner only. $7,635.77

	Quantity		Unit Price		Factor		Total
Installation	120.00	x	50.95	x	1.2489	=	$7,635.77

Rebar benders for retaining wall. 3 workers at 40 hours each.

8 01 22 20 00-0008 HR Cement MasonFor tasks not included in the Construction Task Catalog® and as directed by owner only. $2,545.26

	Quantity		Unit Price		Factor		Total
Installation	40.00	x	50.95	x	1.2489	=	$2,545.26

Slab finishing. 5 guys at 8 hours each.

9 01 22 20 00-0015 HR LaborerFor tasks not included in the Construction Task Catalog® and as directed by owner only. $7,305.57

	Quantity		Unit Price		Factor		Total
Installation	160.00	x	36.56	x	1.2489	=	$7,305.57

Additional labor during excavation and demolition to move materials on site.

Contractor's Price Proposal - Detail Continues..

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

01 - General Requirements

10 01 22 20 00-0015 HR LaborerFor tasks not included in the Construction Task Catalog® and as directed by owner only. $10,958.35

	Quantity		Unit Price		Factor	=	Total
Installation	240.00	x	36.56	x	1.2489	=	$10,958.35

Three laborers at 80 hours each for deck demolition.

11 01 22 20 00-0015 HR LaborerFor tasks not included in the Construction Task Catalog® and as directed by owner only. $1,826.39

	Quantity		Unit Price		Factor	=	Total
Installation	40.00	x	36.56	x	1.2489	=	$1,826.39

Laborer for delivery of equipment. Includes loading and pickup.

12 01 22 20 00-0015 HR LaborerFor tasks not included in the Construction Task Catalog® and as directed by owner only. $1,826.39

	Quantity		Unit Price		Factor	=	Total
Installation	40.00	x	36.56	x	1.2489	=	$1,826.39

Daily erection and removal of windmaster signs for the project duration.

13 01 22 20 00-0043 HR Senior Surveyor (Party Chief) $2,981.37

	Quantity		Unit Price		Factor	=	Total
Installation	40.00	x	59.68	x	1.2489	=	$2,981.37

Layout.

14 01 22 20 00-0044 HR Surveyor (Instrument person) $2,657.16

	Quantity		Unit Price		Factor	=	Total
Installation	40.00	x	53.19	x	1.2489	=	$2,657.16

Layout.

15 01 22 20 00-0045 HR Surveyor (Rod person) $2,367.91

	Quantity		Unit Price		Factor	=	Total
Installation	40.00	x	47.40	x	1.2489	=	$2,367.91

Layout.

16 01 22 20 00-0059 HR Flagperson For Traffic Control $4,383.34

	Quantity		Unit Price		Factor	=	Total
Installation	96.00	x	36.56	x	1.2489	=	$4,383.34

Two workers at 48 hours each.

17 01 22 23 00-0201 WK 5 Ton, 2 Drum Articulated Roller With Full-Time Operator $12,767.82

	Quantity		Unit Price		Factor	=	Total
Installation	3.00	x	3,407.75	x	1.2489	=	$12,767.82

For compaction of backfill.

18 01 22 23 00-0201 0029 MOD For Equipment Without Operator, Deduct -$2,527.15

	Quantity		Unit Price		Factor	=	Total
Installation	1.00	x	-2,023.50	x	1.2489	=	-$2,527.15

19 01 22 23 00-0263 MO 8' Road Broom, Self Propelled Street Sweeper With Full-Time Operator $26,265.54

	Quantity		Unit Price		Factor	=	Total
Installation	2.00	x	10,515.47	x	1.2489	=	$26,265.54

For street cleaning. E&S control.

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

01 - General Requirements

20	01 22 23 00-0263		0070	MOD	For Equipment Without Operator, Deduct								-$18,834.61
						Quantity		Unit Price		Factor	=	Total	
				Installation		2.00	x	-7,540.48	x	1.2489	=	-$18,834.61	
21	01 22 23 00-0271			MO	700 LB Capacity, 36" Wide, Skid-Steer Loader With Full-Time Operator								$25,853.41
						Quantity		Unit Price		Factor	=	Total	
				Installation		2.25	x	9,200.42	x	1.2489	=	$25,853.41	
22	01 22 23 00-0271		0070	MOD	For Equipment Without Operator, Deduct								-$11,771.63
						Quantity		Unit Price		Factor	=	Total	
				Installation		1.25	x	-7,540.48	x	1.2489	=	-$11,771.63	
23	01 22 23 00-0336			MO	3/8 CY Hydraulic Excavator With Full-Time Operator								$35,749.05
						Quantity		Unit Price		Factor	=	Total	
				Installation		2.25	x	12,721.97	x	1.2489	=	$35,749.05	
24	01 22 23 00-0336		0070	MOD	For Equipment Without Operator, Deduct								-$5,446.43
						Quantity		Unit Price		Factor	=	Total	
				Installation		0.50	x	-8,721.97	x	1.2489	=	-$5,446.43	
25	01 22 23 00-0663			MO	5 KW, 11 HP Gas Powered Generator Set								$1,520.05
						Quantity		Unit Price		Factor	=	Total	
				Installation		2.25	x	540.94	x	1.2489	=	$1,520.05	
26	01 22 23 00-0985			WK	5,000 LB Telescopic Boom, Hi-Reach, Rough Terrain Construction Forklift With Full-Time Operator								$7,371.58
						Quantity		Unit Price		Factor	=	Total	
				Installation		2.00	x	2,951.23	x	1.2489	=	$7,371.58	
					For use during deck demolition.								
27	01 22 23 00-0985		0034		For Equipment Without Operator, Deduct								-$436.96
						Quantity		Unit Price		Factor	=	Total	
				Installation		0.20	x	-1,749.39	x	1.2489	=	-$436.96	
28	01 22 23 00-1358			DAY	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$3,151.72
						Quantity		Unit Price		Factor	=	Total	
				Installation		4.00	x	630.90	x	1.2489	=	$3,151.72	
					Surveyor's truck.								
29	01 22 23 00-1358		0039	MOD	For Equipment Without Operator, Deduct								-$1,618.52
						Quantity		Unit Price		Factor	=	Total	
				Installation		4.00	x	-323.99	x	1.2489	=	-$1,618.52	
30	01 22 23 00-1359			WK	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$3,263.81
						Quantity		Unit Price		Factor	=	Total	
				Installation		1.00	x	2,613.35	x	1.2489	=	$3,263.81	
					Flagging crew truck.								
31	01 22 23 00-1359		0039	MOD	For Equipment Without Operator, Deduct								-$2,023.14
						Quantity		Unit Price		Factor	=	Total	
				Installation		1.00	x	-1,619.94	x	1.2489	=	-$2,023.14	

Work Order Number: 110887.00
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	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

01 - General Requirements

32	01 22 23 00-1360			MO	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$22,685.94
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.00	x	9,082.37	x	1.2489	=	$22,685.94	
					Union representative's truck.								
33	01 22 23 00-1360		0039	MOD	For Equipment Without Operator, Deduct								-$17,440.84
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.00	x	-6,982.48	x	1.2489	=	-$17,440.84	
34	01 22 23 00-1360			MO	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$17,014.46
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.50	x	9,082.37	x	1.2489	=	$17,014.46	
					Concrete crew's truck.								
35	01 22 23 00-1360		0039	MOD	For Equipment Without Operator, Deduct								-$13,080.63
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.50	x	-6,982.48	x	1.2489	=	-$13,080.63	
36	01 22 23 00-1360			MO	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$25,521.69
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.25	x	9,082.37	x	1.2489	=	$25,521.69	
					Site superintendent's truck.								
37	01 22 23 00-1360		0039	MOD	For Equipment Without Operator, Deduct								-$19,620.94
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.25	x	-6,982.48	x	1.2489	=	-$19,620.94	
38	01 22 23 00-1373			MO	13 CY Rear Dump Truck With Full-Time Truck Driver								$66,935.15
						Quantity		Unit Price		Factor	=	Total	
					Installation	4.00	x	13,398.82	x	1.2489	=	$66,935.15	
					Hauling soils/fill to and from site. Two trucks for two months each.								
39	01 45 23 00-0091			EA	Prepare 6 x 12 Concrete Cylinder And Deliver To Lab								$455.45
						Quantity		Unit Price		Factor	=	Total	
					Installation	36.00	x	10.13	x	1.2489	=	$455.45	
					Concrete testing.								
40	01 52 13 00-0031			MO	8' x 8' x 20' Storage Container								$209.09
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.00	x	83.71	x	1.2489	=	$209.09	
41	01 52 19 00-0003			MO	Portable Chemical Toilet								$536.18
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.25	x	190.81	x	1.2489	=	$536.18	
					Restroom facility.								
42	01 52 19 00-0003		0004	MOD	For Each Additional Servicing Per Unit Per Week, Add								$312.23
						Quantity		Unit Price		Factor	=	Total	
					Installation	10.00	x	25.00	x	1.2489	=	$312.23	
					Weekly cleaning.								

Contractor's Price Proposal - Detail Continues..

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

01 - General Requirements

43 01 52 19 00-0003 0005 MOD For Delivery, Add $43.71

	Quantity		Unit Price		Factor	=	Total
Installation	1.00	x	35.00	x	1.2489	=	$43.71

44 01 55 26 00-0090 MO Aluminum Sign And Post $62.94

	Quantity		Unit Price		Factor	=	Total
Installation	2.25	x	22.40	x	1.2489	=	$62.94

45 01 55 26 00-0117 EA Place And Remove Crash Attenuator BarrelsIf lifting equipment is not available on site, See CSI section 01 22 23 00-0000 for rentals tasks, 01 71 13 00-0000 for mobilization tasks. $1,958.90

	Quantity		Unit Price		Factor	=	Total
Installation	50.00	x	31.37	x	1.2489	=	$1,958.90

46 01 71 13 00-0003 EA Equipment Delivery, Pickup, Mobilization And Demobilization Using A Tractor Trailer With Up To 53' BedIncludes loading, tie-down of equipment, delivery of equipment, off loading on site, rigging, dismantling, loading for return and transporting away. For equipment such as bulldozers, motor scrapers, hydraulic excavators, gradalls, road graders, loader-backhoes, heavy duty construction loaders, tractors, pavers, rollers, bridge finishers, straight mast construction forklifts, telescoping boom rough terrain construction forklifts, telescoping and articulating boom manlifts with >40' boom lengths, etc. $4,442.16

	Quantity		Unit Price		Factor	=	Total
Installation	6.00	x	592.81	x	1.2489	=	$4,442.16

47 01 74 19 00-0015 EA 30 CY Dumpster (2.5 Ton) "Construction Debris"Includes delivery of dumpster, rental cost, pick-up cost, hauling, and disposal fee. Non-hazardous material. $4,799.52

	Quantity		Unit Price		Factor	=	Total
Installation	7.00	x	549.00	x	1.2489	=	$4,799.52

Dumpsters to be placed on site for demolished materials.

48 01 74 19 00-0018 MO Rampless Concrete Washout BinIncludes delivery. $965.15

	Quantity		Unit Price		Factor	=	Total
Installation	2.00	x	386.40	x	1.2489	=	$965.15

49 01 74 19 00-0021 EA Vacuum, Pickup, Swap And Dump, Concrete Washout BinIncludes vacuum the liquid from the full bin and pick up the bin, and recycle all material. An empty bin will be left at the site if the project is not completed. $3,708.88

	Quantity		Unit Price		Factor	=	Total
Installation	4.00	x	742.43	x	1.2489	=	$3,708.88

50 01 74 19 00-0031 CY Traditional Building Construction Materials Landfill Dump Fee $1,934.42

	Quantity		Unit Price		Factor	=	Total
Installation	90.00	x	17.21	x	1.2489	=	$1,934.42

Demolished materials from deck.

51 01 74 19 00-0031 CY Traditional Building Construction Materials Landfill Dump Fee $1,225.13

	Quantity		Unit Price		Factor	=	Total
Installation	57.00	x	17.21	x	1.2489	=	$1,225.13

52 01 74 19 00-0031 CY Traditional Building Construction Materials Landfill Dump Fee $107.47

	Quantity		Unit Price		Factor	=	Total
Installation	5.00	x	17.21	x	1.2489	=	$107.47

For portions of the concrete retaining wall being removed for repair.

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

01 - General Requirements

53	01 74 19 00-0035			CY	Excavated Dirt Landfill Dump Fee								$14,485.99
						Quantity		Unit Price		Factor	=	Total	
					Installation	700.00	x	16.57	x	1.2489	=	$14,485.99	
54	01 74 19 00-0038			CYM	Hauling On Paved Roads, First 15 Miles								$454.60
						Quantity		Unit Price		Factor	=	Total	
					Installation	700.00	x	0.52	x	1.2489	=	$454.60	
					Hauling excavated materials.								

Subtotal for 01 - General Requirements **$292,114.32**

02 - Site Work

55	02 41 16 13-0017			CCF	By Pneumatic Tools/Hand, Wood Frame Construction Building Demolition								$26,380.07
						Quantity		Unit Price		Factor	=	Total	
					Installation	756.00	x	27.94	x	1.2489	=	$26,380.07	
					Demolition of wooden deck.								
56	02 41 16 13-0017		0005	MOD	For >500 To 1,000, Add								$5,277.90
						Quantity		Unit Price		Factor	=	Total	
					Installation	756.00	x	5.59	x	1.2489	=	$5,277.90	
57	02 41 16 13-0017		0011	MOD	For No Interior Partitions, Deduct								-$6,599.74
						Quantity		Unit Price		Factor	=	Total	
					Installation	756.00	x	-6.99	x	1.2489	=	-$6,599.74	
58	02 41 16 13-0060			CF	Concrete Footing For Fence, Gate Or Playground Equipment Post, Etc. DemolitionIncludes excavation.								$17,903.23
						Quantity		Unit Price		Factor	=	Total	
					Installation	1,980.00	x	7.24	x	1.2489	=	$17,903.23	
					Demolition of existing fence and posts. Post footings are 6" wide, 28" deep. 730 LF of fencing = 73 posts. Total VLF of fence posts =1700. 1700' x 6" x 28" = 1983 CF.								

Subtotal for 02 - Site Work **$42,961.46**

03 - Concrete

59	03 01 30 71-0042			LF	>1/4" To 1/2" Wide, Non-Sag Elastomeric Polyurethane Sealant, Gravity Fed Non Structural Crack Repair For Concrete, Surface Applied With Cartridge Tool (Sikaflex® Concrete Fix)								$872.98
						Quantity		Unit Price		Factor	=	Total	
					Installation	150.00	x	4.66	x	1.2489	=	$872.98	
					Caulking concrete joints.								
60	03 11 13 00-0007			SF	Below Grade Walls Foundation Wood FormworkExcludes footing								$18,509.70
						Quantity		Unit Price		Factor	=	Total	
					Installation	2,360.00	x	6.28	x	1.2489	=	$18,509.70	
					Retaining wall formwork.								
61	03 11 13 00-0007		0001	MOD	For <1,000, Add								$3,389.51
						Quantity		Unit Price		Factor	=	Total	
					Installation	2,360.00	x	1.15	x	1.2489	=	$3,389.51	

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

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	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

03 - Concrete

62	03 11 13 00-0009			LF	Up To 6" High Slab Edge and Block-Out Wood Formwork								$1,744.09
						Quantity		Unit Price		Factor		Total	
					Installation	475.00	x	2.94	x	1.2489	=	$1,744.09	
					Slab formwork.								
63	03 15 16 00-0006			LF	1/2" x 1" Polyurethane Expansion Joint, Poured, 2 Parts								$597.47
						Quantity		Unit Price		Factor		Total	
					Installation	160.00	x	2.99	x	1.2489	=	$597.47	
					Caulking for slab.								
64	03 15 16 00-0024			LF	1/2" x 5" Asphalt Saturated Fiber, Premolded Expansion Joint								$1,094.04
						Quantity		Unit Price		Factor		Total	
					Installation	600.00	x	1.46	x	1.2489	=	$1,094.04	
					Slab expansion joint material.								
65	03 15 16 00-0028			LF	1/2" x 12" Asphalt Saturated Fiber, Premolded Expansion Joint								$831.77
						Quantity		Unit Price		Factor		Total	
					Installation	300.00	x	2.22	x	1.2489	=	$831.77	
					Retaining wall expansion joint.								
66	03 21 11 00-0083			LF	#6, Grade 40, Footings, Steel Reinforcement Bar								$4,376.15
						Quantity		Unit Price		Factor		Total	
					Installation	2,400.00	x	1.46	x	1.2489	=	$4,376.15	
67	03 21 11 00-0198			LF	#4, Grade 40, Walls, Steel Reinforcement Bar								$1,084.05
						Quantity		Unit Price		Factor		Total	
					Installation	1,400.00	x	0.62	x	1.2489	=	$1,084.05	
68	03 21 11 00-0199			LF	#5, Grade 40, Walls, Steel Reinforcement Bar								$4,284.98
						Quantity		Unit Price		Factor		Total	
					Installation	3,650.00	x	0.94	x	1.2489	=	$4,284.98	
69	03 22 13 00-0002			SF	6" x 6" x #10, 21 LB/CSF, Galvanized Welded Wire Fabric Reinforcing Placed In Floors Or Slabs (W1.4 x W1.4)								$633.82
						Quantity		Unit Price		Factor		Total	
					Installation	875.00	x	0.58	x	1.2489	=	$633.82	
					Reinforcement for slab and sidewalks.								
70	03 31 13 00-0037			CY	Up To 6", By Concrete Pump, Place 3,000 PSI Concrete Slab On GradeExcludes pumping equipment.								$12,852.99
						Quantity		Unit Price		Factor		Total	
					Installation	65.00	x	158.33	x	1.2489	=	$12,852.99	
					Slab to be 5" per specifications.								
71	03 31 13 00-0037		0028	MOD	For 3,500 PSI Concrete, Add								$580.43
						Quantity		Unit Price		Factor		Total	
					Installation	65.00	x	7.15	x	1.2489	=	$580.43	
72	03 31 13 00-0068			CY	12" Thick, By Direct Chute, Place 3,000 PSI Concrete Walls								$1,051.64
						Quantity		Unit Price		Factor		Total	
					Installation	5.00	x	168.41	x	1.2489	=	$1,051.64	
					Retaining wall repair.								

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

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Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

03 - Concrete

73	03 31 13 00-0068		0028	MOD	For 3,500 PSI Concrete, Add								$41.21
						Quantity		Unit Price		Factor	=	Total	
					Installation	5.00	x	6.60	x	1.2489	=	$41.21	
74	03 31 13 00-0068			CY	12" Thick, By Direct Chute, Place 3,000 PSI Concrete Walls								$18,929.45
						Quantity		Unit Price		Factor	=	Total	
					Installation	90.00	x	168.41	x	1.2489	=	$18,929.45	
					Pour new retaining wall.								
75	03 31 13 00-0068		0028	MOD	For 3,500 PSI Concrete, Add								$741.85
						Quantity		Unit Price		Factor	=	Total	
					Installation	90.00	x	6.60	x	1.2489	=	$741.85	
76	03 37 16 00-0002			HR	55' To 60' Boom Truck For Concrete Placement (95 CY Per Hour Rating)								$2,555.15
						Quantity		Unit Price		Factor	=	Total	
					Installation	16.00	x	127.87	x	1.2489	=	$2,555.15	
					Concrete pump for slab pour.								

Subtotal for 03 - Concrete **$74,171.28**

22 - Plumbing

77	22 13 16 00-0518			LF	4" Schedule 40 Polyvinyl Chloride (PVC) DWV Pipe								$2,095.72
						Quantity		Unit Price		Factor	=	Total	
					Installation	165.00	x	10.17	x	1.2489	=	$2,095.72	
					Drainage at retaining wall.								
78	22 13 16 00-0518			LF	4" Schedule 40 Polyvinyl Chloride (PVC) DWV Pipe								$3,175.33
						Quantity		Unit Price		Factor	=	Total	
					Installation	250.00	x	10.17	x	1.2489	=	$3,175.33	
					Underslab drainage.								

Subtotal for 22 - Plumbing **$5,271.05**

31 - Earthwork

79	31 05 16 00-0002			CY	#2 Stone Aggregate Fill (1-1/2" To 2-1/2" Clean)								$865.11
						Quantity		Unit Price		Factor	=	Total	
					Installation	15.00	x	46.18	x	1.2489	=	$865.11	
					Stone used for construction entrance.								
80	31 05 16 00-0008			CY	#57 Stone Aggregate Fill (#4 To 1")								$20,894.10
						Quantity		Unit Price		Factor	=	Total	
					Installation	350.00	x	47.80	x	1.2489	=	$20,894.10	
					Stone to be placed against retaining wall for drainage.								
81	31 25 14 26-0004			LF	2' High Silt Fence with Stakes at 6' On Center								$1,368.79
						Quantity		Unit Price		Factor	=	Total	
					Installation	800.00	x	1.37	x	1.2489	=	$1,368.79	
					Erosion and sediment control.								

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

31 - Earthwork

82	31 25 14 26-0017			LF	Removal Of Silt Fence And Stakes								$369.67
						Quantity		Unit Price		Factor	=	Total	
				Installation		800.00	x	0.37	x	1.2489	=	$369.67	
83	31 25 14 26-0024			LF	12" Sediment Log								$1,024.72
						Quantity		Unit Price		Factor	=	Total	
				Installation		150.00	x	5.47	x	1.2489	=	$1,024.72	
					Erosion and sediment control.								

Subtotal for 31 - Earthwork **$24,522.39**

32 - Exterior Improvements

84	32 11 23 16-0004			SF	4" Crushed Aggregate Base Course For Sidewalks								$424.63
						Quantity		Unit Price		Factor	=	Total	
				Installation		400.00	x	0.85	x	1.2489	=	$424.63	
					Crusher run to be installed per the specified depth.								
85	32 11 23 16-0004	0012		MOD	For Up To 1,000, Add								$114.90
						Quantity		Unit Price		Factor	=	Total	
				Installation		400.00	x	0.23	x	1.2489	=	$114.90	
86	32 16 23 00-0003			SF	5" Cast In Place Concrete Sidewalk								$2,897.45
						Quantity		Unit Price		Factor	=	Total	
				Installation		400.00	x	5.80	x	1.2489	=	$2,897.45	
					Sidewalk to be 5" per specifications.								
87	32 16 23 00-0003	0096		MOD	For >100 To 500, Add								$314.72
						Quantity		Unit Price		Factor	=	Total	
				Installation		400.00	x	0.63	x	1.2489	=	$314.72	
88	32 31 13 13-0024			VLF	6" Diameter, Concrete Fill For Post Hole								$2,425.46
						Quantity		Unit Price		Factor	=	Total	
				Installation		238.00	x	8.16	x	1.2489	=	$2,425.46	
					1,020 LF of fencing = 102 post holes. 102 x 28" per hole = 238 VLF								
89	32 31 13 13-0145			LF	4' Galvanized Chain Link Fence, 9 Gauge Coiled Spring Mesh, Top And Bottom Rails, 2-1/2" Line Post At 10' On Center, 3" Corner Post								$7,754.30
						Quantity		Unit Price		Factor	=	Total	
				Installation		290.00	x	21.41	x	1.2489	=	$7,754.30	
					Safety fence.								
90	32 31 13 13-0145	0165		MOD	For 6 Gauge Fabric, Add								$1,644.30
						Quantity		Unit Price		Factor	=	Total	
				Installation		290.00	x	4.54	x	1.2489	=	$1,644.30	
91	32 31 13 13-0149			LF	8' Galvanized Chain Link Fence, 9 Gauge Coiled Spring Mesh, Top And Bottom Rails, 2-1/2" Line Post At 10' On Center, 3" Corner Post								$27,050.05
						Quantity		Unit Price		Factor	=	Total	
				Installation		730.00	x	29.67	x	1.2489	=	$27,050.05	
					Perimeter fence.								

Contractor's Price Proposal - Detail Continues..

Work Order Number: 110887.00
Work Order Title: CUMBERLAND - Splash Pad Project

Proposal Name: CUMBERLAND - Splash Pad Project
Proposal Value: $499,020.91

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

32 - Exterior Improvements

92	32 31 13 13-0149	0165	MOD	For 6 Gauge Fabric, Add		$6,090.14
				Quantity	Unit Price	Factor	Total
			Installation	730.00 x	6.68 x	1.2489 =	$6,090.14
93	32 91 13 26-0013		CY	Backfill Planting Pit By Hand With Topsoil From Stockpile		$6,138.97
				Quantity	Unit Price	Factor	Total
			Installation	150.00 x	32.77 x	1.2489 =	$6,138.97
				Spreading of topsoil.			
94	32 92 19 13-0016		MSF	Tall Fescue, Hydro Or Air Seeding5.5 LB/MSF spread rate.		$379.92
				Quantity	Unit Price	Factor	Total
			Installation	5.00 x	60.84 x	1.2489 =	$379.92

Subtotal for 32 - Exterior Improvements **$55,234.84**

34 - Transportation

95	34 11 93 00-0031		EA	Remove/Dispose Of Concrete Post Footings		$4,745.57
				Quantity	Unit Price	Factor	Total
			Installation	60.00 x	63.33 x	1.2489 =	$4,745.57
				Removal of deck post footings			

Subtotal for 34 - Transportation **$4,745.57**

Proposal Total **$499,020.91**

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

CITY OF
CUMBERLAND
MARYLAND

DEPARTMENT OF ENGINEERING

CONSTITUTION PARK POOL IMPROVEMENTS

SPECIFICATIONS

PROJECT NUMBER

CITY PROJECT NO. 14-21-RE

MAYOR
RAYMOND M. MORRISS

COUNCIL
RICHARD J. CIONI, JR.
EUGENE T. FRAZIER
JOSEPH P. GEORGE
LAURIE P. MARCHINI

CITY ADMINISTRATOR
JEFFREY F. SILKA

CITY ENGINEER
ROBERT L. SMITH, P.E.

DATE PREPARED:

NOVEMBER 2022

MEMBER MARYLAND
MUNICIPAL LEAGUE (MML)

57 N. LIBERTY STREET, CUMBERLAND, MD 21502 www.cumberlandmd.gov
VOICE (301)759-6600 • FAX (301)759-6608 • TDD (800)735-2258

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REQUIRED PROVISIONS

TERMS AND CONDITIONS IN COMPLIANCE WITH FEDERAL REGULATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS.

DEFINITIONS

(a) "Applicant" means any entity seeking assistance for a project including, but not limited to mortgagors, developers, local public bodies, nonprofit or limited dividend sponsors, builders, or property managers.

(b) "Business concerns located within the Section 3 covered project area" means those individuals or firms located within the relevant Section 3 covered project area as determined pursuant to 135.15, listed on the Department's registry on eligible business concern, and which qualify as small under the small business size standards of the Small Business Administration.

(c) "Business concerns owned in substantial part by persons residing in the Section 3 covered project area" means those business concerns which are 51 percent or more owned by persons residing within the relevant Section 3 covered project as determined pursuant to 135.15, owned by persons considered by the Small Business Administration to be socially or economically disadvantaged, listed on the Department's registry of eligible business concerns, and which qualify as small under the small business size standards of the Small Business Administration.

(d) "Contracting party" means any entity which contracts with a contractor for the performance of work in connection with a Section 3 covered projects.

(e) "Contractor" means any entity which performs work in connection with a Section 3 covered project.

(f) "Department" means the Department of Housing and Urban Development.

(g) "Lower Income resident of the area" means any individual who resides with the area of Section 3 covered project and whose family income does not exceed 80 percent of the median income in the Standard Metropolitan States Area (or the country if not within an SMSA) in which the Section 3 covered project is located.

(h) "Political jurisdiction" means a politically organized community with a governing body having general governmental powers.

(i) "Recipient" means any entity who received assistance for a project including but not limited to, mortgagors, developers, local public bodies, nonprofit limited dividend sponsors, builders, or property managers.

(j) "Secretary" means the Secretary of Housing and Urban Development.

(k) "Section 3" means Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u.

(l) "Section 3 clause" means the contract provisions set for the in 135.20 (b).

(m) "Section 3 covered projects" means any nonexempt project assisted by any program administered by the Secretary in which loans, grants, subsidies, or other financial assistance are provided in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities, and new community development (except where the financial assistance available under such program is solely in the form of insurance or guaranty).

(n) Project contracts, and subcontracts, connected with programs administered by the Secretary under Section 235 and 236 of the National Housing Act, as well as any Public Housing program and which do not exceed $500,000 in estimated cost are exempted from the requirements of the part, as is any subcontract of $50,000 or under on such projects or contracts in excess of $500,000.

(o) "Subcontractor" means any entity (other than a person who is an employee of the contractor) which has agreed or arranged with a contractor to undertake a portion of the contractor's obligation or the performance of work in connection with Section 3 covered project.

SUMMARY OF REQUIREMENTS

This is a Community Development Block Grant Project and is subject to the regulations set forth by the United States Department of Housing and Urban Development. In general, these requirements are:

1. Equal Employment Opportunity–Page 7.
   The contractor must agree that he will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The regulation dictates that the Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the Contracting Officer stating provisions of this nondiscrimination clause. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965. An Affirmative Action Plan is required and must be submitted to Labor Relations Office, Department of Community Development not later than fifteen days after the date of the preconstruction conference.

2. Notice of Requirement for Affirmative Action to Insure Equal Employment Opportunity–Page 9.
   Identifies information that must be included in all contracts.

3. Standard Federal Equal Employment Opportunity Construction Contract Specifications – Page 11.
   Explains Contractor's responsibility and goals for minority, female, and handicapped employees.

4. Part 135.70, Development of an Affirmative Action Plan for Section 3 – Page 17.
   States that the Contractor and subcontractors must prepare an Affirmative Action Plan specifically for this section, indicating their intention to utilize eligible businesses within each type of profession involved in the specific contract. The Affirmative Action Plan for Section 3 must be submitted with, and at the time of submission of bid proposal. The City of Cumberland's Plan is available for review in the Labor Relations Office, Department of Community Development, 57 N. Liberty Street, Cumberland, Maryland.

5. Part 24 CFR 135.20 (b), Section 3 Clause – Page 19.
   This clause must be included in all contracts, including subcontractors.

6. Federal Labor Standards Provision – Page 21.
   Requires Contractor to comply with the Davis-Bacon Act, the Anti-Kickback or Copeland Act, and the Contrast Work Hours-Safety Standards Act.

7. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act – Page 26.
   Includes information concerning work-hour accounting and requirement for overtime payments.

8. Certification of Eligibility – Page 26.
   Primary Contractor and subcontractor.

9. Interest of Members, Officers, or Employees of Contractor, Members of Local Governing Body, or other Public Officials, Page 28.
   Contains specific wording regarding conflict of interest.

10. Access to Documents – Page 28.
    Contains language concerning the type of documents involved and the right of access.

11. Preconstruction Conference – Page 28.
    Contains a statement concerning the requirement for a preconstruction conference.

12. Termination of Contract for Cause – Page 28.
    Contains the conditions under which this contract may be terminated for cause.

13. Termination of Contract for Convenience of the City of Cumberland – Page 29.
    Contains details concerning this type of termination.

14. Statement of Compliance – Page 29.
    States the City's position on utilizing minority contractors.

15. Wage Rates – Page 29.
    Contains detailed local rates and fringe benefits applicable to this area for this contract.

16. Compliance with Air and Water Acts – Page 30.
    Lists requirements to be inserted into all contracts and subcontract with respect to any non exempt transaction.

17. Clean Air Act and Federal Water Pollution Control Act Agreement. - Page 38.
    Contractor must agree to comply with these two acts. To be filled in and will be considered part of the contract.

EQUAL EMPLOYMENT OPPORTUNITY

Activities and Contracts Subject to Executive Order 11246, As Amended

Chapter 60 – Office of Federal Compliance Program

Regs. 41 CFR Part 60-1.4(b)

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or as otherwise provided by law.
7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

8. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

Published in Federal Register, Vol. 43, No. 68
Friday, April 7, 1978, Regs. 41 CFR Part 60-4.2(d)

The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to §60–4.6 of this part (see 41 CFR 60–4.2(a)):

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade		**Goal for Female Participation in Each Trade**	
4.8%	11-1-1980 until amended in Federal Register	6.9%	4-1-80 to indefinite, or until amended in the Federal Register

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of

meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60–4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is the City of Cumberland, Allegany County, Maryland.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

§ 60-4.3 Equal opportunity clauses.

1) The equal opportunity clause published at 41 CFR 60–1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60–1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to §60–4.6 of this part and in construction subcontracts in excess of $10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive order.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

a) As used in these specifications:
   i) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
   ii) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
   iii) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
   iv) “Minority” includes:
      (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
      (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
      (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
      (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

b) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

c) If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

d) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project.

The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment,

layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60–3.

xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

xiv) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on

the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor.

The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

k) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

2) The notice set forth in 41 CFR 60–4.2 and the specifications set forth in 41 CFR 60–4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR part 60–4 become effective.

PART 135.70 – DEVELOPMENT OF AN AFFIRMATIVE ACTION PLAN

In developing an affirmative action plan, each applicant, receipt, contractor and subcontractor preparing to undertake work pursuant to a Section 3 covered contract shall:

(a) Set forth the approximate number and dollar value of all contracts proposed to be awarded to all businesses within each category (type of profession) over the duration of the Section 3 covered project in question.
(b) Analyze the information set forth in Paragraph (a) of this section and the availability of eligible business concerns within the project area doing business in professions or occupations identified as needed in Paragraph (a) of this section, and set forth a goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project.
(c) Outline the anticipated program to be used to achieve the goals for each business and/or professional category identified. This program should include but not be limited to the following actions:
    (1) Insertion in the bid documents, if any, of the affirmative action plan of the applicant, recipient, contractor or subcontractor letting the contract; and
    (2) Identification within the bid document, if any, of the applicable Section 3 project area.
(d) Indicate the anticipated process and steps which have been taken and/or will be taken to secure the cooperation of contractors, subcontractors, and unions in meeting the goals and carrying out the affirmative action plan developed pursuant to this subpart.
(e) Take steps to insure that the appropriate business concerns included in the Department's registry for the Section 3 covered project area are notified of pending contractual opportunities either personally or though locally utilized media. All applicants, recipients, contractors, and subcontractors which so notify concerns included in the Department's registry of available contracts and of opportunities to submit bids shall satisfy all requirements of this Part for notification of business concerns located within the Section 3 covered project area and business concerns owned in substantial part by persons residing in the Section 3 covered project area.
(f) Take steps to insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
(g) Where competitive bids are solicited, require the bidders to submit their utilization goals, and their affirmative action plans for accomplishing their goals, and in evaluating each bid, to determine its responsiveness, carefully evaluate the bidders' submission to determine whether the affirmative action plan proposed will accomplish the stated goals.
(h) Where advantageous, seek the assistance of local officials of the Department in preparing and implementing the affirmative action plan.

(i) In implementing its affirmative action plan, each applicant, recipient, contractor or subcontractor shall make a good faith effort to achieve its goal or target number and estimated dollar amount of contracts to be awarded to the eligible businesses and entrepreneurs within each category over the duration of the Section 3 covered project. Each applicant, recipient, contractor or subcontractor seeking to establish that a good faith effort has been made to implement its affirmative action plan, as required by this paragraph, shall as a minimum, set forth evidence acceptable to the Secretary that-it has implemented the steps required by paragraphs (c), (d), (e), and (h) of this section and has ascertained from the Department's Regional Administrator , Area Office Director, or FHA Office Director having jurisdiction over the Section 3 covered project, the boundaries of the Section 3 covered project area, if available, and attempted to recruit from the appropriate areas the necessary eligible business concerns through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Project Area Committees (PAC) in urban renewal areas, Model Opportunities Industrialization Centre (OIC), Urban League, Concentrated Employment Program, or the U.S. Employment Service, as well as the Chamber of Commerce, and any equivalent organizations in the Section 3 covered project area.

§135.38 Section 3 clause.
Department of Housing and Urban Development rules and Regulations 24 CFR 135.38

THIS CLAUSE MUST BE IN ALL CONTRACTS AND MUST BE QUOTED IN THE SPECIFICATIONS.

All section 3 covered contracts shall include the following clause (referred to as the section 3 cause):

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also

applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

FEDERAL LABOR STANDARDS PROVISIONS

Applicability
The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bonafide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 12150140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 12150140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or

working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's

hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as

HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier contractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (and any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in

such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF CONTRACTOR, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

No member, officer, or employee of the City of Cumberland, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Community Development Block Grant Agreement.

ACCESS TO DOCUMENTS

The City of Cumberland or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the contract requirements for the purpose of making audit, examination, excerpts, and transcriptions.

PRECONSTRUCTION CONFERENCE

The City of Cumberland will hold a preconstruction conference with the principal contractor and all available subcontractors to explain the contractors' responsibilities and obligations regarding the labor standards provisions contained in these specifications. The date and location of this conference will be given with the award of the bid.

The preconstruction conference form; which will be given to the contractor at the preconstruction conference, must be returned to the Office of the Coordinator, Community Development Programs, within fifteen days from the date of the conference.

TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, either the Contractor or the City of Cumberland shall fail to fulfill in timely and proper manner his obligations under this contract or if either party shall violate any of the covenants, agreements, or stipulations of the contract, the injured party shall thereupon have the right to terminate this contract by giving written notice to the other party five (5) days before the effective date of termination. In such event, copies of all finished or unfinished material prepared by the Contractor under this contract shall, at the option of the City of Cumberland, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City of Cumberland for damages sustained by the City of Cumberland by virtue of any breach of the contract by the Contractor, and the City of Cumberland may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City of Cumberland from the Contractor is determined.

TERMINATION OF CONTRACT FOR CONVENIENCE OF THE CITY OF CUMBERLAND

The City of Cumberland may terminate this contract at any time by notice in writing from the City of Cumberland to the Contractor. If the contract is terminated by the City of Cumberland as provided herein, the Contractor shall be paid only for the work completed to date of termination.

STATEMENT OF COMPLIANCE CLAUSE

(a) It is the policy of the City of Cumberland, Maryland, to take positive steps to maximize the utilization of minority business enterprises in all contract activity administered under the Community Development Block Grant program.

(b) The Contractor will utilize his best efforts to carry out this policy in the award of his sub-contracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members.

WAGE RATES

The rates of pay for laborers and mechanics employed in construction projects assisted under Title I shall not be less than the wages prevailing in the locality in question, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such laborers and mechanics. Wage rates have to be posted on the job site.

Table 1

For this contract, the wage rates for Highway Construction, published in Federal Register will apply. *See the page immediately following this one for a copy of the Wage Rates at the time of contract bidding.*

"General Decision Number: MD20220011 10/07/2022

Superseded General Decision Number: MD20210011

State: Maryland

Construction Type: Heavy

County: Allegany County in Maryland.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be

adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts.

Modification Number	Publication Date
0	01/07/2022
1	01/28/2022
2	02/25/2022
3	03/11/2022
4	05/13/2022
5	05/20/2022
6	08/05/2022
7	09/02/2022
8	10/07/2022

* CARP0423-019 05/01/2022

	Rates	Fringes
CARPENTER (Form Work Only)	$ 29.40	20.25

ELEC0307-010 05/30/2022

	Rates	Fringes
ELECTRICIAN	$ 36.25	18.73

ENGI0037-017 05/01/2022

	Rates	Fringes
POWER EQUIPMENT OPERATOR: (Bobcat/Skid Loader; Bulldozer; Drill; Excavator; Grader/Blade; Loader; Mechanic; Piledriver)	$ 34.42	15.20+a

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

IRON0568-015 05/01/2022

	Rates	Fringes
IRONWORKER, STRUCTURAL AND REINFORCING	$ 28.46	23.31

LABO0616-007 11/01/2021

	Rates	Fringes
LABORER: Common or General	$ 21.54	21.40

LABO0616-011 11/01/2021

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete	$ 21.54	21.40

TEAM0453-004 05/01/2022

	Rates	Fringes
TRUCK DRIVER: Dump Truck		
10 to 15 yard capacity	$ 24.12	22.33
9 to 10 yard capacity	$ 23.85	22.33
Over 15 yard capacity	$ 24.45	22.33
Under 5 yard capacity	$ 23.10	22.33
TRUCK DRIVER: Lowboy Truck	$ 24.45	22.33

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* SUMD2010-064 07/08/2010

	Rates	Fringes
CARPENTER, Excludes Form Work	$ 19.05	3.77
CEMENT MASON/CONCRETE FINISHER	$ 19.88	4.88
LABORER: Flagger	$ 15.71	8.58
LABORER: Grade Checker	$ 14.62 **	3.08
LABORER: Landscape	$ 22.24	0.00
LABORER: Mason Tender - Brick	$ 15.93	7.83
LABORER: Pipelayer	$ 14.27 **	2.04
OPERATOR: Crane	$ 21.26	7.41
OPERATOR: Gradall	$ 20.50	8.89

OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....$ 17.53 9.07

OPERATOR: Roller.....$ 16.66 0.00

OPERATOR: Trackhoe.....$ 20.47 10.20

PAINTER: Brush, Roller, Spray and Steel.....$ 24.32 6.91

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($15.00) or 13658 ($11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request

review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

COMPLIANCE WITH AIR AND WATER ACTS

The Community Development Block Grant Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857, et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251, et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended form time to time.

In compliance with said regulations, the City of Cumberland shall cause or require to be inserted in full in all contracts and subcontracts with respect to any nonexempt transaction there under funded with assistance provided under the Community Development Block Grant Agreement, the following requirements:

(1) A stipulation by the contractor of subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
(2) Agreement by the contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Act, as amended (33USC 1318) relating to inspection, monitoring, entry, reports, and information as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
(3) A stipulation that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
(4) Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under the Community Development Block Grant Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113 (c) (1) of the Clean Air Act or Section 309 (c) of the Federal Water Pollution Control Act.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT AGREEMENT

Contact Name and Number_____

_____

I/We agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C.).

_____
Contractor

_____
Signature

_____
Date

ITEM QUANTITY ESTIMATE (CONFIRM IN FIELD)

ITEM NO.	ITEM	UNITS	QTY
1	Mobilization	LS	1
2	Removal of Wooden Deck	LS	1
3	Site Excavation	CY	550
4	Concrete Cast-In-Place Retaining Wall	SF	640
5	8’ Chain Link Exterior Fence	LF	730
6	4’ Chain Link Safety Fence	LF	290
7	Repair Concrete Retaining Wall	LS	1
8	5” Reinforced Concrete Slab	SF	3,800
9	5” Reinforced Sidewalk	SF	400

CONTRACT DURATION

The Contractor further covenants and agrees that the work shall be satisfactorily completed in **ONE-HUNDRED EIGHTY (180) Calendar Days** after the **written notice to proceed**. Failure to do so may result in early termination of contract.

GENERAL PROVISIONS

Familiarity with Laws

The proposer is assumed to be familiar with all Federal, State and Local and Municipal Laws and Regulations affecting the contract and the work and those engaged in it and in any way concerned in it. Ignorance shall be no reason for submitting a proposal whose execution, as proposed, would violate any such laws and regulations.

If the prospective proposer discovers any legal discrepancies in the contract documents, he shall at once notify the Engineer in writing and the consequent correction shall be the subject of an Addendum.

If the Contractor makes such a discovery after the contract award whereby the consequent correction affects a difference in the cost of materials or construction, the matter is to be treated like other changes in the work, due to other causes.

Performance Bond Requirements

An acceptable security for Performance Bond shall be as stated in COMARS 21.06.07.10.

A. Performance Bonds

A Performance Bond is required for all construction contracts in the amount equal to at least 100% of the Contract price. The Performance Bond shall be delivered by the proposer to the City of Cumberland no later than the time the Contract is executed.

Liability Insurance

Prior to the commencement of work, the Contractor shall submit to the City of Cumberland a Certificate of Insurance indicating that he carries:

- Commercial General Liability Insurance policy limits shall be not less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal Injury Liability of $1,000,000 per occurrence and $2,000,000 aggregate
- Commercial Auto Liability Insurance policy limits shall be not less than a Combined Single Limit of $1,000,000
- Commercial Excess Liability Insurance policy limits shall be not less than a $1,000,000
- Commercial Workers Compensation- Statutory.

Such insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted.

The insurance policy will name the **"Mayor and City Council of Cumberland"** as an additional insured and will include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance notice of its cancellation.

There will be no special payment for said insurance.

CONTROL OF WORK

Authority of Engineer

The Engineer (see Definitions) shall decide any questions as to acceptability of materials, methods and performance, rate of progress, sequence of operations and fulfillment of contractual obligations of any sort; also as to interpretation of plans and specifications and alterations thereto. He shall determine the quantity of the several kinds of work performed and materials used, to be paid for under the contract, and the amounts due to the Contractor for such work and material, and his estimate shall be precedent to the issuance of any certification for payment or payments under the contract. He shall have executive authority to enforce and make effective any such decisions as the Contractor may fail to perform.

Coordination of Plans and Specifications

In the case of any discrepancy between the plans and the specifications, the plans are to govern. If there is a discrepancy between these standard specifications and supplemental specifications, the supplemental specifications are to govern. Special provisions shall govern over specifications, supplemental specifications and plans.

In case of discrepancy between the Special Provisions and all other provisions contained in this contract, the Engineer shall be the sole authority as to the proper interpretation.

Change in Scope of Work

Should there be any changes in the scope of work not covered by contingent quantities or other provisions in the contract documents, those changes and the costs resulting there from must be itemized and submitted on the Authorization for Change In Work (ACIW) form, available from the Engineer or his authorized representative Generally, this involves additions to the scope of work, or to revised conditions under which the work will be completed, but can also include changes that result in reductions in cost. The Contractor must complete and submit this form to the Inspector or authorized representative of the City **prior to** commencing the added work, or continuing the work under the revised conditions. The City may opt to accumulate the approved ACIWs prior to issuance of a change order, depending on the nature of the change. Failure to submit a completed ACIW in a timely fashion will result in no change order and no additional compensation to the Contractor. The same applies to changes that result in reduced costs. In the case of an emergency, the Contractor and Inspector or authorized representative can document the conditions, in writing, including the agreed-upon course of action, and the Contractor must follow-up with a submittal of an ACIW within 24 hours, or one business day.

Removal of Rejected Material

Material rejected for defects or on account of unauthorized work shall be removed and disposed of, promptly after notification, at the Contractor's expense. If not so done, the Engineer may cause its removal, and charge the cost against the Contractor's account.

Hold Harmless Agreement

The Contractor shall indemnify and save harmless the Mayor and City Council of Cumberland, Maryland, from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Contractor, his agent, or employees, in the execution of the work or in the consequence of any negligence or carelessness in guarding the same.

PAYMENT

Scope of Payment

The Contractor shall accept the compensation as herein provided, as full payment for furnishing all labor, tools, equipment, accessories, supervision, and management necessary to the completed work and for performing all work contemplated under the Contract; also, for all loss or damage arising from the nature of the work or from the action of the elements or other unforeseen causes during the prosecution of the work until its final acceptance; also, for infringement of patents and for any expense incurred from suspension or discontinuance of the work, all as herein specified. No payment will be made for unauthorized work.

Partial Payments

Partial payments may be made monthly if the work performed, accepted, and certified for such payments amounts to more than $500.00 net. Not less than 10% of the gross amount shall be retained by the City until final payment. Partial payment will be approximate only, and shall be corrected in final estimate, acceptance, and payment. Partial payments may be withheld in whole or in part, at the discretion of the Engineer.

Retainage

For each partial payment the City will withhold funds at the following rate, based on the awarded contract amounts:

- For this contract, 10% of each partial payment with a maximum retainage cap of 5% the total contract value, including changes to the contract by approved change order.

Said retainage will not be released by the City until final payment (unless partially released in a semi final payment, at the approval of the Engineer).

Payment Allowance for Materials

When the Contractor requests payment allowance for material, as part of a partial payment, the following terms and conditions shall apply:

1. For reinforcement steel, piling, pipe, traffic barrier, signs and sign assemblies, and other nonperishable material in storage on the project, but excluding aggregates, cement, seed, plants, fertilizer, or other perishable items, an allowance of 100 percent of the invoiced cost of the material plus freight charges to the Contractor may be made provided the cost does not

exceed 90 percent of the Contract price of the applicable Contract item. Such material shall be delivered and stock-piled at the project site after being tested by the City and found to have conformed to the Specifications or to have been accepted under an approved certification program prior to the allowance.

2. No allowance will be made for fuels, form lumber, falsework, temporary structures, or other materials of any kind that will not become an integral part of the finished construction. No payment for stored material will be made if it is anticipated that the material will be incorporated into the work within 30 days of the written request. Only end product manufactured material or fully fabricated products that are awaiting installation or incorporation into the finished work are eligible for prepayment. Components, elements, or ingredients of a finished product are not eligible for prepayment.
3. Material for which an allowance is requested shall be stored in an approved manner within the area designated and/or approved by the City of Cumberland, Maryland where damage is not likely to occur. If any of the stored materials are lost or become damaged in any manner, the Contractor shall be responsible for repairing or replacing the damaged materials. The value of the lost or damaged material will be deducted from the Contractor's subsequent estimates until replacement has been accomplished. The request for allowances for any materials stored on private property within the area designated and/or approved by the City of Cumberland, Maryland shall be accompanied by a release from the owner and/or tenant of such property agreeing to permit the removal of the materials from the property at no cost to the City. The material shall be clearly marked with the City's Contract Number on individual units. If the material is normally shipped to the project in bundles or other forms of packaging, the City's Contract Number shall be clearly marked or affixed to the package. When the material is not stored at the actual project site, the material shall be physically separated by fencing or equivalent barrier from other materials stored at the same site. The material shall be accessible to the City at all times. When it is considered impractical to store materials on the actual project, the Engineer may approve storage areas in the vicinity of the actual project, which will be considered at the project site. When storage of the materials within the area designated and/or approved by the City of Cumberland, Maryland is not practical, approval shall be obtained from the City Engineer for storage elsewhere. Storage of materials outside the area designated and/or approved by the City of Cumberland, Maryland will be subject to the conditions set forth in this provision and limited to materials exceeding $25 000, which are designed and fabricated exclusively for use on a specific project.
4. Material, for which payment has been made, either wholly or partially, shall not be removed from the approved location until such time that it is to be incorporated into the work unless authorized by the Engineer.
5. The Contractor shall submit a written request for payment to the City Engineer at least two weeks prior to the estimate cutoff date established by the City Engineer. The following items shall accompany the written request for payment:
    a. Consent of surety specifying the material type and the items in which the material is to be used.

b. Validated invoices with the signature of an officer of the company supplying the material showing actual cost.
c. A notarized statement attesting that the invoices as submitted do not include charges or fees for placing, handling, erecting, or any other charges or markups other than the actual material cost, sales tax if applicable, and freight charges.
d. Bills of lading showing delivery of the material. The request for allowances for any materials stored on property outside the area designated and/or approved by the City of Cumberland, Maryland shall be accompanied by a release from the owner or tenant of such property agreeing to permit verification by the Inspector that the material is stored at the approved location, and to permit the removal of the materials from the property at no cost to the City.
e. Inspection test reports, certifications and/or a written statement from the Inspector attesting to the inspection and approval of the material.
f. A statement explaining why the material cannot be stored on the project, if the Contractor is requesting to store material at a location other than the project site. The statement shall include the methods of storage, separation, and identification to be used by the Contractor. The Contractor shall provide a method of inventory control and withdrawal satisfactory to the City, which shall be used by the Contractor to monitor materials not stored on the project.
g. A breakdown of the Contract line-item bid unit price showing the relationship of the cost of the stored material to the costs of all other materials, labor, and components of the work included in the Contract line-item unit price bid by the Contractor. Upon receipt of the above by the City Engineer and verification by the Inspector that the material is stored at the approved location, the City Engineer will authorize payment.

The Contractor shall pay the material provider the amount shown on the invoice within 10 days of receipt of payment from the City. Evidence of payment shall be provided to the City. Failure to make invoice payments as specified will be cause to deduct the monies from future estimates and/or deny future stored materials payment requests. Copies of all pertinent data shall be made by the Contractor and distributed to the Inspector for retention as part of the documented records for the project.

Final Payment

Before authorizing final payment, the Engineer shall make a final inspection of the whole work, a final survey, and a computation of final quantities, and shall certify to the City the acceptability and completion of the work and shall submit to the City the final estimate, showing the amount of each item of work performed, or materials in place and the value thereof. After the City has approved this final estimate and accepted the work as completed, it shall notify both Contractor and Surety that the work has been accepted, and shall pay to the Contractor or his Surety the net amount finally due under the Contract; but only after the Contractor has in writing accepted such payment as full and complete satisfaction of all his claims against the City under this Contract, and has submitted final waiver of liens.

WORKMEN'S COMPENSATION PROGRAM (State Accident Fund)

The Contractor agrees to maintain in full force and effect during the term of this Contract, Workmen's Compensation Insurance as required by the Labor and Employment Article of the Annotated Code of Maryland. The Contractor further agrees to provide a Certificate of Insurance from the Contractor's insurance carrier to the City of Cumberland which shall specifically set forth the name and address of the insured, the insurance carrier, the policy number and its effective date. Said coverage shall not be cancelled or modified, nor shall there be any change in the insurance carrier without ten days prior written notice being given to the City of Cumberland. If there be such a change in the insurance carrier, the Contractors shall provide a new Certificate of Insurance as required above.

SPECIAL PROVISIONS

PLANS AND SPECIFICATIONS

All work is to be completed in accordance with the plans and specifications, which are a part of the Contract included in this document.

The plans and specifications are intended to cover a complete project. It should be distinctly understood that failure to mention any incidental and/or necessary related work that would be required to complete the items of work included in this Contract shall not relieve the Contractor of his responsibility to perform such work.

When referred to in the Special Provisions, the MDOT SHA Specifications are the "Maryland Department of Transportation State Highway Administration's Standard Specifications for Construction and Materials" dated July 2021, and the revisions thereof, or additions thereto.

The City of Cumberland's Special Provisions shall override the Maryland Department of Transportation State Highway Administration's Special Provisions, included in this document, if there is a discrepancy between the two.

In case of discrepancy between the Special Provisions and all other provisions contained in this Contract, the Engineer shall be the sole authority as to the proper interpretation.

SUBMITTALS

The contractor shall submit a list of all major materials including catalog cut sheets or shop drawings of items to be used on this project for City review and approval. A list of items requiring submittals and number of copies shall be discussed at the preconstruction meeting.

PRE-CONSTRUCTION CONFERENCE

A Pre-construction Conference will be held between representatives of the City Engineering Department, the contractor, and other interested parties at a time and place to be named later.

The purpose of this Conference will be to explain the Terms and Conditions for this project and to discuss the schedule of construction.

RESPONSIBILITY FOR QUALITY AND COMPLETENESS

The Contract plans and specifications are intended to cover a complete project. The project is broken down into unit prices for payment purposes.

It is the Contractor's responsibility to ascertain the work required to properly complete an item of work, and to include said costs in the unit prices that are bid for that work.

It is also the Contractor's responsibility to provide a quality product to the Owner. All materials and workmanship must not only meet specifications, but must be in accordance with normally acceptable practices.

The City of Cumberland reserves the right to add to or delete from the estimated quantities of work for any of the bid items so that the project meets the allowable budget. Such additions or deletions shall not affect the unit prices bid.

BLANKET WORKMANSHIP AND MATERIALS WARRANTY

A. In addition to any other warranties at law or set out elsewhere in this Contract, the Contractor warrants for one year after final acceptance of the work, that work performed under this Contract conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. With respect to any part of the work which the City takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the City takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to City owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

B. The City shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

C. Should the Contractor fail to remedy any failure, defect, or damage described in A. above within a reasonable time after receipt of notice thereof, the City shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

D. In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the City, be enforced by the Contractor for the benefit of the City. In such case if the Contractor's warranty under A. above has expired, any suit directed by the City to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the City. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

E. If directed by the procurement officer, the Contractor shall require any such warranties to be executed in writing to the City.

F. Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair or any defects of material or design furnished by the City nor for the repair of any damage which results from any such defect in City furnished material or design.

G. The warranty specified herein shall not limit the City's rights under other provisions included in this contract.

PUBLIC AND CITY-OWNED UTILITIES

The Contractor's attention is directed to the requirements of Section GP-7.17 of the MODT SHA Specifications.

All utility companies will be advised by the Contractor of the work proposed under this Contract and of the necessary adjustments to their respective installations. The Contractor shall communicate with all utility companies at least 14 days in advance before commencing any work in areas where utilities are located. The utility owners shall perform all adjustments to utilities other than those specifically included in the proposal.

The Contractor shall be on the alert for any additional utilities, which he may encounter in the course of the operations. If additional utilities are discovered, the Contractor shall immediately take steps to protect the utility and notify the Engineer and the utility owner.

In the case of damage to any utilities by the Contractor, either above or below the ground, the Contractor shall restore such utilities to a condition equal to that existing before the damage was done. Any and all costs incurred for such restoration shall be borne entirely by the Contractor.

If it is deemed necessary by the Engineer, the Contractor may be required by means of a "Stop Order" to suspend all or part of his construction operations in order to facilitate the construction or adjustment of utilities.

The Contractor may be allowed by written instructions from the Engineer to perform work during this "Stop Order" period, so long as the work does not in any way interfere with the work by the utility companies.

The Contractor shall take into consideration the adjustment of installations by public utilities in areas within the limits of this Contract in preparing his proposal. No additional compensation will be allowed for work interruptions, changes in construction sequences, changes in handling, excavation, drainage and paving, changes in types of equipment used, etc. caused by others performing work within the limits of the Contract.

STANDARD DETAILS

Unless shown otherwise on the plans or in these special provisions, the standard details shall be those of MDOT SHA, entitled "Book of Standards for Highway and Incidental Structures". The Contractor will be responsible for ensuring that the Standard Plates in his possession shall be the latest Standard Plates up to and including the date of advertisement.

The Book of Standards for Highway and Incidental Structures is now available only on the Administration's Internet Site at www.roads.maryland.gov. The Book of Standards can be located by clicking on Business; Business Standards and Specifications; Manuals, Standards and Publications; and Book of Standards for Highway and Incidental Structures.

EROSION AND SEDIMENT CONTROL

The Contractor shall develop, submit and obtain approval, from all agencies and the engineer, for the erosion and sediment pollution control plan prior to start of work. The Contractor shall be fully responsible to provide adequate erosion and sediment control for all work. The erosion and sediment control features installed by the Contractor shall be maintained by the Contractor for the duration of the Contract.

This item will not be measured and will not be directly paid for but will be considered as incidental to and included in the other bid items of the Contract.

ACTIVITIES CHART

DESCRIPTION

Plan, schedule, and construct the project using an Activities Chart (AC). The AC shall break down into detail the Contract time required to perform the work activities for the duration of the project. Use the AC for coordinating and monitoring the work specified in the Contract Documents including activities of subcontractors, vendors, suppliers, utilities, railroads, and other parties associated with the construction of the Contract.

Initial Activities Chart Project Schedule (IAC). The IAC shall consist of:

(a) A chronologically sequenced bar chart in which work activity durations shall be represented by working days, days, or completion date as specified in the Invitation for Bids (IFB).

(b) A Written Narrative (WN) describing the original sequence of work, number of shifts per day, number of hours per shift, number and composition of crews, and the equipment to be utilized on each work activity. List subcontracting activities.

Expend the entire Contract time specified in the IFB.

The Engineer reserves the right to specify the number of activities and require additional breakdown of the activities at any time.

Complete the proposed IAC within 14 days after receiving the Notice of Award. The Engineer will review the IAC within 30 days after receipt. If required, a Joint Review Conference will be convened at which time the Engineer and Contractor may make corrections and adjustments to the IAC. Submit revisions to the IAC due to the Engineer's review or the Joint Review Conference within seven days from the date of the review for another review. Submit the revisions in the format used in the IAC. The Engineer will respond to the revised IAC within seven days after receipt.

Do not begin construction work until the IAC is accepted.

Time charges shall begin no later than the on or before date of the Notice to Proceed. Any delay in starting work caused by the acceptance of the IAC by the Engineer will not be a basis for any monetary claim. The City may consider a noncompensable Contract time extension, if warranted.

Upon notification that the IAC is accepted, that document will become the AC of Record (ACR). The ACR shall be the work plan for completing the entire Contract as specified in the Contract Documents.

Failure to adhere to the latest approved ACR will be cause for the City to deny requests for additional compensation or extensions of the Contract duration.

Revisions to the ACR. Revisions shall consist of one or a combination of the following:

(a) A change in the duration of an activity.
(b) A change in the logic of the schedule.
(c) The deletion or addition of one or more activities.

Proposed revisions to the ACR may be submitted at any time during the life of the Contract.

Submit a proposed revision whenever the activities differ from the accepted ACR. Submit the revision in the same format used for the IAC and within 30 days from the date on which activities deviated from the accepted ACR. Include data from all ACR Updates that have been accepted by the City. The WN accompanying the revisions shall describe the reason for the revision, the interdependence of the work activities, and all duration modifications to the ACR. These shall include, but not be limited to, changes in the method or manner of the work, changes in Specifications, addition or deletion of work, increased or decreased quantities, defective work, and acceleration of the work.

The Engineer will review the ACR and respond to the proposed revision within 30 days after receipt. The City reserves the right to deny any proposed revision that adversely impacts the City, utilities, or other interested parties.

ACR Updates. Submit monthly updates of the ACR. Submit updates in the same format as the IAC. Describe the progress of the project to date. Include a description of the current work, any delays or disruptions experienced during the period of the update, any change in manpower or equipment, the inclusion of any schedule revisions, and any potential delays or disruptions.

When a delay or disruption to the work identified in the ACR Update is believed to be the responsibility of the City, submit a revision to the ACR within 30 days after the submittal of the update.

Monthly Job Site Progress Meetings. The City and the Contractor shall hold monthly job site progress meetings to discuss the progress of the project and update the ACR. Arrange to have a representative of each subcontractor currently working on the project in attendance. Submit the ACR updates within 14 days from the date of the monthly meeting. The Engineer will review the update and advise the Contractor of its acceptability prior to the next monthly meeting.

Extensions of Contract Time. Any written request for an extension of time shall be accompanied by a revised ACR documenting the actual delay to the Contract completion date. Include a WN of the events necessitating the extension of the Contract time. Only delays to activities that affect the Contract completion date will be considered for a time extension.

Additional requirements by the City of Cumberland, Maryland

- Bar charts must be prepared in Microsoft Excel, and Written Narratives must be prepared in Microsoft Word. Google Sheets and Google Docs may be used in place of Microsoft Excel and Word, only if the Contractors written request for the software change is approved by the Engineer.
- The Initial Activities Chart Project Schedule (IAC), the Activities Chart of Record (ACR), and the Revisions to the ACR must be submitted as follows:
    - One electronic copy prepared in the Microsoft Office (version 2007) programs listed above; or the Google software listed above, if approved.
    - One Adobe PDF format file for each Excel and Word file, or compatible Google file if approved.
    - One printed copy.

  NOTE: All electronic files: Excel, Word, PDF, etc, must have the City of Cumberland Project Number and the submission date in the file name.

MATERIALS.

Not applicable.

CONSTRUCTION.

Not applicable.

MEASUREMENT AND PAYMENT.

Activities chart project schedule will not be measured but the cost to develop, prepare, write, record, meetings, revise, update and all incidentals necessary to complete the work will be included in the other pay items specified in the Contract Documents.

EXTENSIONS OF THE CONTRACT

The City will not allow any request for an extension of the contract time except in the case of weather-related delays.

TESTING OF MATERIALS

DESCRIPTION

All materials shall be tested in accordance with MDOT SHA Specifications dated 7/1/2021, as amended, unless otherwise stated in the Special Provisions.

MATERIALS AND CONSTRUCTION REQUIREMENTS

Bituminous Concrete Pavement

The Contractor will provide the testing of the Bituminous Concrete Pavement. The Testing and Sampling, Density Requirements, and Surface Tolerances shall be in accordance with MDOT SHA Specifications Section 504.

Concrete

Concrete cylinder tests will be taken for each day's pour for each structure and at least one test for each fifty (50) cubic yards of concrete or fraction thereof in the job. On curb and sidewalk projects, tests shall be done for approximately every 1,500 square feet of curb and sidewalk. Each test shall consist of at least three (3) cylinders. The Engineer shall have the authority to request additional tests or designate which batch shall be sampled.

All tests must be done by a lab acceptable to the City. The Contractor shall be responsible for making cylinders, documenting location of pour and delivery to the lab. The making of the cylinders shall include the collection of all information or performing other related tests as necessary to complete the Portland Cement Concrete Test Form (OMT85). These other related tests shall include, but not limited to, slum test, air content test, and temperature test.

Test results shall be sent to the City of Cumberland Engineering Department. The City reserves the right to be present during making and testing of the cylinders.

MEASUREMENT AND PAYMENT

Testing will not be paid as a separate item, but payment shall be included in other bid items.

NOTE TO CONTRACTOR:

As a quality control measure, the Contractor shall supply nuclear density tests or core sample tests in accordance with appropriate MDOT SHA Specifications and these contract documents. Test reports shall be submitted to the Engineer in writing.

The City reserves the right to contract with a third party or to take its own samples to assure quality control in adherence to the contract requirements.

ESTIMATED QUANTITIES

The quantities appearing in the prepared bid schedule are approximate only and are prepared for the canvassing of bids. It is understood that these schedules, quantities of work to be done, and materials to be furnished, may each be increased, diminished, or omitted, by the direction of the Engineer to maintain an allowable budget, without in any way invalidating prices bid. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the Contract. The City reserves the right to diminish or delete quantities included in biddable items.

SALVAGE RIGHTS

The City of Cumberland retains salvage rights to the following items, which are to be removed and not reused in the construction of this project:

- Manhole/Inlet frames and covers.
- Slotted drainpipe or other drainage pipe.
- Other abandoned City-owned utility vaults or covers.
- Traffic signs, posts, signals, etc.
- Traffic barriers, or “Guardrails”, and posts.
- Street name signs and post
- Planters

It shall be the Contractor’s responsibility to remove all salvageable items with reasonable care to avoid excess damage to these items such that it renders them unusable by the City.

The Contractor shall deliver all salvageable items to the appropriate City storage facility as directed by the Engineer.

NO SALVAGE IS EXPECTED IN THIS PROJECT.

ROCK CLAUSE

The Contractor shall consider all earthwork excavation as unclassified. No additional compensation will be paid for rock excavation and disposal. Blasting will not be allowed except with written permission of the City Engineer.

ITEM PROVISIONS

1 – MOBILIZATION

DESCRIPTION

This Work shall be for all construction preparatory operations that includes movement of personnel and equipment to the project site.

MATERIALS

Not applicable.

CONSTRUCTION REQUIREMENTS

Not applicable.

MEASUREMENT OF PAYMENT

Mobilization will not be measured but will be paid for at the Contract lump sum price. The cost of all required insurance will be incidental to the Mobilization item. The payment will be full compensation for all material, labor, equipment, tools, and incidentals necessary to complete the work.

2 – DEMOLISH WOODEN DECK

DESCRIPTION

The Work covered under this section shall consist of the removal of the existing wooden deck and associated framework and foundations, as shown on the plans.

MATERIALS

Not applicable.

CONSTRUCTION REQUIREMENTS

Protect from damage all portions of the existing facility scheduled to remain, including but not limited to the pool, pool deck, slide structure, and roadway.

All demolished materials shall be removed from the site and properly disposed of in an off-site location.

MEASUREMENT OF PAYMENT

The demolition of the wooden deck will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for all material, labor, equipment, tools, and incidentals necessary to complete the work.

3 – SITE EXCAVATION

DESCRIPTION

The Work covered under this section shall consist of excavating for the concrete pad in areas shown on the plans.

MATERIALS

Not applicable.

Replace any over-excavated areas with clean excavated fill that is free from organic material, concrete, asphalt, or other deleterious material.

CONSTRUCTION REQUIREMENTS

Survey the existing pool deck and establish exact elevations at fixed points to act as benchmarks for excavation.

Contact Miss Utility prior to excavation. Locate, identify, and protect any utilities in the excavation area. Contractor shall coordinate with the City to relocate existing water lines and chemical feed lines that are found in the excavation area.

Protect existing structures, fences, pavement, concrete, and equipment not in the excavation area from excavation equipment and operations. When excavation operations are being conducted near the existing roadway, erect temporary protective barriers.

Excavate area under existing slide down to top of foundations. Retain existing gravel from excavation and re-place a minimum of 2 inches of clean gravel in areas not to receive concrete pad. Add new gravel as needed to attain required depth.

Excavate to the length, width, and depth to safely install and remove any forms, bracing, or supports necessary for the installation of other items (i.e. concrete pad, retaining wall, etc.). Coordinate retaining wall installation with excavation work where necessary.

If upon attaining surveyed excavation depths, and all debris (i.e. organic material, concrete, asphalt, loose fill) has not yet been removed from the site, over-excavate the area until all debris is removed. Replace the over-excavated area with clean excavated fill as stated in the Materials section.

Divert surface flow from rains or water discharges from the excavation. Protect open excavations from rainfall and runoff so as to maintain a subgrade that is satisfactory.

MEASUREMENT OF PAYMENT

Measurement and payment shall be on a cubic yard basis. The payment will be full compensation for all excavation, as well as hauling and disposing of all spoils. Measurement shall be rounded to the nearest whole cubic yard.

Elevation surveying and maintaining of all benchmarks shall be incidental to this item.

4 – CONCRETE CAST-IN-PLACE RETAINING WALL

DESCRIPTION

The Work covered under this section shall consist of furnishing and constructing concrete cast-in-place retaining wall in reasonably close conformity with the lines, grades, design, and dimensions shown on the plans. Work shall include the preparation of subgrade soils and furnishing and installing a granular leveling pad and drainage backfill.

MATERIALS

Portland Cement Concrete

- Shall conform to MDOT SHA Standard Specification Section 902.10, Mix No. 3.

Reinforcing Steel

- Epoxy-coated, and conforming to ASTM A 615 Grade 60.
- Shall conform to MDOT SHA Standard Specification Section 908.02.
- Bars shall be the sizes and spacings specified on the detail.
- All bar lap splices shall be 24” minimum.

Post-Installed Concrete Anchoring System

- Shall consist of the following components:
    - Anchoring adhesive rated for vertical installation, with a minimum 14-day bond strength of 3,000 psi.
    - #4 Epoxy-coated steel reinforcement bars, conforming to the requirements listed in this section
- The specified product shall be Hilti HIT-RE 100 Adhesive Anchoring System, or approved equal.

Granular Backfill

- No. 57 Aggregate

Drainage Pipe

- 4” Perforated Schedule 40 PVC Pipe (and fittings)

Preformed Joint Filler

- Thickness: ½”
- Shall conform to MDOT SHA Standard Specification Section 911.02.

CONSTRUCTION REQUIREMENTS

Submittals

Contractor shall submit all concrete mix designs and concrete batch tickets.

General

Concrete cast-in-place retaining wall shall be formed, reinforced, cast, cured, and finished in accordance with MDOT SHA Standard Specifications 420 and 450, and in accordance with the drawings and details.

The new wall shall be doweled into the existing wall at the terminating end next to the baby pool. Contractor shall follow concrete anchoring system manufacturer's specifications for installation of anchors into existing wall, including required anchor depths and curing times.

Ensure interior of formwork is clean of all water, debris, and other foreign material prior to placement of concrete. Obtain approval from Engineer before placing concrete.

Provide provisions for cold weather placement of concrete, as needed. Follow recommendations of ACI 306R.

All corners and edges shall be installed with a 1" chamfered edge.

Place expansion joints where specified or as directed. Ensure that all joints in footers and walls align.

Cure and protect the concrete as specified in MDOT SHA Standard Specification Section 420. After removal of forms, immediately repair all honeycombed and damaged areas by the grout-cleaning method: "Wet the surface and apply grout consisting of 1 part (by volume) Portland Cement and 1-1/2 parts of sand meeting the requirements of ASTM C144 or ASTM C404, with sufficient water to produce the consistency of thick paint. Match color of surrounding concrete. Scrub grout into voids, and remove excess grout (ACI 301-10 5.3.3.4)."

Place granular backfill behind wall, to the limits shown on the details.

MEASUREMENT OF PAYMENT

Measurement and payment shall be on a LINEAR FOOT basis, and shall be full compensation for all material, labor, tools and incidentals required to complete the work.

5 – 8' CHAIN LINK EXTERIOR FENCE

DESCRIPTION

The Work covered under this section shall consist of providing all labor and material required to replace the chain link security fence in locations shown on the plans and in accordance with this section.

MATERIALS

Refer to MD SHA Standard Specifications Section 914.

A. Steel Chain Link Fencing Fabric
    a. Fabric shall be 2-inch mesh woven from zinc-coated No. 6 gauge wire.
    b. The ends shall have a knuckled selvage at the bottom and a barbed selvage at the top.
    c. Fabric shall conform to AASHTO M181, Type 1 (Standard Specification for Chain Link Fence).
B. Tie Wires, Line Post Clips, Tension Wires, and Tension Wire Clips
    a. All listed items shall conform to AASHTO M181, Type 1.
    b. Zinc coating shall be Class 1 (a minimum weight of 1.2 oz/ft^2).
    c. Refer to project drawings for typical placement of items.
C. Posts, Braces, Fittings, and Hardware
    a. All posts shall be zinc coated.
    b. Line posts shall be round Schedule 40, with a 2.375" OD
    c. Terminal/corner posts shall be round Schedule 40, with a 2.875" OD
    d. Longitudinal rails and brace rails shall be round Schedule 40, with a 1.66" OD
    e. Maximum spacing between posts shall be 10'-0".
    f. Line posts shall be fitted with weathertight loop caps for top rail installation.
D. Privacy Screen
    a. Height: 4' (bottom half of fence)
    b. Material: Polypropylene with UV inhibitors
    c. Brass grommets for fence attachment
    d. Minimum life expectancy: 8 years
E. Concrete
    a. Concrete for post footings shall have a minimum 28-day compressive strength of 2,500 psi.
    b. Concrete patch material for

CONSTRUCTION REQUIREMENTS

Refer to MD SHA Standard Specifications Section 607 and ASTM F567.

A. Demolition and Clearing
    a. Remove existing fence fabric.
    b. For sections of existing fence installed in concrete deck, sawcut posts at deck level and grind post down below grade. Fill to surface with approved concrete patch material.

c. For section of existing fence installed in soil or asphalt, remove posts and concrete foundations entirely. Fill in post holes to surface with approved backfill.
d. Where needed, clear, grub, and remove all debris for replacement fence. Clear and grub a minimum distance of 6 inches on either side of the fence line.

B. Anchorage for Posts
a. All post holes shall have a minimum depth of 28 inches.
b. Place posts in the center of concrete footings. Thoroughly compact the concrete around the post by rodding or vibrating. Trowel the top surface to a smooth finish slightly above the groundline and uniformly sloped to drain away from the post. Do not disturb the post within the 72 hours after the individual post footing is completed.
c. For posts installed in existing concrete pool deck: Use a concrete saw to cut an 8-inch square hole through concrete deck. Once through concrete, post may be installed in same manner as above. Trowel the top surface to a smooth finish, matching existing pool deck grade.

C. General Installation Requirements
a. Install new fence as shown on the plans. Fence alignment on the plans is only a guide. The exact location of the fence will be determined in the field by the Engineer.
b. In locations adjacent to a retaining wall, install new fence behind (above) retaining wall.
i. In areas of new wall construction, install fence posts into pre-installed rigid sleeves (see Item 4) located behind wall. Follow retaining wall block and fence manufacturer's recommendations for post installation
ii. In areas of existing concrete retaining wall (adjacent to baby pool), install posts a minimum of 12" from front face of wall. Take additional precaution to not damage existing wall in these locations (geogrid is not anticipated to be encountered).
c. Install all posts plumb.
d. Use posts lengths that accommodate the fabricated width of the fence fabric without stretching or compressing the fabric and that provide the required spacing below the bottom of the fabric.
e. Install terminal posts at all ends, abrupt changes in grade, and at changes in horizontal alignment greater than 15 degrees. Install terminal posts at a spacing not to exceed 500 LF.
f. Install fence with a top rail and bottom tension wire.
g. Install horizontal brace rails with diagonal truss rods and turn buckles at all terminal posts. Supply sufficient braces to provide complete bracing of each terminal post to the adjacent line posts.
h. Install the proper weathertight post caps on all round line, terminal, and corner posts.
i. Place the bottom of the fabric approximately 1 inch above the groundline. A maximum clearance of 3 inches will be permitted for a maximum horizontal distance of 8 feet.
j. Run a tension wire continuously between terminal posts near the top and bottom of the fabric. Attach the wire to the fabric with hog ring fasteners at 18 in. intervals.

k. Tie the fabric to the brace rails at intervals not exceeding 2 ft and to posts at intervals not exceeding 12 inches. Attach stretcher bars to terminal posts by connectors equally spaced at not more than 16-inch centers. Place top and bottom connectors as close as possible to the ends of the fabric.

MEASUREMENT OF PAYMENT

Measurement and payment shall be on a linear foot basis, as measured horizontally by length. Measurement shall be rounded to the nearest whole foot.

Payment for the unit price bid shall include all materials, including concrete, posts, fabric, and hardware, as well as incidentals necessary to complete the item. The removal and disposal of the existing fence shall be incidental to the unit price bid for the replacement of the 8’ chain link security fence.

6 – 4' CHAIN LINK SAFETY FENCE

DESCRIPTION

The Work covered under this section shall consist of providing all labor and material required to replace the chain link "safety" fence, separating different areas of the pool, in locations shown on the plans and in accordance with this section.

MATERIALS

Refer to MD SHA Standard Specifications Section 914.

A. Vinyl-Coated Steel Chain Link Fencing Fabric
    a. Fabric shall be 2-inch mesh woven from 9-gauge galvanized steel core wire coated in black PVC (8 gauge finish).
    b. The ends shall have a knuckled selvage at both top and bottom.
    c. Fabric shall conform to AASHTO M181, Type 4 (Standard Specification for Chain Link Fence).
B. Tie Wires, Line Post Clips, Tension Wires, and Tension Wire Clips
    a. All listed items shall conform to AASHTO M181, Type 4.
    b. All listed items shall be black vinyl-clad galvanized steel.
    c. Refer to project drawings for typical placement of items.
C. Posts, Fittings, and Hardware
    a. All posts shall be black vinyl-clad galvanized steel.
    b. Line posts shall be round Schedule 40, with a 1.9" OD
    c. Terminal/corner posts shall be round Schedule 40, with a 2.375" OD
    d. Top longitudinal rails shall be round Schedule 40, with a 1.66" OD
    e. Maximum spacing between posts shall be 10'-0"
    f. Line posts shall be fitted with weathertight loop caps for top rail installation
D. Concrete
    a. Concrete for post footings shall have a minimum 28-day compressive strength of 2,500 psi.

CONSTRUCTION REQUIREMENTS

Refer to MD SHA Standard Specifications Section 607 and ASTM F567.

A. Demolition and Clearing
    a. Remove existing fence fabric.
    b. Remove all posts and foundations. For posts installed in concrete deck, sawcut posts at deck level and grind post down below grade. Fill to surface with approved concrete patch material.
B. Anchorage for Posts
    a. Use a concrete saw to cut an 8-inch square hole through concrete deck at all post locations. All foundation holes shall be a minimum of 24" deep. Clean hole of debris.

b. Place foundation concrete in holes in accordance with ASTM F567. Place posts in the center of concrete footings. Thoroughly compact the concrete around the post by rodding or vibrating. Trowel the top surface to a smooth finish slightly above the groundline and uniformly sloped to drain away from the post. Do not disturb the post within the 72 hours after the individual post footing is completed.

C. General Installation Requirements
   a. Install new fence as shown on the plans. Fence alignment on the plans is only a guide. The exact location of the fence will be determined in the field by the Engineer.
   b. Install all posts plumb.
   c. Use posts lengths that accommodate the fabricated width of the fence fabric without stretching or compressing the fabric and that provide the required spacing below the bottom of the fabric.
   d. Install terminal posts at all ends and at changes in horizontal alignment greater than 15 degrees. Install terminal posts at a spacing not to exceed 500 LF.
   e. Install horizontal brace rails with diagonal truss rods and turn buckles at all terminal posts. Supply sufficient braces to provide complete bracing of each terminal post to the adjacent line posts.
   f. Install the proper weathertight post caps on all round line, terminal, and corner posts.
   g. Place the bottom of the fabric approximately 1/2 inch above the pool deck.
   h. Run a tension wire continuously between terminal posts near the top and bottom of the fabric. Attach the wire to the fabric with hog ring fasteners at 18 in. intervals.
   i. Tie the fabric to the brace rails at intervals not exceeding 2 ft and to posts at intervals not exceeding 12 inches. Attach stretcher bars to terminal posts by connectors equally spaced at not more than 16-inch centers. Place top and bottom connectors as close as possible to the ends of the fabric.

MEASUREMENT OF PAYMENT

Measurement and payment shall be on a linear foot basis, as measured horizontally by length. Measurement shall be rounded to the nearest whole foot.

Payment for the unit price bid shall include all materials, including concrete, posts, fabric, and hardware, as well as incidentals necessary to complete the item. The removal and disposal of the existing fence around the slide shall be incidental to the price of the 4’ chain link safety fence.

7 – REPAIR CONCRETE RETAINING WALL

DESCRIPTION

This item includes all labor and material required to repair the concrete retaining wall located along the southern side of the existing baby pool area, as shown on the plans.

MATERIALS

A. Reinforcement Corrosion Protection
    a. For use on exposed rebar prior to patching with the appropriate concrete product listed above.
    b. Portland cement adhesive with corrosion inhibitor
    c. Minimum coating thickness: 1/32”
    d. The specified product shall be Armatec 1C, produced by SIKA Corporation, or approved equivalent.
B. Self-Consolidating Concrete
    a. Refer to ACI 273R-07 for standard specification of Self-Consolidating Concrete.
    b. Minimum 28-day compressive strength: 5,000 psi
    c. Can be applied horizontally, vertically, or overhead.
    d. “Form and pour” method of repair.
    e. The specified product for this method shall be SikaCrete 211 SCC Plus, produced by SIKA Corporation, or approved equivalent.

CONSTRUCTION REQUIREMENTS

All repairs should be made per manufacturer’s recommendation. Please contact a manufacturer representative with any technical questions regarding installation of materials.

The contractor shall chip down to sound concrete, and shall remove all dirt, oil, grease, and other bond-inhibiting materials.

If the patch area includes exposed steel reinforcement, contractor shall mechanically clean steel to remove all traces of rust. Contractor shall then apply Reinforcement Corrosion Protection product per manufacturer’s specifications.

Contractor shall prepare, mix, and apply concrete product per manufacturer’s specifications. In accordance with ACI, curing is required. Contractor shall moist-cure patch area immediately after application and for 48 hours. Cure area shall be protected from rain, sun, and wind until compressive strength is at 70% of the 28-day compressive strength.

Contractor shall provide provisions for placement of concrete products in temperatures below 40 degrees Fahrenheit.

MEASUREMENT OF PAYMENT

The repair of the concrete retaining wall will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for a completed repair, including all material, labor, tools and incidentals required to complete the work.

8 – 5" REINFORCED CONCRETE SLAB

DESCRIPTION

This item includes the installation of a 5" thick Welded Wire Fabric (WWF) reinforced concrete slab in areas shown on the plans or as directed by the Engineer. New slab shall include a gutter underdrain system that ties into the underdrain system of the existing pool deck. The cross section of the slab shall be the same as the 5-inch reinforced sidewalk shown on the plans.

See MD SHA Standard Specifications Section 603.

MATERIALS

Curing Materials..... MD SHA Spec. Section 902.07
Form Release Compound..... MD SHA Spec. Section 902.08
Portland Cement Concrete ..... MD SHA Spec. Section 902.10, Mix No. 3
Asphalt Mix ..... MD SHA Spec. Section 904
Welded Wire Fabric ..... MD SHA Spec. Section 908.05
Joint Sealer..... MD SHA Spec. Section 911.01
Preformed Joint Fillers ..... MD SHA Spec. Section 911.02

CONSTRUCTION REQUIREMENTS

General

See MD SHA Standard Specification Section 603.03.01, or as directed by the Engineer.

Preparation

Compact the subgrade to 92 percent density per T 180, Method C, and trim to the proper shape and required grade. Remove all soft and unsuitable material and replace with approved material. Place 4" of CR-6 aggregate base on subgrade, as shown on the plans.

Install ½" expansion joints adjacent to all existing concrete.

Gutter Underdrain System

New concrete slab shall include PVC underdrain system, which shall tie into drainage pipe under existing pool deck. Drains with lockable grates shall be installed at a minimum spacing of 25' within new slab. Slab shall have a minimum slope of 1/8" per foot towards the nearest drain.

All drains shall be connected to 4" PVC pipe leaders, which shall connect to existing 4" drainage line underneath the existing pool deck at one location, as shown on the plans. Contractor is responsible for means and methods for connecting all PVC pipe leaders to common drainage point. PVC pipe shall be installed per the details.

Demolition and replacement of section of existing pool deck for access to existing drainage line shall be incidental to this item.

Concreting and Finishing

Deposit the concrete on the prepared aggregate base in a manner, approved by the Engineer, to avoid any joints or seams in the finished concrete surface. Consolidate the concrete by using immersion type vibrators. Avoid excessive vibration that results in segregation, and any vibrator contact with the side forms, reinforcement, or underlying material. The consolidation system and settings are subject to approval of the Engineer. Thoroughly spade along the edges and tamp the entire surface area to eliminate voids. Strike off and screed the concrete to the top of the forms.

Float the surface and apply a broom finish. Do not plaster the surface. Use a 1/4 in. edging tool on all outside edges and all joints. Tool or sawcut joints to match joint spacing in existing pool deck, both longitudinally and transversally. Joints shall be a minimum of ¾ inch deep.

Cure the concrete for at least 72 hours. A liquid membrane forming compound shall not be used. Curing shall be via burlap curing, or other wet curing method approved by the Engineer.

Slab Grading and Flatness

The concrete slab shall match the existing grade of the pool deck. Slab shall have a maximum grade of 48:1 and a minimum grade of 96:1. The section of slab located between the existing slide and chain link exterior fence shall transition to a cross slope of 48:1 from the slide side to the fence side.

The finished slab shall have a minimum flatness of FF25. The contractor shall perform the testing for flatness, and the test must be witnessed by the Engineer or his representative. Approval will be by the Engineer.

MEASUREMENT AND PAYMENT

Measurement and payment shall be on square foot basis as measured horizontally by length and width.

The payment will be full compensation for a completed installation including concrete tests, boxing out, framing, finishing, CR-6 base, jointing, reinforcement, and all labor, material, equipment, tools, and all incidentals required to complete the work. Demolition and replacement of section of existing pool deck for access to existing drainage line shall be incidental to this item.

9 – 5" REINFORCED CONCRETE SIDEWALK

DESCRIPTION

See MD SHA Standard Specifications Section 603.

MATERIALS

See MD SHA Standard Specifications Section 603 and 908.05.

CONSTRUCTION REQUIREMENTS

See MD SHA Standard Specifications Section 603 and 908.05 as well as MD SHA Standard Standards 655.01, 655.11 and 655.12.

MEASUREMENT AND PAYMENT

5-INCH REINFORCED CONCRETE SIDEWALK will be on square foot basis as measured horizontally by length and width.

Payment for the unit price bid shall include excavation, boxing out, framing, finishing, CR-6 base, jointing, reinforcement, and incidentals necessary to complete the item.



CITY OF CUMBERLAND
MARYLAND

ENGINEERING DEPARTMENT

TITLE

CONSTITUTION PARK POOL IMPROVEMENTS

PROPOSED SITE PLAN

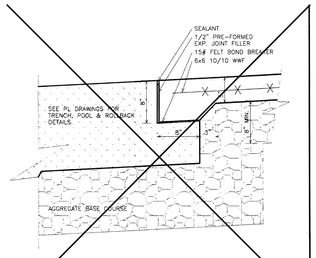
NOTES

REVISION	No.	DATE

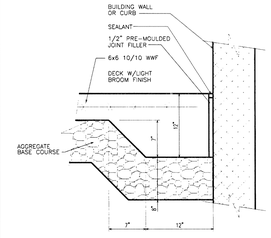
DESIGNED BY: -	C1
DRAWN BY: MDI	
CHECKED BY: -	
DATE: 11/7/2022	DWG.:
PROJ.: 14-21-RE	SHEET 1 OF 2

NOTES:

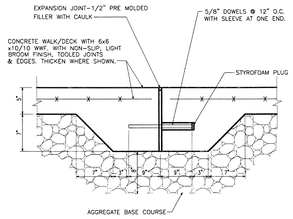
1. PLACE A CONSTRUCTION JOINT EVERY 5' BY SCORING A 3/8" JT. INTO CONC.
2. SURFACE TO BE BRUSHED WITH STIFF BROOM TO ASSURE NON SLIP SURFACE.
3. PROVIDE 1/2" E.J. EVERY 15' BETWEEN SLAB SECTIONS AND ADJACENT TO ALL CONCRETE CURBS, AND BUILDINGS, MD STD 655.01.
4. CONCRETE TO BE MD STD. MIX #3. MIN. 5% TO 8% AIR ENTRAINED.
5. SIDEWALKS SHALL HAVE A CROSS SLOPE OF 1/4" PER FOOT FROM REAR EDGE TO CURB UNLESS SHOWN OTHERWISE.
6. SEAL ALL JOINTS NEXT TO BUILDINGS AND
7. REFER TO PLANS FOR SCORING



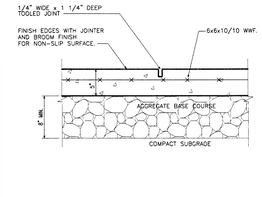
POOL DECK AT ROLLBACK DETAIL	PL1.4-4
	SCALE: 1 1/2"=1'-0"



DECK AT BUILDING OR CURB DETAIL	PL1.4-2
	SCALE: 1 1/2"=1'-0"

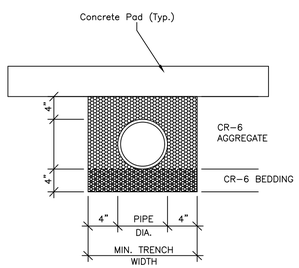


DECK EXPANSION JOINT DETAIL	PL1.4-5
	SCALE: 1 1/2"=1'-0"

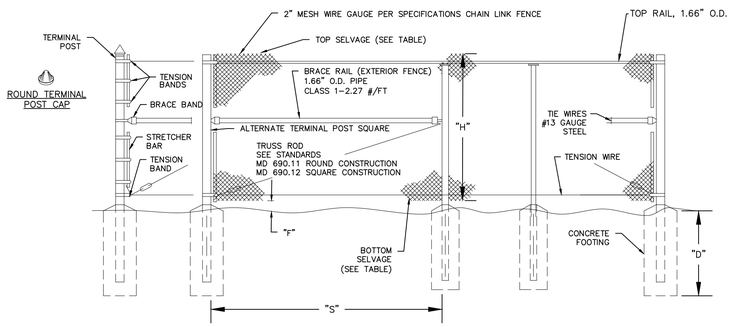


TOOLED JOINT DETAIL	PL1.4-3
	SCALE: 1 1/2"=1'-0"

REINFORCED CONCRETE PAD DETAIL (1)
NOT TO SCALE



PVC PIPE TRENCH DETAIL (3)
NOT TO SCALE



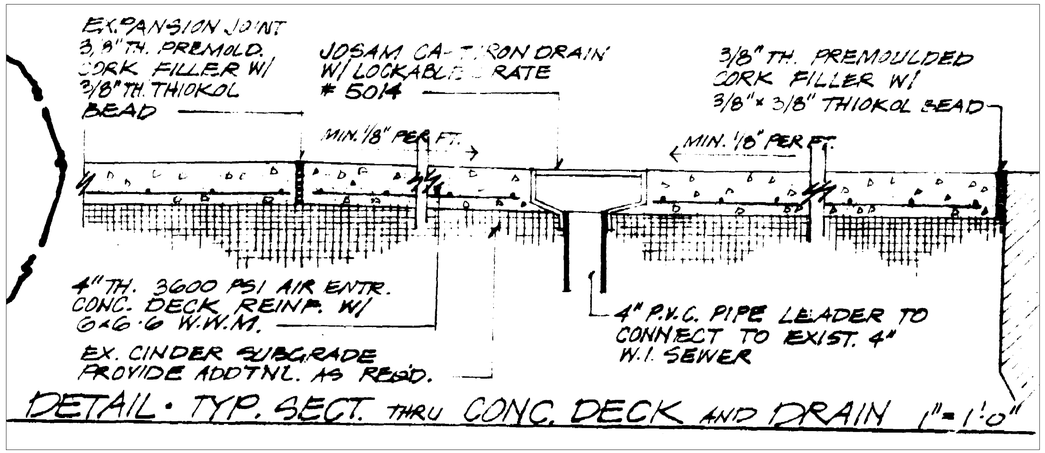
NOTES

1. ALL ROUND LINE POSTS TO BE CAPPED WITH LOOP CAPS. TOP RAILS TO RUN THROUGH LOOPS.
2. FASTEN FABRIC TO TENSION WIRE WITH HOG RINGS @18"±C/C. HOG RINGS TO BE 12½ GAUGE GALVANIZED STEEL WIRE.
3. MATERIALS TO MEET REQUIREMENTS OF AASHTO M 181.
4. THE COLOR OF THE COATING SHALL BE AS SPECIFIED IN THE CONTRACT DOCUMENTS.
5. CONTRACTOR SHALL MARK LOCATION OF PROPOSED FENCE AND GATES, AND RECEIVE ENGINEER'S APPROVAL OF LOCATION BEFORE INSTALLATION. ANY FENCE IMPROPERLY LOCATED WITHOUT ENGINEER'S APPROVAL WILL BE RELOCATED AT CONTRACTOR'S EXPENSE.

		EXTERIOR FENCE	SAFETY FENCE
"H" HEIGHT OF FENCE		8'-0"	4'-0"
"S" POST SPACING-MAX		10'-0"	10'-0"
"D" LENGTH-MIN.		28"	24"
"F" SPACING UNDER FABRIC		APPROX. 1" (MAX. 3")	1/2"
LINE POSTS	ROUND-CLASS 1	2.375" O.D.@3.65 #/FT	1.9" O.D.@
TERM. POSTS	ROUND-CLASS 1	2.875" O.D.@5.79 #/FT	2.375" O.D.@
SELVAGE- TOP/BOTTOM		BARBED/KNUCKLED	KNUCKLED/KNUCKLED

CHAIN LINK FENCE DETAIL (2)
NOT TO SCALE

SITE INFORMATION	
TOTAL AREA	+/- 38,000 SF
TOTAL LIMIT OF DISTURBANCE	+/- 4,900 SF
TOTAL CUT	+/- 600 CY
TOTAL FILL	0 CY



DETAIL FROM 1975 POOL INSTALLATION DRAWINGS (FOR REFERENCE ONLY)
NOT TO SCALE

The Maryland Department of the Environment (MDE) stated that their finding of consistency is contingent upon the applicant taking the actions summarized below.
1. If the applicant suspects that asbestos is present in any portion of the structure that will be renovated/demolished, then the applicant should contact the Community Environmental Services Program at (410) 537-3215 to learn about the State's requirements.
2. Construction, renovation and/or demolition of buildings and roadways must be performed in conformance with State regulations pertaining to Particulate Matter from Materials Handling and Construction'requiring that during any construction and/or demolition work, reasonable precaution must be taken to prevent particulate matter, such as fugitive dust, from becoming airborne.
3. During the duration of the project, soil excavation/grading/site work will be performed; there is a potential for encountering soil contamination. If soil contamination is present, a permit for soil remediation is required from MDE. Please contact the New Source Permits Division at (410) 537-3230 to learn about the State's requirements.
4. Any solid waste including construction, demolition, and land clearing debris, generated from the subject project, must be properly disposed of at a permitted solid waste acceptance facility, or recycled if possible. Contact the Solid Waste Program at (410) 537-3315 for additional information regarding solid waste activities and contact the Resource Management Program at (410) 537-3314 for additional information regarding recycling activities.
5. The Resource Management Program should be contacted directly at (410) 5373314 by those facilities which generate or propose to generate or handle hazardous wastes to ensure these activities are being conducted in compliance with applicable State and federal laws and regulations. The Program should also be contacted prior to construction activities to ensure that the treatment, storage, and disposal of hazardous wastes and low-level radioactive wastes at the facility will be conducted in compliance with applicable State and federal laws and regulations.
6. The proposed project may involve rehabilitation, redevelopment, revitalization, or property acquisition of commercial, industrial property. Accordingly, MDE's Brownsfields Site Assessment and Voluntary Cleanup Programs (VCP) may provide valuable assistance to you in this project. These programs involve environmental site assessment in accordance with accepted industry and financial institution standard for property transfer. For specific information about these programs and eligibility, please contact Land Restoration Program at (410) 537-3437.

CITY OF CUMBERLAND MARYLAND

ENGINEERING DEPARTMENT

TITLE

CONSTITUTION PARK POOL IMPROVEMENTS

DETAILS

NOTES

REVISION	No.	DATE

DESIGNED BY: -	C2
DRAWN BY: -	
CHECKED BY: -	
DATE: 11/7/2022	DWG.:
PROJ.: 14-21-RE	SHEET 2 OF 2

File Attachments for Item:

. Order 27,138 - accepting the proposal from Carl Belt, Inc. for the Constitution Park Amphitheater Contract (31-21-RE) in an amount not to exceed $170,387.23

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,138 **DATE:** December 6, 2022

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

THAT, the proposal from Carl Belt, Inc., 11521 Milnor Avenue, Cumberland, MD, 21502 for "Constitution Park Amphitheater Contract" (31-21-RE) in the estimated cost not-to-exceed One Hundred Seventy Thousand Three Hundred Eighty-Seven Dollars and Twenty -Three Cents ($170,387.23) be and is hereby accepted; and

BE IT FURTHER ORDERED, that this project was procured through Gordian EZ IQC using NJPA pricing to solicit a competitive bid.

_____

Raymond M. Morriss, Mayor

Budget: 115.GP12.63000

Council Agenda Summary

Meeting Date: 12/6/2022

Key Staff Contact: Matt Idleman, PE

Item Title:

Constitution Park Amphitheater Contract, City Project 31-21-RE

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

Accepting the proposal from Carl Belt, Inc. for City Project 31-21-RE for the estimated unit cost of $170,387.23. This project was procured through Gordian EZ IQC using NJPA pricing to solicit a competitive bid. The contractor will form and pour new sidewalk, excavate parking lot area and repave, install new plumbing, etc.

The project is fully funded through ARPA funds.

Amount of Award: $170,387.23

Budget number: 115.GP12.63000

Grant, bond, etc. reference: ARPA

GORDIAN®

Work Order Signature Document

EZIQC Contract No.: MD-WMA-GC03-042419-CBI

[X] **New Work Order** [ ] **Modify an Existing Work Order**

Work Order Number: 111576.00 Work Order Date: 11/23/2022

Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Owner Name:	MID ATLANTIC - City of Cumberland	Contractor Name:	Carl Belt, Inc.
Contact:	Matt Idleman	Contact:	Tristan Kimble
Phone:	301-759-6503	Phone:	301-729-8900

Work to be Performed

Work to be performed as per the Final Detailed Scope of Work Attached and as per the terms and conditions of EZIQC Contract No MD-WMA-GC03-042419-CBI.

Brief Work Order Description:

Form and pour new sidewalk. Excavate parking lot area and repave.
Install new plumbing fixtures and toilet partitions. Plumbing stub ups will need to be relocated per plans.
Install new gutters and down spouts on pavilion.
All work to be completed in accordance with the specific scope and all project plans and specifications. No changes shall occur without approval from the City of Cumberland.

Time of Performance ***See Schedule Section of the Detailed Scope of Work***

Liquidated Damages Will apply: [ ] Will not apply: [X]

Work Order Firm Fixed Price: $170,387.23

Owner Purchase Order Number:

Approvals

Owner Date

Contractor Date

Detailed Scope of Work

To: Tristan Kimble
Carl Belt, Inc.
11521 Milnor Ave
Cumberland, MD 21502
301-729-8900

From: Matt Idleman
MID ATLANTIC - City of Cumberland

301-759-6503

Date Printed: November 23, 2022

Work Order Number: 111576.00

Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Brief Scope: Form and pour new sidewalk. Excavate parking lot area and repave. Install new plumbing fixtures and toilet partitions. Plumbing stub ups will need to be relocated per plans.
Install new gutters and down spouts on pavilion.
All work to be completed in accordance with the specific scope and all project plans and specifications. No changes shall occur without approval from the City of Cumberland.

☐ Preliminary	☐ Revised	☒ Final

The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.

SCOPE:

- Mobilize Equipment.
- Install E&S Devices.
- Load/Dispose of waste soil and existing Concrete.
- Layout for new sidewalk per plan detail.
- Add 30 CR-6 Base stone for sidewalks.
- Form and add welded wire reinforcing mat (835 SF), Upper Slab Bolsters (215 EA), and ½" expansion joint (100 LF) to sidewalk per plan detail.
- Thomas Construction (Sub-Contractor) to place 4000PSI Concrete and stamp per the detail. Sub-Contractor responsible for furnishing concrete. No Concrete testing required.
- Caulk Expansion joints on stamped concrete once Thomas Construction completes the placement of the sidewalks.
- Knotts Seamless Gutter (Sub-Contractor) to install 5" Seamless gutter and 3"x4" Downspout on existing pavilion (NW Side only). Sub-Contractor responsible for furnishing gutter materials and instillation.
- Install Galvanized Expanded Metal Window guards 14 ½" x 32 5/16" to existing windows for bathrooms in existing pavilion.
- Apex Heating & Cooling (Sub-Contractor) to relocate plumbing stubs to match plan detail for relocation of new bathroom fixtures (New Sinks-4 New Toilets-3 and New Urinals-2). Sub-Contractor responsible for furnishing all materials and installation.
- Install new Composite Material Toilet Partition & Hardware on new offsets noted in plans in both

bathrooms.

- Excavate/Drill Auger Holes for the instillation of the 27 (In-Ground Mount) Park benches as noted in the plans.
- Place benches with excavator in proper location, Brace and pour 3500PSI Concrete in the drilled holes to anchor the Park Benches.
- Using excavator & Skid Steer re-grade surrounding area with topsoil (Approx one 15CY Load) per the plans.
- Seed and mulch area by hand in the area surrounding disturbed areas around benches, sidewalk, asphalt work.
- Excavate area shown in plans for placement of asphalt.
- Add CR-6 base Stone and compact for placement of Asphalt. No compaction testing for stone required.
- Belt Paving (Sub-Contractor) to install 2.5” of 19mm SuperPave for base and 1.5”of 12.5mm Superpave for surface. Sub-Contractor responsible for furnishing asphalt materials and installation.

Contractor Date

Owner Date

Contractor's Price Proposal - Summary

Date: November 23, 2022

IQC Master Contract #: MD-WMA-GC03-042419-CBI
Work Order Number: 111576.00
Owner PO #:
Work Order Title: CUMBERLAND - Constitution Park Amphitheater
Contractor: Carl Belt, Inc.
Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

01 - General Requirements	**$52,957.47**
03 - Concrete	**$11,752.96**
07 - Thermal & Moisture Protection	**$1,038.71**
08 - Openings	**$249.52**
09 - Finishes	**$26.65**
10 - Specialties	**$3,291.94**
22 - Plumbing	**$9,246.17**
31 - Earthwork	**$774.56**
32 - Exterior Improvements	**$91,049.25**
Proposal Total	**$170,387.23**

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

Contractor's Price Proposal - Detail

Date: November 23, 2022

IQC Master Contract #: MD-WMA-GC03-042419-CBI
Work Order Number: 111576.00
Owner PO #:
Work Order Title: CUMBERLAND - Constitution Park Amphitheater
Contractor: Carl Belt, Inc.
Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

01 - General Requirements

1	01 22 20 00-0006			HR	CarpenterFor tasks not included in the Construction Task Catalog® and as directed by owner only.							$9,869.31
						Quantity		Unit Price		Factor		Total
					Installation	160.00	x	49.39	x	1.2489	=	$9,869.31
					Site superintendent.							
2	01 22 20 00-0006		0001		For Foreman, Add							$493.57
						Quantity		Unit Price		Factor		Total
					Installation	160.00	x	2.47	x	1.2489	=	$493.57
3	01 22 20 00-0024			HR	PlumberFor tasks not included in the Construction Task Catalog® and as directed by owner only.							$4,057.23
						Quantity		Unit Price		Factor		Total
					Installation	48.00	x	67.68	x	1.2489	=	$4,057.23
					Plumbing fixture removal and pipe moving.							
4	01 22 20 00-0024		0001	MOD	For Foreman, Add							$101.31
						Quantity		Unit Price		Factor		Total
					Installation	24.00	x	3.38	x	1.2489	=	$101.31
5	01 22 20 00-0024		0002	MOD	For Apprentice, Deduct							-$405.84
						Quantity		Unit Price		Factor		Total
					Installation	24.00	x	-13.54	x	1.2489	=	-$405.84
6	01 22 23 00-0201			WK	5 Ton, 2 Drum Articulated Roller With Full-Time Operator							$4,255.94
						Quantity		Unit Price		Factor		Total
					Installation	1.00	x	3,407.75	x	1.2489	=	$4,255.94
					Compaction of parking lot.							
7	01 22 23 00-0201		0029	MOD	For Equipment Without Operator, Deduct							-$631.79
						Quantity		Unit Price		Factor		Total
					Installation	0.25	x	-2,023.50	x	1.2489	=	-$631.79
8	01 22 23 00-0271			MO	700 LB Capacity, 36" Wide, Skid-Steer Loader With Full-Time Operator							$11,490.40
						Quantity		Unit Price		Factor		Total
					Installation	1.00	x	9,200.42	x	1.2489	=	$11,490.40
9	01 22 23 00-0271		0070	MOD	For Equipment Without Operator, Deduct							-$2,354.33
						Quantity		Unit Price		Factor		Total
					Installation	0.25	x	-7,540.48	x	1.2489	=	-$2,354.33
10	01 22 23 00-0336			MO	3/8 CY Hydraulic Excavator With Full-Time Operator							$15,888.47
						Quantity		Unit Price		Factor		Total
					Installation	1.00	x	12,721.97	x	1.2489	=	$15,888.47
11	01 22 23 00-0336		0070	MOD	For Equipment Without Operator, Deduct							-$2,178.57
						Quantity		Unit Price		Factor		Total
					Installation	0.20	x	-8,721.97	x	1.2489	=	-$2,178.57

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

01 - General Requirements

12	01 22 23 00-1359			WK	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$6,527.63
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.00	x	2,613.35	x	1.2489	=	$6,527.63	
					Plumber's truck.								
13	01 22 23 00-1359		0039	MOD	For Equipment Without Operator, Deduct								-$4,046.29
						Quantity		Unit Price		Factor	=	Total	
					Installation	2.00	x	-1,619.94	x	1.2489	=	-$4,046.29	
14	01 22 23 00-1359			WK	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$3,263.81
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	2,613.35	x	1.2489	=	$3,263.81	
					Paving crew's truck.								
15	01 22 23 00-1359		0039	MOD	For Equipment Without Operator, Deduct								-$2,023.14
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	-1,619.94	x	1.2489	=	-$2,023.14	
16	01 22 23 00-1360			MO	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$11,342.97
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	9,082.37	x	1.2489	=	$11,342.97	
					Superintendent truck.								
17	01 22 23 00-1360		0039	MOD	For Equipment Without Operator, Deduct								-$8,720.42
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	-6,982.48	x	1.2489	=	-$8,720.42	
18	01 22 23 00-1360			MO	3/4 Ton, 4 x 4 Crew Cab Pickup Truck With Full-Time Truck Driver								$11,342.97
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	9,082.37	x	1.2489	=	$11,342.97	
					Concrete crew's truck.								
19	01 22 23 00-1360		0039	MOD	For Equipment Without Operator, Deduct								-$8,720.42
						Quantity		Unit Price		Factor	=	Total	
					Installation	1.00	x	-6,982.48	x	1.2489	=	-$8,720.42	
20	01 71 13 00-0003			EA	Equipment Delivery, Pickup, Mobilization And Demobilization Using A Tractor Trailer With Up To 53' BedIncludes loading, tie-down of equipment, delivery of equipment, off loading on site, rigging, dismantling, loading for return and transporting away. For equipment such as bulldozers, motor scrapers, hydraulic excavators, gradalls, road graders, loader-backhoes, heavy duty construction loaders, tractors, pavers, rollers, bridge finishers, straight mast construction forklifts, telescoping boom rough terrain construction forklifts, telescoping and articulating boom manlifts with >40' boom lengths, etc.								$2,221.08
						Quantity		Unit Price		Factor	=	Total	
					Installation	3.00	x	592.81	x	1.2489	=	$2,221.08	
					Mobilization of excavator, skid steer, and roller.								
21	01 74 19 00-0036			CY	Asphalt, Concrete, Gravel And Subgrade Material, Landfill Dump Fee								$1,183.58
						Quantity		Unit Price		Factor	=	Total	
					Installation	27.00	x	35.10	x	1.2489	=	$1,183.58	
					Existing concrete removal landfill fee.								

Contractor's Price Proposal - Detail Continues..

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

Subtotal for 01 - General Requirements **$52,957.47**

03 - Concrete

22	03 11 13 00-0009		LF	Up To 6" High Slab Edge and Block-Out Wood Formwork		$1,009.74
				Quantity x Unit Price x Factor = Total		
			Installation	275.00 x 2.94 x 1.2489 = $1,009.74		
				Formwork.		
23	03 15 16 00-0024		LF	1/2" x 5" Asphalt Saturated Fiber, Premolded Expansion Joint		$182.34
				Quantity x Unit Price x Factor = Total		
			Installation	100.00 x 1.46 x 1.2489 = $182.34		
				Expansion joint.		
24	03 31 13 00-0035		CY	Up To 6", By Direct Chute, Place 3,000 PSI Concrete Slab On Grade		$7,513.38
				Quantity x Unit Price x Factor = Total		
			Installation	40.00 x 150.40 x 1.2489 = $7,513.38		
				4500 PSI mix per specifications.		
25	03 31 13 00-0035	0031	MOD	For 4,500 PSI Concrete, Add		$659.42
				Quantity x Unit Price x Factor = Total		
			Installation	40.00 x 13.20 x 1.2489 = $659.42		
26	03 35 33 00-0002		SF	Up To 2,500 SF Stamped Concrete Finish		$2,388.08
				Quantity x Unit Price x Factor = Total		
			Installation	835.00 x 2.29 x 1.2489 = $2,388.08		
				Stamped concrete finish. City of Cumberland to provide stamp.		

Subtotal for 03 - Concrete **$11,752.96**

07 - Thermal & Moisture Protection

27	07 71 23 00-0006		LF	5", 0.032" Thick, K-Style Aluminum Gutter		$704.75
				Quantity x Unit Price x Factor = Total		
			Installation	110.00 x 5.13 x 1.2489 = $704.75		
				5" K style per specifications.		
28	07 71 23 00-0112		LF	3" Diameter, 16 Ounce, Round Copper Downspout		$333.96
				Quantity x Unit Price x Factor = Total		
			Installation	20.00 x 13.37 x 1.2489 = $333.96		

Subtotal for 07 - Thermal & Moisture Protection **$1,038.71**

08 - Openings

29	08 56 56 00-0004		SF	11 Gauge, Wire Mesh, Inoperable, Steel Security Window Screen		$219.98
				Quantity x Unit Price x Factor = Total		
			Installation	13.75 x 12.81 x 1.2489 = $219.98		
				Window guards for existing windows.		
30	08 56 56 00-0004	0197	MOD	For Galvanized Steel, Add		$29.54
				Quantity x Unit Price x Factor = Total		
			Installation	13.75 x 1.72 x 1.2489 = $29.54		

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

Subtotal for 08 - Openings **$249.52**

09 - Finishes

31 09 91 33 00-0010 GAL Acrylic (Vinyl Acrylic) Block Filler, 50 SF Per Gallon $26.65

	Quantity		Unit Price		Factor		Total
Installation	1.00	x	21.34	x	1.2489	=	$26.65

Masonry block filler for repair.

Subtotal for 09 - Finishes **$26.65**

10 - Specialties

32 10 14 23 00-0004 EA Up To 25 SI, Adhesive Backed Vinyl, Surface Mount, Indoor/Outdoor Sign $49.57

	Quantity		Unit Price		Factor		Total
Installation	3.00	x	13.23	x	1.2489	=	$49.57

ADA signage.

33 10 14 53 00-0018 EA 12" x 12" Aluminum Engineer Grade Traffic Sign $31.70

	Quantity		Unit Price		Factor		Total
Installation	1.00	x	25.38	x	1.2489	=	$31.70

Parking lot signage.

34 10 14 53 00-0019 EA 12" x 18" Aluminum Engineer Grade Traffic Sign $39.48

	Quantity		Unit Price		Factor		Total
Installation	1.00	x	31.61	x	1.2489	=	$39.48

Parking lot signage.

35 10 21 13 19-0025 EA 36" x 55" x 1", Wall Hung And Overhead Braced, Recycled Solid Plastic (HDPE), Urinal Screen $909.47

	Quantity		Unit Price		Factor		Total
Installation	2.00	x	364.11	x	1.2489	=	$909.47

36 10 21 13 19-0030 EA 26" x 55" x 1", Recycled Solid Plastic (HDPE), Toilet Partition Door $951.17

	Quantity		Unit Price		Factor		Total
Installation	3.00	x	253.87	x	1.2489	=	$951.17

37 10 21 13 19-0035 EA 6" x 55" x 1", Recycled Solid Plastic (HDPE), Toilet Partition Panel $290.48

	Quantity		Unit Price		Factor		Total
Installation	3.00	x	77.53	x	1.2489	=	$290.48

38 10 28 13 13-0027 EA Two Roll, Surface Mounted, Acrylonitrile Butadiene Styrene (ABS) Plastic Toilet Tissue Dispenser (Bobrick B-5288) $171.37

	Quantity		Unit Price		Factor		Total
Installation	3.00	x	45.74	x	1.2489	=	$171.37

Toilet accessories to match project specifications.

39 10 28 13 13-0053 EA 20 Fluid Ounce, 4" Spout, Top-Filling Lavatory Mounted, Chrome Plated Soap Dispenser (Bobrick B-8221) $284.20

	Quantity		Unit Price		Factor		Total
Installation	4.00	x	56.89	x	1.2489	=	$284.20

Toilet accessories to match project specifications.

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	Equip.	Material	(Excluded if marked with an X)			

10 - Specialties

40	10 28 13 13-0330			EA	18" x 24", Surface Mounted, Stainless Steel Angle Frame Glass Mirror (Bobrick B-290 1824)							$564.50
						Quantity		Unit Price		Factor		Total
					Installation	4.00	x	113.00	x	1.2489	=	$564.50
					Toilet accessories to match project specifications.							

Subtotal for 10 - Specialties **$3,291.94**

22 - Plumbing

41	22 11 19 00-0526			EA	3/4" Faucet, Bronze Garden Hose Valve With Screwed Ends, 125#							$107.56
						Quantity		Unit Price		Factor		Total
					Installation	2.00	x	43.06	x	1.2489	=	$107.56
42	22 42 13 13-0012			EA	Flush Valve Type, Siphon Jet, Wall Mounted, Wall Outlet, Handicap Accessible, Elongated Vitreous China Water Closet (American Standard Afwall®)							$1,932.06
						Quantity		Unit Price		Factor		Total
					Installation	3.00	x	515.67	x	1.2489	=	$1,932.06
					Flush valve project specifications.							
43	22 42 16 13-0007			EA	19" x 17" Vitreous China Wall Hung Lavatory (American Standard Declyn™)							$1,585.80
						Quantity		Unit Price		Factor		Total
					Installation	4.00	x	317.44	x	1.2489	=	$1,585.80
					Sink to meet project specifications.							
44	22 42 43 00-0023			EA	Exposed Infrared Water Closet Flush Valve (Zurn ZEMS6000AV-HET-IS)							$2,655.51
						Quantity		Unit Price		Factor		Total
					Installation	4.00	x	531.57	x	1.2489	=	$2,655.51
					Flush valves.							
45	22 47 13 00-0056			EA	Stainless Steel, Single Wall Mounted Drinking Fountain (HAWS 1105)							$2,965.24
						Quantity		Unit Price		Factor		Total
					Installation	2.00	x	1,187.14	x	1.2489	=	$2,965.24
					Drinking fountain to meet project specifications.							

Subtotal for 22 - Plumbing **$9,246.17**

31 - Earthwork

46	31 23 16 36-0021			CY	Compaction Of Fill Or Subbase For Building Foundations and Other Structures by Vibratory Plate, Air Tamper, Etcetera							$256.27
						Quantity		Unit Price		Factor		Total
					Installation	40.00	x	5.13	x	1.2489	=	$256.27
					Compaction of sidewalk subbase.							
47	31 23 16 36-0021		0023	MOD	For >20 To 50, Add							$192.33
						Quantity		Unit Price		Factor		Total
					Installation	40.00	x	3.85	x	1.2489	=	$192.33

Contractor's Price Proposal - Detail Continues..

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

31 - Earthwork

48	31 25 14 26-0004			LF	2' High Silt Fence with Stakes at 6' On Center								$256.65
						Quantity		Unit Price		Factor	=	Total	
					Installation	150.00	x	1.37	x	1.2489		$256.65	
					Erosion and settlement control.								
49	31 25 14 26-0017			LF	Removal Of Silt Fence And Stakes								$69.31
						Quantity		Unit Price		Factor	=	Total	
					Installation	150.00	x	0.37	x	1.2489		$69.31	
					Removal of silt fence upon project completion.								

Subtotal for 31 - Earthwork **$774.56**

32 - Exterior Improvements

50	32 11 16 16-0007			SY	6" Crushed Aggregate Base Course For Roadways And Parking Areas								$352.56
						Quantity		Unit Price		Factor	=	Total	
					Installation	30.00	x	9.41	x	1.2489		$352.56	
					GAB for paving area.								
51	32 11 16 16-0007		0008	MOD	For Up To 500, Add								$79.24
						Quantity		Unit Price		Factor	=	Total	
					Installation	27.00	x	2.35	x	1.2489		$79.24	
52	32 11 23 16-0004			SF	4" Crushed Aggregate Base Course For Sidewalks								$886.41
						Quantity		Unit Price		Factor	=	Total	
					Installation	835.00	x	0.85	x	1.2489		$886.41	
					Subbase for sidewalks to be CR6.								
53	32 11 23 16-0004		0012	MOD	For Up To 1,000, Add								$239.85
						Quantity		Unit Price		Factor	=	Total	
					Installation	835.00	x	0.23	x	1.2489		$239.85	
54	32 12 16 13-0006			SY	2-1/2" Thick Bituminous Hot Mix Binder CourseIncludes placement, rolling, finishing and sweeping.								$710.19
						Quantity		Unit Price		Factor	=	Total	
					Installation	51.00	x	11.15	x	1.2489		$710.19	
					Base course.								
55	32 12 16 13-0006		0418	MOD	For Up To 400, Add								$92.99
						Quantity		Unit Price		Factor	=	Total	
					Installation	51.00	x	1.46	x	1.2489		$92.99	
56	32 12 16 13-0015			SY	1-1/2" Thick Bituminous Hot Mix Surface CourseIncludes placement, rolling, finishing and sweeping.								$271.36
						Quantity		Unit Price		Factor	=	Total	
					Installation	32.00	x	6.79	x	1.2489		$271.36	
					Finish Course.								
57	32 16 23 00-0003			SF	5" Cast In Place Concrete Sidewalk								$6,048.42
						Quantity		Unit Price		Factor	=	Total	
					Installation	835.00	x	5.80	x	1.2489		$6,048.42	

Contractor's Price Proposal - Detail Continues..

Work Order Number: 111576.00
Work Order Title: CUMBERLAND - Constitution Park Amphitheater

Proposal Name: CUMBERLAND - Constitution Park Amphitheater
Proposal Value: $170,387.23

	Sect.	Item	Modifer.	UOM	Description	Line Total
Labor	**Equip.**	**Material**	**(Excluded if marked with an X)**			

32 - Exterior Improvements

58	32 16 23 00-0003		0099	MOD	For Welded Wire Reinforcement, Add								$427.56
						Quantity		Unit Price		Factor	=	Total	
				Installation		835.00	x	0.41	x	1.2489		$427.56	
59	32 31 13 13-0006			VLF	4" Diameter Hole, Auger By Machine Fence Post Hole In Soil								$2,316.58
						Quantity		Unit Price		Factor	=	Total	
				Installation		270.00	x	6.87	x	1.2489		$2,316.58	
					Post holes for bench legs.								
60	32 31 13 13-0023			VLF	4" Diameter, Concrete Fill For Post Hole								$1,911.94
						Quantity		Unit Price		Factor	=	Total	
				Installation		270.00	x	5.67	x	1.2489		$1,911.94	
					Concrete fill for post holes.								
61	32 33 43 13-0011			EA	96" Backed Wood Bench With Armrest (Landscapeforms Gretchen's)								$75,951.94
						Quantity		Unit Price		Factor	=	Total	
				Installation		27.00	x	2,252.41	x	1.2489		$75,951.94	
					Benches to meet project specifications.								
62	32 91 13 16-0017			EA	Pine Straw Mulch BaleCovers 50 SF at a thickness of 2" to 4" forming a uniform mat through which none of the original ground surface can be seen.								$93.11
						Quantity		Unit Price		Factor	=	Total	
				Installation		15.00	x	4.97	x	1.2489		$93.11	
63	32 91 19 13-0009			CY	Spread Topsoil By Hand From Stockpile								$527.35
						Quantity		Unit Price		Factor	=	Total	
				Installation		15.00	x	28.15	x	1.2489		$527.35	
64	32 92 19 13-0016			MSF	Tall Fescue, Hydro Or Air Seeding5.5 LB/MSF spread rate.								$1,139.75
						Quantity		Unit Price		Factor	=	Total	
				Installation		15.00	x	60.84	x	1.2489		$1,139.75	

Subtotal for 32 - Exterior Improvements **$91,049.25**

Proposal Total **$170,387.23**

This total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding.

CONSTITUTION PARK AMPHITHEATER UPGRADES

CITY PROJECT NO: 31-21=RE

INDEX OF SHEETS		
PAGE	SHEET	DESCRIPTION
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C-1	2	GENERAL NOTES
C-2	3	PROPOSED IMPROVEMENTS
C-3	4	DETAILS

PREPARED FOR:

MAYOR AND CITY COUNCIL OF CUMBERLAND
ALLEGANY COUNTY, MARYLAND



VICINITY MAP
SCALE 1" = 500'

STANDARDS AND SPECIFICATIONS

ALL WORK ON THIS PROJECT SHALL CONFORM TO THE CITY OF CUMBERLAND'S CONTRACT DOCUMENTS (PLANS AND SPECIFICATIONS) WHICH ARE BASED ON AND SUPPLEMENTED BY:

- THE MARYLAND DEPARTMENT OF TRANSPORTATION, STATE HIGHWAY ADMINISTRATION'S:

  STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MATERIALS, DATED JULY 2018, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

  BOOK OF STANDARDS FOR HIGHWAY & INCIDENTAL STRUCTURES, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

  ACCESSIBILITY POLICY & GUIDELINES FOR PEDESTRIAN FACILITIES ALONG STATE HIGHWAYS, DATED JUNE 2010, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

  MARYLAND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 2011 EDITION AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

  MARYLAND STANDARD SIGN BOOK, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

  BICYCLE POLICY AND DESIGN GUIDELINES, DATED JANUARY 2015, AND THE REVISIONS THEREOF OR THE ADDITIONS THERE TO.

  ALL SUPPLEMENTS ARE POSTED ON HTTPS://WWW.ROADS.MARYLAND.GOV

- MARYLAND DEPARTMENT OF THE ENVIRONMENT, WATER MANAGEMENT ADMINISTRATION'S:

  MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL, DATED 2011, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

- U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION'S:

  MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 2009 EDITION, WITH REVISION NUMBER 1 AND 2, AS PUBLISHED IN MAY 2012, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

- NATIONAL ASSOCIATION OF CITY TRANSPORTATION OFFICIALS' (NATCO):

  URBAN BIKEWAY DESIGN GUIDE, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

- AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO):

  GUIDE TO THE DEVELOPMENT OF BICYCLE FACILITIES, 2012 EDITION, AND THE REVISIONS THEREOF OR ADDITIONS THERETO.

MAYOR

RAYMOND M. MORRISS

CITY COUNCIL

COUNCILWOMAN - LAURIE P. MARCHINI
COUNCILMAN - RICHARD J. CIONI, JR.
COUNCILMAN - SETH D. BERNARD
COUNCILMAN - EUGENE T. FRAZIER

CITY ADMINISTRATION

CITY ADMINISTRATOR - JEFF D. RHODES
CITY ENGINEER - ROBERT L. SMITH III, P.E.
CITY CLERK - MARJORIE A. WOODRING
CITY SOLICITOR - MICHAEL S. COHEN

ADA COMPLIANCE

THE DESIGN OF THIS PROJECT HAS INCORPORATED FACILITIES FOR THE ELDERLY AND HANDICAPPED IN COMPLIANCE WITH STATE AND FEDERAL LEGISLATION.

CITY OF CUMBERLAND
MARYLAND

ENGINEERING DEPARTMENT

TITLE

CONSTITUTION PARK AMPHITHEATER UPGRADES

TITLE SHEET

NOTES

REVISION	No.	DATE

DESIGNED BY: -
DRAWN BY: -
CHECKED BY: -

G-1

DATE: 2/23/2022

DWG.:

PROJ.: 31-21-RE

SHEET 1 OF 4

UTILITY CONTACTS

ATLANTIC BROADBAND
201 SOUTH MECHANIC STREET
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 888-536-9600

NON-EMERGENCY CONTACT:
MR. SCOTT WILSON
TECHNICAL SUPERVISOR
301-759-4806, EXT. 5

MR. TREVOR SELL
TECHNICAL SUPERVISOR
301-759-4806, EXT. 9

COLUMBIA GAS OF MARYLAND, INC.
1000 INDUSTRIAL BOULEVARD
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 888-460-4332

NON-EMERGENCY CONTACT:
MR. KERRY PUFFINBURGER
FIELD OPERATIONS LEADER
301-784-3379

MR. SCOTT TURLEY
CONSTRUCTION LEADER
301-448-0633

COLUMBIA GAS OF MD/PA
1452 GUN CLUB ROAD
UNIONTOWN, PA 15401
EMERGENCY NUMBER: 888-460-4332

NON-EMERGENCY CONTACT:
MR. NATHAN GRIESE
FIELD ENGINEER
301-269-3305

COLUMBIA GAS TRANSMISSION
(A TRANSCANADA CORPORATION)
12001 INDUSTRIAL PARK STREET
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 800-835-7191

NON-EMERGENCY CONTACT:
MS. LORRIE STEADMAN
LAND REPRESENTATIVE 3
301-729-5624

LUMOS NETWORKS
4600 J BARRY COURT SUITE 110
CANONSBURG, PA 15317
EMERGENCY NUMBER: 724-749-3200

NON-EMERGENCY CONTACT:
MR. MATTHEW BLEDSOE
OSP ENGINEER
724-749-3032

POTOMAC EDISON
(A FIRST ENERGY CORPORATION)
700 FOURTH STREET
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 800-544-4877

NON-EMERGENCY CONTACT:
MR. MARTY DUNNINGTON
DESIGNER, ENGINEERING SERVICES
301-759-5709

SKYLINE TECHNOLOGY SOLUTIONS
(MONITORS ALL MARYLAND STATE FIBER ASSETS)
6956-f AVIATION BOULEVARD
GLEN BURNIE, MD 21061
EMERGENCY NUMBER: 410-553-2605

NON-EMERGENCY CONTACT:
MR. JOHN F. WHITE
FIELD ENGINEER/COORDINATOR
301-616-1005

VERIZON
425 BLACKISTON AVENUE
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 800-275-2355

NON-EMERGENCY CONTACT:
MR. GARY H. BENNETT
ENGINEERING ASSISTANT
301-759-1846

MR. GENE BROWNING
I&M SUPERVISOR
301-334-9940

VERIZON BUSINESS (MCI)
400 INTERNATIONAL PARKWAY
RICHARDSON, TX 75081
EMERGENCY NUMBER: 724-749-3200

NON-EMERGENCY CONTACT:
MR. DEAN BOYERS
ENGR III SPEC.
469-886-4238

MISS UTILITY
7223 PARKWAY DRIVE, SUITE 100
HANOVER, MD 21076
LOCATE REQUESTS; 800-257-7777

ADMIN PHONE: 410-712-0056
FAX: 410-712-0062

CITY OF CUMBERLAND, PUBLIC WORKS DEPARTMENT
SEWER UTILITIES DIVISION
400 EAST OFFUTT STREET
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 301-759-6426

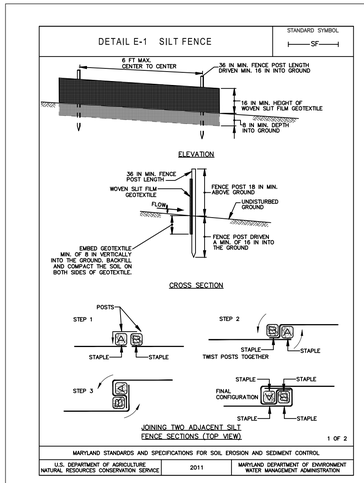
NON-EMERGENCY CONTACT:
MR. TIM MURPHY
FLOOD/SEWER SUPERINTENDENT
301-759-6630

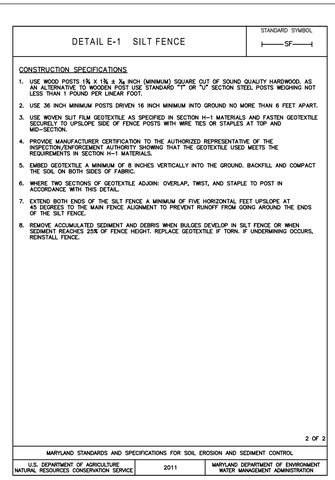
CITY OF CUMBERLAND, PUBLIC WORKS DEPARTMENT
WATER UTILITIES DIVISION
215 BOWEN STREET
CUMBERLAND, MD 21502
EMERGENCY NUMBER: 301-759-6625

NON-EMERGENCY CONTACT:
MR. ROBERT RIDER
WATER UTILITIES SUPERINTENDENT
301-759-6623

GENERAL NOTES

1. ALL PROPOSED CONCRETE IS TO BE 3000 PSI, MIX NO. 2, AIR-ENTRAINED CONCRETE, UNLESS OTHERWISE NOTED. ALL EXPOSED CONCRETE CORNERS ARE TO HAVE A ONE INCH (1") RADIUS.
2. SALVAGE ALL EXISTING MANHOLE COVERS, INLET GRATES, VALVE COVERS, TRAFFIC AND STREET NAME SIGNS, ETC., WHICH ARE NOT REINCORPORATED INTO THE WORK. SALVAGED MATERIAL SHALL REMAIN THE PROPERTY OF THE CITY OF CUMBERLAND AND IS TO BE DELIVERED BY THE CONTRACTOR TO THE LOCATION OR LOCATIONS DESIGNATED BY THE ENGINEER.
3. ALL AREAS WITHIN THE PROJECT LIMITS ARE NOT OTHERWISE TREATED ARE TO BE SEEDED AND MULCHED. AREAS OUTSIDE PROJECT LIMITS DISTURBED AS A RESULT OF CONSTRUCTION WORK SHALL BE RESTORED TO THEIR PRE-CONSTRUCTION CONDITION OR BETTER.
4. ALL CONCRETE WALKS AND STEPS TO BE RECONSTRUCTED AS GOOD OR BETTER THAN EXISTING AND SHALL BE EQUAL TO THE WIDTH OF THE EXISTING SIDEWALK AT THE TIE-IN POINT.
5. ALL ROOF DRAIN TIE-INS SHALL BE AS PER RAIN LEADER DETAIL ON THESE DRAWINGS. CONTRACTOR TO FIELD VERIFY NUMBER OF EXISTING RAIN LEADERS.
6. ALL COMPANY-OWNED UTILITY VALVES, METERS, TEST STATIONS, POLES, ETC., SHALL BE ADJUSTED BY THE UTILITY OWNER (OR REPRESENTATIVE). THE CONTRACTOR SHALL COORDINATE ALL UTILITY WORK.
7. UTILITIES (I.E. WATER VALVES, POLES, ETC., WHICH ARE ADJUSTED BY OTHERS) WITHIN NEW SIDEWALK OR CURB AREAS SHALL BE BOXED OUT WITH JOINTS SEPARATING BOXED-OUT AREAS FROM REMAINING CONCRETE.
8. IT IS INTENDED THAT ALL WORK BE DONE WITHIN EXISTING LEGAL PUBLIC RIGHTS-OF-WAY. IT SHALL BE THE CONTRACTORS RESPONSIBILITY TO OBTAIN ANY DESIRED PERMISSION OR AUTHORIZATION OF ENTRY UPON ANY PRIVATELY HELD LANDS.
9. THE LOCATION OF EXISTING UTILITIES ARE COMPILED FROM THE BEST AVAILABLE INFORMATION. HOWEVER, THEIR ACCURACY IS NOT WARRANTED AND IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO DETERMINE THEIR EXACT LOCATION AND EXISTING CONDITION BEFORE BEGINNING CONSTRUCTION. IT IS ALSO THE RESPONSIBILITY OF THE CONTRACTOR TO ASSURE THAT NO HAZARDS EXIST AND TO PROTECT THE UTILITIES BY FROM ANY AND ALL DAMAGE. THE MEANS OF PROTECTING THE UTILITIES MUST BE APPROVED BY OWNERS OF EACH UTILITY, AND THE APPROVAL SHALL BE OBTAINED BEFORE COMMENCING WORK IN THE VICINITY OF THE UTILITIES. IT IS REQUIRED THAT "MISS UTILITY" (1-800-257-7777) AND ALL APPLICABLE UTILITIES BE CONTACTED AT LEAST ONE WEEK PRIOR TO COMMENCEMENT OF WORK, OR IN THE TIME PERIOD REQUIRED BY MUNICIPAL, COUNTY, STATE, AND FEDERAL REGULATIONS.
10. JOB SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING THE OFFICE OF THE ENGINEER OF ANY DISCREPANCIES IN THE PLANS OR IN THE RELATIONSHIP OF FINISHED GRADES TO EXISTING PRIOR TO BEGINNING WORK. THE CONTRACTOR SHALL NOTE THAT IN CASE OF DISCREPANCY BETWEEN SCALED AND FIGURED DIMENSIONS SHOWN ON THEH PLANS, THE FIGURED DIMENSION SHALL GOVERN.
12. ALL EXTERIOR LIGHTING, TEMPORARY AND PERMANENT, SHALL BE SHIELDED TO PREVENT GLARE TO THE ADJACENT ROADS AND PROPERTIES.
13. THE CONTRACTOR SHALL TAKE THE PRECAUTIONS TO SAW CUT THE EXISTING SIDEWALK WHERE NECESSARY TO AVOID DAMAGE TO FOUNDATIONS, UTILITIES, AND OTHER MISCELLANEOUS ITEMS IN AND/OR ADJOINING THE CONSTRUCTION AREA DURING THE REMOVAL OF THE EXISTING SIDEWALK. THESE SAW CUTS SHALL BE INCIDENTAL TO THE UNIT PRICE BID FOR 5" CONCRETE SIDEWALK. ANY DAMAGE TO FOUNDATIONS, UTILITIES, AND OTHER ITEMS CAUSED BY NOT TAKING THE PROPER PRECAUTIONS SHALL BE REPAIRED OR REPLACED AT THE CONTRACTOR'S EXPENSE.
14. ALL SIGNS WITHIN THE PROJECT AREA SHALL BE REPLACED WITH NEW SIGNS. ALL ADDITIONAL REQUIRED SIGNS SHALL BE NEW AND LOCATED AS SHOWN ON THE PLANS OR AS DIRECTED BY THE ENGINEER.
15. THE CONTRACTOR SHALL PROTECT ALL MONUMENTATION FROM DISTURBANCE OR DAMAGE DURING CONSTRUCTION. THIS SHALL INCLUDE ALL CONCRETE MONUMENTS, PROPERTY MARKERS, BURIED CENTERLINE MARKERS, ETC., INCLUDING THOSE SHOWN ON THE PLANS AND AS DIRECTED BY THE ENGINEER. ALL MONUMENTS SHOULD BE WITNESSED PRIOR TO CONSTRUCTION IN A MANNER THAT ENSURES THE REPLACEMENT OF THE MONUMENT TO A POSITION WITHIN FIVE MILLIMETERS (¼") OF THE ORIGINAL POSITION. SURVEY NOTES OF THE WITNESSES SHALL BE PROVIDED TO THE ENGINEER PRIOR TO STARTING CONSTRUCTION. ALL MONUMENTS DISTURBED OR DAMAGED DURING CONSTRUCTION SHALL BE RESET BY THE CONTRACTOR. SURVEY NOTES OF THE RESETTING MUST BE SUBMITTED TO, AND APPROVED BY, THE ENGINEER BEFORE FINAL PAYMENT CAN BE MADE. THE SURVEY WORK TO SET THE WITNESSES AND TO RESET ANY MONUMENTATION SHALL BE DONE BY A PROFESSIONAL SURVEYOR LICENSED BY THE STATE OF MARYLAND, AND THE SURVEY NOTES MUST BEAR SAID SURVEYOR'S SEAL.
16. PROTECTIVE BARRIERS AT EXCAVATION SITES:
    - 16.1. ALL TRENCHES LEFT OVERNIGHT THAT ARE ACCESSIBLE TO VEHICULAR TRAFFIC MUST HAVE A STEEL PLATE COVERING OF PROPER DIMENSION TO SUPPORT HIGHWAY LOADINGS AND ENSURE COVERAGE OF THE TRENCH BY A MINIMUM OF EIGHTEEN (18) INCHES OVER EACH SUPPORTING SURFACE. THE STEEL PLATES SHALL BE SECURELY ANCHORED TO THE PAVEMENT AND SHALL HAVE ASPHALT RAMPS ON ALL SIDES. IF THE TRENCH OPENING IS TOO LARGE FOR STEEL PLATES, IT SHALL BE PROPERLY SECURED WITH TRAFFIC BARRICADES AND ORANGE SAFETY FENCING SHALL BE PLACED AND ANCHORED AROUND THE PERIMETER OF THE EXCAVATION. BARRIERS HALL BE PROPERLY MARKED WITH REFLECTIVE MATERIALS AND FLASHERS. ALL MATERIAL SHALL MEET OR EXCEED THE MARYLAND SHA SPECIFICATIONS.
    - 16.2. SIDEWALK AND TREE, OR LAWN EXCAVATIONS SHALL BE ADEQUATELY PROTECTED BY THE USE OF TIMBER, CURBING, BARRICADES, FENCING, FLASHERS, AND SIDEWALK CLOSED SIGNS.
    - 16.3. ALL WARNING DEVICES, FENCES, ETC. SHALL BE KEPT GRAFFITI-FREE. FENCE POSTS SHALL BE FIRMLY ANCHORED AND PLUMB. FENCING SHALL BE IN GOOD CONDITION AND TIGHT. BARRICADES AND TIMBERS, IF USED SHALL BE IN GOOD CONDITION AND INSTALLED IN SUCH A FASHION AS NOT TO CREATE A HAZARD. FLASHERS AND REFLECTIVE MATERIALS MUST BE FIRMLY SECURED TO POSTS.
    - 16.4. PROTECTION OF EXCAVATION SITES AND THE MATERIALS USED THEREIN SHALL BE MEASURED AND PAID, BUT SHALL BE INCIDENTAL TO THE ITEMS REQUIRING EXCAVATION. ALL MATERIAL SHALL MEET OR EXCEED THE MARYLAND STATE HIGHWAY ADMINISTRATION'S SPECIFICATIONS, AND SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE MARYLAND STATE HIGHWAY ADMINISTRATION SPECIFICATIONS AND MD MUTCD.





GENERAL EROSION AND SEDIMENT CONTROL NOTES

1. The contractor shall protect all points of construction ingress and egress to prevent the deposition of materials onto public roads. All materials deposited onto public roads shall be removed immediately. The use of hoses or power washers is not permitted.
2. The contractor shall inspect daily and maintain continuously in all effective operating condition all erosion and sediment control measures until such time as permanent stabilization of exposed soil occurs.
3. Following initial soil disturbance, permanent or temporary stabilization shall be completed within three (3) calendar days as to the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes and all slopes greater than 3:1 slope, and seven days as to all other disturbed or graded areas on the project site.
4. The approval of this plan makes no representation as to the existence or nonexistence of any utilities at this site. It is the responsibility of the landowners or operators and contractors to assure that no hazard exists or damage will occur to utilities. It is suggested that miss utility be contacted at 800.257.7777.

CITY OF CUMBERLAND
MARYLAND

ENGINEERING DEPARTMENT

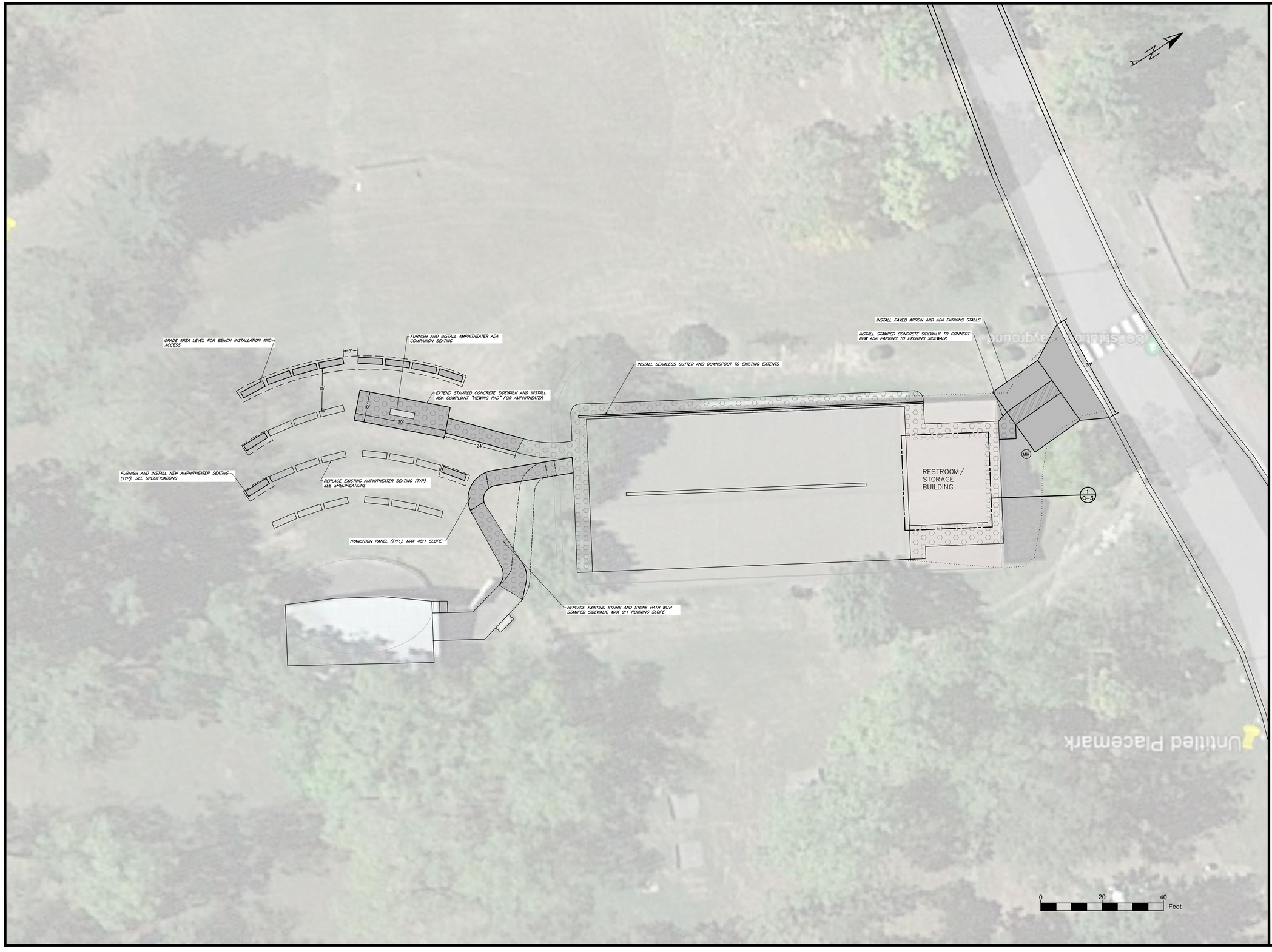
TITLE

GENERAL NOTES

NOTES

REVISION	No.	DATE

DESIGNED BY: -	C-2
DRAWN BY: -	
CHECKED BY: -	
DATE: 2/23/2022	DWG.:
PROJ.: 31-21-RE	SHEET 2 OF 4



CITY OF CUMBERLAND MARYLAND

ENGINEERING DEPARTMENT

TITLE

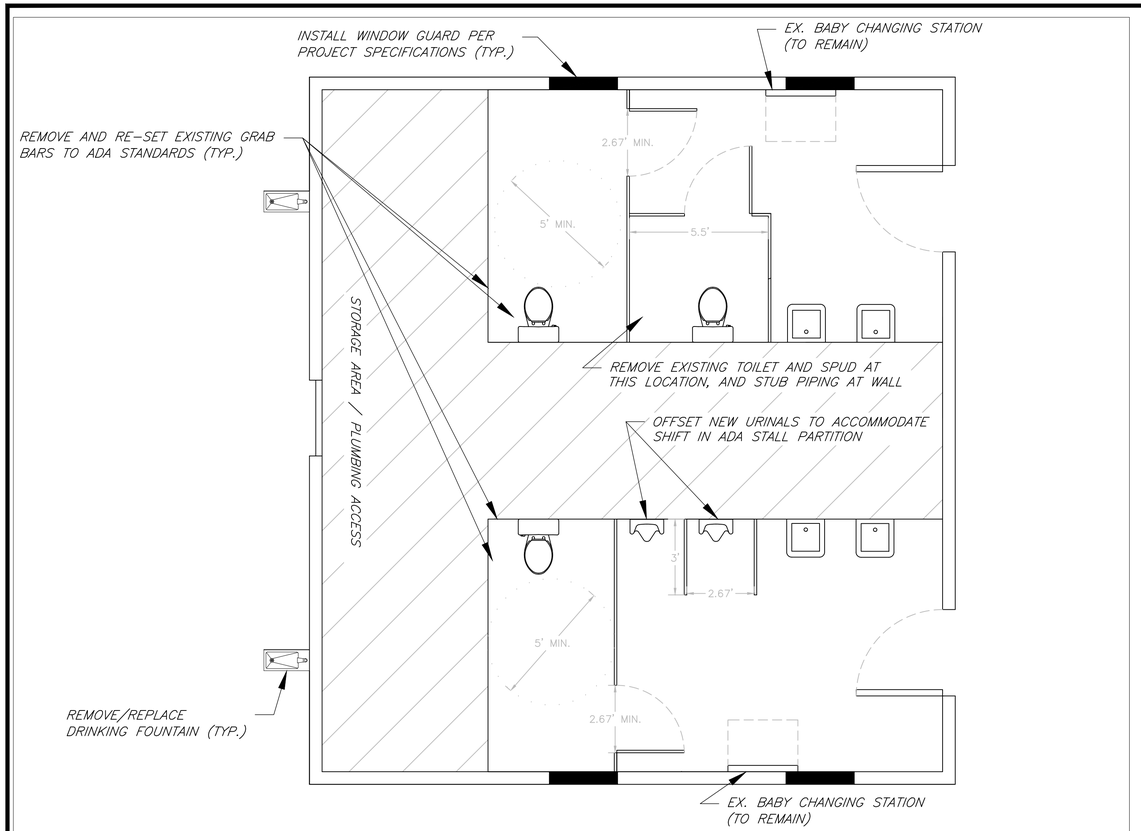
CONSTITUTION PARK AMPHITHEATER UPGRADES

PROPOSED IMPROVEMENTS

NOTES

REVISION	No.	DATE

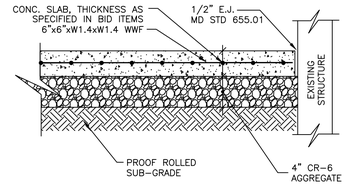
DESIGNED BY: MDI	C-2
DRAWN BY: MDI	
CHECKED BY: -	
DATE: 2/23/2022	DWG.:
PROJ.: 31-21-RE	SHEET 3 OF 4



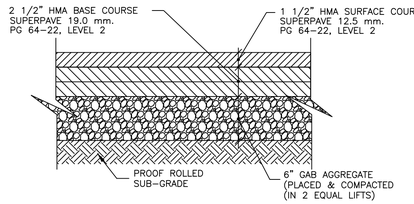
NOTE: EXISTING BABY STATIONS AND GRAB BARS TO REMAIN. REMOVE PRIOR TO PAINTING WALLS, AND REPLACE UPON COMPLETION.

RESTROOM BUILDING INTERIOR DETAIL 1
NOT TO SCALE

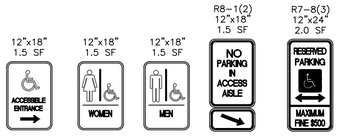
NOTES:
1. PLACE A CONSTRUCTION JOINT EVERY 5' BY SCORING A 3/8" JT. INTO CONC.
2. SURFACE TO BE BRUSHED WITH STIFF BROOM TO ASSURE NON SLIP SURFACE.
3. PROVIDE 1/2" E.J. EVERY 15' BETWEEN SLAB SECTIONS AND ADJACENT TO ALL CONCRETE CURBS, AND BUILDINGS, MD STD 655.01.
4. CONCRETE TO BE MD STD. MIX #3. MIN. 5% TO 8% AIR ENTRAINED.
5. SIDEWALKS SHALL HAVE A CROSS SLOPE OF 1/4" PER FOOT FROM REAR EDGE TO CURB UNLESS SHOWN OTHERWISE.
6. SEAL ALL JOINTS NEXT TO BUILDINGS AND
7. REFER TO PLANS FOR SCORING



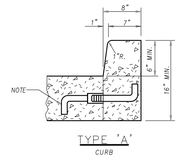
REINFORCED CONCRETE SIDEWALK/SLAB DETAIL
NOT TO SCALE



PARKING LOT PAVEMENT SECTION DETAIL
NOT TO SCALE



ADA COMPLIANT SIGNAGE DETAILS
NOT TO SCALE



NOTE: PROVIDE LONGITUDINAL TIE DEVICE "J" BAR MODIFIED. REFER TO STANDARD NO MD 572.61.

"TYPE A" STYLE CURB WALL DETAIL
NOT TO SCALE

CITY OF CUMBERLAND MARYLAND

ENGINEERING DEPARTMENT

TITLE

CONSTITUTION PARK AMPHITHEATER UPGRADES

DETAILS

NOTES

REVISION	No.	DATE

DESIGNED BY:MDI	C-3
DRAWN BY: -	
CHECKED BY: -	
DATE: 2/23/2022	DWG.:
PROJ.:31-21-RE	SHEET 4 OF 4

CONSTITUTION PARK AMPHITHEATER UPGRADES

SPECIFICATION, PROPOSAL, AND CONTRACT

PROJECT NUMBER

CITY PROJECT NO. 31-21-RE

DATE PREPARED:

JULY 2022

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ITEM QUANTITY ESTIMATE (CONFIRM IN FIELD)

ITEM NO.	ITEM	UNITS	QTY
1	Mobilization	LS	1
2	Construction Stakeout	LS	1
3	5-Inch Reinforced Stamped Concrete Sidewalk	SF	550
4	ADA Viewing Area Stamped Concrete Slab	SF	200
5	Furnish and Install Seamless Gutters and Downspouts	LF	115
5	Furnish and Install Welded Wire Window Guards	EA	4
6	Furnish and Install Wall-Mounted Drinking Fountains	EA	2
7	Furnish and Install Tamper Proof Hose Bib	EA	1
8	Paint Interior Walls	LS	1
9	Restroom Plumbing Renovations	LS	1
10	Furnish and Install HDP Restroom Partitions	LS	1
11	Furnish and Install Misc. Restroom Fixtures	LS	1
12	Furnish and Install Outdoor Amphitheater Benches	EA	27
13	Asphalt Parking Area	SY	30

CONTRACT DURATION

The Contractor covenants and agrees that the work shall be satisfactorily completed by **May 1, 2023**. Failure to do so could result in early termination of contract.

Liability Insurance

Prior to the commencement of work, the Contractor shall submit to the City of Cumberland a Certificate of Insurance indicating that he carries:

- Commercial General Liability Insurance policy limits shall be not less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal Injury Liability of $1,000,000 per occurrence and $2,000,000 aggregate
- Commercial Auto Liability Insurance policy limits shall be not less than a Combined Single Limit of $1,000,000
- Commercial Excess Liability Insurance policy limits shall be not less than a $1,000,000
- Commercial Workers Compensation- Statutory.

Such insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted.

The insurance policy will name the **"Mayor and City Council of Cumberland"** as an additional insured and will include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance notice of its cancellation.

There will be no special payment for said insurance.

Hold Harmless Agreement

The Contractor shall indemnify and save harmless the Mayor and City Council of Cumberland, Maryland, from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Contractor, his agent, or employees, in the execution of the work or in the consequence of any negligence or carelessness in guarding the same.

Scope of Payment

The Contractor shall accept the compensation as herein provided, as full payment for furnishing all labor, tools, equipment, accessories, supervision, and management necessary to the completed work and for performing all work contemplated under the Contract; also, for all loss or damage arising from the nature of the work or from the action of the elements or other unforeseen causes during the prosecution of the work until its final acceptance; also, for infringement of patents and for any expense incurred from suspension or discontinuance of the work, all as herein specified. No payment will be made for unauthorized work.

Partial Payments

Partial payments may be made monthly if the work performed, accepted, and certified for such payments amounts to more than $500.00 net. Not less than 10% of the gross amount shall be retained by the City until final payment. Partial payment will be approximate only, and shall be corrected in final

estimate, acceptance, and payment. Partial payments may be withheld in whole or in part, at the discretion of the Engineer.

Retainage

For each partial payment the City will withhold funds at the following rate, based on the awarded contract amounts:

- For this contract, 10% of each partial payment with a maximum retainage cap of 5% the total contract value, including changes to the contract by approved change order.

Said retainage will not be released by the City until final payment (unless partially released in a semi final payment, at the approval of the Engineer).

PLANS AND SPECIFICATIONS

All work is to be completed in accordance with the plans and specifications, which are a part of the Contract included in this document.

The plans and specifications are intended to cover a complete project. It should be distinctly understood that failure to mention any incidental and/or necessary related work that would be required to complete the items of work included in this Contract shall not relieve the Contractor of his responsibility to perform such work.

When referred to in the Special Provisions, the MDOT SHA Specifications are the "Maryland Department of Transportation State Highway Administration's Standard Specifications for Construction and Materials" dated July 2021, and the revisions thereof, or additions thereto.

The City of Cumberland's Special Provisions shall override the Maryland Department of Transportation State Highway Administration's Special Provisions, included in this document, if there is a discrepancy between the two.

In case of discrepancy between the Special Provisions and all other provisions contained in this Contract, the Engineer shall be the sole authority as to the proper interpretation.

SUBMITTALS

The contractor shall submit a list of all major materials including catalog cut sheets or shop drawings of items to be used on this project for City review and approval.

RESPONSIBILITY FOR QUALITY AND COMPLETENESS

The Contract plans and specifications are intended to cover a complete project. The project is broken down into unit prices for payment purposes.

It is the Contractor's responsibility to ascertain the work required to properly complete an item of work, and to include said costs in the unit prices that are bid for that work.

It is also the Contractor's responsibility to provide a quality product to the Owner. All materials and workmanship must not only meet specifications, but must be in accordance with normally acceptable practices.

The City of Cumberland reserves the right to add to or delete from the estimated quantities of work for any of the items so that the project meets the allowable budget. Such additions or deletions shall not affect the unit prices bid.

BLANKET WORKMANSHIP AND MATERIALS WARRANTY

A. In addition to any other warranties at law or set out elsewhere in this Contract, the Contractor warrants for one year after final acceptance of the work, that work performed under this Contract conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. With respect to any part of the work which the City takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the City takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to City owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

B. The City shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

C. Should the Contractor fail to remedy any failure, defect, or damage described in A. above within a reasonable time after receipt of notice thereof, the City shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

D. In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the City, be enforced by the Contractor for the benefit of the City. In such case if the Contractor's warranty under A. above has expired, any suit directed by the City to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the City. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

E. If directed by the procurement officer, the Contractor shall require any such warranties to be executed in writing to the City.

F. Notwithstanding any other provision of this clause, unless such a defect is caused by the

negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair or any defects of material or design furnished by the City nor for the repair of any damage which results from any such defect in City furnished material or design.

G. The warranty specified herein shall not limit the City's rights under other provisions included in this contract.

EROSION AND SEDIMENT CONTROL

The Contractor shall follow the approved sediment pollution control plan; or shall develop, submit and obtain approval, from all agencies and the engineer, for the erosion and sediment pollution control plan prior to start of work. The Contractor shall be fully responsible to provide adequate erosion and sediment control for all work. The erosion and sediment control features installed by the Contractor shall be maintained by the Contractor for the duration of the Contract.

This item will not be measured and will not be directly paid for but will be considered as incidental to and included in the other bid items of the Contract.

ACTIVITIES CHART

DESCRIPTION

Plan, schedule, and construct the project using an Activities Chart (AC). The AC shall break down into detail the Contract time required to perform the work activities for the duration of the project. Use the AC for coordinating and monitoring the work specified in the Contract Documents including activities of subcontractors, vendors, suppliers, utilities, and other parties associated with the construction of the Contract.

Initial Activities Chart Project Schedule (IAC). The IAC shall consist of:

(a) A chronologically sequenced bar chart in which work activity durations shall be represented by working days, days, or completion date as specified.

(b) A Written Narrative (WN) describing the original sequence of work, number of shifts per day, number of hours per shift, number and composition of crews, and the equipment to be utilized on each work activity. List subcontracting activities.

ITEM PROVISIONS

1 – MOBILIZATION

DESCRIPTION

See MD SHA Standard Specifications Section 108.

This Work shall be for all construction preparatory operations that includes movement of personnel and equipment to the project site.

MATERIALS

Not applicable.

CONSTRUCTION REQUIREMENTS

Not applicable.

MEASUREMENT OF PAYMENT

Mobilization will not be measured but will be paid for at the Contract lump sum price. The cost of all required insurance will be incidental to the Mobilization item. The payment will be full compensation for all material, labor, equipment, tools, and incidentals necessary to complete the work.

2 – CONSTRUCTION STAKEOUT

DESCRIPTION

See MD SHA Standard Specifications Section 107.

Contractor shall be responsible for establishing field elevations, location stakeout of proposed improvements, grading stakeout, and all other survey work necessary for the proposed construction.

MATERIALS

See MD SHA Standard Specifications Section 107.

CONSTRUCTION REQUIREMENTS

The Contractor shall be responsible for all construction stakeouts for all of the work. Prior to start of the work, the Contractor shall verify all grades and all other information shown on the drawings required to properly perform the work. In case of discrepancies, the Contractor shall notify the Engineer at once, and failure to do so shall be at the Contractor's sole risk.

MEASUREMENT AND PAYMENT

See MD SHA Standard Specifications Section 107.

3 – 5-INCH REINFORCED STAMPED CONCRETE SIDEWALK

DESCRIPTION

See MD SHA Standard Specifications Section 603.

MATERIALS

See MD SHA Standard Specifications Section 603 and 908.05.

CONSTRUCTION REQUIREMENTS

See MD SHA Standard Specifications Section 603 and 908.05 as well as MD SHA Standard Standards 655.01, 655.11 and 655.12.

All sidewalks must have a running slope not steeper than 9H:1V (where possible, all attempts shall be made to have running slopes no steeper than 12H:1V). Cross slopes of ramp runs must not be steeper than 48H:1V. All directional transitions (shown on the plans) shall have no slopes greater than 48H:1V.

For the sidewalk between the pavilions and amphitheater stage, install curb walls on the uphill side of any ramp sections that cut into the existing ground. Extend curb wall height to a minimum of 2 inches above top of adjacent exposed cut slope. All curb walls shall be “Type A” style (see Details).

The stamp formwork will be provided by City personnel.

MEASUREMENT AND PAYMENT

5-INCH REINFORCED CONCRETE SIDEWALK will be paid for on square foot basis as measured horizontally by length and width.

Payment for the unit price bid shall include handicap ramps, excavation, boxing out, framing, finishing, CR-6 base, jointing, reinforcement, and incidentals necessary to complete the item.

The contractor shall take the precaution to saw cut the existing sidewalk where necessary to avoid damage to foundations, utilities, and other miscellaneous items in and/or adjoining the construction area during the removal of the existing sidewalk. These saw cuts shall be incidental to the unit price bid for 5” concrete sidewalk. Any damage to foundations, utilities, and other items caused by not taking the proper precautions shall be repaired or replaced at the contractor’s expense.

The removal and disposal of existing sidewalk, and cut/fill necessary to meet grades, shall be incidental to the unit price bid for the 5 Inch Reinforced Concrete Sidewalk.

4 – ADA VIEWING AREA STAMPED CONCRETE SLAB

DESCRIPTION

This item includes the installation of a 5" thick Welded Wire Fabric (WWF) reinforced concrete slab adjacent to the amphitheater seating area, as shown on the plans or as directed by the Engineer. The cross section of the slab shall be the same as the 5-inch reinforced sidewalk shown on the plans.

See MD SHA Standard Specifications Section 603.

MATERIALS

Curing Materials..... MD SHA Spec. Section 902.07
Form Release Compound..... MD SHA Spec. Section 902.08
Portland Cement Concrete ..... MD SHA Spec. Section 902.10, Mix No. 3
Welded Wire Fabric ..... MD SHA Spec. Section 908.05
Joint Sealer..... MD SHA Spec. Section 911.01
Preformed Joint Fillers ..... MD SHA Spec. Section 911.02

CONSTRUCTION REQUIREMENTS

General

See MD SHA Standard Specification Section 603 and MD SHA Standard Detail 655.01, or as directed by the Engineer.

The concrete slab shall have no cross slopes greater than 48H:1V.

Preparation

Compact the subgrade to 92 percent density per T 180, Method C, and trim to the proper shape and required grade. Remove all soft and unsuitable material and replace with approved material. Place 4” of CR-6 aggregate base on subgrade, as shown on the plans.

Concreting and Finishing

Deposit the concrete on the prepared aggregate base in a manner, approved by the Engineer, to avoid any joints or seams in the finished concrete surface. Consolidate the concrete by using immersion type vibrators. Avoid excessive vibration that results in segregation, and any vibrator contact with the side forms, reinforcement, or underlying material. The consolidation system and settings are subject to approval of the Engineer. Thoroughly spade along the edges and tamp the entire surface area to eliminate voids. Strike off and screed the concrete to the top of the forms.

Float the surface and apply a stamped finish, matching the adjacent sidewalk. Stamp will be provided by the City. Do not plaster the surface. Use a 1/4 in. edging tool on all outside edges and all joints. Tool or sawcut joints at a minimum of ¾ inch deep.

Cure the concrete for at least 72 hours. A liquid membrane forming compound shall not be used. Curing shall be via burlap curing, or other wet curing method approved by the Engineer.

MEASUREMENT AND PAYMENT

ADA VIEWING AREA STAMPED CONCRETE SLAB will be paid for on square foot basis as measured horizontally by length and width, excluding the area of the marble courts.

The payment will be full compensation for a completed installation including boxing out, framing, finishing, CR-6 base, jointing, reinforcement, and all labor, material, equipment, tools, and all incidentals required to complete the work.

5 – FURNISH AND INSTALL SEAMLESS GUTTERS AND DOWNSPOUTS

DESCRIPTION

Furnish and install seamless gutters and downspout on the western side of Pavilions 1 and 2, as shown on the plans. This includes removal of existing gutters and downspout.

MATERIALS

1. Aluminum Gutter
    a. K Style, 5” Profile
    b. 0.032” thickness, white finish
2. Aluminum Downspout and Elbows
    a. 2”x3” opening
    b. White finish

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Remove existing gutter and downspout on western side of structure. Inspect fascia board for damage or rot, and replace as needed. Install the gutters, downspouts, and fittings in accordance with the manufacturer's recommendations.

MEASUREMENT AND PAYMENT

FURNISH AND INSTALL SEAMLESS GUTTERS AND DOWNSPOUTS will be paid for per linear foot of gutter. The payment will be full compensation for a completed installation, including removal and proper disposal of the existing gutter, and all labor, material, equipment, tools, and all incidentals required to complete the work.

6 – FURNISH AND INSTALL WELDED WIRE WINDOW GUARDS

DESCRIPTION

Furnish and install stainless steel welded wire window guards in the window openings of the restroom building in Pavilions 1 and 2, as described below and as directed by the Engineer.

MATERIALS

1. Stainless Steel Welded Wire Mesh, 0.12" Diameter (11 gauge)
    a. 1-1/2" square mesh
    b. Cut to size of window openings, plus extra for anchorage
2. HILTI Nail-In Anchors, ¼" x 2"
3. Stainless Steel Wire Mounting Brackets

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Remove the existing plywood. Install the welded wire mesh into the CMU blocks from the inside of the restrooms, using nail-in anchors and brackets. Install the anchors per manufacturer's recommendations. Ensure a complete closure around the window opening by installing anchors at a minimum spacing of 12 inches.

MEASUREMENT AND PAYMENT

FURNISH AND INSTALL WELDED WIRE WINDOW GUARDS will be paid for per each. The payment will be full compensation for a completed installation, including all labor, material, equipment, tools, and all incidentals required to complete the work.

7 – FURNISH AND INSTALL WALL-MOUNTED DRINKING FOUNTAINS

DESCRIPTION

Furnish and install wall-mounted drinking fountains on the CMU block walls in Pavilions 1 and 2, in the locations of the existing water fountains or as directed by the Engineer.

MATERIALS

1. Exterior Wall-Mounted Drinking Fountain
    a. Manufacturer: Elkay (1333 Butterfield Road, Suite 200, Downers Grove, IL 60515), or approved equal
    b. Dimensions: 12-1/8”x18-3/4”x6-1/2”H
    c. Freeze Resistant
    d. Non-refrigerated
    e. Vandal Resistant Bubbler
    f. ADA Compliant
    g. Finish: Stainless steel
2. Fast setting Concrete Mix, conforming to ASTM C387 (for any repairs)
3. Exterior Masonry Paint (for any repairs)
    a. Sherwin-Williams LOXON XP Waterproof Masonry Coating, or approved equal

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Remove the existing drinking fountains and all associated equipment. Take extra precautions to not damage the CMU block during removal. Install new fountains in accordance with the manufacturer’s recommendations, using the existing hole(s) in the wall, as needed. Install freeze resistant equipment inside restroom building.

Upon completion of installation, any exposed holes in the CMU blocks shall be filled with fast-setting concrete mix. Any exposed bare wall or areas of damaged paint due to installation shall be re-painted. Match the existing color of the wall to make painting repairs. Take extra precaution to not paint any part of the fountains.

MEASUREMENT AND PAYMENT

FURNISH AND REPLACE WALL-MOUNTED DRINKING FOUNTAINS will be paid for per each. The payment will be full compensation for a completed installation, including removal and proper disposal of existing fountains, as well as all labor, material, equipment, tools, and all incidentals required to complete the work.

8 – FURNISH AND INSTALL TAMPER PROOF HOSE BIB

DESCRIPTION

Furnish and install tamper proof hose bib on the CMU block walls in Pavilions 1 and 2, in the location of the existing hose bib on the southern wall, or as directed by the Engineer.

MATERIALS

1. Bronze, ¾", Anti-siphon, non-freeze, lockable wall hydrant
2. Fast setting Concrete Mix, conforming to ASTM C387 (for any repairs)
3. Exterior Masonry Paint (for any repairs)
    a. Sherwin-Williams LOXON XP Waterproof Masonry Coating, or approved equal

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Remove the existing hose bibs. Take extra precautions to not damage the CMU block during removal. Install new bibs in accordance with the manufacturer's recommendations, using the existing hole(s) in the wall, as needed.

Upon completion of installation, any exposed holes in the CMU blocks shall be filled with fast-setting concrete mix. Any exposed bare wall or areas of damaged paint due to installation shall be re-painted. Match the existing color of the wall to make painting repairs.

MEASUREMENT AND PAYMENT

FURNISH AND REPLACE TAMPER PROOF HOSE BIBS will be paid for per each. The payment will be full compensation for a completed installation, including removal and proper disposal of existing fountains, as well as all labor, material, equipment, tools, and all incidentals required to complete the work.

9 —PAINT INTERIOR WALLS

DESCRIPTION

This item will include the cleaning and painting of the masonry brick walls in the interior of each restroom, as well as the plywood divider wall between Pavilions 1 and 2

MATERIALS

Unless otherwise noted, all name brand material listed shall be considered to mean, or "equal as approved by the Engineer".

1. Paint for Masonry Block: Sherwin-Williams LOXON XP Waterproof Masonry Coating
    a. Color: Toasted Pine Nut (SW7696)

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Clean and prepare the surfaces in accordance with the paint manufacturer's recommendations. For plywood divider, touch up any bare wall with primer and allow to dry prior to application of paint.

Paint masonry block walls by applying two coats at 6.5 to 8.4 mils dry film thickness per coat, with a 13 to 16.8 mills total dry film thickness, with 10 or less pinholes per square foot.

Do not paint immediately after rain, during foggy weather, or when the temperature is below 50 degrees.

MEASUREMENT AND PAYMENT

PAINT INTERIOR WALLS will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for all labor, material, equipment, tools, and all incidentals required to complete the work.

10 – RESTROOM PLUMBING RENOVATIONS

DESCRIPTION

This item will include the installation of new interior water lines and restroom fixtures. All water lines can be exposed and mounted to the CMU block walls. Cutting and capping of existing waterlines and removal of existing fixtures shall be incidental to the item.

MATERIALS

The contractor will use the following materials, or equal as approved by the Engineer.

1. Sink: Mansfield 2018HBNS-4 20x18 White Wall-Mount Lavatory
    a. 2 in each restroom, 4 total
2. ADA-height Toilet: Kohler K-96057-0 White Highcliff Ultra, Top Spud, ADA-height Elongated Toilet Bowl
    a. 2 in each restroom, 4 total
3. Flush Valve: Zurn Z6000 Aquaflush Exposed Diaphragm Flush Valve - ADA Design
    a. 2 in each restroom, 4 total
4. Copper Pipe: Shall be 3/4: type L hard copper tubing

CONSTRUCTION REQUIREMENTS

Catalog Cuts of all materials, including those listed below, and for all appurtenances shall be submitted to the Engineer for approval prior to purchase and installation.

All plumbing work shall be coordinated with other contract items. Remove all existing fixtures: toilets, lavatories, urinal, etc.

"Snake" all drains to be sure they are free and working. Existing plumbing that protrudes from the block walls shall be cut and capped in a fashion so that it is recessed behind the surface of the wall, and the wall shall be patched in a manner approved by the Engineer.

Install new water lines to all plumbing fixtures. Water lines may be exposed and mounted to the CMU block walls. Interior water lines should have a 15% fall with tees and drain valves on them for winterization.

Refer to the plans for placement of the new plumbing fixtures. Ensure that the new partitions can be placed without interference from the fixtures or water lines. Ensure all wall-hung fixtures (i.e. sinks, urinals) are installed at ADA accessible heights.

Wall mounted sinks and ADA height toilets shall be installed in accordance with the manufacturer's instructions and in accordance with ADA standards. Faucets in all sinks are to be standard faucets. Auto shut off are not to be installed.

MEASUREMENT AND PAYMENT

PLUMBING RENOVATIONS will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for a completed installation of the water lines and plumbing fixtures including all labor, material, equipment, tools, and all incidentals required to complete the work; including the removal exiting fixtures.

11 – FURNISH AND INSTALL HDP PARTITIONS

DESCRIPTION

The contractor will furnish and install High Density Polymer (HDP) toilet partitions at locations shown on the plans, or where directed by the Engineer. The contractor will be required to make the field measurements and coordinate with the manufacturer and vendor for the correct doors, panels, pilasters, headrails, hardware, and fittings.

MATERIALS

1. HDP (High Density Polymer) Toilet Partitions
    a. Manufacturer: General Partitions Mfg. Corp. (*1702 Peninsula Dr., Erie, PA 16505*), or approved equal.
    b. Doors and Panels: Shall be 1” thick (55” high). Solid color throughout. All edges to be machined radius and all sharp edges removed.
    c. Pilasters: Shall be same construction as doors and panels. Pilasters are to be anchored to the floor with heavy gauge angle. Top of pilasters to be securely braced with extruded aluminum headrail with integral crown loafer rail.
    d. Headrail: Shall be 1-7/8”x1-1/32”x1/16” with integral crown loafer rail, extruded aluminum heat-treated and anodized.
    e. Hardware: Surface Mounted Aluminum Slide Latch, Coat Hook, Aluminum Wrap Around Hinge Assembly, and Aluminum Door Stop & Keeper.
    f. Fittings: Panels and pilasters are anchored to the wall with continuous brackets. Pilaster trim shall be 3” high. All hardware and fittings to be secured with vandal-proof bolts or No. 14 screws of proper length.
    g. Color: Bordeaux (Maroon)

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

The toilet partitions and appurtenances shall be installed in accordance with the manufacturer's recommendations.

MEASUREMENT AND PAYMENT

FURNISH AND INSTALL HDP PARTITIONS will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for a completed installation of the toilet partitions including all labor, material, equipment, tools, and all incidentals required to complete the work; including the removal and proper disposal of the existing partitions.

12 – FURNISH AND INSTALL MISCELLANEOUS FIXTURES

DESCRIPTION

This item will include the install of miscellaneous fixtures, including: grab bars, toilet paper and soap dispensers, mirrors, and baby changing stations. Removal of existing fixtures shall be incidental to the item.

MATERIALS

The contractor will use the following materials, or equal as approved by the Engineer.

1. Toilet Paper Dispenser: Bradley Model 5A10, Diplomat Toilet Paper Dispenser Surface Mounted
    a. 2 in each restroom, 4 Total
2. Soap Dispensers: Bradex Model 6324, 4" Spout Pump Soap Dispenser
    a. 2 in each restroom, 4 Total
3. Mirrors: Bradley Model 740-5 Fixed Tilt Mirror, with Bright annealed 20 Gauge Stainless Steel in lieu of polished float glass mirror
    a. 1 in each restroom, 2 Total

CONSTRUCTION REQUIREMENTS

Catalog Cuts of all materials, and for all appurtenances shall be submitted to the Engineer for approval prior to purchase and installation.

All work shall be coordinated with other contract items. All fixtures shall be installed in compliance with ADA requirements.

Remove all existing miscellaneous fixtures. Install all materials and appurtenances in accordance with the plans, local building codes, and ADA standards. The existing grab bars and baby changing stations shall be re-used. Ensure that these fixtures have been installed to ADA standards, and adjust as needed.

MEASUREMENT AND PAYMENT

FURNISH AND INSTALL MISCELLANEOUS FIXTURES will not be measured but will be paid for at the Contract lump sum price. The payment will be full compensation for a completed installation of the grab bars, toilet paper dispensers, soap dispensers, mirrors, and baby changing stations including all labor, material, equipment, tools, and all incidentals required to complete the work. Removal of existing fixtures is incidental to this item.

13 – FURNISH AND INSTALL GROUND MOUNTED AMPHITHEATER BENCHES

DESCRIPTION

Furnish and install ground-mounted ground mounted metal benches on the hillside adjacent to the amphitheater, as shown on the Plans. Work also includes removal of the existing benches and foundations, land grading for additional benches, placement of gravel, and turfgrass establishment.

MATERIALS

1. 8' Thermoplastic Coated Metal Bench
    a. Manufacturer: Belson Outdoors (627 Amersale Dr., Naperville, IL 60563), or approved equal.
    b. Seat Dimensions: 10" or 12" wide, 18" installed height
    c. Includes matching back support
    d. Diamond patterned steel seat and back support
    e. UV stabilized thermoplastic coating
    f. Color:
        i. Seat: Green
        ii. Frame: Green or Black
    g. In-ground mount
2. Fast setting Concrete Mix, conforming to ASTM C387
    a. 28-day Compressive Strength: 4,000 PSI
3. ¾" Limestone Gravel (AASHTO #57)
4. Woven polypropylene landscape fabric
5. Turfgrass Establishment Materials, in accordance with MD SHA Standard Specifications Section 920 (Fertilizer, Straw Mulch, Seed Mixtures, Topsoil, etc.)

CONSTRUCTION REQUIREMENTS

All work shall be coordinated with other contract items.

Site Preparation

Prior to initiation of work, contractor shall place erosion and sediment control devices (i.e. silt fence, filter log, etc.) at the locations shown on the plans. These devices shall be maintained in accordance with MD SHA Standard Specifications Section 308.

Remove and properly dispose of all existing benches, including concrete foundations.

Trim, slope, and shape the existing embankment in the locations shown on the plans, to accommodate the new benches. Grade the slope in such a manner to allow a minimum of an 18"-wide level walking path in front of the new benches. Make any repairs to the existing embankment in areas where the old benches were removed to accommodate the new benches and 18"-wide level walking path in these locations. Dispose of any excess and unsuitable materials off-site, and as specified in MD SHA Standard Specifications Section 201. Final grading of embankment is subject to approval by the Engineer prior to installation of new benches.

New Installation

Install new benches in accordance with the manufacturer's recommendations. Benches shall be mounted in the ground using the concrete mix specified in the Materials section. Final bench height shall be 18" above the ground. Install benches in the locations and pattern as shown on the plans. Benches shall be placed in sets of three or four, with approximately 4" between each bench. Take special care to ensure that each set of benches is installed plumb, at a uniform height, and with equal spacing. Sets of benches shall be spaced 60" apart.

Additionally, one bench shall be installed in the center of the ADA viewing area pad, as shown on the plans. This bench shall be bolted to the concrete pad, in accordance with the manufacturer's recommendations.

Upon completion of bench installation, exposed shall be prepped for turfgrass establishment. All disturbed areas shall receive turfgrass establishment in accordance with MD SHA Specifications Section 705.

MEASUREMENT AND PAYMENT

FURNISH AND INSTALL GROUND MOUNTED AMPHITHEATER BENCHES will be paid for per each. The payment will be full compensation for a completed installation, including removal and proper disposal of the existing benches, site grading, and all labor, material, equipment, tools, and all incidentals required to complete the work.

14 – ASPHALT PARKING AREA

DESCRIPTION

This item is for the installation of a bituminous pavement parking area on the northern corner of Pavilions 1 and 2, as shown on the plans. Installation includes placement of a 6" CR-6 aggregate base course, a 2.5" bituminous base course, and a 1.5" bituminous surface course. See detail.

MATERIALS

1. CR-6 Aggregate Base Course
    a. See MD SHA Standard Specification Sections 501 and 901
2. SuperPave Asphalt Mix 19.0mm, PG64S-22 (Asphalt Base)
    a. See MD SHA Standard Specification Section 504
    b. Mix design shall be submitted to and approved by the Engineer
3. SuperPave Asphalt Mix 12.5mm, PG64S-22 (Asphalt Surface)
    a. See MD SHA Standard Specification Section 504
    b. Mix design shall be submitted to and approved by the Engineer

CONSTRUCTION REQUIREMENTS

Prior to initiation of work, contractor shall place erosion and sediment control devices (i.e. silt fence, filter log, etc.) at the locations shown on the plans. These devices shall be maintained in accordance with MD SHA Standard Specifications Section 308.

Excavate to the limits of the proposed parking area, as shown on the plans. Dispose of any excess and unsuitable materials off-site, and as specified in MD SHA Standard Specifications Section 201.

Compact subbase and place layers in accordance with MD SHA Standard Specification Sections 501 and 504. Asphalt layers may be placed by hand and compacted using walk-behind rollers due to space constraints. All edges shall be formed to 45-degree angles and packed with a hand tamper.

MEASUREMENT AND PAYMENT

ASPHALT PARKING AREA will be on square yard basis as measured horizontally by length and width.

Payment for the unit price bid shall include all excavation, CR-6 base, bituminous layers, equipment, and incidentals necessary to complete the item.

File Attachments for Item:

. Order 27,139 - accepting the proposal of Micro-Tech Designs to perform SCADA improvement as needed for emergencies or maintenance and entering into a three (3) year agreement at a cost not to exceed of $490,000

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,139 **DATE:** December 6, 2022

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

THAT, the proposal from Micro-Tech Designs, 4312 Black Rock Road, Hampstead, MD 21074, for the WRF & WFP Integration Services Project (8-21-WWTO) in the estimated cost not-to-exceed Four Hundred Ninety-Nine Thousand, Twenty Dollars and Ninety-One Cents ($499,020.91) be and is hereby accepted; and

BE IT FURTHER ORDERED THAT, all other proposals received for this project be and are hereby rejected.

_____

Raymond M. Morriss, Mayor

Budget: 002.299DD.65000 & 003.399DD.65000

Council Agenda Summary

Meeting Date: 12/6/2022

Key Staff Contact: Robert Smith, P.E.

Item Title:

WRF & WFP Integration Services Agreement

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

The City of Cumberland's Water Filtration Plant (WFP) & Water Reclamation Facility (WRF) need to utilize the services of Micro-Tech Designs in order to perform SCADA Improvement as needed for emergencies or maintenance. In order to utilize this service, the WRF & WFP departments need to enter into a 3-year agreement as outlined in the RFP. The estimated cost breakdown will be $310,000.00 over the course of 3 years for the WFP and $180,000.00 for the WRF. The total cost will be estimated at $490,000.00.

Amount of Award: $185,000.00 (FY23), $135,000.00 (FY24), $170,000.00 (FY25)

Budget number: 002.299DD.65000 & 003.399DD.65000

Grant, bond, etc. reference: City Funds

CITY OF CUMBERLAND MARYLAND

PROJECT INFORMATION	
Project Title:	WRF & WFP Integration Services
City Project:	8-21-WWTP
Contract Length:	952 Calendar Days

CERTIFIED COST PROPOSAL TABULATION

	PROPOSER	PROPOSER	PROPOSER
	M.C. Dean	**Micro-Tech Designs**	**Wunderlich-Malec**
	1765 Greensboro Station Place, Tysons, VA 22102	4312 Black Rock Road, Hampstead, MD 21074	6751 Columbia Gateway Dr, Suite 300 Columbia, MD 21046

GRADING MATRIX

ITEM NO.	ITEM DESCRIPTION	MAX GRADE	Grade	Converted Percentage	Grade	Converted Percentage	Grade	Converted Percentage
1	Consultant's undestanding of the project	10	10	20.0%	10	20.0%	10	20.0%
2	References from clients on simliar projects	10	10	20.0%	10	20.0%	10	20.0%
3	Consultant's experience on similar work	10	10	20.0%	10	20.0%	10	20.0%
4	Consultant's staff experience	10	9	18.0%	10	20.0%	9	18.0%
5	Assessment of Rates	10	9.6	19.3%	9.9	19.7%	10.0	20.0%
	TOTAL GRADE			**97.3%**		**99.7%**		**98.0%**

I HEREBY CERTIFY THE ABOVE IS A TRUE AND CORRECT SUMMARY OF THE PROPOSALS RECEIVED:

Robert Smith, PE

Director of Engineering & Utilities

PROPOSAL

Proposal by Micro-Tech Designs, Inc.
Name

4312 Black Rock Road
Address (Street and/or P.O. Box)

Hampstead MD 21074
City State Zip

(410)239-2885 (410)239-3736
A.C. Phone No. A.C. Fax No.

To furnish all materials and to perform all work in accordance with the Plans and Specifications relating to a contract for:

WRF & WFP INTEGRATION SERVICES
CITY PROJECT NO. 8-21-WWTP

as set forth in the Description which is a part of the Contract documents, on which proposals will be received until, but not after 2:00 p.m., Local Time, on 11/09/2022, as set forth in the Request for Proposals herewith.

* *

To the Mayor and City Council
City of Cumberland
Maryland

Gentlemen:

In accordance with the advertisement of the City of Cumberland, inviting proposals for the work hereinbefore named, and in accordance with the plans and specifications now on file in the City Engineering Department do/does certify that Micro-Tech Designs, Inc. is/are the only person or persons interested in this proposal as principals; that the proposal is made without collusion with any persons, firm or corporation; that and examination has been made of the specifications and contract form contained herein, also of the plans and of the site of the work and Micro-Tech Designs, Inc. do/does propose to furnish all necessary machinery, equipment, material specified, labor and other means of engineering and design in whatever manner and sequence required.

AFFIDAVIT OF QUALIFICATION TO SUBMIT PROPOSAL

I hereby affirm that

1. I am the President (Title) and the duly authorized representative of the firm of Micro-Tech Designs, Inc. (Name of Corporation)

   and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I nor the above firm, nor to the best of my knowledge, any of its officers, directors, or partners, or any of its employees directly involved in obtaining contracts with the State or any county, bi-county or multi-county agency, or subdivision of the State have been convicted of, or have pleaded nolo contendere to a charge of, or have during the course of an official investigation or other proceeding admitted in writing or under oath acts or omissions which constitute bribery, attempted bribery, or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland or under the laws of any state or the federal government (conduct prior to July 1, 1977 is not required to be reported).

3. (State "none" or, as appropriate, list any conviction, pleas, or admission described in paragraph 2 above, with the date; court, official, or administrative body; the individuals involved and their position with the firm, and the sentence or disposition, if any.)

   None

AFFIDAVIT OF QUALIFICATION TO SUBMIT PROPOSAL

I acknowledge that this affidavit is to be furnished to such other agencies as are hereinafter set forth and, where appropriate, to the Board of Public Works and to the Attorney General under section 16D of Article 78A of the Annotated Code of Maryland. I acknowledge that, if the representations set forth in this affidavit are not true and correct, any such agency may terminate any contract awarded and take any other appropriate section. I further acknowledge that I am executing this affidavit in compliance with section 16D of Article 78A of the Annotated Code of Maryland, which provides that certain persons who have been convicted of or have admitted to bribery, attempted bribery, or conspiracy to bribe may be disqualified, either by operation of law or after a hearing, from entering into contracts with the State or any of its agencies or subdivisions.

I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.



(Signature)

11/08/2022
(Date)

Cameron Farzanfar

President

Micro-Tech Designs, Inc.

LOCAL PREFERENCE CERTIFICATION

1. I am the President (Print / type position) of Micro-Tech Designs, Inc. (Print/type business name),

   hereinafter referred to as the "Business."

2. The Business maintains an active bona fide place of business at:

   4312 Black Rock Road
   (Street address)

   Hampstead, MD 21074
   (City, state, zip code)

   The said place of business is located within [check one]:

   ☐ The City of Cumberland, Maryland

   ☐ Allegany County, Maryland

   ☒ None of the above (Not Applicable)

3. I have made inquiry with the Maryland State Department of Assessments and Taxation. If the Business is required to register to do business with the State of Maryland, it is in good standing with the State of Maryland.

4. I hereby certify under the penalties of perjury that the contacts of the foregoing Local Preference Certification are true and correct.

Cameron Farzanfar
Name *(print or type)*

11/08/2022
Date

Signature

NOTE: In order to receive a local preference, City of Cumberland and/or Allegany County real and personal property taxes must be paid current through the date of the submission of proposals and County residents' Allegany County real and personal property taxes must be paid current through that date. Such taxes shall not be deemed to be current if they are unpaid, in whole or in part, as of the date interest begins to accrue on the unpaid balance thereof in accordance with Ann. Code of Md., art. Tax-Property, §§ 10-102 and 10-103.

ADDENDUM RECEIPT VERIFICATION FORM

All addenda issued must be acknowledged, therefore before proposals may be considered responsive, the City of Cumberland, Maryland must receive verification that all proposals considered the contents of all Contract Documents and all Addenda issued, as applicable, for this project.

I do solemnly declare and affirm under the penalties of perjury that this proposal was prepared by this firm, including all sub-consultants and suppliers, with consideration of all the information contained in the as advertised Contract Documents and all Addenda issued, as applicable.

☐ NO ADDENDA WERE ISSUED

☒ ADDENDUM NO. 1 to 1

(Must be filled in by the proposer – if only one Addendum enter 1 in the blank space provided)

Date: 11/08/2022

By: Cameron Farzanfar
(print name of Authorized Representative)

(signature of Authorized Representative)

C – Discipline Rate Structure

Discipline Rate Structure must be submitted in the price proposal envelope.

Hourly rates shall be fully burden and include overhead, payroll burden and profit.
Hourly rates must be based on audited certified payroll records.

Principal	$ 188.00	/per hour
Project Manager	$ 158.00	/per hour
Project Engineer	$ 158.00	/per hour
Senior Engineer	$ 188.00	/per hour
Staff Engineer	$ 158.00	/per hour
Electrical Engineer	$ 158.00	/per hour
I&C Technician	$ 132.00	/per hour
I&C Technician Helper	$ 105.00	/per hour
Programmer	$ 158.00	/per hour
Systems Engineer	$ 158.00	/per hour
Network Engineer	$ 158.00	/per hour
Applications Engineer	$ 158.00	/per hour
Construction Superintendent	$ N/A	/per hour
Construction Installer (Electrician)	$ N/A	/per hour
Cost Estimator/Scheduler	$ N/A	/per hour
Construction Manager	$ N/A	/per hour
Clerical	$ 50.00	/per hour
Designer	$ 65.00	/per hour
Modeler	$ 65.00	/per hour
Other	$ N/A	/per hour

MICRO-TECH DESIGNS, INC.

System Integrator Qualifications

City of Cumberland, MD
WRF & WFP Integration Services
City Project No. 8-21-WWTP (October 2022)

4312 Black Rock Road, Suite 1
Hampstead, MD 21074
Phone: 410-239-2885
Fax: 410-239-3736

This package includes a brief summary and project examples from the past experience of Micro-Tech Designs, Inc. We appreciate your time and consideration for allowing us to perform this project.

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1. QUALIFICATIONS OF SYSTEMS INTEGRATOR

1.1 COMPANY BACKGROUND

Micro-Tech Designs, Inc. was formed in 1994 to fill a void in the local market for a quality, service-oriented system integrator specializing in PLC based control and instrumentation systems. Located within a 12,000 square foot building in Hampstead, MD the 5,000 sq. ft. in-house UL-508A registered panel shop is located below a 4,000 sq. ft. office. Micro-Tech Designs, Inc. serves both the industrial and municipal markets with customers primarily on the East Coast.

Custom UL508A control panel design, including the use of Programmable Logic controllers (PLC's), Operator Interface Terminals (OIT's) and Human Machine Interfaces (HMI's) from various manufacturers have been used based on the standards, specifications, needs and preferences of each individual customer. Micro-Tech Designs, Inc. is a registered Aveva (formerly Wonderware) system integrator with a complete development package for in-house use and is also an authorized service center for Square D Field Services with factory-trained personnel to perform modifications to and provide startup services for Square D Equipment. In addition, Micro-Tech Designs, Inc. is a member of the Top Builder and Top Integrator programs with Square D Company and a Bronze member for Allen-Bradley product support.

Micro-Tech Designs, Inc. will design an equipment package to meet customer specified operational criteria or assist the customer in determining their needs. With our staff comprised of Engineers/Designers, Production Personnel, and Field Service Technicians, Micro-Tech Designs, Inc. can supply a complete control system including the design and fabrication of UL listed control panels, field mounted process control instrumentation, PLC's (hardware and software), HMI's (hardware and software) and field services (system start-up, commissioning, and training). All systems will be provided with a complete drawing set developed on CAD in accordance with current ANSI and ISA standards. It is the goal of Micro-Tech Designs, Inc. to provide each customer with quality equipment and/or services that will fulfill their direct needs.

1.2 SOFTWARE DEVELOPMENT

The programmers at Micro-Tech Designs, Inc. are proficient in the use of ladder logic and function block program development using Schneider Electric's EcoStruxure Control Expert as well as Rockwell Automation RSLogix Studio 5000 software. We have hardware, software and cabling that allows us to service customers with PLC's programmed with Taylor ProWorx Plus for Modicon, Concept Versions 2.2, 2.4 and 2.6 by Square D Sy/Mate Plus or SFW374, GE-Fanuc Logicmaster LM90 and CIMPLICITY, and Allen-Bradley RSLogix5, RSLogix500, and RSLogix5000 Professional Editions, AI or APS software just to name a few. Micro-Tech Designs, Inc. has **licensed** copies of **each** of the above-mentioned PLC programming packages for in-house use in program development.

OIT and HMI application development tools include PanelBuilder, Vijeo Designer, Allen-Bradley RSView and Aveva (Formerly Wonderware InTouch) to name a few.

The field support personnel work either directly with the customer or in conjunction with the project manager. Field support personnel are capable of testing and troubleshooting control logic either in relay-based systems or PLC based systems. The field support personnel are familiar with PLC program troubleshooting and program development. The field support personnel also provide instrumentation calibration and some system operational instruction. Field support technicians are factory trained in troubleshooting and repair of AFC's.

1.3 AFFILIATIONS

- Micro-Tech Designs, Inc. is an Authorized Service Center (ASC), Top Builder and Top Integrator for Square D Company. Service Technicians have been tested by Square D Company and attend refresher courses as deemed necessary by Square D Company.
- Micro-Tech Designs, Inc. is a registered Wonderware Systems Integrator. Employees attend training classes administered by Wonderware Certified Instructors.
- Micro-Tech Designs, Inc. is enrolled in the Phoenix Contact Systems Integrator Program. As a Phoenix Contact system integrator, MTD has access to tools, training and resources to successfully implemement their full product portfolio.

2. EXPERIENCE

2.1. NORTH BRANCH WWTP PLC UPGRADE

Date Completed: 2022
Owner: Allegany County Utilities Division
Richard L. Day
13850 Hazmat Dr. SW
Cumberland, MD 21502
Phone: 301-729-6164
Email: rday@alleganygov.org

Micro-Tech Designs, Inc. (MTD) provided the PLC based system and Motor Control Centers for North Branch WWTP (formerly the Celanese WWTP) in 2003. We have served Allegany County DPW since 2003 at various sites throughout the county. The Schneider Quantum PLC system was obsolete, and Mr. Day wanted to have these systems upgraded to the M340 and X80 I/O. There are multiple PLC's at this facility, and we have upgraded the Belt Filter Press PLC, PLC-2, PLC-3 and PLC-3R1. The Belt Filter Press PLC was an Allen-Bradley MicroLogix PLC and during this upgrade, MTD was able to change this over to the Modicon M340 for the sake of consistency with PLC's on their network. MTD created new PLC drawings to prepare for the removal of the existing PLC (Quantum) and reuse the wiring to interface to the new X80 I/O. All PLC Racks were configured and programmed/tested here in the office prior to on-site removal of the existing PLC. Once programming and configuration was checked out, we were able to quickly remove the old Quantum PLC's and replace them with the M340 PLCs and get them back up and running automatically.

2.2. FREDERICK ENR UPGRADE

Date Completed: 2019
Owner: City of Frederick
111 Aviation Blvd
Frederick, MD 21629
Phone: 301-600-1809
Email: jmichael@cityoffrederick.com
Design Engineer: GHD
16701 Melford Boulevard, Suite 330
Bowie, MD 20715
Phone: 301-805-5629
General Contractor: PC Construction Company
Dan Stromberg
Phone: 802-316-2853
E-mail: dstromberg@pcconstruction.com

MTD, Inc. supplied six new moor control center packages complete with custom controls and communications, four new networked Schneider M340 PLC panels, instrumentation, Citect SCADA software and hardware, along with all equipment/instrument startup and training. Additionally, Micro-Tech Designs, Inc. supplied instrument cabinets, completed retrofits/upgrades to existing equipment and provided all of the SCADA and PLC programming on this ENR upgrade project

Relying on the network for monitoring and control, this project required configuring communications from the M340 PLC's to the intelligent MCC devices for interlocking and control of remote equipment. Using the communications algorithms that have been developed and implemented in multiple PLC's at the City of Frederick Facility to minimize network traffic, MTD, Inc. was able to utilized the communications network for complete process control.

2.3. TOWN OF DENTON WWTP UV SYSTEM & PLC UPGRADE

Date Completed:	2019
Owner:	Denton Public Utilities Mr. Mark Chandler 650 Legion Road Denton, MD 21629 Phone: 410-479-5446 E-mail: mchandler@dentonmaryland.com
Design Engineer:	George, Miles, & Buhr, LLC Chris Derbyshire Phone: 410-742-3115 E-mail: cderbyshire@gmbnet.com
General Contractor:	M2 Construction John Troutman Phone: 717-415-1773 E-mail: jtroutman@m2constructionllc.com

In addition to integrating the new UV system into the overall plant PLC system and SCADA, this project involved the upgrade and retrofit of older Quantum PLC Based Modbus plus system to the new M580 Ethernet based with Remote IO. This project consisted of upgrading and retrofitting the Main PLC system, Headworks PLC system and the Biolac System to upgrade the client to Unity Based, M580 hardware and software for fear of obsolescence and parts availability in the near future.

In addition to monitoring and controlling the main WWTP facility, the main processor also utilizes a 900MHz spread spectrum radio which polls the towns remote pump station sites and allows them to monitor and control those stations as well. This project

proved our ability to keep a plant running with minimal interruption and our ability to port over old architecture to new.

3. PROJECT PLAN

As described in the Request for Proposals (RFP), the current system employs aging and obsolete components. As time progresses, so does the risk of component failure and reduction in the availability of replacement parts for repairs. Currently all systems are operational and taking a proactive approach to upgrading allows for a more staged approach to upgrading each site and simplifies the overall task. We believe this is well within our capabilities as a turn-key solution.

The current system utilizes products from Modicon and Wonderware. These both are products that MTD is quite familiar with. We are a registered EcoExpert with Schneider Electric, the parent company for the Modicon Lineup. We are registered in their Modicon User Group and the Alliance Industrial System Integrator Program, while also being considered a Master Control Panel Builder and Authorized Field Service Center. Wonderware, now called AVEVA, is a product also under the Schneider Electric Umbrella. MTD is a registered System Integrator with this branch as well.

For this particular RFP, our plan would be to treat each upgrade as its own individual project. As each project falls into the scheduled queue, Micro-Tech Designs, Inc. would perform a site visit to gather any information pertinent to the site (site drawings, panel pictures, panel as-builts, etc.) and to upload/connect to the current PLC to extract the most recent PLC logic. Once complete with the site visit, Micro-Tech Designs, Inc. would develop panel drawings in AutoCAD reflecting the migration to the M340 PLC and associated X80 I/O. Upon completion of PLC wiring diagrams and the generation of a bill of materials, parts would be procured and simultaneously, the program will be converted from the existing Proworks/Concept software platform to the new EcoStruxture Control Expert software (formerly Unity). When all parts have been procured, a site visit can be coordinated with the City for decommissioning and installation of new equipment. We understand that downtime needs to be minimized and we will do as much upfront preparation as possible to make sure that is the case. As the hardware and software for the new system is installed and tested, red-lined drawings will be kept up-to-date so that final startup revisions to the drawings can be made upon successful startup and provided to the City. In addition to final drawings, Micro-Tech Designs, Inc. will also provide O&M manuals and training for operators on the new equipment.

In addition to the upgrade plan set forth in the RFP, there is also a portion of the RFP that requires on-call services for existing SCADA Systems at both the WRF and WFP as needed. Over the past year, Micro-Tech Designs, Inc. has filled the void that was left by the previous integrator and has performed these on-call services for both locations. We appreciate the use of TeamViewer software for remote troubleshooting, we believe that this will greatly benefit both parties as we also have a corporate license for the TeamViewer Software. The use of the remote connectivity software will allow for a much quicker response and negate the need to always travel to the site for issues that can be addressed remotely.

Given the scope of work and MTD's vast experience with both major products (Schneider M340 and AVEVA Software), and the experience that we have had with the City of Cumberland both at the WFP and WRF, we feel it would be advantageous and, in the city's, best interest to allow us to perform the upgrades from engineering and concept through implementation. Having

worked directly with these products and their users, we have an understanding only made available through real world and hands-on experiences.

3.1 KEY PERSONNEL

The personnel at Micro-Tech Designs, Inc. are cross trained to allow the company to handle projects that require heavy staffing in multiple disciplines. All employees (except bookkeeping and production staff) are trained and accomplished in the use of AutoCAD. Micro-Tech Designs, Inc. key employee capabilities are listed below:

- **Cameron E. Farzanfar – President / Project Engineer**

  Mr. Farzanfar graduated from the University of Maryland in 2006, College Park with a degree in Electrical Engineering specializing in microprocessor-based communications. Mr. Farzanfar has been with Micro-Tech Designs for 18 years where he has been responsible for the electrical design, PLC programming and startup support for both PLC and relay-based control systems. Mr. Farzanfar has experience in these other areas:

  - Startup and Installation of communications networks including Modbus, DeviceNet, ControlNet, and Ethernet
  - SCADA development/communication with Wonderware Intouch, Allen-Bradley RSView / FactoryTalk, and GE Proficy
  - Database creation and management via SQL Server Express Studio and Wonderware Intouch.
  - PLC Programming Modicon, Allen-Bradley,, GE, and Siemens PLC's

  Mr. Farzanfar's specialized training:

  - Allen-Bradley RSLogix 500 and 5000 PLC Programming
  - Wonderware/Aveva InTouch HMI Development
  - Unity Pro Software/EcoStruxure Control Expert Software

  Relevant Project Experience:

  1) City of Frederick SCADA Upgrade

     Mr. Farzanfar designed and programmed a Modicon M340 PLC network that communicated via 900Mhz Spread spectrum radios to communicate with fourteen sites throughout the City of Frederick to both control and monitor various zones throughout the water distribution system. Responsible for the AutoCAD control panel design, the PLC system programming, and the Phoenix Contact Radio configuration/testing. Mr. Farzanfar also performed all path studies prior to implementation to provide data for best antenna/infrastructure placement.

2) Georges Creek WWTP

Newly constructed wastewater treatment plant located in Allegany County Maryland. Mr. Farzanfar was responsible for the control panel design of five independent PLC control panels, all of which were networked back to a centralized Wonderware SCADA System. As the Systems Integrator on this project, Mr. Farzanfar also developed and deployed the entire SCADA system as well as the integration of OEM manufacturer equipment into the overall control scheme (Filter System, UV System, Headworks System).

3) Evergreen Hamlet SPS

Mr. Farzanfar Designed the PLC control panel and MCC that replaced the existing controls at the Evergreen Hamlet SPS. Mr. Farzanfar wrote the PLC and HMI code that is consistent with Loudoun water standards and performed the startup and training necessary to place the station online and integrated back via cellular modem to their central plant SCADA. Once all electrical connections were made, Mr. Farzanfar provided the startup and training of the station.

- **Wesley P. Martin Jr. – Vice President / Project Engineer/Manager / Service Tech**

  Mr. Martin is a Project Manager as well as a field service technician with 20 years of field experience. He has been with Micro-Tech Designs Inc. since 2001 and obtained his Associates Degree from Carroll Community College in 2003 specializing in Electronics. Mr. Martin's duties include design of custom control systems utilizing relay or PLC based controls. Mr. Martin's expertise is the design and implementation of modifications to existing equipment for interface to new PLC or DCS based control systems.

  Mr. Martin's experience includes:

  - Startup and Troubleshooting of Variable Frequency Drive Installations.
  - Field Upgrades to Existing Control Panels and Motor Control Centers.
  - Instrumentation Calibration and Startup
  - Control Panel Fabrication

  Mr. Martin's specialized training:

  - VFD/SSRV training at a Square D Facility in Raleigh/Durham, NC
  - GE Zenith Controls ATS Training in Chicago, IL
  - Specializing in the project managing/scheduling and coordination project.

  Mr. Martin's Relevant Project Experience:

1) Rock Hall Water System Monitoring

   Mr. Martin met with the Town of Rock Hall and discussed their wants/desires for remote monitoring of their nine pump stations. He then designed a system based around the Sensaphone Sentinel using the existing instrumentation at the various sites to relay information back to the Sensaphone system for dispatch and monitoring purposes.

2) Rehoboth Beach And South Coastal Upgrade

   Mr. Martin designed multiple control panels that utilize a Modicon M340 PLC network for the control and monitoring of various processes throughout the large upgrade taking place at the Rehoboth Beach WWTP. Mr. Martin performed on-site I/O checks with the PLC Programmer and performed instrumentation startup and calibration.

3) Quincy Village WTP

   Mr. Martin designed the PLC control panel which provided the control and automation necessary for the system well and distribution system. Mr. Martin met with the operators at the township and discussed what they would like to automate and then designed the system around that. Mr. Farzanfar then took over the programming role while Mr. Martin worked on the field devices/PLC interface.

- **William A. Poff – Project Engineer**

  Mr. Poff is a graduate of Towson State University in 1971 with a degree in Math and Minor in Physics. Mr. Poff has over 46 years of experience integrating electrical and mechanical systems for new and retrofitted applications. He has extensive expertise in applying PLC's, variable frequency drives, magnetic clutches and liquid rheostats in high horsepower squirrel cage and synchronous multi-motor applications. In addition to motor control systems design experience, he also has a great deal of background knowledge in working with clients to solve their problems in control and instrumentation applications.

  Mr. Poff's work experience includes:

  - Design and fabrication of a PLC based low lift pumping system with six (6) 600 HP, 2300 Volt synchronous motors and magnetic clutches.
  - Provide instrumentation and controls for a waste treatment facility for a major drop forge and plating factory in the northeast.
  - Upgrade of over 40 existing Motor Control Centers and Switchgear at two major Wastewater Treatment Plants in Maryland

- Design of small control panels and complete motor control systems for new facilities using Allen-Bradley, Cutler-Hammer, General Electric, Siemens, and Square D equipment.

Mr. Poff's Relevant Project Experience:

1) Frederick ENR Upgrade

   Mr. Poff designed the intelligent Motor Control Centers for this project. In addition to the networking aspect of the design, Mr. Poff also designed the power and controls associated with each bucket within the eight Motor Control Centers that were provided on this project.

2) Anne Arundel County SPS

   Mr. Poff designed the Siemens based PLC control panels and the associated Motor Control Centers for the sewage pumps at multiple Anne-Arundel sewage pump stations. In addition to the design of the control system, Mr. Poff also designed the Bubbler level control panel and all external fan control panels necessary for the complete electrical package.

- **Wayne A. Bussard – Project Engineer/Project Manager**

  Mr. Bussard attended Broward College and received his certificate in 2002. Mr. Bussard has a variety of engineering, design and drafting experience in the instrumentation/controls and petroleum industries. He began his career as an entry level CADD operator at a reputable System Integrator. As a self-starter, he mastered the CADD program and climbed his way up to become a Project Manager. He currently handles and manages all aspects of control system projects from CADD Design to Programming to Startup. Prior to his employment at Micro-Tech Designs, Wayne's CADD experience pointed him to a supervisor position with a petroleum construction company. As supervisor, he was in charge of five CADD operators and managed the engineering/design of new and existing gasoline stations.

  Mr. Bussard's experience includes:

  - 29-Years of CADD Experience On AutoCAD.
  - 21-Years of Custom Control System Design.
  - PLC Programming Software; Concept, Unity, RSLogix 500, RSLogix 5000, GE Fanuc, ProWORX,
  - HMI/OIT Programming Software; Wonderware, PanelMate, Citect, RSView; FactoryTalk, Magelis XBT-L1000, PanelBuilder, and Vijeo Designer.

- Structural, Mechanical, Electrical, Civil and Environmental Design of Gasoline Stations.

Mr. Bussard's specialized training:

- Allen-Bradley RSLogix 500 and 5000 PLC Programming
- Aveva (Wonderware) InTouch HMI Development

Mr. Bussard's Relevant Project Experience:

1) Cedar Crest Pump Stations #1 & #2

   Mr. Bussard designed the PLC control panel and MCC that replaced the existing controls at the Evergreen Hamlet SPS. Mr. Bussard wrote the PLC and HMI code that is consistent with Loudoun water standards and performed the startup and training necessary to place the station online and integrated back via cellular modem to their central plant SCADA. Once all electrical connections were made, Mr. Bussard provided the startup and training of the station and programming interface to the various external devices in the system (SCADA, Power Monitor, Etc.).

2) Frederick ENR Upgrade

   Mr. Bussard designed PLC cabinets and programmed Modicon M340 PLC's for the control and automation of the City of Frederick WWTP ENR project. This project consisted of seven PLC control panels and integration with multiple OEM vendors (Centrifuge, Heat Exchanger, UV, Paralleling Gear, etc.) In addition to control panel design and programming, Mr. Bussard provided all startup services associated with the startup for this project. Micro-Tech Designs, Inc. also supplied the intelligent Motor Control Centers for this project which were all networked back to the PLC's for control and monitoring via the ethernet network which Mr. Bussard also coordinated and programmed.

3) Town of Denton PLC Upgrade

   Mr. Bussard designed the PLC upgrades necessary to upgrade the outdated Modicon Quantum PLC's to the M580 platform. Mr. Bussard converted all of the programs and performed PLC and network startup on a live system and carefully planned out the implementation so as to minimize downtime. Mr. Bussard also programed the new M580 PLC's to communicate to the existing Cellnet 900Mhz Spread Spectrum Radio network for the control and monitoring of the Waste Water Pump Stations.

- **Andrew German, P.E. – Project Engineer/Project Manager**

  Mr. German is a graduate of the University of West Virginia with a B.S. degree in Electrical Engineering in 2016. He has been with Micro-Tech Designs, Inc. for just over five years and obtained his P.E. in Electrical Engineering in 2020 (License Number 52517). During his tenure at Micro-Tech Designs, Inc. he has designed, and programmed PLC based systems using Schneider Electric, Allen-Bradley, Siemens and GE hardware and software. He has also developed and Implemented SCADA systems using Wonderware, FactoryTalk View, WinCC and VT SCADA.

  Mr. German's experience also includes:

  - Design of Low Voltage and Medium Voltage Switchgear Controls
  - Instrumentation Calibration
  - Performing Radio Path Studies for SCADA systems
  - Oversaw the testing of a Salt Dredge that utilized a Schneider Electric PLC network for controls
  - Programmed the automated controls for multiple Water and Wastewater treatment plants, as well as dewatering facilities, pelletizer plants, and greywater facilities.

  Mr. German's Relevant Project Experience:

  1) Middletown SCADA System Upgrade

     Designed and implemented a replacement radio/PLC based system for the Town of Middletown to replace their existing failed telemetry system. Utilizing the Modicon M340 Platform and the Phoenix Contact 900MHz Radio system, Mr. German designed various control panels that would communicate to one another for the control and monitoring of six sites in the distribution network. Additional sites were added for the control and monitoring of sewage pump stations and a complete Wonderware SCADA system was built to monitor and control the various stations.

  2) Trappe Water Distribution Upgrade

     Mr. German designed PLC and VFD cabinets for the Trappe Water Distribution system. This system utilized a fiber network to communicate tank level to the three separate well sites through the use of the Modicon M340 PLC. Various control schemes were implemented to allow the Town to have modes of maintenance so that the wells could continue to provide the water to the town in the event of component failure or tank maintenance.

3) Charles Town WWTP

Mr. German designed the PLC control panels and power panels that are used at various pump stations throughout the Charles Town sewage pump system. Using the Allen-Bradley ControlLogix PLC and 900MHz Spread Spectrum Radios, Mr. German created a viable network that could be controlled and monitored from their central SCADA system located at the Charles Town WWTP. Mr. German also modified the existing VTSCADA System to include graphics (both control and monitoring) for the new wastewater pump stations.

- **Anthony H. DeWall – Service Technician**

  Mr. DeWall is our lead field-troubleshooting technician with over 25 Years' experience. He has worked with VFD's in various applications including but not limited to: food, refrigeration, pharmaceuticals, stone crushing, HVAC, hoisting, and pumping applications. Not only is Anthony an expert with VFD's, he is proficient in several PLC languages including: General Electric, Allen-Bradley, Square D and Modicon. Prior to his employment at Micro-Tech Designs, Inc., Mr. DeWall worked at another System Integrator in the area and after mastering basic wiring skills in the production department he moved to their engineering department as a designer.

  Mr. DeWall's experience includes:

  - Instrumentation Calibration
  - Testing Radio Path Studies for SCADA Applications
  - Clean Room Protocols
  - Working with Low Voltage and Medium Voltage Switchgear
  - Working with Motor Control Centers
  - Circuit Board Design and Production for Custom Applications

  Mr. DeWall's specialized training:

  - VFD/SSRV Training at a Square D Facility in Raleigh/Durham, NC
  - Wonderware InTouch HMI Development
  - Schneider Electric PowerLogic AccuSine Harmonic Filters Commissioning in Salem, OR

  Mr. DeWalls Relevant Project Experience:

  1) Mr. DeWall is our main field service technician and will be found at almost all of our job sites at one time or another. Given his experience and expertise, we look to him for instrument startup/calibrations, on-

site panel modifications if needed, and general startup and troubleshooting help.

4. QUALITY ASSURANCE PLAN

As with all our projects, providing a high-quality product is our end goal. Accountability and thoroughness top our list of internal requirements that must be met before a product is deemed "ready" for shipment/turnover.

To ease this process, each panel or piece of equipment is internally assigned its own individual serial number. Associated with each serial number is a project checklist that we have created which outlines the testing procedure to ensure that no steps were missed in the verification process. Individuals within the company must sign/initial next to the completed task of that particular serial number that they are working on which provides a level of accountability and quality assurance for our products.

The testing above consists of verifying that "as assembled" panel is built to the custom engineered drawings that were approved during the submittal process. Not only is this verified, but the panel is also verified for functionality where appropriate. Panels are energized in house, prior to sign off and components are verified/setup with the information available at the time.

In the case of a PLC based control panel, an engineer will energize and connect to a panel once the shop foreman has verified that all wiring coincides with the provided drawings. Once connected, a test program is loaded into the controller which allows us to test each digital input, digital output, analog input and analog output on the given PLC panel.

As far as on-site startup/testing, Micro-Tech Designs, Inc. continues to update and evolve in terms of documentation and efficiency in order to thoroughly test systems while on site during the startup process while at the same time, capturing any changes during the process so that an accurate set of documents can be turned over upon project completion. To aid in this process, we will devise open and closed loop testing sheets which will aid in the testing process and will mitigate the chances that something is missed prior to startup. In addition, we keep spreadsheets of data for all submittal tracking, calibrated instrumentation (including dates, calibration data, etc.) and we also keep an updated startup logs which are for our internal use which contain a journal-like entry of each day on site and tasks performed.

5. FACILITIES AND EQUIPMENT

As mentioned in our company overview (Section 1) our 4000 sq. ft. Engineering/Design space consists of six full time engineers/designers. Each engineer has his own workstation with a licensed CAD software. Just below our office, we have a 5000 sq. ft. in-house UL-508A panel shop where we have four full time production staff dedicated to building control panels. We have one dedicated full-time field service technician.

Our personnel are cross trained, that is to say that our design team is, in most cases, also part of our on-site and startup team as well. Ideally, we like to have our design team involved throughout the entirety of the job – from conception to completion. Our design engineer will design control panels, follow the submittals through, release and procure material, answer questions related to the production/testing of the panel and assist with startup if necessary. We like to maintain this level of involvement as it ensures that information is not missed and that intent/understanding is not compromised.

We have an in house conference space with seating available for 6-8 people and a dedicated lunch space that could accommodate up to 20 people. We have a projector in house as well to allow us to broadcast images in the event that a meeting is required such that everyone can see the same material.

6. TRAINING

Training will be performed on site for all pieces of equipment that is supplied by Micro-Tech Designs, Inc. by its qualified engineering team and technicians. We will provide training sign in sheets, and a training syllabus for each for each phase of a given project. The syllabus will list each panel / field device and a brief description to help the operators troubleshoot and maintain that particular equipment. We will also be providing an Operations and Maintenance manual which will describe, in detail, the maintenance and troubleshooting as recommended by the manufacture.

We have the capability to provide offsite training as well, be it performed by us or as required by specification to be conducted by a certain manufacturer. We have provided off-site training successfully in the past, using visual references (handouts/projectors) as necessary.

7. REFERENCE LETTERS

The below letters affirm that Micro-Tech Designs, Inc. is a capable Systems Integration company who holds reputation and customer service in high regard. Our goals are always to comply with specification and standards and to meet/exceed the needs of the customer. References that we would like to offer are:

Scott Getchell
Town of Denton, MD
Town Administrator
4 N 2nd Street
Denton, MD 21629
410-479-2050
sgetchell@dentonmaryland.com

Jason Michael
Superintendent, Water & Sewer Facilities Maintenance
The City of Frederick
100 Treatment Plant Road
Frederick, MD
301-600-1809
Jmichael@cityoffrederickmd.gov

Richad L. Day
Area Supervisor, Treatment Plant Operations
Allegany County Utilities Division
13850 Hazmat Drive SW
Cumberland, MD 21502
301-2729-6164
rday@alleganygov.org

Bruce Carbaugh
Town of Middletown
Director of Public Works
31 West Main Street
Middletown, MD 21769
301-371-6171
bcarbaugh@ci.middletwon.md.us

ACE Services, Inc

To whom it may concern,

I was able to work with Micro-Tech Designs, Inc. on the Joppatowne Waste Water Treatment plant and wanted to say that they performed at a very high level and were able to complete the project in a timely and professional manner. They were knowledgeable, professional and went above and beyond what was expected of them to get the job done. We appreciate their work and recommend their services to other firms.

Please feel free to contact me if you need any additional references.

Sincerely,

Jim Voltz, P.E.
President

American Contracting & Environmental Services, Inc. 10330 Old Columbia Road, Suite 102, Columbia, MD 20146
Water | Wastewater | Industrial | Design/Build | Renewable Energy P 301.490.9100 F 301.490.9101
W www.aceservinc.com

M.A. BONGIOVANNI, INC. GENERAL CONTRACTOR

1400 Jamesville Avenue
P. O. Box 147, Colvin Station
Syracuse, New York 13205

Telephone: 315-475-9937
Fax: 315-475-3620

Re: Micro-Tech Designs, Inc.

To whom it may concern,

I have been involved with the estimating and construction management of water and waste water treatment plant projects with M.A. Bongiovanni, Inc. for over thirty years. In that time, it has been our distinct pleasure to have worked with Micro-Tech Designs, Inc. – most recently at the Tuscawilla WWTP in Charles Town, WV .
Our contract with them to provide instrumentation and systems integration services for this project was in excess of $ 167,000. Their knowledge, professionalism and attention to detail was vital in the successful and timely completion of the work.

We have worked with many integrators on projects all over the Northeast United States, but consider Micro-Tech Designs, Inc. to be among the best, and look forward to joining forces with them on future projects.

We highly recommend them to anyone in need of their services.

Dennis Sexton

M.A. Bongiovanni, Inc.

Randy McClement
Mayor

The City of Frederick
Maryland

Aldermen
Kelly M. Russell
President Pro Tem

Michael C. O'Connor
Philip Dacey
Joshua Bokee
Donna Kuzemchak

Dear To Whom it concerns:

Micro-Tech Designs, of Hampstead, MD, has provided CSI services for the City of Frederick on many projects of various sizes over the past 15 years. These projects have included improvements to processes associated with water treatment and distribution as well as sewer collection and wastewater treatment; involving nearly every water and sewer facility owned and operated by the City of Frederick. Most recently, Micro-Tech Designs completed the City of Frederick's "Wastewater Treatment Plant Solids Processing Rehabilitation" project.

As well, Micro-Tech Designs is currently working with the City of Frederick on several large projects including the ENR Upgrade for the City's 8 MGD Wastewater Treatment Plant, the construction of a 1-million gallon elevated water storage tank, and the complete renovation of the City's 3 MGD Monocacy Water Treatment Plant.

Micro-Tech Designs has performed exceptionally well in all phases of their work and we are pleased to be working with them again on our current projects. Please feel free to contact me directly to discuss their ability to bring success to your project.

Respectfully submitted,

Jason A. Michael

Jason A. Michael
Superintendent, W & S Facilities Maintenance

CC: Department Files

Water and Sewer Facilities Maintenance - Jason A. Michael, Superintendent
111 Airport Drive East Frederick, MD 21701 Phone: 301-600-1809 Fax: 301-600-1813
jmichael@cityoffrederick.com / www.cityoffrederick.com

ALLEGANY COUNTY
DEPARTMENT OF PUBLIC WORKS
UTILITIES DIVISION

701 Kelly Road, Suite 300
Cumberland, MD 21502
301-777-5942 FAX 301-777-2428
www.gov.allconet.org

BOARD OF COUNTY COMMISSIONERS
William R. Valentine, President
Creade V. Brodie
Jacob C. Shade

David A. Eberly
County Administrator
Paul F. Kahl, P.E.
Director of Public Works
Mark W. Yoder, P.E.
Utilities Division Chief

Gentlemen:

Micro-Tech Designs, Inc. has designed and installed control systems for Allegany County Utilities Division at the following wastewater plants: North Branch WWTP (2.0MGD facility), Georges Creek WWTP (0.7MGD facility), Barton Business Park WWTP (0.050 MGD facility), Flintstone WWTP (0.045MGD facility), and Oldtown WWTP (0.040MGD facility). The larger facilities are equipped with multiple PLCs with remote capabilities and reporting packages. Micro-Tech was easy to work with during the construction and start-up phase. Their support after completion of the projects has been overwhelming. We currently have "Sole-Sourced" them for integration in all current projects. We would highly recommend MTD to anyone.

If you have any other questions, feel free to contact me at rday@alleganygov.org or by cell phone at 301-707-9310.

Sincerely,

Richard L Day

Richard Day
Area Supervisor, Plant Operations
Allegany County Utilities Division

SCOTT W. GETCHELL

Senior Water/Wastewater Technologist

To Whom It May Concern:

I am writing this reference on behalf of MicroTech Designs (MTD) of Hampstead, MD.

While I served as the Director of Public Works for the Town of Denton, I employed MTD on several projects over the course of 10 years, including pump station upgrades, water system upgrades and the WWTP ENR upgrade. I have continued my relationship with MTD in my current role as Director of Operational Services with George, Miles and Buhr (GMB) A/E Firm. I work with MTD on occasion with existing GMB clients.

I enjoy working with MTD. I find them very professional, responsive and qualified. I highly recommend them for systems integration and control panel fabrication.

If you have any questions or would like to discuss this matter in greater detail, please do not hesitate to contact me.

Sincerely,

Scott W. Getchell

509 Randolph Street – Denton, MD 21629

Phone: 410-829-4556 | swgetchell@outlook.com

File Attachments for Item:

. Order 27,140 - declaring certain City-owned properties to be surplus and authorizing them for public sale

- ORDER -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,140 **DATE:** December 6, 2022

WHEREAS, the Mayor and City Council of Cumberland is the record owner of certain parcels of property identified herein; and

WHEREAS, the Mayor and City Council have determined that these properties are no longer needed for any public use and will be offered for sale to the general public;

IT IS, THEREFORE, ORDERED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

1. The following properties are hereby declared to be surplus in accordance with the provisions of Section 1 of the Charter of the City of Cumberland:

1.	400 North Mechanic Street	Tax ID No. 05-007712
2.	402 North Mechanic Street	Tax ID No. 05-009960
3.	411 Frederick Street	Tax ID No. 23-004771

2. After the passage of twenty (20) days from the date of this Order, the Mayor and City Council may pass an Ordinance authorizing the execution of a deed effecting the conveyance of any or all of the properties to a purchaser, and the City may proceed with the transfer of any or all of the properties in accordance with the terms of said Ordinance

_____

Raymond M. Morriss, Mayor

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 05 **Account Number -** 007712

Owner Information

Owner Name: CUMBERLAND MAYOR & CITY COUNCIL OF
Use: EXEMPT COMMERCIAL
Principal Residence: NO
Mailing Address: 57 N LIBERTY ST
CUMBERLAND MD 21502-
Deed Reference: /02307/ 00315

Location & Structure Information

Premises Address: 400 N MECHANIC ST
CUMBERLAND 21502-0000
Legal Description: N MECHANIC ST
80X28

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0104	0000	7101	10003.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1845	1,920 SF		2,240 SF	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
		OFFICE BUILDING	/	C3			

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	5,600	5,600		
Improvements	61,900	64,500		
Total:	67,500	70,100	69,233	70,100
Preferential Land:	0	0		

Transfer Information

Seller: CUMBERLAND NEIGHBORHOOD HOUSING	**Date:** 06/23/2017	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /02307/ 00315	**Deed2:**
Seller: CUMBERLAND HOSE CO NO 1	**Date:** 12/10/2004	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01107/ 00118	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	650	69,233.00	70,100.00
State:	650	69,233.00	70,100.00
Municipal:	650	69,233.00|70,100.00	69,233.00|70,100.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 05 **Account Number -** 009960

Owner Information

Owner Name:	CUMBERLAND MAYOR & CITY COUNCIL	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	NO
Mailing Address:	57 N LIBERTY ST CUMBERLAND MD 21502-0000	**Deed Reference:**	/01107/ 00118

Location & Structure Information

Premises Address:	402 N MECHANIC ST CUMBERLAND 21502-0000	**Legal Description:**	N MECHANIC ST GEPHARTS ADDN 33X132

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0104	0015	7102	10003.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			4,356 SF	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2021	As of 07/01/2022	As of 07/01/2023
Land:	15,200	15,200		
Improvements	0	0		
Total:	15,200	15,200	15,200	15,200
Preferential Land:	0	0		

Transfer Information

Seller: CUMBERLAND, CITY OF	**Date:** 10/11/2002	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01107/ 00118	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	670	15,200.00	15,200.00
State:	670	15,200.00	15,200.00
Municipal:	670	15,200.00|15,200.00	15,200.00|15,200.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

Real Property Data Search ( )
Search Result for ALLEGANY COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 23 **Account Number -** 004771

Owner Information

Owner Name: CUMBERLAND CITY OF
Use: EXEMPT COMMERCIAL
Principal Residence: NO
Mailing Address: PO BOX 1702 CUMBERLAND MD 21501-1702
Deed Reference:

Location & Structure Information

Premises Address: 411 FREDERICK ST CUMBERLAND 21502-0000
Legal Description: S/S FREDERICK ST LOTS 113-114-115 107 90X108

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0102	0000	0373F	10003.01	0000				2021	Plat Ref:

Town: CUMBERLAND

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1920	2,520 SF		9,675 SF	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
		FIRE STATION	/	C3			

Value Information

	Base Value	Value As of 01/01/2021	Phase-in Assessments As of 07/01/2022	As of 07/01/2023
Land:	19,800	19,800		
Improvements	145,800	130,300		
Total:	165,600	150,100	150,100	150,100
Preferential Land:	0	0		

Transfer Information

Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
County:	640	150,100.00	150,100.00
State:	640	150,100.00	150,100.00
Municipal:	640	150,100.00|150,100.00	150,100.00|150,100.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

File Attachments for Item:

. Order 27,141 - amending Order 26,508 and executing a new Cooperation Agreement with the Housing Authority of the City of Cumberland recognizing the name change from Wills Creek View, LP to JFK Apartments, LP

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,141 **DATE:** December 6, 2022

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

THAT, Order No. 26,508, passed August 13, 2019, authorizing execution of a Cooperation Agreement pertaining to the Housing Authority for the City of Cumberland be and is hereby amended; and

BE IT FURTHER ORDERED, that, the Mayor be and is hereby authorized to execute a new Cooperation Agreement between The Housing Authority for the City of Cumberland and the Mayor and City Council of Cumberland for the public housing development formerly known as Wills Creek View, LP and now known as JFK Apartments, LP.

_____

Raymond M. Morriss, Mayor

COOPERATION AGREEMENT
JFK Apartments, LP

This Cooperation Agreement ("Agreement") entered into this _____ day of _____ 2022, by and between the Housing Authority of the City of Cumberland (referred to as the Local Authority) and the Mayor and City Council of Cumberland (referred to as the City), witnessed:

WHEREAS, The Local Authority received from the United States of America, acting through the Secretary of Housing and Urban Development (referred to as HUD) a program reservation for 100 units of low-rent Public Housing that were developed and located within the corporate limits of the City of Cumberland and referred to as John F. Kennedy Homes (also Apartments);

WHEREAS, The Local Authority and the City entered into a Cooperation Agreements on May 10, 1963, providing for aid and cooperation in respect to low-rent housing projects developed and to be developed and operated by the Local Authority with the financial assistance of the United States of America pursuant to the United States Housing Act of 1937 (referred to as the Act);

WHEREAS, The Local Authority also entered into an identical agreement with Allegany County in 1963 (referred to as the County);

WHEREAS, The Local Authority began the conversion process of John F. Kennedy Homes to a Rental Assistance Demonstration ("RAD") project in 2017. In pursuit of that conversion, the Local Authority had a Cooperation Agreement executed with the City and County governments under the proposed name of Wills Creek View, LP. However, a name change has since occurred and the new name is JFK Apartments, LP which will be responsible for the payments and provisions provided for in this agreement. John F. Kennedy Homes will be known in the future as "JFK Apartments, LP" and the Local Authority is hereby changed to JFK Apartments, LP.; and

WHEREAS, to update the existing agreements for John F. Kennedy Homes and Wills Creek View, LP, the parties wish to enter into this new Cooperation Agreement with the City.

NOW THEREFORE THE PARTIES AGREE:

(1) Whenever used in this agreement:

(a) The term "project" shall mean those 100 units of low-rent housing known as JFK Apartments, LP previously developed and owned by the Housing Authority of the City of Cumberland with financial assistance and regulatory requirements from HUD and/or the Maryland Department of Housing and Community Development (referred to as DHCD).

(b) The term "taxing body" shall mean the State of Maryland or any political subdivision or taxing unit thereof (including the City) in which a project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a project if it were not exempt from taxation.

(c) The term "shelter rent" shall mean the total of all charges to all tenants of a project for dwelling rents and non-dwelling rents (excluding all other income of such project), less the cost to the JFK Apartments, LP of all dwelling and non-dwelling utilities.

(d) The term "slum" shall mean any area where unsafe and unsanitary dwelling units predominate i.e., which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health, or morals.

(2) JFK Apartments, LP shall endeavor to maintain a contract or contracts with HUD/DHCD for loans and annual contributions and undertake to develop and administer this project.

(3) Under the constitution and statutes of the State of Maryland, all projects are exempt from all real and personal property taxes and special assessments levied or imposed by any taxing body; and with respect to any project, so long as either:

(a) such project is used for low-rent housing purpose, or

(b) any contract between the JFK Apartments, LP and HUD/DHCD for loans or annual contributions, or both, in connection with such project, remains in force or effective; or

(c) any bonds issued or monies due to HUD/DHCD in connection with such project shall remain outstanding, whichever period is the longest, the City agrees that it will not levy or impose any real or personal property taxes, special assessments, registration or licensing fees or other financial obligations upon such project, or upon JFK Apartments, LP with respect thereto.

During such period, the JFK Apartments, LP shall make annual payments (herein called Payments In Lieu Of Taxes-PILOT) in lieu of such taxes, special assessments, registration or licensing fees or other financial obligations, and in payment for public services and facilities furnished for or with respect to such project. Each such annual Payment In Lieu Of Taxes shall be made at the time when real property taxes on such project would be paid if it were subject to taxation, and shall be in an amount equal to either:

(a) 10% of the aggregate shelter rent charged by JFK Apartments, LP in respect to such project during the tax year for which such payment is made; or

(b) the amount to be permitted to be paid by applicable state law in effect on the date of this cooperative agreement, whichever amount is the lower; provided, however, that upon failure of JFK Apartments, LP to make any such payments in lieu of taxes, no lien against any project or assets of JFK Apartments, LP shall attach.

The County agrees that payments in lieu of taxes made under this contract shall be distributed as follows: 20% to Allegany County, and 80% to City of Cumberland; provided, however, that the total payment for any year made to the City shall not be in excess of the total amount of real property taxes which would have been paid on such properties for such year if the said properties were not exempt from taxation, and provided that the total payments for any year made to said City shall not be in excess of the total amount of real property taxes which would have to be paid to them on such properties for such year if the said projects were not exempt from taxation.

Notwithstanding anything herein to the contrary, the payments to be made by JFK Apartments, LP to the City, provided for herein with respect to the project, shall be made by JFK Apartments, LP and accepted by the City only as long as:

(a) the project shall be owned and used for the provision of rental housing and "service facilities" as permitted section 7-505 of the Tax Property Article of the Annotated Code of Maryland, as amended from time to time; and

(b) the JFK Apartments, LP, in all respects, complies with and satisfies the requirements of said section 7-505, as amended from time to time, pursuant to which the City is authorized to enter into an agreement for the payment of negotiated sums in lieu of taxes, and complies with all its obligations under the terms of this Agreement; and

(c) from time to time, upon the request of the City, JFK Apartments, LP provides the City or its authorized representative, all financial and other information required by the City in order to ensure the full and complete compliance with the terms of this Agreement and applicable law; and

(d) Upon the termination or expiration of this Agreement, full taxes shall be paid based upon the assessed value of the properties comprising the project and the applicable property rate in effect as such time.

Neither the JFK Apartments, LP nor any successor-in-interest to JFK Apartments, LP with respect to this Agreement and the property comprising the project shall apply for, accept, or utilize any incentive, credit, abatement, offset, rebate, refund, or other program that would result in the reduction or elimination of:

(a) the full assessed value of the said property, any other real estate owned by the JFK Apartments, LP which is subject to this Agreement; and

(b) real estate taxes due and payable to City based upon the full assessed value of the property identified in subsection (a) of this paragraph, and any improvements within the property identified in said subsection (a). Nothing contained in this paragraph shall be interpreted or construed to prohibit the JFK Apartments, LP from taking full advantage of any program that would result in a reduction or elimination of the JFK Apartments, LP or its successor-in-interest's real estate taxes that are due and payable to any entity other than the City with regard to the aforesaid property and any other real estate in the area which is subject to the terms of this Agreement.

(4) During the period commencing with the date of acquisition of any part of the site or sites of any project and continuing so long as either (a) such project is used for low-rent housing purposes, or (b) any contract between the JFK Apartments, LP and HUD/DHCD for loans or annual contributions, or both, with respect to such project shall remain in force and effect, or (c) any bonds issued in connection with such project shall remain outstanding; whichever period is the longest, the

City, without cost or charge to the JFK Apartments, LP, or the tenants of such project (other than the payments in lieu of taxes) shall;

(a) Furnish or cause to be furnished to the JFK Apartments, LP, and the tenants of such project:
(i) the public services and facilities which are at the date hereof being furnished without cost or charge to other dwellings and inhabitants in the City, including but not limited to: educational, fire, police and health protection and services; maintenance and repair of public streets; alleys, sidewalks, sewer, and water systems; snow removal; garbage, trash collection and disposal; street lighting on public streets within such projects and on the boundaries thereof; and
(ii) also such additional public services and facilities as may from time-to-time hereafter be furnished without cost or charge to other dwellings and inhabitants in the City;

(b) Insofar as the City may lawfully do so, and subject to City policies, without waiving its right to exercise discretion when applicable law allows for the exercise of such discretion, grant such waivers of the building code of the City as are reasonable and necessary to promote economy and efficiency in the development and administration of such project.

(c) Accept grants of easements necessary for the development of such project, provided they are not contrary to the City interests; and

(d) Cooperate with the JFK Apartments, LP by such other lawful action or ways as the City and the JFK Apartments, LP may find necessary in connection with development and administration of such project, provided they are not in contrary to the City interests.

(5) The City recognizes the stringent physical inspection process HUD/DHCD requires the JFK Apartments, LP to execute on a regular basis. The City further recognizes that HUD/DHCD's physical inspection requirements are equal to or more stringent than the standards required by City code. Therefore, the JFK Apartments, LP shall not be subject to the City rental inspection requirements so long as HUD/DHCD's inspection standards are at least equal to or more stringent than the standards required by the City code. Notwithstanding this provision, the City will be permitted to perform an inspection at any time upon the provision of no less than twenty-four (24) hours' notice.

(6) If the City shall, within a reasonable time after written notice from the JFK Apartments, LP, fail or refuse to furnish or cause to be furnished any of the services or facilities which it is obligated hereunder to furnish, or cause to be furnished to the JFK Apartments, LP, or to any project, then the JFK Apartments, LP may proceed to obtain such services or facilities elsewhere, and deduct the cost thereof from any payments in lieu of taxes due or to become due to the City in respect to any project or any other low-rent housing projects assisted or owned by HUD/DHCD.

(7) No cooperation agreement heretofore entered into between the City and the JFK Apartments, LP shall be construed to apply to any project covered by this Agreement.

(8) So long as any contract between the JFK Apartments, LP and HUD/DHCD for loans (including

preliminary loans) or annual contributions, or both, with respect to any project shall remain in force and effect, or so long as any bonds issued in connection with such project shall remain outstanding, this Agreement shall not be abrogated, changed, or modified without the consent of HUD/DHCD. The privileges and obligations of the City hereunder shall remain in full force and effect with respect to each project so long as the beneficial title to such project is held by the JFK Apartments, LP or some other public body or governmental agency, including HUD/DHCD, authorized by law to engage in the development or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, any project is held by such other public body or governmental agency, including HUD/DHCD, the provisions hereof shall inure to the benefit of and may be enforced by such other public body or governmental agency, including HUD/DHCD.

(9) This Agreement shall not be subject to assignment without the written consent of the City, which consent may be withheld for any reason or no reason at all

(10) This Agreement shall be interpreted in accordance with the laws of the State of Maryland, and any action to enforce this Agreement shall be brought to the Circuit Court for Allegany County, Maryland. The parties waive the right to assert that this court lacks jurisdiction over the matter or that it constitutes an inconvenient forum.

(11) This Agreement shall be subject to all applicable federal, state, and municipal laws and regulations relative to its subject matter.

(12) This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns.

(13) This Agreement constitutes the full and complete agreement among the parties, and no amendments thereto shall be valid, except in writing and duly approved and executed by the parties hereto.

(14) This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

In witness whereof, the Mayor and City Council of Cumberland and the JFK Apartments, LP have respectively caused this agreement to be duly executed as of the day and year first above-written.

WITNESS:

JFK APARTMENTS, LP

By: JFK Apartments, LLC, its General Partner
By: Cumberland Housing Alliance, its Sole Member
By: The Housing Authority of the City of Cumberland Maryland, its Sole Owner

By: _____
MICHELE E. BENDER
President/Chief Executive Officer

MAYOR AND CITY COUNCIL OF CUMBERLAND

_____

By: _____
RAYMOND M. MORRISS
Mayor

Gmail

Allison Layton <allison.layton@cumberlandmd.gov>

Fwd: JFK Pilot Agreement

1 message

Jeff Silka <jeff.silka@cumberlandmd.gov> Tue, Nov 29, 2022 at 11:42 AM
To: Allison Layton <allison.layton@cumberlandmd.gov>

Please have an order prepared for this Cooperation Agreement. You may use the email as the back up for the agenda.

Jeffrey F. Silka, ICMA-CM
City Administrator
City of Cumberland
57 N. Liberty Street
Cumberland, MD 21502
Office (301) 759-6424
Cell (240) 609-9303

---------- Forwarded message ---------
From: **Steve Kesner** <steve.kesner@cumberlandhousing.org>
Date: Tue, Nov 29, 2022 at 10:10 AM
Subject: JFK Pilot Agreement
To: Ray Morriss <ray.morriss@cumberlandmd.gov>, Jeff Silka <jeff.silka@cumberlandmd.gov>, Michael Scott Cohen <michaelcohen@atlanticbbn.net>

After years of preparatory work, the $16 million remodeling of the JFK apartments is finally getting closer to a realization with a spring/early summer start. The total project is estimated to cost $23 million or more.

In 2019, we had a Cooperation Agreement executed with the City for this project under the proposed new name of Wills Creek View, LP. However the name has been changed to JFK Apartments, LP so I have a new Cooperation Agreement that needs to be executed. No other substantial changes just the name and some cleanup items. I have a maximum of 30 days to get this submitted to keep this project on track so if you could review and get it on your consent agenda ASAP would be appreciative.

I have attached the scanned original signed by our President/CEO. If you need the original or have questions/comments, please contact me by the below contact information.

Steve

CUMBERLAND HOUSING GROUP

Steven J. Kesner

Development Coordinator

The Cumberland Housing Group

635 East First Street

Cumberland, MD 21502-4362

301-707-2341 (mobile)

Steve.kesner@cumberlandhousing.org

www.CumberlandHousing.org

The Cumberland Housing Group is an Equal Housing Opportunity provider and consists of the following agencies: The Housing Authority of the City of Cumberland, Cumberland Housing Alliance, Inc.and Cumberland Neighborhood Housing Services, Inc.

STATEMENT OF CONFIDENTIALITY: The information in this message is privileged and confidential and is intended only for the use of the individual or entity named above. If the reader of the message is not the intended recipient, you are hereby notified that you are prohibited from disseminating, distributing, or copying the information contained in this message. If you received this in error, please notify the sender immediately and destroy all copies of the original message.

JFK Apartments LP 11.29.20022.pdf
632K

File Attachments for Item:

. Order 27,142 - approving a FY22 General Fund appropriations and transfers

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,142 **DATE:** December 6, 2022

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

THAT, the following General Fund appropriations and transfers be and are hereby approved for Fiscal Year 2021-2022.

	Original Budget	Budget Changing Ordinances	Current	Revised Amended Budget	Adjustment Required
Expenditures					
General Government	$ 1,776,048	$ -	$ 1,776,048	$ 1,997,048	$ 221,000
Public Safety	13,678,259	-	13,678,259	13,713,259	35,000
Public Works	2,737,782	-	2,737,782	2,737,782	-
Recreation	878,527	-	878,527	878,527	-
Community Dev & Housing	1,373,059	-	1,373,059	1,433,059	60,000
Debt Service	3,179,707	-	3,179,707	3,428,707	249,000
Operating Transfers	4,498,922	-	4,498,922	3,933,922	(565,000)
Total Expenditures	**$ 28,122,304**	**$ -**	**$ 28,122,304**	**$ 28,122,304**	**$ -**

Comptroller has assigned $3.0 million of fund balance to cover capital project funding gaps and for public safety vehicles and equipment.

_____

Raymond M. Morriss, Mayor

Council Agenda Summary

Meeting Date: December 6, 2022

Key Staff Contact: Ken Tressler and Mark Gandolfi

Item Title:

City of Cumberland – FY 2022 Year-end Budget Adjustment & Notice of Assignment of Funds

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

An order approving the following FY 2022 General Fund budget adjustments.

	Original Budget	Budget Changing Ordinances	Current	Revised Amended Budget	Adjustment Required
Expenditures					
General Government	$ 1,776,048	$ -	$ 1,776,048	$ 1,997,048	$ 221,000
Public Safety	13,678,259	-	13,678,259	13,713,259	35,000
Public Works	2,737,782	-	2,737,782	2,737,782	-
Recreation	878,527	-	878,527	878,527	-
Community Dev & Housing	1,373,059	-	1,373,059	1,433,059	60,000
Debt Service	3,179,707	-	3,179,707	3,428,707	249,000
Operating Transfers	4,498,922	-	4,498,922	3,933,922	(565,000)
Total Expenditures	**$ 28,122,304**	**$ -**	**$ 28,122,304**	**$ 28,122,304**	**$ -**

Additionally, in accordance with the City's fund balance policy, please be advised that the comptroller has assigned $3,000,000 of fund balance for capital projects and capital equipment. Capital projects and capital equipment may include, but not be limited to, the Baltimore Street Bridge and Fire Department vehicles and equipment.

The unassigned fund balance meets the fund balance policy's goal to achieve and maintain an unassigned General Fund balance equal to 25.0% of expenditures.

The FY 2022 financial statements present the General Fund's fund balance as:

	Fiscal Year 2022		
Fund Balance	**Beginning**	**Change**	**Ending**
Nonspendable	$ 3,609,418	$ (36,327)	$ 3,573,091
Restricted	4,431,211	2,766,506	7,197,717
Assigned	-	3,000,000	3,000,000
Unassigned	5,293,724	1,218,545	6,512,270
	$ 13,334,354	$ 6,948,724	$ 20,283,078

File Attachments for Item:

. Order 27,143 - authorizing an allocation from the Baltimore Street Improvement funds in an amount not to exceed $420,000 to the CEDC for their Downtown Capital Assistance Program in exchange for the DGS Capital Grant of $420,000 awarded to the CEDC for the Baltimore Street Improvement Project

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. 27,143 **DATE:** December 6, 2022

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

THAT, a one-time allocation from the Baltimore Street Improvement funds in an amount not to exceed Four Hundred Twenty Thousand Dollars and No Cents ($420,000) to the Cumberland Economic Development Corporation (CEDC) to be utilized for their Downtown Comprehensive Investment Program in exchange for the DGS Capital Grant in the amount of Four Hundred Twenty Thousand Dollars and No Cents ($420,000) which was awarded to the CEDC for the Baltimore Street Improvement Project be and is hereby approved.

_____

Raymond M. Morriss, Mayor

CUMBERLAND ECONOMIC DEVELOPMENT CORPORATION
3 Pershing Street, Suite 105 Cumberland MD 21502
(301) 722-4173

Date: November, 10 2022

VIA EMAIL
To: Jeffrey Silka
City Administrator
City of Cumberland
57 N. Liberty Street
Cumberland, MD 21502

Re: Downtown Comprehensive Investment Program – Request for Funds

Dear Jeff,

In accordance to a string of emails dating back to July, 13th 2022 titled "Capital Grant Exchange", I am writing to request a one-time allocation of funds in the amount of four hundred and twenty thousand dollars ($420,000) as a reimbursement for a capital grant provided to the city from the CEDC of the same amount to be used for the upcoming Baltimore Street Access Project. The funds requested by the CEDC will be used as part of the Downtown Comprehensive Investment Program and will be allocated to building and business owners located within the downtown special taxing district and in accordance to the guidelines of the program. Of course, please do not hesitate to contact me with any questions or concerns.

Sincerely,

Matthew B. Miller
Executive Director
matt.miller@choosecumberland.org