

## Mayor and City Council of Cumberland

Mayor Raymond M. Morriss Councilman Seth D. Bernard Councilman Richard J. "Rock" Cioni Councilman Eugene T. Frazier Councilwoman Laurie P. Marchini

> City Administrator Jeffrey D. Rhodes City Solicitor Michael S. Cohen City Clerk Marjorie A. Woodring

# **AGENDA**

Regular M&CC Public Meeting Via Video-conference

**DATE:** April 06, 2021

The following link may be used to view the public portions of the meetings live:

 $\frac{https://cumberlandmd.webex.com/cumberlandmd/onstage/g.php?MTID=e257a8e8f008bc22dbafed24e2d755638}{755638}$ 

Citizens who wish to speak at designated times during the meeting may indicate so by using the option to "raise their hand" and they will be called upon at the appropriate time.

The meeting may also be viewed live through the City's website at <a href="http://www.ci.cumberland.md.us/">http://www.ci.cumberland.md.us/</a> Access the Government tab, then the Mayor and City Council Public Meetings link, then the Live Meeting Coverage link.

#### **CLOSED SESSION**

- 5:00 PM Convene in open session for the purpose of closing the meeting to discuss issues
  pertaining to negotiations with the UFCW Local 1994 representing members of the Cumberland
  Police Department, pursuant to Section 3-305(b)(9) of the General Provisions Article of the
  Annotated Code of Maryland
- 2. Closed session (Live video coverage will not be available.)

### **OPEN SESSION - 6:15 PM**

1. <u>6:15 PM</u> - Reconvene into open session – (Live video coverage will resume.)

#### **Roll Call**

### **Statement of Closed Meeting**

1. Statement of closed meetings held March 23 and April 6, 2021

#### **Proclamations**

- 1. Proclaiming the month of April as Fair Housing Month in Cumberland
- 2. Proclaiming April 8, 2021 as Day of Civility in the City of Cumberland, with the proclamation being accepted by Renee Mason from the Allegany County Library

### **Director's Reports**

#### (A) Administrative Services

1. Administrative Services monthly report for February, 2021

### (B) Engineering

1. Engineering Division monthly report for March, 2021

### **Approval of Minutes**

1. Approval of the Work Session and Regular Session Minutes of March 16, 2021

### **Public Hearings**

Public Hearing - presentation of the Community Development Block Grant (CDBG) 2021 Annual Action Plan proposed projects for funding and proposed changes for the FY 2019 CDBG Annual Action Plan

#### **New Business**

### (A) Resolutions

1. Resolution R2021-03 (one reading only) - to authorize the City to issue (i) a tax-exempt series of general obligation bonds in order to finance or reimburse the costs of projects authorized for debt funding in the FY 2021 budget and to refinance an outstanding general obligation bond issued to Community Development Administration ("CDA") in 2011, and (ii) a taxable series of general obligation bonds in order to refinance certain outstanding general obligation bonds issued to CDA in 2012 and 2014 and certain City general obligation bonds issued in 2013, together with related costs; and providing that any such general obligation bonds will be sold by negotiated underwriting

#### (B) Ordinances

1. Ordinance No. 3885 (*1st reading*) - granting Shenandoah Cable Television, LLC the non-exclusive right to use the city's public rights-of-way for the delivery of high-speed internet service to Frostburg State University

### (C) Orders (Consent Agenda)

1. Order 26,768 - accepting the bid from Carl Belt, Inc. for Koon Dam Concrete Repairs (11-20-WFP) in the estimated lump sum cost of \$571,330.00, for necessary repairs at the Koon Dam structure to include patching large spalls on the spillway and replacing approx. 5,000 sq. ft. of deteriorated sidewalk along the bridge

- Order 26,769 accepting the bid from Carl Belt, Inc. for the "Flood Control System Concrete Repairs Project" (01-13-FPM) in the estimated lump sum cost of \$148,650.00 for repairing or replacing existing concrete structures related to the Flood Control System in Cumberland and Ridgeley, with the work occurring across 6 locations of the City, requiring separate mobilizations
- 3. Order 26,770 authorizing the City Administrator to execute a letter of agreement with Verizon Maryland, LLC acknowledging Verizon's intent to renew for one (1) year its lease of 3 (three) parking spaces in the George St. Parking Garage for a cost of \$75/each per month, and granting the option to renew for one additional year under the same terms and conditions
- 4. Order 26,771 approving an amendment to the 2020 CDBG Annual Plan to allocate CDBG CARES Act Funds in the amount of \$113,160 to the Allegany Youth Enrichment Program and \$6,750 to the YMCA Transitional Homeless Sanitizer Project
- 5. Order 26,772 authorizing the Mayor's execution of a letter of engagement with Saxton & Stump and the Evitts Creek Water Company outlining terms for the provision of professional legal services in connection with compliance with the laws and regulations of the PA Public Utilities Commission and the PA Department of Environmental Protection relative to the operations of the Evitts Creek Water Company
- 6. Order 26,773 authorizing the execution of Change Order No. 8 with Leonard S. Fiore, Inc. for City Project "Phase I CSO Storage Facility WWTP" in the decreased amount of (\$7,240.00) due to unused contingent items, bringing the current contract price to \$26,357,616.88
- 7. Order 26,774 accepting the sole source proposal from Robinson Pipe Cleaning to clean the Evitts Creek sewer main at a cost not-to-exceed \$50,000
- 8. Order No. 26,775 authorizing execution of a Facility Encroachment Agreement with CSX Transportation, Inc. for an area near the Gene Mason Sports Complex, relative to the project to install a 78" Parallel Pipeline from Mill Race to CSO Storage Tank (19-16-S)
- 9. Order No. 26,776 authorizing execution of a Facility Encroachment Agreement with CSX Transportation, Inc. for an area near the CSX Bridge near the Western MD Scenic Railroad, relative to the project to install a 78" Parallel Pipeline from Mill Race to the CSO Storage Tank (19-16-S)
- 10. Order 26,777 authorizing execution of a grant agreement between the Downtown Development Commission and the MD Department of Housing and Community Development for the receipt of \$55,461 through the DHCD Maryland Strong Economic Recovery Initiative to be used to award downtown businesses with Covid economic relief funds
- 11. Order 26,778 authorizing the execution of an Arts and Entertainment Districts Operating Support Letter of Agreement for the period July 1, 2021 June 30, 2022,

defining the City's role and estimated in-kind support of \$500 for the Cumberland Arts and Entertainment District

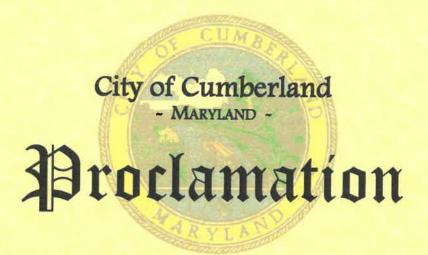
### **Public Comments**

All public comments are limited to 5 minutes per person

### Adjournment

### File Attachments for Item:

1.	<b>Proclaiming</b>	the month	of April as	Fair Housing	Month in	Cumberland



- WHEREAS, the City of Cumberland is proud to join the U. S. Department of Housing and Urban Development in celebrating the fifty-third anniversary of the Fair Housing Act of 1968; and
- WHEREAS, the 1968 Fair Housing Act, which guarantees the right of all Americans to dwell in the neighborhood of their choice, is one of the most important components of our national civil rights policy; and
- WHEREAS, although this non-discriminatory policy is the law of the land, its proper enforcement requires the continued cooperation of all levels of government as well as the real estate and homebuilding industries, and private citizens; and
- WHEREAS, throughout Maryland, this spirit of cooperation is being provided through the efforts of our state, federal and local governments and with the support of countless community and nonprofit organizations; and
- WHEREAS, equal housing opportunity has a dramatic impact on school integration and the acceptance and understanding of ethnic and racial diversity; and
- WHEREAS, promoting equal housing opportunity is essential to our larger mission of promoting justice in all areas of life for all citizens.

Row, Therefore, the Mayor and City Council of Cumberland, do hereby proclaim the month of April 2021 in the City of Cumberland as

# "FAIR HOUSING MONTH"

Given under our Hands and Seals this 6th Day of April, in the Year 2021, with the Corporate Seal of the City of Cumberland Hereto Attached, Duly Attested by the City Clerk.

ATTEST:

Marjorie A. Woodring

City Clerk

MAYOR AND CITY COUNCIL
OF CUMBERLAND

Raymond M. Morriss

Mayor

### **File Attachments for Item:**

2. Proclaiming April 8, 2021 as Day of Civility in the City of Cumberland, with the proclamation being accepted by Renee Mason from the Allegany County Library



WHEREAS,

in July 2017, the Allegany County Library System became a chapter of the Choose Civility initiative, which started in Howard County, MD in 2006, inspired by the book Choosing Civility: The 25 Rules of Considerate Conduct, by John Hopkins University Professor Dr. P.M. Forni, promoting the importance of civil behaviors.; and

WHEREAS.

Choose Civility offers program components and tools to organizations and individuals eager to embrace principles of civil behavior that enhance our quality of life, such as respect, compassion, empathy, listening, speaking kindly, taking responsibility, inclusiveness, and valuing diversity; and

WHEREAS,

components for the Choose Civility initiative range from readings and discussion groups to workshops and annual events, and marketing materials range from car window clings to bookmarks and posters that reinforce the message; and

WHEREAS.

a variety of community partners and sponsorships are critical to supporting and leveraging the influence of Choose Civility throughout the community, with businesses, organizations, government agencies and individuals providing guidance for the initiative to reach City residents, workers and visitors.

Now, Therefore, the Alayor and City Council of Cumberland, do hereby proclaim April 8th, 2021 to be

# "Day of Civility"

in the City of Cumberland, and do encourage all citizens to choose to be a model of civility.

Given under our Hands and Seals this 6<sup>th</sup> of April, in the Year 2021, with the Corporate Seal of the City of Cumberland hereto attached, duly Attested by the City Clerk.

MAYOR AND CITY COUNCIL OF CUMBERLAND
Raymond M. Morriss  Mayor

### File Attachments for Item:

. Administrative Services monthly report for February, 2021

### **Administrative Services Monthly Report for February 2021**

### April 6, 2021

Honorable Mayor and City Council City Hall Cumberland, Maryland 21502

Dear Mayor and City Council Members:

The following report is submitted by the Department of Administrative Services for the month of February, 2021.

### **Information Technology Department**

February 2021

### **Statistics**

139 completed help desk requests 154 open help desk requests

### **Activities**

Major department initiatives in the past month include:

- Continue troubleshooting/refining mobile data terminal setup in police cars as well as setting up terminals for new vehicles
- Continue making changes to update our network environment and improve security
- Continue to assist with virtual meetings and teleworking
- Worked with vendor on Cisco phone operating system upgrade
- Assist with Tolemi Building Blocks project
- Assist with police CJIS audit

### Parks and Recreation

February 2021

<u>Pavilion Reservations</u> - Annual Pavilion Reservation postponed (Covid 19 related) – Date to resume making reservations to be determined

\$100.00 for the Large Pavilion and \$75.00 for the Small Pavilion. Public response has been good.

#### Areas of work

- Began receiving Facility Use Requests for League and events for 2021 season
- July 4th Fireworks contract was determined to be Starfire Corporation of Carrolltown PA.
- Continue to take and review Seasonal applications for Lifeguards, Day camp, park watchman
- Work related to 2021 season for Park Pool
- Work related to Constitution Park Day Camp Program and State Registration of program.
- CDBG block grant 2021 project submitted

### **Meetings**

- Staff Meeting
- Northeast Elementary School Stem Club Zoom meeting
- Pool Manager and Day Camp Director
- Related to renovation and replacement of Baby Pool Filters

#### Upcoming

- Determine 2021 Field and facility usage for Leagues and groups
- Determine Pavilion Rental and Usage for season
- Determine if any Spring events will be held
- Pool Lifeguard interviews and swim test to be determined
- Day Camp and Pool related operations for 2021 season

### **Community Development Report**

February 2021

### **CODE COMPLIANCE**

### **Code Enforcement Activity:**

26 new complaints received this month - 16 of those are still open

10 violations were found

49 complaints have been resolved overall -

Violations by Violation Type	
Cleanliness of sidewalks, alleys and gutters	4 40.0%
Dwellings, yards and lots to be kept clean	4 40.0%
Licensing of rental dwelling units	1 10.0%
Registration of agents	1 10.0%

### ISSUED - Permits, Reviews, and Licenses

Building	Demolition	Electrical	Miscellaneous
Residential4	Residential0	Residential3	Residential2
Commercial1	Commercial 0	Commercial5	Commercial1
Occupancy	Plumbing	Commercial Signage	Use Public ROW
Residential0	Residential3	Total1	Total issued2
Commercial0	Commercial0		
Utility	Rental Licenses	Rental Inspections.	<b>Certificates of</b>
Residential	Issued12	Conducted: 16	Appropriateness
Commercial0	(New and Renewal)	Passed15	Issued1
		Failed1	Change Amend0

### Plans, Reviews, Amendments and Appeals

(ZA, SPR, SR, ZMA, ZTA, SRA)

Issued.....1

### Revenue from Issued Permits/Reviews

Building Permits\$1475.00
Miscellaneous Permits
Occupancy Permits
Sign Permits
Utility Permits
Plan Reviews, Amendments & Appeals300.00
Zoning Classification Determination. (info request)0
Municipal Infractions (Citation Fines)0
Rental Licenses (new & renewals)1025.00
Paid Rental Inspection Requests
Certificates of Appropriateness <u>30.00</u>
TOTAL\$4238.50
Demolition Permit – Bonds (partial)\$0.00
Nuisance Abatement

# COMMUNITY DEVELOPMENT PROGRAMS

February 2021

### **Community Development Block Grant Program**

Community Development Block Grant (CDBG) Monthly Activity	February Report	2021				
Activity	Year	Initial Fund	ERR	Contract	Spent	Remain
CHNS Closing Cost Grant	2018	\$13,403.00	X	X	\$10,000.00	\$3,403.00
						\$3,403.00
correct on 2/23/2021	PRE-	Feb 21 dr	POST			
		Orig.			Spent	Remain
2017 Constitution Park Grove 4 Inclusive	2015				фо. о <i>сс.</i> <b>55</b>	фо оо
Playground	2017	Amendment	X	X	\$8,966.77	\$0.00
					Activities	\$3,403.00
2014 2019 F					Admin(s)	\$0.00
2014-2018 Funds	2010	ΦΩ1 CΩC 25			Total All	\$3,403.00
Bellevue Sidewalks decreased funds Dec. 2019	2019	\$81,606.35	X	X	\$80,144.02	\$1,462.33
HRDC Emergency Housing	2019	\$35,000.00		X	\$25,000.00	\$10,000.00
Admin.		\$121,447.70		na	\$84,287.10	\$37,126.57
Fair Housing	2019	\$10,000.00		na	\$8,062.41	\$1,937.59
AHEC Dental Access	2019	\$15,000.00		X	\$15,000.00	\$0.00
Assoc. Charities Long Term	2019	\$8,750.00		X	\$8,750.00	\$0.00
Incredible Years Parenting Fam. Junct.	2019	\$10,000.00		X	\$10,000.00	\$0.00
PHA FCH Sidewalks	2019	\$50,000.00		X	\$44,877.81	\$5,122.19
Const. Park Grove 4 Inclusive Playground	2019	\$34,761.64		X	\$34,761.64	\$0.00
Summer @ Your Library	2019	\$2,000.00		X	\$2,000.00	\$0.00
Horizon Goodwill Job Training Program	2019			X	\$3,582.37	\$7,417.63
2019 Total Funds		\$379,565.69	ERR	Contract	Expended	\$63,066.31
Baltimore Street Redesign	2020	\$402,700.00	X	RROF out		\$402,700.00
HRDC Emergency Homeless Prevention	2020	\$25,000.00	X	X		\$25,000.00
South Penn Playground	2020	\$20,600.00	X	X		\$20,600.00
Admin.	2020	\$110,065.20		X	\$31,854.22	\$78,210.98
Indirect Cost	2020			X	\$7,560.00	\$3,920.80
Fair Housing	2020			X	\$2,777.70	-
YMCA Gilcrhist HVAC	2020	\$54,000.00		underway	. ,	\$54,000.00
AHEC Dental Access	2020	\$8,000.00		X	\$495.40	\$7,504.60
Assoc. Charities Long Term	2020	\$5,000.00		X	Ψ.,,,,,	\$5,000.00
Assoc. Charities Short Term	2020	\$9,000.00		X		\$9,000.00
Incredible Years Parenting Fam. Junct.	2020	\$7,000.00		X	\$629.19	\$6,370.81
PHA FCH Sidewalks Ph. 2	2020	\$50,000.00			Ψ027.17	\$50,000.00
FCRC Domestic Violence Sex Assault Shelter/Services	2020			X	\$3,671.57	\$6,828.43

Targeted City PD Foot and Bike Patrols	2020	\$4,916.00	X	X		\$4,916.00
Jane's Place, Inc. Abused Children Services	2020	\$7,900.00	X	X		\$7,900.00
YMCA Gilcrhist Food Program	2020	\$3,842.00	X	X		\$3,842.00
Constitution Park Inclusive Playground Ph. 2	2020	\$65,000.00	X	X	\$61,730.90	\$3,269.10
HRDC Transitional Homeless Shelter	2020	\$6,000.00	X	X		\$6,000.00
2020 Grant Totals		\$809,458.00			\$108,718.98	\$700,739.02
Program Income (Jul./Aug. draw)	2020 yr	\$6.99				
	-					
Program Income (Sep./Oct. draw)	2020 yr	\$6.99				
Program Income (Nov. draw)	2020 yr	\$3.80				
Program Income (Dec. draw)	2020 yr	\$3.80				
Program Income (Jan. Draw)	2020 yr	\$3.80				
Total PI 2020		\$25.38				
Total					\$533,903.31	\$763,805.33
					Total All Yrs.	\$767,208.33
as of 2/23/21 <i>post</i> Jan. 2021 Draw						
Community Development Block Grant CDBG Projects					Grand Total	\$767,208.33

### **Historic Planner/Preservation Coordinator**

### February 2021

- Attended the Heritage Area Expansion meeting hosted by Dee-Dee Ritchie at Canal Place via Zoom. on 2/3/21
- Prepared the HPC meeting packets and public notices for the 2/10/21 meeting. Completed the preparation of two Certificates of Appropriateness for the agenda, along with editing the meeting minutes and assembling all other documents for the meeting
- Resubmitted the Virginia Avenue Community Enhancement funding request to Allegany County and helped to answer additional questions that David Nedved had about the request
- Assisted the HPC with the 2/10/21 public meeting
- Assisted with the 2/10/21 virtual training for the HPC by the Maryland Association of Historic District Commissions
- Created new pages on the City's website for viewing the HPC meetings online both during and after the meetings take place
- Submitted Certified Local Government Application for HPC Training Funds
- Provided determination letters to all applicants whose reviews took place at the 2/10/21 meeting
- Spoke with Carolyn Brackett for interview about heritage tourism and historic preservation in Cumberland as part of her research for the Appalachian Forest National Heritage Area
- Spoke with Taylor Vega at Citizenserve about ways to resolve some data issues for the COA/RCA migration from the AS/400
- Sent historic district facade letters (unable to fund) to 500 Washington Street, 212 Washington Street, and 519 Washington Street
- Contacted Allegany Museum re: project that has taken place without review

### Comptroller's Office Financial Activity Report

February 2021

### **Cash Flow:**

Attached for your review is a Cash Flow Summary for the month of February 2021.

On February 1, 2021, the City had a cash balance of \$3.2 million. Receipts exceeded disbursements by \$2.3 million resulting in a cash balance of \$5.5 million at February 28, 2021.

As of February 28, 2021, the significant tax receivable balances were as reflected in the table below.

Taxes receive	\$	3,499,388						
	Beg Balance	New Billings	A	batements	Collections	Bad Deb	t Er	nding Balance
FY 2021	\$2,106,924	\$ 177,405	\$	(3,685)	157,040	\$	- \$	2,123,604
FY 2020	784,117	-		(1,150)	35,501		-	747,466
FY 2019	387,495	51		(755)	31,658		-	355,133
FY 2018	153,043	-		-	2,995		-	150,048
FY 2017	34,037	-		-	-		-	34,037
FY 2016	27,745	-		-	-		-	27,745
FY 2015	24,602	-		-	-		-	24,602
FY 2014	14,832	-		-	-		-	14,832
FY 2013	10,101	-		-	-		-	10,101
FY 2012	5,658	-		-	-		-	5,658
FY 2011	3,172	-		-	-		-	3,172
Prior FY's	2,990	-		-	-		-	2,990
	\$ 3,554,716	\$ 177,456	\$	(5,590)	\$ 227,194	\$	- \$	3,499,388

Φ 2 400 200

The current year tax receivable balance is comprised of the following:	
Real property (non-owner occupied)	\$949,290
Non-Corp Personal Property	5,644
Corporate Personal Property	666,646
Real Property (semiannual payments)	502,024
Real Property (Half Year)	
	\$2,123,604

The City's liquidity position continues to be strong as illustrated in the following cash and investments table. Restricted cash and investments are comprised primarily of invested bond proceeds restricted to associated capital projects and expenditures.

# Cash and Investment Summary February 28, 2021

	Cash	li	nvestments
Beginning Balance	\$ 3,239,885	\$	13,905,834
Add: Cash Receipts Investment Transfer	4,709,451 1,000,000		998 -
Less: Disbursements Investment Transfer	3,437,557 -		- 1,000,000
Ending Balance	\$ 5,511,779	\$	12,906,832
Restricted	\$ 188,886	\$	6,986

The table below illustrates cash restrictions and restricted investments associated with specific expenditures and/or capital projects.

2/1/2021	Increase		Utilization		2/28/2021	
77,391	\$	-	\$	-	\$	77,391
58,436		-		-		58,436
-		-		-		-
53,099		-	7	-		53,099
188,926	\$	-	\$	-	\$	188,926
	77,391 58,436 - 53,099	77,391 \$ 58,436 - 53,099 *	77,391 \$ - 58,436 -  53,099 • -	77,391 \$ - \$ 58,436 -  53,099 -	77,391 \$ - \$ - 58,436  53,099	77,391 \$ - \$ - \$ 58,436 53,099

### **Restricted Investments**

	2/1	/2021	Incr	ease	Uti	lization	2,	/28/2021
DDC	\$	6,985	\$	1	\$	=.	\$	6,986
	\$	6,985	\$	1	\$	-	\$	6,986

The DDC restricted investment was funded through donations and is restricted for the purpose of maintenance of the Wes Han Fountain in the Downtown Mall.

### **Capital Projects and Associated Debt:**

The tables below illustrate undrawn Maryland CDA bond proceeds as well as the accumulated debt draws and grants received associated with the Combined Sewer Overflow (CSO) projects.

Available Bond Pro	eeds	;						
		2/1/2021		Issue	U	tilization	2	2/28/2021
CDA 2015		261,506		-		26,228		235,278
CDA 2018		10,032		-		-		10,032
CDA 2019		2,478,368	7	-		1,710		2,476,658
	\$	2,749,906	\$	-	\$	27,938	\$	2,721,968
CSO Projects Debt I	Oraws	<b>;</b>						
CSO Projects Debt I		s 2/1/2021		Issue	U	tilization	2	2/28/2021
CSO Projects Debt DE Evitts Creek Debt			\$	Issue -	<b>U</b> \$	tilization -	\$	<b>2/28/2021</b> 143,260
•		2/1/2021	\$	Issue - -	_	tilization - -		
Evitts Creek Debt		2/1/2021	\$	Issue - - -	_	tilization - - -		
Evitts Creek Debt Evitts Creek Grant		<b>2/1/2021</b> 143,260	\$	Issue - - - -	_	tilization - - - - 2,099,904		143,260 -

The CDA 2015 draw of \$26K was toward the WWTP blower building electrical switch gear. The CDA 2019 debt draw of \$2K was toward the SCADA system upgrade phase 2.

The Wastewater Treatment Plant (WWTP) CSO project is complete and contract closeout was certified January 13, 2021. On January 28, 2021, the system reached 5 million gallons and was fully tested. The final grant draws have been calculated and were submitted in February for \$2.1 million and March, 2021 for \$264K. The CSO project was capitalized in fiscal year 2020 at a value of \$29.1 million.

Phase 3 of the Evitts Creek CSO project is in the engineering phase with the majority of the necessary funding in place. The City anticipates additional funding in April 2021 from MDE. Grant and loan money for Phase 4 have been requested from MDE for costs of the planning phase. MDE's decisions on funding awards are anticipated to take place in April or May of 2021.

### **Utility Collections:**

February 26<sup>th</sup>, 2021 and 2020 demonstrate that February 26<sup>th</sup>, 2021 exhibits a 30% increase in total dollars past due from active and suspended customers (74K), a 17% increase in total customers who are suspended or at risk for service termination (158), 46% more suspended accounts (66) and a 12% increase in number of customers eligible for shut off (12).

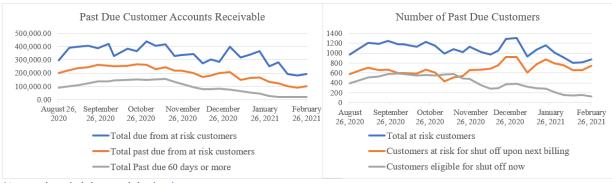




- \*Number of suspended accounts is included in total at risk and service temrinated customers
- \*\*Amounts do not include inactive accounts

Despite the pandemic related increases over the prior year, the policies and procedures for service termination and customer support are achieving the desired outcomes. At the end of February 2021, the dollar amount past due 60 days continues to decline. This is a result of the resumption of service termination on November 16<sup>th</sup>, 2020 and directing customers on where to seek financial assistance. Since the prior month, 91 fewer customers are eligible for service termination, down to 128 from 219. Amounts past due 60 days or more have declined by \$7K from \$28K to \$21K. Additionally, the average outstanding balance per individual is declining over the prior month. At February 26<sup>th</sup>, 2021, the total past due 30 days or more is \$100K for 872 customers.

The City continues to provide communications of where to seek financial assistance, collaborate with financial assistance providers and offer four (4) month payment plans. A press release was issued during the first week of February notifying the community of additional Community Development Block Grant (CDBG) funding toward customer water and trash utilities now available through the Office of Home Energy Programs (OHEP).



<sup>\*</sup>Amounts do not include suspended or inactive accounts

The City has been experiencing delays in postal service delivery of customer payments. Each customer's individual circumstance is considered and, in all cases, online account access, email billing, and direct payment methods through the online account are being described and recommended.

### COVID-19:

### **Funding**

At the end of February, the US House of Representatives voted on next stimulus package which includes \$350 billion for state, local and tribal government relief. The US Senate made modifications but kept the value for state, local and tribal government relief. The legislation passed both the House and Senate and was signed into law by President Biden on March 11, 2021. The City is projected to receive \$20 million (50% in the current year and the second half one (1) year after).

• CARES Act funding previously made available to, and utilized by the City of Cumberland totals \$633,750.

City's COVID 19 funding utilization through 2/28/2021:

Purpose	Amount	Utilization
Total Utilization	633,750	
Hazard Pay		270,677
Lost Revenue		54,801
City Hall Rotunda Monitor		7,714
Unemployment Claims		6,366
COVID Testing Events		18,014
Software		39,967
PPE		
General		51,149
Facilities and Equipment		135,061
Business Loan Program		50,000
Total:	\$633,750	\$ 633,750

Note: With the exception of CDBG, no other COVID 19 funding is presently available.

Respectfully submitted,

Jeff Rhodes City Administrator

sln

### File Attachments for Item:

. Engineering Division monthly report for March, 2021

Capita	al Projects					March 3	1, 2021
Order	.,	Project Name	Description	Phase	Comments	Ву	Date of Update
2008		(gravity sewer under railroad)	Evitts Creek Pump Station effluent with gravity line that parallels the Canal Towpath. Said gravity line is being replaced under project 17-03-S(1).	Design	UPDATE - WRA obtained the ROE permit from CSX on 1/12/21. WRA is working with CSX to obtain construction permits in order to collect field data. CSX (AECOM) has rejected the request to use temporary rail crossings. WRA researching other methods of access.	MDI	3/22/2021
2010	01-10-WWTP	CSO Storage Facility At WWTP	CSO storage and handling facility in accordance with LTCP	Complete	UPDATE Project is closed out and will be removed on next month's report.	RLS	3/26/2021
2013		Flood Control System Concrete Repairs	Repairs to various points of FCS system per USACOE inspection	Construction Bidding	UPDATE - Project was advertised for bid on 2/8/21. Bid opening was held on 3/17/21, with Carl Belt as the apparent lowest bidder @ \$148,650. Derrik and I will be prepared the procurement packet for MDE to review prior to construction.	MDI	3/22/2021
2014	04-14-WWTP	Sludge Screening Study/Design	Study to select the best alternative to keep rags out of the recently cleaned and modified digester because the modifications will make it impossible to revive rags in the future.	Design	NO CHANGE Need/Benefit of the project is being reevaluated, and for now the project is on hold. Design is complete and the project will remain on this report for the time being.	RLS	4/2/2018
2014	19-14-M	Greene Street Complete Street Plan	Planning Study for Greene Street	Planning	NO CHANGE - The Design Report from Alta Planning + Design was submitted and presented to the Mayor and City Council. The plan to start work on Construction Funding Applications has been delayed because of the Baltimore Street Project, which would have been competing for the same funds. This project still needs to be done and should be a priority in the future.	RLS	6/1/2017
2015	9-15-M	Potomac River Walk	The Study Phase of this project is being done through the Cumberland MPO and consists of a Walk / Trail for pedestrians and bikes along the Potomac River between Wills Creek and the YMCA	Study	NO CHANGE -This project has been turned over to Canal Place. Engineering Services for Design were received. Recommendation from the committee was to award to CEC.	RLS	8/9/2019
2015	18-15-S	CSO Water Quality Analysis	Base line data collection for analysis of future CSO needs after CSO Storage is on line.	Planning	No CHANGE Project continues. Health Department Lab is back up to full hours and coverage, so we are taking regular scheduled stream samples for analysis at this time. Rainy days are the target for sampling at this time.		1/22/2021
2015		WWTP & Collection System Asset Management Plan	Development of an Asset Management Plan	Planning	NO CHANGE Asset Management Program/Capital Improvement implementation. Working on Survey 123 and Collector with Sewer & Water Staff. Work is ongoing.	RJK	1/22/2021

Capita	al Projects					March 31	1, 2021
•	Project No.	Project Name	Description	Phase	Comments	Updated	Date of Update
						Ву	
2016	12-16-M	Baltimore Street Access Improvement - Final Design	The purpose of the New Baltimore Street Town Center project is to reopen and improve Baltimore Street, which is currently configured as a pedestrian mall, to vehicular traffic while maintaining elements of the mall.	Design	UPDATED - EADS is preparing the 99% Invitation for Bid documents for review by the City and MDOT SHA, Cochrane Studios is working on the plan for the plantings within the project area, and the City's Engineering Dept. is working on reducing the number of proprietary items listed in the project specifications (by preparing generic specification for the items, or by listing at least 3 compatible items in the specification). The Engineering Dept. continues to coordinate the flow of information between all parties involved in the project, and to ensure that changes to the project comply with State and Federal funding requirements.	JRD	12/212020
2016	17-16-M	Stage Renovations at Liberty Street Stage	Replace wood stage with Concrete	Design	NO CHANGE - This project would be unnecessary if the Baltimore Street Access project is executed. The project will remain on this list until the Baltimore Street project moves to construction.	RLS	5/15/2019
2016	18-16-BR	John J. McMullen, Bridge No. A-C-01 Repairs	Bridge Repair	Planning	NO CHANGE - This project is expected to move forward in FY21 with State Aid Funds.	RLS	1/28/2020
2016	19-16-S	78" Parallel Pipeline from Mill Race to CSO	78" Pipeline to CSO tank in accordance with Consent Decree	Design	UPDATED - Design work is nearly complete, as City staff works on property acquistion. Per discussions with MDE, this project cannot move forward until property acquisition is complete. There is no schedule for completing the acquisitions at this time.	RLS	3/26/2021
2017	2-17-FPM	Flood Control Encroachment removal Project	The City as the Local Sponsor of the Flood Control Project is expected to maintain the easements along the Flood Control Project, however the area along Wills Creek and other areas were never given any comments until the Corps of Engineers standards changed.  Completion of this project is necessary to allow the City to get a Satisfactory rating on its annual Flood Control Inspections.	Planning	NO CHANGE - This project has been delayed because of other work, but must be done. A tree removal project has been bid out and a contractor selected to do the work of removing trees in the encroachment area.	RLS	7/11/2018
2017	3-17-M	Route 51 Bridge 12" Waterline Replacement	Replace water line on bridge as part of SHA Bridge Deck Project	Construction	UPDATE - The water line will be replaced in Phase 2 of the project which slated to begin in in early April.	RLS	3/26/2021
2017	18-17-M	Maryland Avenue Development	This is not and Engineering Project, but included here to cover future department work with the development.	Design	UPDATE- Phases 1 & 2 of the Cumberland Gateway project has moved into construction. The Department will support future phases for stormwater management reviews and traffic design support.	RLS	3/26/2021
2017	29-17-UTIL	VOID See 19-15-M	VOID				
2017	31-17-W	Decatur Street 24" Crosstown Water Main Replacement	Prior to designing the water main replacement a more detailed Water Model analysis of the City's system will be done to make sure the issues are being properly addressed. Design will follow.	Design	UPDATE - The project is currently being bid with bids returning on 4/7. The project will be submitted to MDE for approval to award shortly afterwards. Construction is slated to begin August.	RLS	3/26/2021
2018	08-18-BR	Cumberland Street Bridge Replacement	This project will replace the bridge structure.	Design	NO CHANGE - EBA and the City presented the TS&L package to MDOT. Waiting on environmental clearance prior to getting permission to move forward with Final Engineering.	RLS	12/21/2020

Capita	al Projects					March 3	1, 2021
	Project No.	Project Name	Description	Phase	Comments	Updated By	Date of Update
2018	09-18-BR	Baltimore Street Bridge Replacement	This project will replace the bridge structure.	Design	NO CHANGE - This project is in the final engineering stages. The PS&E package is expected to submitted in mid-April	RLS	3/26/2021
2018	19-18-M	ADA Improvements at 218 Washington Street	Construct an ADA complinat parking space in the 200 block of Washington Street, and reset the brick sidewalk adjacent to parking area.	Complete	NO CHANGE - The final inspection was held, and the final invoices have been submitted to the Finance Department for payment. The final cost is under budget.	JAT	10/30/2020
2018	22-18-M	Solid Waste and Recycling Collection	Contract documents for the FY20 garbage and recycling collection bid process	Planning	NO CHANGE	RJK	3/29/2021
2018	25-18-BR	SHA Project: Replacement of MD 51 Bridge Deck	Replace the water line under the industrial blvd bridge under a MDOT bridge rehabilitation project	Construction	Refer to project 3-17-W	RLS	10/11/2018
2018	26-18-M	Ridgeley Levee System Certification					
2018	31-18-WFP	Pine Ridge Water & PUC Rate Issues	Project involves determining a path forward regarding the supplying of PA residents with water	N/A	NO CHANGE - City staff continues to work through issues with PA regulators about water issues	RLS	1/28/2020
2018	32-18-FPM	Rehabilitation Assistance for Flood Damages to Flood Risk Management Projects	Request USACE to make repairs or provide funding to address flood control issues	Planning	NO CHANGE - The USACE has denied financial support due to the flood control being in an unacceptable condition. The City is looking to enter the SWIF program to receive aid to get financial support for construction.		10/12/2018
2018	43-18-BR	Fayette Street Bridge Replacement	This project will replace the bridge structure.	Planning	NO CHANGE - The bridge has been opened for one lane of traffic. The bridge will be replaced in the future.	RLS	2/26/2020
2018	44-18-BR	Washington Street Bridge Replacement	This project will replace the bridge structure.	Planning	NO CHANGE - Studies have been returned and subject to CSX negotations.	RLS	8/5/2019
2019	5-19-M	Virginia Ave Lot Demolition	Remove two structures and retaining walls at 6, 8 and 10 Virginia Ave.	Construction Bidding	NO CHANGE - The grading plan has been approved by ASCD and the project has been turned over to Code Enforcement for demolition	RLS	8/5/2019
2019	7-19-WFP	Filter Building Pilot Study	Perform a study to evaluate the potential to replace current filter building with a new membrane/GAC building in the future. The City is required to perform a pilot study to validate the technology we are proposing to use.		NO CHANGE - The pilot study continues with only a few more weeks remaining in the Study. The final report will be provided in early spring which will outline the City's options for future filtering operations.	RLS	12/21/2020
2019	8-19-WFP	New Inlet Screens for Gate House	Installation of two intake screens beneath the gate house at the Gordon Dam.	Construction	COMPLETE - Project was completed on 3/10/21.	MDI	3/22/2021
2019	10-19-M	Residential Grass Mowing	Contract for mowing the residential properties within the City Limits which include blighted properties and recent demos.	Construction	NO CHANGE- Contract underway (No work through winter months)	DTG	3/22/2021
2019	11-19-M	Non Residential Grass Mowing	Contract for mowing the Commercial and Public Owned Properties within the City Limits. To include water tanks, City Hall, Public Safety and several others.	Construction	NO CHANGE- Contract underway (No work through winter months)	DTG	3/22/2021
2019	14-19-M	WWTP RMP Compliance Services	RMP Compliance for OSHA 29 CFR 1910	Planning	UPDATE Compliance work continues. TIER II reports completed, Annual LEPC update conducted March 9. RMP program updated to comply with OSHA 29 CFR 1910 for chlorine and sulfer dioxide storage on site.	RJK	3/29/2021

Capita	al Projects					March 31	1, 2021
Order	Project No.	Project Name	Description	Phase		By	Date of Update
2019			Building Switchgear to reduce the 4160V down to 480V to improve the safety of the building and to adequately protect our equipment.	Construction	UPDATE- Contractor (S&S) is still in the procurement stage and a NTP will not be issued until a construction timeline has been established. Contractor has obtained 7 approved material submittals to date, and has ordered the equipment with the longest lead times. On-site construction not anticipated to begin until Spring '21.	MDI	3/22/2021
2020	2-20-M		Repairing a spalled section of slab on grade in Frederick St parking garage, as well as looking into sealing all concrete driving surfaces	Planning	NO CHANGE- Researching proper repair systems for spalled concrete in parking garages. Working with Street Dept. to determine if city forces can make repairs.	MDI	1/24/2020
2020	6-20-S	Sanitary Sewer Lining Assessment	Performing a cost assessment on relining (CIPP) all sanitary sewer lines within city.	Planning	NO CHANGE - Based on list of "high risk" lines provided by sewer dept, have developed a preliminary cost estimate.  Awaiting updated list from most recent cleaning and cameraing prior to moving forward with project.	MDI	3/30/2020
2020	9-20-M	Constitution Park Fill Disposal	Assessing potential clean fill dump sites for Public Works	Construction	UPDATE - Grading plan has approved by Allegany SCD and MDE, and stakes have been placed to deliniate approximate locations of fill slopes and control devices. City has cleared site, installed E&S Controls, and placed the first lift of fill.	MDI	3/22/2021
2020	10-20-M	2020 ECWC Watershed Timber Sale	This project will hold a timber sale at the EC watershed as part of our watershed management plan	Planning	UPDATE - The contactor is approximately 50% complete.	RLS	3/26/2021
2020	11-20-WFP	Koon Dam Repairs	Concrete repairs to the dam structure (spillway and downstream face) per the annual dam inspection recommendations.	Construction Bidding	UPDATE - Project was advertised for bid on 2/1/21. Bids were opened on 3/3/21, and Carl Belt was the low apparent bidder @ \$571,330. Contract approval is on the next M&CC Meeting agenda.	MDI	3/22/2021
2020	12-20-RE	Long Field Upgrades - Phase 1	Improvements to Long Field Concession and Restroom area. Upgrades include electrical improvements.	Planning	NO CHANGE - Received POS funding for upgrades to Long Field on 5/20. Received quote for electrical upgrades for S&S Electric on 6/9. Developed a list of other needed improvements with help from Dapper Dan rep. Awaiting SourceWell quotes (Belt) for these upgrades.	MDI	9/23/2020
2020		CSO Nine Minimum Controls Annual Review	A requirement of our LTCP and NPDES Report to look at these controls annually		UPDATE - The next NMC report in progress spring 2021.	RJK	3/29/2021
2020		Carver Building Repairs	Project to repair damage to the Carver Building				
2020		South Street Pavement Repairs	also making ADA and sidewalk improvements	Design	NO CHANGE - Belt Paving has completed the permanent trench repairs, and mill & overlay of the western 1/2 of the street. Additionally the portion of Third Street betweein South Street and Pennsylvania Ave. was overlaid.	JRD	12/21/2020
2020	16-20-M		Project will include upgrading sidewalk for ADA compliance along Queen City Drive at corners of Bedford and Frederick Streets, below McMullen Bridge.	Design	NO CHANGE - Part of CDBG 5-year plan. Developing a set of bid specifications to put to bid around March 2021. Bid documents ready for final internal review.	MDI	12/21/2020

Capit	al Projects					March 3	1, 2021
Order	Project No.	Project Name	Description	Phase	Comments	Updated By	Date of Update
2020		CSO Long-Term Control Plan Projects/Schedule Review	Correspondences with MDE regarding the LTCP Projects and the Consent Decree (CO) end date: October 1, 2023.	N/A	UPDATE- Two meetings occurred in March; one with the CO partners (Allegany County, Frostburg & Lavale) and one meeting with CO partners and MDE.  Result of the meeting with MDE was to send an official letter detailing a request for extension and include supporting information on project schedules and financial need.  The letter is in the process of being drafted; one letter from all the jurisdictions to be submitted to MDE within the next two months.	RJK	3/29/2021
2020	20-20-W	General Permit 17HT Discharges from Tanks Pipes Other	Potable water system general permit for chlorinated discharge regulations regarding streams.	Planning	UPDATE Notification from MDE accepting the City's NOI received. Compliance with the new General Permit now underway.	RJK	3/29/2021
2020	22-20-M	Fall Tree Removal Project	Project to remove various hazardous street trees throughout the City.	Construction	UPDATE - Project work is complete.	DTG	3/22/2021
2020	28-20-M	Fall Tree Pruning Project	Project to prune various hazardous street trees throughout the City.	Construction	UPDATE - Project work is complete.	DTG	3/22/2021
	29-20-S	Locust Grove Force Main & LaVale Water Main Replacement	Joint project between Allegany County Public Works & LaVale Sanitary Commission to replace the force main from the new Locust Grove Pump Station and replace water main to LaVale.		NEW -		
	30-20-SWM	Grow West Facility Expansion	SWM Review for proposed expansion of Grow West MD Facility @ the industrial park.		NO CHANGE - Earthwork has begun on site prior to final SWM plan submittal. In lieu of final plan, City temporarily approved Site Development Phase submittal to allow for construction permitting. Still awaiting Final Plan set.	MDI	12/21/2020
2021	2-21-WWTP	Influent Screening System Upgrade	Design and replacement of a new influent screening system at the headworks of the WWTP.	Design	<b>NEW</b> - Engineering and design services were advertised for bid on 3/22/21. Bids will be due on 4/21/21.	MDI	3/22/2021

### File Attachments for Item:

1	Approval of the	Worls Consider	and Dagulan	Caccion M	mustag of Manah	16 2021
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## Mayor and City Council of Cumberland

Mayor Raymond M. Morriss Councilman Seth D. Bernard Councilman Richard J. "Rock" Cioni Councilman Eugene T. Frazier Councilwoman Laurie P. Marchini

> City Administrator Jeffrey D. Rhodes City Solicitor Michael S. Cohen City Clerk Marjorie A. Woodring

### **MINUTES**

M&CC Public Meeting Video Conference

DATE: March 16, 2021

#### I. OPEN SESSION - 6:15 PM

#### II. Roll Call

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

**Also Present**: Jeffrey D. Rhodes, City Administrator; Marjorie A. Woodring, City Clerk; Kenneth Tressler, Director of Administrative Services

#### III. Proclamations

1. Proclamation declaring the month of March as "Red Cross Month" - to be accepted by Jason Keeling, Executive Director of the Allegany Highlands Chapter of the American Red Cross

Mayor Morriss read the Proclamation, and Jason Keeling thanked the M&CC, and provided background on Red Cross Month across the country. He gave a brief summary of the work they have done locally, saying that last year they collected almost 2,000 units of blood, provided various services to families of active-duty service members and veterans, provide life-saving CPR courses, and disaster relief. He added that last year in Allegany County they provided disaster relief – food, shelter, clothes, etc. - for 22 families of house fires. Mr. Keeling also advised that his Chapter is redistricting, and stated that Cumberland is now served from Morgantown, WV as the Appalachia region, and said Mr. Steve Finger is a Chapter Board member, and is also a representative that the City can contact.

### IV. Director's Reports

<u>Motion</u> to approve the reports was made by Councilman Frazier, seconded by Councilman Cioni, and was passed on a vote of 5-0.

### (A) Public Works

1. Maintenance Division monthly report for January and February, 2021

### (B) Fire

1. Fire Department monthly report for February, 2021

### (C) Police

1. Police Department monthly report for February, 2021

### (D) Utilities - Flood, Water, Sewer

1. Utilities Division Flood/Water/Sewer monthly report for February, 2021

### V. Approval of Minutes

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

1. Approval of the Work Session and Closed Session Minutes of February 23, 2021, and the Closed and Regular Session Minutes of March 2, 2021

### VI. New Business

### (A) Resolutions

1. **Resolution No. R2021-02** (1 Reading Only) - to authorize the City to issue (i) a tax-exempt series of general obligation bonds in order to finance or reimburse the costs of projects authorized for debt funding in the FY21 budget and to refinance an outstanding general obligation bond issued to Community Development Administration loan ("CDA") in 2011, and (ii) a taxable series of general obligation bonds in order to refinance certain outstanding general obligation bonds issued to CDA in 2012, 2014, and 2015 and certain City general obligation bonds issued in 2013, together with related costs; and providing that any such general obligation bonds will be sold by public sale at competitive bid.

Mr. Rhodes stated that in short, the City is borrowing money relative to new debt, for the FY21 budget in the net amount of \$3.9M, and then re-financing existing debt of about \$3.5M because of better interest rates, which saves the City about \$1.5M. Mr. Tressler stated that this Resolution is complicated because issuing new debt as well as refunding debt. He stated that the additional ordinances were to approve the bond parameters, and stated that the Resolution was to provide details of the series, including the portions of the bonds that are being refinanced. He added that it's still the same bond, still the same deals, and still the same financing they have been talking about for a while now. Mr. Tressler also mentioned that they received the second bond rating report today, which was A-Stable. He said that once this is passed, they will go out to market and try to sell the bonds. Mr. Rhodes noted that the City's ratings have improved, and it has been A-Stable for a couple years now, so they are very pleased about that.

**READING:** The Resolution was presented in title only for its one reading, and Mayor Morriss called for questions or comments. <u>Motion</u> to approve the Resolution was made by Councilman Cioni, seconded by Councilman Bernard, and was passed on a vote of 4-0, with Councilwoman Marchini abstaining.

### (B) Orders (Consent Agenda)

Mr. Rhodes provided background on all Consent Agenda items, and Mayor Morriss called for questions or comments. <u>Motion</u> to approve all items was made by Councilwoman Marchini, seconded by Councilman Frazier, and was passed on a vote of 5-0.

**Order 26,763** - accepting the sole source proposal from Hertrich Fleet Services, Inc. to provide a 2021 Ford F150 4WD Extended Cab for the amount not to exceed \$33,194 - using joint pricing through the Howard County, MD Contract #4400003197.

Order 26,764 - declaring a 2001 Freightliner Ambulance (VIN #1FVABLBW51HB62976) to be surplus and authorizing its donation to the Mountain Maryland Search and Rescue (MMSR).

Mr. Rhodes advised that MMSR will not be using this vehicle as an ambulance; rather they will use it as K-9 transportation. Councilman Bernard advised that he had spoken with Lt. Tichnell about this search and rescue organization, learned a little bit more about it, and encouraged Council to reach out to the Lieutenant. The Mayor stated that they do a lot of good work around the area, and said it's an excellent use of the vehicle.

**Order 26,765** - authorizing the execution of a temporary Encroachment Agreement with Greis Kaarvaliksen, owner of 2 Grandview Terrace, to allow for his use and access of the public right-of-way adjacent to his property and to repair and maintain the steps and porch in this designated area.

Mr. Rhodes advised that Mr. Kaarvaliksen has done a lot of work in that neighborhood on properties he has purchased, and said that this encroachment agreement will give him access for continued maintenance.

**Order 26,766** - authorizing a Special Taxing District Exemption for 55 Baltimore Street for the 2020-2021 tax year in the amount of \$1,104.72 (Original tax \$1,472.42 / 75% residential occupancy).

**Order 26,767** - authorizing appointments to the Human Relations Commission, Planning & Zoning Commission, Parks & Recreation Board, and Shade Tree Commission.

#### VII. Public Comments

All public comments are limited to 5 minutes per person

VIII.	Adjournment
	With no further business at hand, the meeting adjourned at 6:46 p.m.
	Minutes approved on
	Raymond M. Morriss, Mayor

ATTEST: Marjorie A. Woodring, City Clerk \_\_\_\_\_

# **Mayor and City Council of Cumberland**

### WORK SESSION

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

Tuesday, March 16, 2021 5:30 p.m.

### This meeting was held via Video-Conference

**PRESENT:** Raymond M. Morriss, President; Council Members: Seth Bernard, Richard Cioni, Eugene Frazier, and Laurie Marchini.

**ALSO PRESENT:** Jeffrey D. Rhodes, City Administrator; Margie Woodring, City Clerk; Ken Tressler, Director of Administrative Services; Kevin Thacker, Code Compliance Manager; Allison Layton, Citizen Services Representative

#### I. PUBLIC MEETING AGENDA REVIEW – MARCH 16, 2021

Mayor Morriss reviewed the Public Meeting Agenda for March 16, 2021, and went over the Reports and Minutes up for approval, as well as a Proclamation for Red Cross Month. He advised that Jason Keeling, Executive Director of the Red Cross Allegheny Highlands Chapter will be in attendance at the public meeting.

Mr. Rhodes provided background on **Resolution R2021-02**, which authorizes the City to issue General Obligation Bonds in order to finance or reimburse the costs of projects authorized for debt funding in the FY21 budget, as well as refinancing certain other general obligation bonds. He advised that the City will be borrowing approximately \$4M in new debt, refinancing a little over \$14M, and will ultimately save the City about \$1.5M. Mr. Rhodes also advised that Mr. Tressler will be going over the Resolution in more detail during tonight's Regular Public Meeting.

Mr. Rhodes reviewed the five Consent Agenda items:

**Order 26,763** - accepting the sole source proposal from Hertrich Fleet Services, Inc. to provide a 2021 Ford F150 4WD Extended Cab for the amount not to exceed \$33,194 - using joint pricing through the Howard County, MD Contract #4400003197.

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**Order 26,76** - authorizing appointments to the Human Relations Commission, Planning & Zoning Commission, Parks & Recreation Board, and Shade Tree Commission.

### II. COMM. DEV. PRESENTATION – NEIGHBORHOOD REVITALIZATION

Mr. Thacker provided background on the blight committee, and advised that 2.5 years ago they started it back up. He stated that members from Community Development, and the Police and Fire Departments identified and addressed problem properties, and said the next step in the process is moving to revitalization. He said this will include new software technology from Citizenserve and Building Blocks.

Mr. Thacker advised that since FY14 the City has spent over \$1.5M on nuisance abatement and blight removal. He stated that in FY19, when the blight committee started back up, the City demolished 12 structures, and in FY20, 22 structures. He added that this year 4 properties have been demolished, and 4 more are planned, with one being a shared-demo. Mr. Thacker advised that shifting focus to revitalization will help them target development opportunities, and return properties back to a productive tax base.

Mr. Tressler described the process, saying they looked at data from multiple sources and tried to put it in a context they could understand. He provided details on the steps in the process that was undertaken, from categorizing based on property type, to focusing on nuisance abatement, which culminated in implementing the new software called Building Blocks, to further enhance understanding.

Councilman Bernard inquired about the increase in FY20 as opposed to FY19. Mr. Tressler explained that some funds were done in connection with Community Enhancement Funds from the County, which had to be approved and go through the approval process. He stated that caused a delay in those demos that pushed it to FY20. In answer to another question from Council, Mr. Tressler stated that the FY19 funds were partly enhancement money, but mostly all City money. He advised that the County funds started with Rolling Mills Gateway Project, and stated that they've done several other projects and are getting ready for another on the Virginia Avenue corner, with County enhancement 50/50 matching money. Mr. Tressler said they have collected data from multiple sources, starting with the blight study, tax sale lists, negligent property owners list, CDBG housing studies, etc. He advised that the data is constantly changing, so they have incorporated some tools to help them manage it.

Mr. Thacker advised that from those lists they have categorized the properties into demo properties, and are moving towards rehab, non-buildable lots, buildable lots, and added that their next phase is developer properties. He stated that from the list, and from ride-alongs with Council members, they have identified target areas where they want to concentrate their efforts: Rolling Mill Corridor, Columbia Street, Goethe Street, and Central Avenue.

Mr. Thacker discussed the first surplus property sale that was held in September 2020, where 20 properties were listed, with 9 sold. He said after the bid process the unsold properties stayed on the City website, and 3 more were sold.

Ms. Layton advised that after that initial surplus sale, they have formalized the process into an on-going sale. She went over the steps taken on the slide, saying it was a pretty lengthy process. She stated that all surplus properties were declared at the same time, and 20 will be put out to bid at a time, with a minimum of 30 days to respond to the bids. She said that after that 30-day window, they will have the committee meet on an as-needed basis to review and evaluate the bids with the same criteria as on the initial sale. She said after that, recommendations are made to M&CC, and approvals will be made by way of Ordinance.

Mr. Tressler advised with the initial list, 8 were sold for expansion, 1 for a garage, and since then, 3 more for building on, so they're happy with the results. Mr. Thacker explained that the first list focused on adjacent lots, which would probably never get built on. He said the next list will be targeted areas, high traffic areas, and said they have also had a lot of interest from citizens – people calling and inquiring – so others on the list are the ones people have asked about.

Mr. Tressler advised that one other consideration is the City's cost to maintain these properties, such as paying for lawn maintenance. He added that they are just getting the program launched, and said the best properties to be sold are yet to come.

Ms. Layton advised that the remaining properties will continue to have a For Sale sign posted, and then provided on the presentation the next group of properties to be sold, which she said would be available for bid very soon.

Mr. Thacker explained lots shown on Goethe Street, advising that one listed is not buildable due to zoning, one is buildable, and one is a rehab project. He said they don't really want to demo properties; they want structures there, and noted that 424 Goethe Street is a nice brick building with a new roof. He added that with the next round of properties, 70-80% of the inquiries have come from residents of the City right now, that want to expand what they have.

Mr. Thacker reviewed the next slide, saying they have good procedures in place, and the next step is development lots. He stated that they are hoping to have these sold in the future to a developer, or for a bigger project. He explained that the lots are multiple parcels where larger development opportunities would exist, and said for example, the 600 block of Maryland Avenue and the 200 block of Williams Street are developer projects, and are adjacent to the Rolling Mills Project. Mr. Thacker advised that they do have a partnership with the CEDC, and said they stay in touch with Matt Miller and want him to be in the loop.

Mr. Tressler moved to the next slide, and advised that they will continue to acquire additional properties, which is not really their preference. He explained that they want other owners to have the opportunity to acquire the properties, but said they themselves will have to deal with neglected properties.

Mr. Tressler explained Acquiring Through Tax Sale, saying they discovered there are corporate tax sale investors who are only in it to earn a higher rate of interest, and said that many properties that were bought never got redeemed and are still out there. He said once they can claim those properties, they will be rehab candidates.

He advised that there will be a tax sale in May, and added that they haven't had one since 2019. He said if those properties don't receive bids they will have to foreclose or ask for a donation from the owner to get out of tax liability.

Mr. Thacker briefly explained acquiring properties through donation, and said in the next phase they will be trying to figure out the procedure on how to accept these donations, and went over the list of criteria, which included health and safety concerns, owner not able to take care of property, owner deceased or incarcerated, and the property being in a target area.

Mr. Thacker explained shared demolition costs, and gave the example of 884 Sperry Terrace, where the adjacent owner offered to pay part of the costs by purchasing the property from the City for the cost of demolition. Mr. Tressler advised that this was suggested from Mr. Miller a while back.

Mr. Thacker provided details on revitalization partnerships, saying they are working with Lee Borror and CDBG funds through HRDC, who have wanted to rehab affordable housing for a while now, but have never had the proper people in place to manage that. He explained that the City's Code Enforcement staff will help with the project management, oversee the inspections, etc., and help get these properties back into affordable housing for a lot of residents.

Ms. Layton provided information on the new Building Blocks tool, and shared a map, saying some information has not been imported yet, but will be coming soon. She explained that the map shows a birds-eye view of the City, with color markers to indicate land or structure. She said it gives the user the ability to zoom in on a parcel view, and gave a demonstration. She advised that it also gives the user the ability to change from map to satellite view, and back, and stated that each property will have a record that includes available details about it, but for now it's just SDAT information. Ms. Layton advised that eventually Police, Fire, nuisance complaints and all data sets will be imported, to become a thorough picture of what's going on with each property. She said this will help determine where they want to concentrate their efforts, which neighborhoods have the most issues, and how they can address them.

Mayor Morriss stated that it looks like a great tool in the City's revitalization efforts, with lots of information, and said he looks forward to fully utilizing it. Mr. Tressler noted that the Police and Fire Departments are also very interested in having live updates, live feed from SDAT, and he said it even gives live feed from utility billing, as well as live feed from the Citizenserve software. Mr. Tressler advised that they got the idea for utilizing this software from seeing demos from the City of Hagerstown, and said they were really impressed with it, and will save them a ton of time.

There was discussion on potential legislation Mr. Cohen has written about making sure people who participated in prior tax sales without turning properties around are not allowed to participate for 5 or 10 years, which needs to be done at the State level. Mayor Morriss stated that with COVID, the Delegation wasn't able to give that consideration. He stated that Senator Edwards has the information, and added that the City is hoping to get it as a Senate and House bill next year.

Mr. Thacker advised that if Council needed more explanation of any of the presentation slides to get in touch with him, and added that they have started to work with and share information with Hagerstown. The Mayor advised that he has

also been working with the Maryland Municipal League to get their backing and support.

III.	ADJOURNMENT

With no further business at hand, the meeting adjourned at 6:22 p.m.
Respectfully submitted,
Marjorie A. Woodring City Clerk
Minutes approved

## **File Attachments for Item:**

1. Public Hearing - presentation of the Community Development Block Grant (CDBG) 2021 Annual Action Plan proposed projects for funding and proposed changes for the FY 2019 CDBG Annual Action Plan

## 2021 City of Cumberland Community Development Block Grant Program

City of Cumberland Community Development Staff announces the Community Development Block Grant (CDBG) 2021 Annual Action Plan proposed projects for funding. These 14 projects fall under one of four categories: Housing/Rehabilitation, Facilities/Infrastructure, Admin/Planning, and Public Services for a total of \$797,370. CDBG is funded through the U.S. Department of Housing and Urban Development. The following 2021 proposed CDBG projects will be presented at the regular Mayor and City Council meeting on Tuesday, April 6, 2021 and voted upon for final approval at the regular Mayor and City Council meeting on Tuesday, April 20, 2021.

	2021
Project Name	CDBG
Housing/Rehabilitation	
JFV Sidewalk ADA installation	\$35,000
Rental Rehabilitation HRDC,	\$19,300
Subtotal	\$54,300
Facilities /Infrastructure Improvements	
Baltimore Street Redesign Ph 2	\$232,721
Constitution Park Improvements Splashpad	\$76,000
Riverside YMCA Dehumidification System Replacement	\$200,368
YMCA Gilcrist Facility HVAC Rehab Ph 2	\$48,520
Subtotal	\$557,609
Administration/Planning	
Administration	\$150,000
Subtotal	\$150,000
Public Services	
CPD Foot and Bike Patrols	\$3,961
AHEC West Dental Access	\$4,000
YMCA Gilcrist Food Program	\$5,000
Long Term Prescription Program Assoc Charities	\$4,000
Short Term Prescription Program Assoc Charities	\$5,000
Jane's Place,Cumb Cares Project (child abuse/neglect)	\$4,000
Abuse Intervention Program IPV (intimate partner	4
violence)	\$9,500
	<b>***</b> 15 :
Public Services subtotal	\$35,461
Subtotal	\$35,461
TOTAL PROJECTS	\$797,370
Total Available Allocations	\$797,370

Comments regarding the 2021 CDBG Annual Plan will be accepted through April 16, 2021 in writing to Lee Borror, 57 N. Liberty Street, Cumberland, Maryland 21502 or <a href="lee.borror@cumberlandmd.gov">lee.borror@cumberlandmd.gov</a> or by calling 301 759-6437 M-F, 8:00 a.m. – 4:00 p.m.

ADV: March 16

### File Attachments for Item:

. Resolution R2021-03 (*one reading only*) - to authorize the City to issue (i) a tax-exempt series of general obligation bonds in order to finance or reimburse the costs of projects authorized for debt funding in the FY 2021 budget and to refinance an outstanding general obligation bond issued to Community Development Administration ("CDA") in 2011, and (ii) a taxable series of general obligation bonds in order to refinance certain outstanding general obligation bonds issued to CDA in 2012 and 2014 and certain City general obligation bonds issued in 2013, together with related costs; and providing that any such general obligation bonds will be sold by negotiated underwriting

#### RESOLUTION NO. R2021-03

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY") ENTITLED A RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF TWO SEPARATE SERIES OF THE CITY'S GENERAL OBLIGATION BONDS PURSUANT TO THE AUTHORITY DESCRIBED HEREIN. SUCH BONDS TO BE RESPECTIVELY DESIGNATED "MAYOR AND CITY COUNCIL OF CUMBERLAND TAX-EXEMPT PUBLIC IMPROVEMENT AND REFUNDING BONDS OF 2021" (THE "TAX-EXEMPT BONDS") AND "MAYOR AND CITY COUNCIL OF CUMBERLAND TAXABLE REFUNDING BONDS OF 2021" (THE "TAXABLE BONDS" AND, COLLECTIVELY WITH THE TAX-EXEMPT BONDS, THE "BONDS"), SUBJECT TO THE FURTHER PROVISIONS OF THIS RESOLUTION, THE PROCEEDS OF THE TAX-EXEMPT BONDS TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF, TOGETHER WITH ANY OTHER MONEYS AVAILABLE FOR SUCH PURPOSES, IF ANY, (A) FINANCING OR REIMBURSING COSTS OF THE PROJECTS IDENTIFIED HEREIN AS THE NEW MONEY PROJECTS, (B) CURRENTLY REFUNDING IN WHOLE OR IN PART THE OUTSTANDING CALLABLE PRINCIPAL INSTALLMENTS OF THE GENERAL OBLIGATION BOND OF THE CITY IDENTIFIED HEREIN AS THE 2011 INFRASTRUCTURE BOND, AND/OR (C) FINANCING OR REIMBURSING COSTS OF ISSUANCE AND RELATED COSTS OF THE TAX-EXEMPT BONDS, AND THE PROCEEDS OF THE TAXABLE BONDS TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF (A) ADVANCE REFUNDING IN WHOLE OR IN PART THE OUTSTANDING CALLABLE PRINCIPAL INSTALLMENTS OR MATURITIES, AS APPLICABLE, OF THE GENERAL

OBLIGATION BONDS OF THE CITY IDENTIFIED HEREIN AS THE 2012 INFRASTRUCTURE BOND, THE 2014 INFRASTRUCTURE A-2 BOND, THE 2014 INFRASTRUCTURE A-3 BOND AND/OR THE 2013 TAXABLE BONDS. AND (B) FINANCING OR REIMBURSING COSTS OF ISSUANCE AND RELATED COSTS OF THE TAXABLE BONDS: PRESCRIBING THE FORMS AND TENOR OF THE BONDS AND CERTAIN TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE THEREOF BY PRIVATE (NEGOTIATED) SALE THROUGH A NEGOTIATED UNDERWRITING TO ROBERT W. BAIRD & CO. INCORPORATED (THE "UNDERWRITER") AND OTHER DETAILS INCIDENT TO THE ISSUANCE, SALE AND DELIVERY OF THE BONDS; AUTHORIZING THE NEGOTIATION, APPROVAL, EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT WITH THE UNDERWRITER; PROVIDING FOR ADJUSTMENTS IN CERTAIN PRELIMINARY MATURITY AND AMORTIZATION SCHEDULES FOR THE BONDS PROVIDED FOR HEREIN AND AUTHORIZING THE CITY ADMINISTRATOR TO DETERMINE AND FIX CERTAIN TERMS AND DETAILS IN CONNECTION WITH THE SALE OF THE BONDS: AUTHORIZING AND APPROVING THE PREPARATION, COMPLETION AND DISTRIBUTION OF A PRELIMINARY AND A FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE SALE OF THE BONDS; SELECTING OR PROVIDING FOR A BOND REGISTRAR AND PAYING AGENT. AN ESCROW DEPOSIT AGENT, A VERIFICATION AGENT AND, TO THE EXTENT NEEDED, A BIDDING AGENT, AND DETERMINING OR PROVIDING FOR CERTAIN MATTERS RELATING TO SUCH ENGAGEMENTS; PROVIDING FOR THE APPROPRIATION. DISBURSEMENT AND INVESTMENT OF THE PROCEEDS OF

THE BONDS: AUTHORIZING CERTAIN DETERMINATIONS AND ACTIONS TO BE TAKEN IN CONNECTION WITH THE CURRENT REFUNDING OR ADVANCE REFUNDING. AS APPLICABLE. OF THE OUTSTANDING CALLABLE PRINCIPAL INSTALLMENTS OR MATURITIES. AS APPLICABLE. OF THE INFRASTRUCTURE BOND, THE 2012 INFRASTRUCTURE BOND, THE 2014 INFRASTRUCTURE A-2 BOND, THE 2014 INFRASTRUCTURE A-3 BOND AND/OR THE 2013 TAXABLE BONDS: PROVIDING FOR THE IMPOSITION OF TAXES NECESSARY FOR THE PAYMENT OF THE DEBT SERVICE ON THE BONDS; PROVIDING THAT THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY ARE PLEDGED TO THE PAYMENT OF SUCH DEBT SERVICE: PROVIDING THAT DEBT SERVICE ON THE BONDS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE: MAKING OR PROVIDING FOR CERTAIN COVENANTS AND DETERMINATIONS RELATING TO THE TAX-EXEMPT STATUS OF THE TAX-EXEMPT BONDS; AUTHORIZING CERTAIN OFFICIALS TO MAKE CERTAIN DETERMINATIONS OR TO TAKE CERTAIN ACTIONS IN CONNECTION WITH THE PREPAYMENT OR REDEMPTION OF ANY OF THE REFUNDED BONDS. INCLUDING, WITHOUT LIMITATION, NEGOTIATING, APPROVING, EXECUTING AND DELIVERING ANY AMENDMENTS. MODIFICATIONS OR SUPPLEMENTS TO, OR REPLACEMENTS OF, ANY AGREEMENTS, DOCUMENTS, INSTRUMENTS OR CERTIFICATES PREVIOUSLY DELIVERED BY THE CITY IN CONNECTION WITH THE ISSUANCE OF THE 2011 INFRASTRUCTURE BOND, THE 2012 INFRASTRUCTURE BOND. THE 2014 INFRASTRUCTURE A-2 BOND AND/OR THE

2014 INFRASTRUCTURE A-3 BOND, AS APPLICABLE; AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE UNDERTAKING PURSUANT TO SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12 AND COVENANTING TO PROVIDE CONTINUING DISCLOSURE RELATING TO THE BONDS; PROVIDING THAT THE PROVISIONS OF RESOLUTION NO. R2021-02 IDENTIFIED HEREIN ARE NOT REVOKED, BUT THAT ANY SERIES OF THE BONDS PROVIDED FOR THEREIN AND IN THIS RESOLUTION MAY BE SOLD AND ISSUED ONLY IN ACCORDANCE WITH THE PROVISIONS OF SUCH RESOLUTION NO. R2021-02 OR THIS RESOLUTION; PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED; AND GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BONDS.

### RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland and a municipality within the meaning of the Enabling Act and the Refunding Act identified below (the "City"), is authorized and empowered by Sections 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland (previously codified as Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland), as replaced, supplemented or amended (the "Enabling Act"), and Sections 81 and 82A of the Charter of the City of Cumberland, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds. Pursuant to the provisions of Section 19-207 of the Local Government Article of the Annotated Code of Maryland (previously codified as Section 24 of Article 31 of the Annotated Code of Maryland), as

replaced, supplemented or amended (the "Refunding Act"), the City is further authorized to issue bonds for the purpose of refunding any of its bonds or other evidences of obligation then outstanding for the public purpose of realizing debt service savings or debt restructuring.

- 2. Pursuant to the authority of the Enabling Act, Sections 81 and 82A of the Charter, Ordinance No. 3881, passed by the Mayor and City Council of the City, the governing body of the City (the "Mayor and City Council"), on January 5, 2021 and effective on February 4, 2021 ("Ordinance No. 3881"), the Mayor and City Council authorized the sale and issuance by the City, from time to time, of one or more series of general obligation bonds in an original aggregate principal amount not to exceed Four Million Five Hundred Twenty-Five Thousand Dollars (\$4,525,000) (the "Authorized New Money Bonds").
- 3. Ordinance No. 3881 provides that the par amount of the Authorized New Money Bonds may be applied in order to finance, reimburse or refinance costs of certain projects identified as follows: (A) new and/or replacement vehicles and heavy duty equipment (including, without limitation, patrol vehicles, utility vehicles, light and heavy duty trucks, sport utility vehicles, backhoes and mower equipment attachments), (B) facility and site improvements (including, without limitation, exterior and structural building improvements and renovations, sprinklers, fence repair and replacement, one or more pole buildings, and various field improvements), (C) bridge and access design, improvements, construction and repairs, (D) street improvements, (E) various water system equipment, improvements and repairs (including, without limitation, sludge thickener mixers, cross connections program upgrades, hydrant/valve replacement, water main replacement, valve equipment, waterlines, and filtration plant improvements, including but not limited to intake screening, concrete repairs and dam repairs), and/or (F) various sewer and flood system equipment, improvements and repairs (including, without limitation, SCADA system

equipment and improvements, electrical switching gear, influent screen design and construction, ammonia-nitrogen and nitrate probes, and concrete repairs), all for use by various City departments, including, without limitation, the Police, Fire, Engineering, Public Works, Parks & Recreation, Water Distribution, Sanitary Sewer, and Flood Control Departments (the projects generally described in clauses (A) through (F) being referred to herein collectively as the "New Money Projects" and, individually, as a "New Money Project"), together with, in each such case as is applicable with respect to the respective New Money Project components described in clauses (A) through (F), land and right-of-way acquisition and development; acquisition of other property rights; site and utility improvements, including, without limitation, grading, landscaping, paving and repaving, sidewalk, curb, gutter, storm water, water and sewer improvements, traffic control improvements, and related or similar activities and expenses; demolition, razing and removal; acquisition, construction, expansion, upgrading, reconstruction, replacement, renovation, rehabilitation, improvement, installation, furnishing and equipping activities and expenses and related or similar activities and expenses; planning, design, architectural, engineering, feasibility, testing, surveying, document development, bidding, permitting, inspection, construction management, financial and legal expenses and other related or similar activities and expenses; contingencies; costs of issuance (which may include costs of bond insurance or other credit or liquidity enhancement); capitalized interest (whether or not expressly so stated); and any such costs that may represent the City's share or contribution to the financing or refinancing of any such New Money Project (collectively, "Costs of the New Money Projects").

4. Sections 4-101 through 4-255 of the Housing and Community Development Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "CDA Act"), authorizes the Community Development Administration (the "Administration"), a governmental

unit in the Division of Development Finance of the Department of Housing and Community Development, a principal department of the government of the State of Maryland, to provide financial assistance to political subdivisions and municipal corporations to finance or refinance, among other things, infrastructure projects and to establish a capital reserve fund in connection therewith.

- 5. Pursuant to the authority of the CDA Act, the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, and Ordinance No. 3693, passed by the Mayor and City Council on June 7, 2011 and effective pursuant to the CDA Act on June 7, 2011 ("Ordinance No. 3693"), the City issued to the Administration on August 31, 2011 its Mayor and City Council of Cumberland Infrastructure Bond, 2011 Series A in the original aggregate principal amount of \$11,415,000 (the "2011 Infrastructure Bond").
- 6. Proceeds of the 2011 Infrastructure Bond, together with other funds, were applied to (i) refund the then-outstanding 1999 Bond, 2005 Bond, 2006 Bond and 2007 Bond identified in Ordinance No. 3693, and thereby refinance costs of the projects identified in Ordinance No. 3693 that were originally financed or refinanced from proceeds of the 1999 Bond, the 2005 Bond, the 2006 Bond and the 2007 Bond, and (ii) pay costs of issuance of the 2011 Infrastructure Bond.
- 7. Pursuant to the authority of the CDA Act, the Enabling Act, Sections 81 and 82A of the Charter, and Ordinance No. 3723, passed by the Mayor and City Council on September 25, 2012 and effective pursuant to the CDA Act on September 25, 2012 ("Ordinance No. 3723"), the City issued to the Administration on December 19, 2012 its Mayor and City Council of Cumberland Infrastructure Bond, 2012 Series B in the original principal amount of \$1,515,491.29 (the "2012 Infrastructure Bond").

8. Ordinance No. 3723 authorized proceeds of the 2012 Infrastructure Bond to be applied for the purpose of providing all or a portion of the funds necessary for (i) financing, reimbursing or refinancing costs of certain projects identified as follows: (A) Water Main Replacements, which generally involves water main replacements for streets including, but not limited to, sections of Michigan Avenue, Kentucky Avenue, Centre Street, Lafayette Street and Virginia Avenue, (B) Replacement of Hydrants and Valves, which generally involves the replacement of hydrants and valves throughout the City of Cumberland, (C) East Side Station Roof Replacement, (D) Fort Hill Reservoir Valve Replacement, (E) Upgrade of Water System Cross Connection Program, (E) New Chlorine Feed and Storage Facility, which generally involves construction of such new facility, (F) Water Filtration Plant Outfall Relocation Project, and (G) Memorial Campus Facility Demolition, together with, in each such case as is applicable with respect to the projects described in clauses (i)(A) through (G), to acquire or pay for, as applicable, the acquisition of improved or unimproved land, necessary property rights and equipment, related site and utility improvements, and related planning, design, architectural, engineering, acquisition, demolition, construction, reconstruction, rehabilitation, renovation, repair, removal, construction management, installation, improving, furnishing and equipping expenses and other related expenses, paving, and functionally related renovation or rehabilitation activities necessary at the locations or facilities at which such undertakings occur, to the extent not explicitly identified in clauses (i)(A) through (G) (collectively, the "2012 Infrastructure Projects"), (ii) funding a portion of a capital reserve fund, and/or (iii) paying issuance and other costs related to the 2012 Infrastructure Bond. The clause (E) reference was inadvertently used twice to distinguish two different identifiers of the 2012 Infrastructure Projects in Ordinance No. 3723.

9. Pursuant to the authority of the CDA Act, the Enabling Act, Sections 81 and 82A of the Charter, and Ordinance No. 3744, passed by the Mayor and City Council on May 21, 2013 and effective pursuant to the CDA Act on May 21, 2013, the City supplemented and amended Ordinance No. 3723 to modify the definition of the 2012 Infrastructure Projects and provide that proceeds of the 2012 Infrastructure Bond may be applied for (i) financing or refinancing costs of certain projects identified as follows: (A) Water Main Replacements, which generally involves water main replacements for streets including, but not limited to, sections of Michigan Avenue, Kentucky Avenue, Centre Street, Lafayette Street and Virginia Avenue, (B) Other Street Improvement Projects, (C) Replacement of Hydrants and Valves, which generally involves the replacement of hydrants and valves throughout the City of Cumberland, (D) East Side Station Roof Replacement, (E) Fort Hill Reservoir Valve Replacement, (F) Upgrade of Water System Cross Connection Program, (G) New Chlorine Feed and Storage Facility, which generally involves construction of such new facility, (H) Water Filtration Plant Outfall Relocation Project, (I) Memorial Campus Facility Demolition, (J) Wastewater Treatment Plant and System Improvements, and (K) Water Treatment Plant and System Improvements, together with, in each such case as is applicable with respect to the projects described in clauses (i)(A) through (K), to acquire or pay for, as applicable, the acquisition of improved or unimproved land, necessary property rights and equipment, related site and utility improvements, and related planning, design, architectural, engineering, acquisition, demolition, construction, reconstruction, rehabilitation, renovation, repair, removal, construction management, installation, improving, furnishing and equipping expenses and other related expenses, paving, repaving, sidewalk, curb, gutter and drain work, and functionally related renovation or rehabilitation activities necessary at the locations or facilities at which such undertakings occur, to the extent not explicitly identified in clauses (i)(A)

through (K), (ii) funding a portion of a capital reserve fund and/or (iii) paying issuance and other costs related to the 2012 Infrastructure Bond.

- 10. Pursuant to the authority of the CDA Act, the Enabling Act, Sections 81 and 82A of the Charter, and Ordinance No. 3757, passed by the Mayor and City Council on May 6, 2014 and effective pursuant to the CDA Act on May 6, 2014 ("Ordinance No. 3757"), the City issued to the Administration on August 28, 2014 its (i) Mayor and City Council of Cumberland Infrastructure Bond, 2014 Series A-1 in the original principal amount of \$1,461,417 (the "2014 Infrastructure A-1 Bond"), (ii) Mayor and City Council of Cumberland Infrastructure Bond, 2014 Series A-2 in the original principal amount of \$915,000 (the "2014 Infrastructure A-2 Bond"), and (iii) Mayor and City Council of Cumberland Infrastructure Bond, 2014 Series A-3 in the original principal amount of \$5,143,583 (the "2014 Infrastructure A-3 Bond" and, together with the 2014 Infrastructure A-1 Bond and the 2014 Infrastructure A-2 Bond, the "2014 Infrastructure Bonds").
- 11. Ordinance No. 3757 authorized proceeds of the 2014 Infrastructure Bonds to be applied for the purpose of providing all or a portion of the funds necessary for (i) financing or refinancing costs of certain projects identified as follows: (A) Improvements to the Water System and the Sewer System, including (without limitation) acquisition of vehicles, pump and motor upgrades, cross-connection program activities, detection improvements and upgrades, digester repairs, sewer replacements, flood control concrete repairs, pump station control upgrades, and improvement or replacement of water mains, hydrants and valves, (B) Facility and Property Improvements, including (without limitation) at City Hall, in the Municipal Services Center, at the Central Services building, at the Wastewater Treatment Plant, in Constitution Park, and at municipal pools, (C) Information Systems Improvements and Equipment, (D) Other Street Improvements, including (without limitation) bridge and intersection light improvements, and (E)

Acquisition of New and/or Replacement Vehicles and Equipment, including (without limitation) for emergency services providers, for public works purposes, and for utility system purposes, together with, in each such case as is applicable with respect to the projects described in clauses (i)(A) through (E), the acquisition or payment for, as applicable, improved or unimproved land, necessary property rights and equipment, related site and utility improvements, and related planning, design, architectural, engineering, acquisition, demolition, construction, reconstruction, rehabilitation, renovation, repair, removal, construction management, permitting, installation, improvement, furnishing and equipping expenses and other related expenses, paving, repaving, sidewalk, curb, gutter and drain work, and functionally related activities necessary at the locations or facilities at which such undertakings occur, to the extent not explicitly identified in clauses (i)(A) through (E), (ii) funding a portion of a capital reserve fund, and/or (iii) paying issuance and other costs related to the 2014 Infrastructure Bonds.

12. Pursuant to the authority of the Enabling Act, the Refunding Act, Ordinance No. 3725, passed by the Mayor and City Council on October 9, 2012 and effective on November 8, 2012 ("Ordinance No. 3725"), Ordinance No. 3731, passed by the Mayor and City Council on January 29, 2013 and effective on February 28, 2013 ("Ordinance No. 3731"), and Resolution No. R2013-01, adopted by the Mayor and City Council on June 4, 2013 and effective on June 4, 2013, as supplemented by Resolution No. R2013-02, adopted by the Mayor and City Council on June 18, 2013 and effective on June 18, 2013 (collectively, the "2013 Resolutions"), the City issued on July 2, 2013 its Mayor and City Council of Cumberland Taxable Redevelopment and Refunding Bonds of 2013 in the original aggregate principal amount of \$5,040,000 (the "2013 Taxable Bonds").

13. Ordinance No. 3725 authorized proceeds of the general obligation bonds issued pursuant thereto to be applied for the public purpose of financing, reimbursing or refinancing "costs" (as defined below) of certain projects identified as follows:

	Project Name
1.	Water Main Replacements
2.	Other Street Improvement Projects
3.	Replacement of Hydrants and Valves
4.	East Side Station Roof Replacement
5.	Fort Hill Reservoir Valve Replacement
6.	Upgrade of Water System Cross Connection Program
7.	New Chlorine Feed and Storage Facility
8.	Water Filtration Plant Outfall Relocation Project
9.	Memorial Campus Facility Demolition
10.	Reserves Deemed Necessary or Desirable
11.	Costs of Issuance

(collectively, the "Authorized 2013 New Money Projects"). As defined in Ordinance No. 3725, "costs" include, as applicable, land and right-of-way acquisition and development; site and utility improvements; acquisition, demolition, construction, expansion, upgrading, reconstruction, replacement, renovation, rehabilitation, removal, improvement, installation, furnishing and equipping activities and expenses and related activities and expenses; planning, design, architectural, engineering, feasibility, surveying, inspection, construction management, financial and legal expenses and other related activities and expenses; paving, repaving, sidewalk, curb, gutter and drain work and expenses and related activities and expenses; costs of funding any reserves deemed necessary or desirable; costs of issuance (which may include costs of bond insurance or other credit or liquidity enhancement); capitalized interest (whether or not expressly so stated); and any such costs which may represent the City's share or contribution to the financing or refinancing of any such Authorized 2013 New Money Projects.

- 14. Ordinance No. 3731 authorized the issuance and sale by the City, upon its full faith and credit, of one or more series of its general obligation refunding bonds from time to time in an aggregate principal amount not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,000) (the "Authorized HVAC Loan Refunding Bonds") in order to provide all or a portion of the funds needed (i) to refund or advance refund a promissory note dated November 22, 2010 (the "2010 Promissory Note") issued by the City to Susquehanna Bank in order to evidence a loan from such bank in the principal amount of \$1,532,200 for the public purpose of financing or reimbursing costs of HVAC upgrades to 500 Memorial Avenue, also known as the Memorial Campus Facility, in Cumberland, Maryland (which is the location of the former Memorial Hospital) in accordance with its terms by prepaying the same in whole or in part, for the public purpose of (A) realizing savings in the aggregate cost of debt service on a direct comparison or present value basis, or (B) debt restructuring that in the aggregate effects such a reduction in the cost of debt service or is determined by the Mayor and City Council to be in the best interests of the City, to be consistent with the City's long-term financial plan, and to realize a financial objective of the City, as contemplated in the Refunding Act and as to be determined by resolution of the Mayor and City Council, (ii) to pay all or a portion of the related costs of issuance of the Authorized HVAC Loan Refunding Bonds, (iii) to fund any reserves deemed necessary or desirable, and (iv) to the extent determined by the Mayor and City Council by resolution, to pay interest on the Authorized HVAC Loan Refunding Bonds.
- 15. Proceeds of the 2013 Taxable Bonds were applied to (i) finance or reimburse "costs" (as defined in Ordinance No. 3725) of the projects identified in Ordinance No. 3725 as "Memorial Campus Facility Demolition" and "Other Street Improvement Projects", (ii) to currently refund the 2010 Promissory Note in whole, and (iii) pay costs of issuance of the 2013 Taxable Bonds.

- 16. The 2011 Infrastructure Bond matures on May 1, 2032. At any time on or after June 1, 2021, the 2011 Infrastructure Bond is subject to prepayment at the option of the City, in whole or in part, in an amount equal to the principal amount to be prepaid plus accrued interest to the date fixed for redemption of the Administration's corresponding bonds, in accordance with the terms of a Repayment Agreement dated as of August 1, 2011 between the City and the Administration relating to the 2011 Infrastructure Bond, as the same may have been amended or supplemented (the "2011 Repayment Agreement"), including, without limitation, terms relating to the minimum authorized principal amount of the 2011 Infrastructure Bond to be prepaid, the order of prepayment and the required payment or provision for payment of certain expenses relating to any prepayment of the 2011 Infrastructure Bond.
- 17. The 2012 Infrastructure Bond matures on May 1, 2032. At any time on or after June 1, 2022, the 2012 Infrastructure Bond is subject to prepayment at the option of the City, in whole or in part, in an amount equal to the principal amount to be prepaid plus accrued interest to the date fixed for redemption of the Administration's corresponding bonds, in accordance with the terms of a Repayment Agreement dated as of December 1, 2012 between the City and the Administration relating to the 2012 Infrastructure Bond, as the same may have been amended or supplemented (the "2012 Repayment Agreement"), including, without limitation, terms relating to the minimum authorized principal amount of the 2012 Infrastructure Bond to be prepaid, the order of prepayment and the required payment or provision for payment of certain expenses relating to any prepayment of the 2012 Infrastructure Bond.
- 18. The 2014 Infrastructure A-1 Bond matures on May 1, 2024. The 2014 Infrastructure A-2 Bond matures on May 1, 2029. The 2014 Infrastructure A-3 Bond matures on May 1, 2034. At any time on or after June 1, 2023, the 2014 Infrastructure Bonds are subject to

prepayment at the option of the City, in whole or in part, in an amount equal to the principal amount to be prepaid plus accrued interest to the date fixed for redemption of the Administration's corresponding bonds, in accordance with the terms of a Repayment Agreement dated as of August 1, 2014 between the City and the Administration relating to the 2014 Infrastructure Bonds, as the same may have been amended or supplemented (the "2014 Repayment Agreement"), including, without limitation, terms relating to the minimum authorized principal amount of the 2014 Infrastructure Bonds to be prepaid, the order of prepayment and the required payment or provision for payment of certain expenses relating to any prepayment of the 2014 Infrastructure Bonds. The 2011 Repayment Agreement, the 2012 Repayment Agreement and the 2014 Repayment Agreement are collectively referred to in this Resolution as the "Repayment Agreements" and, individually, as a "Repayment Agreement."

- 19. The 2013 Taxable Bonds mature on November 1, 2032. The 2013 Taxable Bonds that mature on and after November 1, 2024 are subject to redemption at the option of the City, in whole or in part, on November 1, 2023 or on any date thereafter, at a redemption price of 100% of the principal amount of the 2013 Taxable Bonds (or portions thereof) to be redeemed, plus interest accrued to the date fixed for redemption, without penalty or premium.
- 20. Each of Ordinance No. 3881, Ordinance No. 3882, Ordinance No. 3725 and Ordinance No. 3731 provides that any of the general obligation debt of the City authorized thereby may be consolidated with other authorized general obligation debt of the City and issued as a single series.
- 21. Pursuant to Resolution No. R2021-02, adopted by the Mayor and City Council on March 16, 2021 and effective on March 16, 2021 ("Resolution No. 2021-02"), the Mayor and City Council determined to (i) issue a single series of general obligation bonds the interest on which is tax-

exempt for federal income tax purposes in order to (A) finance or reimburse Costs of the New Money Projects, (B) currently refund in whole or in part the outstanding callable principal installments of the 2011 Infrastructure Bond, and/or (C) pay related costs of issuance and other costs of such series of tax-exempt bonds, including any costs required by the 2011 Repayment Agreement in connection with any refunding and prepayment of the 2011 Infrastructure Bond, and (ii) issue a single series of general obligation bonds the interest on which is taxable for federal income tax purposes in order to (A) to advance refund in whole or in part the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds, and/or (B) pay related costs of issuance and other costs of such series of taxable bonds, including any costs required by the 2012 Repayment Agreement or the 2014 Repayment Agreement in connection with any refunding and prepayment of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond and/or the 2014 Infrastructure A-3 Bond, all as further provided therein.

22. Resolution No. R2021-02 provided that the series of the tax-exempt bonds and the series of the taxable bonds referred to in Recital 21 would be sold by solicitation of competitive bids at a public sale, which competitive bids would be submitted though an electronic bidding platform. Accordingly, pursuant to the authority contained in Resolution No. R2021-02, (i) the City released a Preliminary Official Statement dated March 18, 2021 providing for the issuance of such series of the tax-exempt bonds in an original aggregate principal amount of \$10,490,000 and such series of the taxable bonds in an original aggregate principal amount of \$6,925,000, subject to further adjustment as provided in Resolution No. R2021-02, and further providing that proceeds of such taxable bonds would not be used to advance refund any portion of the callable principal installments of the 2014 Infrastructure A-2 Bond due to market conditions, and (ii) sale of such bonds was scheduled for March

25, 2021. Due to the fact that very few bidders signed up to bid for the bonds on March 25, 2021, the sale was postponed and rescheduled to March 30, 2021 based on an expectation that additional bidders would likely register to bid on such later sale date. As of the afternoon of March 29, 2021, no additional bidders had registered to bid for such bonds on the rescheduled sale date of March 30, 2021. Pursuant to Resolution No. R2021-02, the City determined to cancel the public sale scheduled for March 30, 2021 so as not to end up in the potential scenario of receiving no bids or no acceptable bids for one of the contemplated series of the bonds when, as of such time, the City expected to sell both series of such bonds.

23. Davenport & Company LLC, the financial advisor to the City, has recommended that the City now pursue a private sale of the contemplated bonds through a negotiated underwriting. Accordingly, this Resolution provides for a private sale of such bonds through a negotiated underwriting. The City may apply other available moneys to the purposes described in these Recitals.

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

SECTION 1. (a) The Recitals to this Resolution are deemed a substantive part of this Resolution and are incorporated herein by reference. Capitalized terms used in the Sections of this Resolution that are not otherwise defined herein shall have the meanings given to such terms in the Recitals hereto.

(i) to any official authorized under the Charter, the code of City ordinances (the "City Code") or other applicable law or authority to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting or interim capacity under the Charter, the City Code or other applicable law or authority,

- (iii) to any person who serves in a "deputy", "associate" or "assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy, associate or assistant in accordance with the Charter, the City Code or other applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein. The titles of the officials of the City referred to in this Resolution correspond to the titles of such officials as provided for in the Charter.
- (c) With respect to any responsibility, right, power or duty delegated to the City Administrator of the City (the "City Administrator") by the terms of this Resolution, in the event of the absence or disability of the City Administrator or a vacancy in such position at the time of exercise of any such responsibility, right, power or duty, and in the event that at such time no acting or interim City Administrator has been appointed or otherwise provided for, any such responsibility, right, power or duty may be exercised by the Mayor of the City (the "Mayor").
- (d) References in this Resolution to "principal amount" shall be construed to mean par amount and references in this Resolution to "proceeds" shall be construed to mean par amount and any allocable original issue premium and/or investment earnings, to the extent applicable.
- (e) To the extent this Resolution does not specifically identify how any responsibility, right, power or duty delegated to the City Administrator by the terms hereof shall be evidenced, any such exercise may be evidenced conclusively by the execution and delivery by the City Administrator of an order with respect thereto.
- (f) References in this Resolution to refunding and prepaying, or providing for the refunding and prepayment of, the outstanding callable principal installments or maturities, as

applicable, of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond and/or the 2014 Infrastructure A-3 Bond shall be construed (to the extent applicable) to also refer to the corresponding refunding, defeasance and redemption of any corresponding bonds of the Administration.

SECTION 2. (a) Pursuant to the authority of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3881 and Ordinance No. 3882, as applicable, and subject to the provisions of Section 3 of this Resolution, the City hereby determines to borrow money and incur indebtedness for one or more of the following public purposes: (i) financing or reimbursing all or any portion of the Costs of the New Money Projects, (ii) currently refunding the outstanding callable principal installments of the 2011 Infrastructure Bond in whole or in part, and, in connection therewith, prepaying all or a portion of the outstanding principal amount thereof and paying interest accrued thereon to the date of redemption of the corresponding bonds of the Administration to be redeemed, in order to realize debt service savings on a direct comparison or present value basis, (iii) financing or reimbursing all or a portion of costs of issuance related to the purposes specified in clauses (i) and (ii), including, without limitation, legal and financial costs and costs of any credit enhancement, and paying any other amounts due in connection with such current refunding, including, without limitation, any costs required to be paid or provided pursuant to the 2011 Repayment Agreement, and (iv) to the extent determined by the City Administrator on behalf of the City in connection with the sale of the Tax-Exempt Bonds identified in subsection (b) below, funding interest on the Tax-Exempt Bonds (collectively the "2021 Tax-Exempt Project"). It is the stated intention of the Mayor and City Council to currently refund and prepay the outstanding callable principal installments of the 2011 Infrastructure Bond in whole to the extent such refunding in whole makes economic sense and to the extent such refunding results in debt service savings that are

considered to be within a conventionally accepted range (including taking into account aggregate savings with respect to all refunded bonds); provided that, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services of the City (the "Director of Administrative Services"), the Comptroller of the City (the "Comptroller"), the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to determine to currently refund and prepay less than the outstanding callable principal installments of the 2011 Infrastructure Bond if a current refunding and prepayment in whole of such callable principal installments would not satisfy the provisions of the Refunding Act or make economic sense, in accordance with and subject to the further provisions of this Resolution.

(b) To evidence the borrowing and indebtedness authorized in Section 2(a) of this Resolution, the City, acting pursuant to the authority of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3881 and Ordinance No. 3882, as applicable, hereby determines to issue and sell, upon its full faith and credit, a series of its general obligation bonds to be designated as the "Mayor and City Council of Cumberland Tax-Exempt Public Improvement and Refunding Bonds of 2021" (the "Tax-Exempt Bonds") in the maximum original aggregate principal amount not to exceed Thirteen Million Dollars (\$13,000,000), which maximum original aggregate principal amount is (i) equal to the maximum original aggregate principal amount of the Authorized New Money Bonds provided for in Ordinance No. 3881 and (ii) within the limitations of Ordinance No. 3882 with respect to the authorized maximum original aggregate principal amount of the Original Refunding Bonds as defined and provided for therein after giving effect to that portion of the Taxable Bonds identified in subsection (d) below authorized to be issued pursuant to the authority of Ordinance No. 3882, as applicable. The provisions of this subsection (b) are subject to the provisions of Section 3 of this Resolution. In providing for the final sizing of the Tax-Exempt Bonds, the City

Administrator, in consultation with the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, shall ensure that the allocable portions of the Tax-Exempt Bonds issued for the respective purposes of the 2021 Tax-Exempt Project do not exceed (i) the maximum original aggregate principal amount of the New Money Bonds provided for in Ordinance No. 3881 plus (ii) the maximum original aggregate principal amount of the Original Refunding Bonds provided for in Ordinance No. 3882, after giving effect to the portion of the Taxable Bonds identified below being issued pursuant to the authority of Ordnance No. 3882 as described in subsection (d) below, as applicable.

(c) Pursuant to the authority of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3725, Ordinance No. 3731 and Ordinance No. 3882, as applicable, the City hereby determines to borrow money and incur indebtedness for the public purpose of (i) advance refunding the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds in whole or in part and, in connection therewith, prepaying all or a portion of the outstanding principal amount thereof and paying interest accrued thereon to the respective dates of redemption of the corresponding bonds of the Administration to be redeemed, in order to realize debt service savings on a direct comparison or present value basis, (ii) financing or reimbursing all or a portion of costs of issuance of the Taxable Bonds identified in subsection (d) below, including, without limitation, legal and financial costs and costs of any credit enhancement, and paying any other amounts due in connection with such advance refundings, including, without limitation, any costs required to be paid or provided for pursuant to the 2012 Repayment Agreement and the 2014 Repayment Agreement, as applicable, and/or (iii) to the extent determined by the City Administrator, on behalf of the City, in connection with the sale of the Taxable Bonds, funding interest on the Taxable Bonds (collectively, the "2021 Taxable Project"). It is the stated intention of the Mayor and City Council to advance refund the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and the 2013 Taxable Bonds in whole to the extent such refunding in whole makes economic sense and results in debt service savings that are considered to be within a conventionally accepted range (including taking into account aggregate savings with respect to all refunded bonds); provided that, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to determine to advance refund the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds in part if an advance refunding in whole would not satisfy the provisions of the Refunding Act or make economic sense, or if an advance refunding in whole of such callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds would violate any applicable provisions of the Code (as defined in Section 16 of this Resolution), all in accordance with and subject to the further provisions of this Resolution.

(d) To evidence the borrowing and indebtedness authorized in Section 2(c) of this Resolution, the City, acting pursuant to the authority of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3882, Ordinance No. 3725 and Ordinance No. 3731, as applicable, hereby determines to issue and sell, upon its full faith and credit, a series of its general obligation bonds to be designated as the "Mayor and City Council of Cumberland Taxable Refunding Bonds of 2021" (the "Taxable Bonds") in the maximum original aggregate principal amount not to

exceed Nine Million Dollars (\$9,000,000), which maximum original aggregate principal amount (i) is within the limitations of Ordinance No. 3882 with respect to the authorized maximum original aggregate principal amount of Original Refunding Bonds provided for therein after giving effect to that portion of the Tax-Exempt Bonds identified in subsection (b) above authorized to be issued pursuant to the authority of Ordinance No. 3882, and (ii) does not exceed the limitations provided for in Ordinance No. 3725 and Ordinance No. 3731 with respect to any applicable refunding bonds issued under authority of such Ordinances. The provisions of this subsection (d) are subject to the provisions of Section 3 of this Resolution.

- (e) The Tax-Exempt Bonds and the Taxable Bonds are referred to in this Resolution collectively as the "Bonds", and individually as a "series" of the Bonds.
- (f) Other available moneys may be applied to the purposes of the 2021 Tax-Exempt Project and/or the 2021 Taxable Project as determined in accordance with the provisions of Section 8 of this Resolution.
- (g) The proceeds of the Tax-Exempt Bonds are hereby appropriated and allocated for the purposes of the 2021 Tax-Exempt Project, as the components of such 2021 Tax-Exempt Project may be finally determined in accordance with the provisions of this Resolution. The proceeds of the Taxable Bonds are hereby appropriated and allocated for the purposes of the 2021 Taxable Project, as the components of such 2021 Taxable Project may be finally determined in accordance with the provisions of this Resolution.

SECTION 3. (a) Each series of the Bonds shall be dated the date of its delivery and shall be issued initially in book-entry only form as fully-registered bonds, without coupons attached, by issuing a single bond for each maturity of such series registered in the name of Cede & Co., as partnership nominee for The Depository Trust Company, or its successor ("DTC"); provided that, if

DTC so requests, or a system of book-entry only registration of a series of the Bonds is discontinued, replacement bonds for such series of the Bonds shall be issued in denominations of \$5,000 and integral multiples thereof. Each series of the Bonds shall be consecutively numbered in such manner as shall be determined by the Bond Registrar and Paying Agent (as defined in Section 10 of this Resolution).

(b) Subject to the further provisions of this Section 3, the Tax-Exempt Bonds shall mature, subject to any term bonds of the Tax-Exempt Bonds provided for in accordance with Section 4(a) of this Resolution, and subject to prior redemption at the option of the City, as determined by the City Administrator upon the sale of the Tax-Exempt Bonds in accordance with the provisions of Section 8 of this Resolution. It has been recommended by the City's financial advisor, subject to adjustment as provided herein, that the preliminary maturity schedule for the Tax-Exempt Bonds shall be for an original aggregate principal amount of Ten Million Five Hundred Twenty-Five Thousand Dollars (\$10,525,000) as follows:

[CONTINUED ON FOLLOWING PAGE]

## Preliminary Maturity Schedule for Tax-Exempt Bonds\*

Maturity Date	Principal Amount	Maturity Date	Principal Amount
June 1, 2022	\$ 105,000	June 1, 2037	\$135,000
June 1, 2023	735,000	June 1, 2038	135,000
June 1, 2024	1,035,000	June 1, 2039	140,000
June 1, 2025	1,095,000	June 1, 2040	140,000
June 1, 2026	1,150,000	June 1, 2041	140,000
June 1, 2027	1,195,000	June 1, 2042	130,000
June 1, 2028	520,000	June 1, 2043	130,000
June 1, 2029	490,000	June 1, 2044	135,000
June 1, 2030	510,000	June 1, 2045	140,000
June 1, 2031	535,000	June 1, 2046	140,000
June 1, 2032	550,000	June 1, 2047	145,000
June 1, 2033	115,000	June 1, 2048	145,000
June 1, 2034	120,000	June 1, 2049	150,000
June 1, 2035	130,000	June 1, 2050	150,000
June 1, 2036	130,000	June 1, 2051	155,000

<sup>\*</sup> The maturity dates, principal amounts and determination of serial bonds provided for in the foregoing table are subject to adjustment as provided herein, including, without limitation, to provide for term bonds.

It is the stated intention of the Mayor and City Council to currently refund the outstanding callable principal installments of the 2011 Infrastructure Bond in whole and to prepay such callable principal installments of the 2011 Infrastructure Bond on the earliest available prepayment date of June 1, 2021. Notwithstanding anything to the contrary contained in this Resolution, in the event the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City or bond counsel to the City, as applicable, determines from time to time prior to the sale of the Tax-Exempt Bonds that tax considerations limit the ability to apply proceeds of the Tax-Exempt Bonds to any Costs of the New Money Projects, other funds become available to apply to Costs of the New Money Projects, legal or tax considerations limit the City's ability to currently refund a portion of the outstanding callable principal installments of the 2011 Infrastructure Bond, that sufficient savings cannot be achieved or the goals of the Refunding Act

will not be met by currently refunding a portion of the outstanding callable principal installments of the 2011 Infrastructure Bond, that other funds are available for application to the current refunding of the outstanding callable principal installments of the 2011 Infrastructure Bond, that anticipated original issue premium is expected to be available for application to the 2021 Tax-Exempt Project, and/or that the amortization schedule for the Tax-Exempt Bonds should be adjusted in order to maximize debt service savings in any particular fiscal year or years, to avoid an over-issuance problem, due to market considerations, or to account for other legal or financial considerations, such official may adjust the original aggregate principal amount of the Tax-Exempt Bonds as set forth in this subsection (b) upward or downward (so long as such original aggregate principal amount, as adjusted, does not exceed \$13,000,000 and is within the applicable maximum original aggregate principal amounts provided for in Ordinance No. 3881 and/or Ordinance No. 3882, as applicable), and correspondingly adjust one or more of the original aggregate principal amounts of the maturities of the Tax-Exempt Bonds set forth in this subsection (b) upward or downward, and to the extent necessary, eliminate one or more of the maturities of the Tax-Exempt Bonds provided for in this subsection (b), in order to reflect such overall adjustment in the original aggregate principal amount of the Tax-Exempt Bonds, and any such adjustment (i) shall be reflected in the Preliminary Official Statement (as defined in Section 9 hereof) if such determination is made prior to the release of the Preliminary Official Statement or (ii) shall be reflected in the Bond Purchase Agreement (as defined in Section 8 hereof) executed and delivered by the City Administrator in accordance with the provisions of Section 8 of this Resolution and in the Official Statement (as defined and provided for in Section 9 hereof). It is the stated intention of the Mayor and City Council that, to the extent available for such purpose, any original issue premium resulting from the sale of the Tax-Exempt Bonds to the Underwriter be applied to

reducing the par amount of the Tax-Exempt Bonds needed for the purposes of the 2021 Tax-Exempt Project after giving effect to the payment of Underwriter's discount and any expenses of sale payable to or on behalf of the Underwriter therefrom and the application of any amount of such original issue premium available for the payment of other costs of issuance of the Tax-Exempt Bonds.

(c) Subject to the further provisions of this Section 3, the Taxable Bonds shall mature, subject to any term bonds of the Taxable Bonds provided for in accordance with Section 4(a) of this Resolution, and subject to prior redemption at the option of the City, as determined by the City Administrator upon the sale of the Taxable Bonds in accordance with the provisions of Section 8 of this Resolution. It has been recommended by the City's financial advisor, subject to adjustment as provided herein, that the preliminary maturity schedule for the Taxable Bonds shall be for an original aggregate principal amount of Seven Million Three Hundred Fifty-Five Thousand Dollars (\$7,355,000) as follows:

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# **Preliminary Maturity Schedule for Taxable Bonds\***

Principal Amount	Maturity Date	Principal Amount
\$ 50,000	June 1, 2029	\$720,000
175,000	June 1, 2030	660,000
490,000	June 1, 2031	665,000
810,000	June 1, 2032	690,000
735,000	June 1, 2033	605,000
700,000	June 1, 2034	345,000
710,000		
	\$ 50,000 175,000 490,000 810,000 735,000 700,000	\$ 50,000 June 1, 2029 175,000 June 1, 2030 490,000 June 1, 2031 810,000 June 1, 2032 735,000 June 1, 2033 700,000 June 1, 2034

<sup>\*</sup> The maturity dates, principal amounts and determination of serial bonds provided for in the foregoing table are subject to adjustment as provided herein, including, without limitation, to provide for term bonds.

It is the stated intention of the Mayor and City Council to advance refund the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and the 2013 Taxable Bonds in whole and to prepay or redeem such callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and the 2013 Taxable Bonds in whole on their respective earliest available prepayment or redemption dates of June 1, 2022, June 1, 2023, June 1, 2023 and November 1, 2023, respectively. Notwithstanding anything to the contrary contained in this Resolution, in the event the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City or bond counsel to the City, as applicable, determines from time to time prior to the sale of the Taxable Bonds that legal or tax considerations limit the City's ability to advance refund a portion of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds, that sufficient savings cannot be achieved or the goals of the Refunding

Act will not be met by advance refunding a portion of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds, that other funds are available for application to the advance refunding of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds, that anticipated original issue premium is expected to be available for application to the 2021 Taxable Project, and/or that the amortization schedule for the Taxable Bonds should be adjusted in order to maximize debt service savings in any particular fiscal year or years, to avoid an over-issuance problem, due to market considerations, or to account for other legal or financial considerations, such official may adjust the original aggregate principal amount of the Taxable Bonds as set forth in this subsection (c) upward or downward (so long as such original aggregate principal amount, as adjusted, does not exceed \$9,000,000 and is within the applicable maximum original aggregate principal amounts provided for in Ordinance No. 3882, Ordinance No. 3725 and/or Ordinance No. 3731, as applicable), and correspondingly adjust one or more of the original aggregate principal amounts of the maturities of the Taxable Bonds set forth in this subsection (c) upward or downward, and to the extent necessary, eliminate one or more of the maturities of the Taxable Bonds provided for in this subsection (c), in order to reflect such overall adjustment in the original aggregate principal amount of the Taxable Bonds, and any such adjustment (i) shall be reflected in the Preliminary Official Statement if such determination is made prior to the release of the Preliminary Official Statement or (ii) shall be reflected in the Bond Purchase Agreement executed and delivered by the City Administrator in accordance with the provisions of Section 8 of this Resolution and in the Official Statement provided for in Section 9 of this Resolution. It is the stated intention of the

Mayor and City Council that, to the extent available for such purpose, any original issue premium resulting from the sale of the Taxable Bonds to the Underwriter be applied to reducing the par amount of the Taxable Bonds needed for the purposes of the 2021 Taxable Project after giving effect to the payment of Underwriter's discount therefrom and any expenses of sale payable to or on behalf of the Underwriter and the application of any amount of such original issue premium available for the payment of other costs of issuance of the Taxable Bonds.

- the Bonds in accordance with the provisions of Section 8 of this Resolution. Interest on each series of the Bonds shall be payable on December 1, 2021 and semi-annually thereafter on each June 1 and December 1 until maturity or any applicable prior redemption in whole. Interest payments due on each series of the Bonds shall be made to the registered owners thereof who are the registered owners of record as of the 15<sup>th</sup> day of the month preceding the month in which each interest payment date occurs. Each series of the Bonds shall bear interest from the most recent date to which interest has been paid or, if no interest has been paid, from its date of delivery. Interest shall be computed on the basis of a 360-day year consisting of 12 30-day months.
- (e) The principal or redemption price of the Bonds shall be payable at the corporate trust office designated by the Bond Registrar and Paying Agent. Interest on the Bonds shall be payable by check or draft of the Bond Registrar and Paying Agent mailed to the owners thereof; provided that, so long as either series of the Bonds is registered in book-entry form under a book-entry only system maintained by DTC, any successor thereto or any replacement securities depository (the "Securities Depository"), payments of the principal or redemption price of and interest on such series of the Bonds shall be made as required by the rules and regulations of such Securities Depository.

- Administrative Services, the Comptroller, the financial advisor to the City or bond counsel to the City, as applicable, determines prior to or upon the sale of the Tax-Exempt Bonds provided for in Section 8 hereof that market conditions are not favorable for a current refunding of the outstanding callable principal installments of the 2011 Infrastructure Bond in whole or in part, the City Administrator may determine that the Tax-Exempt Bonds shall not be issued for purposes of currently refunding any portion of the 2011 Infrastructure Bond. In such event, the Tax-Exempt Bonds shall be issued with the designation "Mayor and City Council of Cumberland Tax-Exempt Public Improvement Bonds of 2021"; the Refunding Act and Ordinance No. 3882 shall not serve as authority for the issuance of the Tax-Exempt Bonds; and all references in this Resolution to the issuance of the Tax-Exempt Bonds for purposes of currently refunding and prepaying the outstanding callable principal installments of the 2011 Infrastructure Bond in whole or in part and to the Refunding Act and Ordinance No. 3882 serving as authority for the issuance of the Tax-Exempt Bonds shall be deemed to be inapplicable and disregarded.
- Administrative Services, the Comptroller, the financial advisor to the City or bond counsel to the City, as applicable, determines prior to or upon the sale of the Taxable Bonds provided for in Section 8 hereof that market conditions are not favorable for an advance refunding of any portion of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond or the 2013 Taxable Bonds, as applicable, the City Administrator may determine that the Taxable Bonds shall not be issued for purposes of advance refunding any portion of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond or the 2013 Taxable Bonds,

as applicable. In such event, the applicable provisions of Ordinance No. 3882, Ordinance No. 3725 and/or Ordinance No. 3731, as applicable, shall not serve as authority for the issuance of the Taxable Bonds; and all references in this Resolution to the issuance of the Taxable Bonds for purposes of advance refunding the outstanding callable principal installments, or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond or the 2013 Taxable Bonds, as applicable, and Ordinance No. 3882, Ordinance No. 3725 and/or Ordinance No. 3731, as applicable, serving as authority for the issuance of the Taxable Bonds, shall be deemed inapplicable and disregarded.

(h) In the event the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City or bond counsel to the City, as applicable, determines prior to or upon the sale of the Taxable Bonds provided for in Section 8 hereof that sufficient savings cannot be achieved or the goals of the Refunding Act will not be met by advance refunding any portion of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and the 2013 Taxable Bonds, the City Administrator may determine that the Taxable Bonds shall not be issued. In such event, all references in this Resolution to the Taxable Bonds, the advance refunding and redemption of the callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and the 2013 Taxable Bonds, and Ordinance No. 3725, Ordinance No. 3731 or the applicable provisions of Ordinance No. 3882 serving as authority for the issuance of the Taxable Bonds, as applicable, shall be deemed to be inapplicable and disregarded, and references in this Resolution to the Bonds shall be construed to relate solely to the Tax-Exempt Bonds.

- (j) Notwithstanding the foregoing provisions of this Section 3, the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, may determine that the principal and interest payment dates on either series of the Bonds shall be dates other than June 1 and June 1 and December 1, respectively, in order to (i) better align the amortization of either series of the Bonds issued to partially refund the outstanding callable principal installments of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond and/or the 2014 Infrastructure A-3 Bond, as applicable, with the corresponding dates on which any corresponding bonds of the Administration may be called for redemption, (ii) maximize debt service savings, and/or (iii) address other legal or financial considerations and, in any such event, the City Administrator may adjust the amortization schedules of the Tax-Exempt Bonds and/or the Taxable Bonds provided for in this Section 3 and make corresponding adjustments to the optional redemption dates for the affected series of the Bonds provided for in Section 4(b) of this Resolution. Any such adjustments (i) shall be reflected in the Preliminary Official Statement if such determination is made prior to the release of the Preliminary Official Statement or (ii) shall be reflected in the Bond Purchase Agreement executed and delivered by the City Administrator in accordance with the provisions of Section 8 of this Resolution and in the Official Statement provided for in Section 9 of this Resolution.
- (k) Appropriate provisions relating to any determinations made by the City Administrator in accordance with the provisions of this Section 3 may be reflected in the Bond Purchase Agreement executed and delivered by the City Administrator in accordance with the provisions of Section 8 of this Resolution, in the Official Statement provided for in Section 9 of this Resolution, in the final form of the applicable series of the Bonds executed and delivered in

accordance with Section 7 hereof, in a separate order of the City Administrator, in the Section 148 Certificate provided for in Section 16 hereof (with respect to the Tax-Exempt Bonds) and, to the extent any such determinations are made prior to the release of the Preliminary Official Statement, in the Preliminary Official Statement.

SECTION 4. (a) With respect to any term bonds to be issued as determined in connection with the sale of a series of the Bonds (each, a "Term Bond" and, collectively, "Term Bonds"), each such Term Bond shall be subject to mandatory sinking fund redemption at a redemption price of 100% of the principal amount of the mandatory sinking fund installment specified for each applicable date as determined upon the sale of the applicable series of the Bonds, plus accrued interest on such principal amount to the date fixed for mandatory sinking fund redemption.

(b) Subject to the provisions of Section 3(j) of this Resolution and the further provisions of this Section 4, the Bonds of either series that mature prior to June 1, 2032 shall not be subject to redemption prior to maturity at the option of the City. The Bonds of either series that mature on or after June 1, 2032 shall be subject to redemption prior to their stated maturities at the option of the City, in whole or in part, on June 1, 2031 or on any date thereafter, in the order of maturity specified by the City, at a redemption price of 100% of the principal amount of the Bonds (or portions thereof) to be redeemed, plus interest accrued on the principal amount being redeemed to the date fixed for redemption, without penalty or premium. Notwithstanding the foregoing provisions of this subsection (b), the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized to provide that (i) either series of the Bonds shall be initially subject to redemption at the option of the City on an earlier or later date than specified in this subsection (b), (ii) either series of the Bonds shall be subject to redemption at the option of

the City on a specified schedule that provides for a redemption premium or premiums to be payable for a stated period of time with respect to any such optional redemption, and/or (iii) either series of the Bonds shall not be subject to redemption at the option of the City, based on a conclusion that modifications to the optional redemption features for either series of the Bonds is justified under then-current market conditions. Appropriate provisions relating to any determinations made by the City Administrator in accordance with the provisions of this subsection (b) shall be reflected in the Bond Purchase Agreement executed and delivered by the City Administrator in accordance with the provisions of Section 8 of this Resolution and in the Official Statement provided for in Section 9 of this Resolution and, to the extent any such determinations are made prior to the release of the Preliminary Official Statement, in the Preliminary Official Statement.

- (c) If fewer than all of the outstanding Bonds of either series shall be called for redemption at the City's option, the City shall choose the maturities of the Bonds of such series to be redeemed in whole or in part and the principal amount of each such maturity to be redeemed in its sole discretion, and if any such maturity consists of Term Bonds, the City shall choose the mandatory sinking fund redemption installments of such Term Bonds to be reduced and the amount of each such reduction, in its sole discretion. If fewer than all of the Bonds of any one maturity of either series shall be called for optional or mandatory sinking fund redemption, the particular Bonds or portions of Bonds to be redeemed from such maturity shall be selected by lot by the Bond Registrar and Paying Agent; provided that, so long as the applicable series of the Bonds is registered in the name of a Securities Depository or its nominee, such selection shall be made by such Securities Depository in accordance with its rules and regulations.
- (d) When less than all of a Bond in a denomination in excess of \$5,000 is redeemed, then, upon surrender thereof, there shall be issued without charge to the registered

owner thereof, for the unredeemed balance of the principal amount of such Bond, at the option of such owner, Bonds of the same series in any of the authorized denominations specified by the registered owner. The aggregate face amount of Bonds so issued shall be equal to the unredeemed balance of the principal amount of the Bond surrendered, and the Bonds issued shall be of the same series, shall bear interest at the same rate and shall mature on the same date as the unredeemed balance of the Bond surrendered.

When any Bonds are to be redeemed (whether by optional or mandatory (e) sinking fund redemption), the City shall cause a redemption notice to be given to the registered owners of the Bonds to be redeemed in whole or in part by notice mailed by first class mail, postage prepaid, at least thirty (30) days prior to the date fixed for redemption to the addresses of such registered owners appearing on the registration books for such series of the Bonds kept by the Bond Registrar and Paying Agent; provided, however, that the failure to mail a redemption notice or any defect in a notice so mailed, or in the mailing thereof, shall not affect the validity of the redemption proceedings. The redemption notice shall state (i) whether the Bonds of the applicable series are to be redeemed in whole or in part and, if in part, the maturities, numbers, principal amounts, interest rates and CUSIP numbers of the Bonds to be redeemed, (ii) that the interest on the Bonds or portions thereof to be redeemed shall cease to accrue on the date fixed for redemption, (iii) the date fixed for redemption, (iv) the address of the office of the Bond Registrar and Paying Agent with a contact person and phone number, (v) that the Bonds to be redeemed in whole or in part shall be presented for redemption and payment on the date fixed for redemption at the designated corporate trust office of the Bond Registrar and Paying Agent, and (vi) any conditions to such redemption. Notwithstanding anything to the contrary contained in this subsection (e), so long as the Bonds to be redeemed are registered in book-entry only form with a Securities

Depository, any redemption notice shall be given in the manner and at the time required by the rules and regulations of such Securities Depository.

(f) From and after the date fixed for redemption, if funds sufficient for the payment of the redemption price and accrued interest are available on such date, the Bonds or portions thereof designated for redemption shall cease to bear interest from and after such date. Upon presentation and surrender for redemption, the Bonds or portions thereof to be redeemed shall be paid by the Bond Registrar and Paying Agent at the redemption price, plus accrued interest on the principal amount being redeemed to the date fixed for redemption. If they are not paid upon presentation, the Bonds or portions thereof designated for redemption shall continue to bear interest at the rate or rates stated therein until paid.

SECTION 5. The Bonds shall be executed in the name of the City and on its behalf by the Mayor, by manual or facsimile signature or by any other means authorized by applicable law. The corporate seal of the City shall be affixed to the Bonds (manually or by facsimile or by any other means authorized by applicable law) and attested by the signature of the City Clerk of the City (the "City Clerk"), by manual or facsimile signature or by any other signature means authorized by applicable law. The Bonds shall be issued subject to registration as to principal and interest in the name of the owner or owners thereof on the books kept for registration and registration of transfer of the Bonds of each series at the designated corporate trust office of the Bond Registrar and Paying Agent. The Bonds shall be authenticated by the manual signature or facsimile signature (or by any other signature means authorized by applicable law) of an authorized officer of the Bond Registrar and Paying Agent. The Bonds shall not be valid for any purpose or constitute an obligation of the City unless so authenticated. In the event any official of the City whose signature appears on the Bonds shall cease to be such official prior to the delivery of the Bonds, or, in the event any such

official whose signature appears on the Bonds shall have become such after the date of issue thereof, the Bonds shall nevertheless be a valid and binding obligation of the City in accordance with their terms.

SECTION 6. (a) The Bonds of each series shall be transferable only upon the registration books for such series kept at the designated corporate trust office of the Bond Registrar and Paying Agent and by the registered owner in person, or by his duly authorized attorney in writing, upon surrender thereof, together with a written instrument of transfer in the form attached thereto and satisfactory to the Bond Registrar and Paying Agent and duly executed by the registered owner thereof in person, or by his attorney duly authorized in writing, but no Bond will be transferred unless the Security Depository then in place determines to discontinue providing its services as a securities depository or directs that the Bonds of such series be re-registered in a different name or denomination, or unless the Securities Depository then in place is removed by the City.

(b) A Bond may be transferred or exchanged at the designated corporate trust office of the Bond Registrar and Paying Agent. Upon any such transfer or exchange, the City shall issue, and the Bond Registrar and Paying Agent shall authenticate and deliver, a new registered Bond or Bonds of the same series in authorized denomination or denominations equal to the aggregate principal amount of the Bond transferred or exchanged, with the same maturity date and bearing interest at the same rate. Any such new Bond or Bonds issued in transfer or exchange may be executed, sealed and authenticated as provided in Section 5 of this Resolution with respect to the original execution and delivery of the Bonds, or as otherwise required by then-applicable law. In each case, the Bond Registrar and Paying Agent may require payment by the registered owner requesting such transfer or exchange of any tax, fee or other governmental charge, shipping charges or insurance

that may be required to be paid with respect to such transfer or exchange, but otherwise no charge shall be made to the registered owner for such transfer or exchange.

- (c) The Bond Registrar and Paying Agent shall not be required to transfer or exchange any Bond after the mailing or giving of notice of call of such Bond or any portion thereof for redemption.
- (d) If any Bond shall become mutilated or be destroyed, lost or stolen, the City in its discretion may execute, and upon its request the Bond Registrar and Paying Agent shall authenticate and deliver, a new Bond of the same series in exchange for the mutilated Bond or in lieu of and substitution for the Bond so destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the City and to the Bond Registrar and Paying Agent such security or indemnity as may be required by them to save each of them harmless from all risks, however remote, and the applicant shall also furnish to the City and to the Bond Registrar and Paying Agent evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Bond. Upon the issuance of any Bond upon such exchange or substitution, the City may require the payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto and any other expenses of the City or the Bond Registrar and Paying Agent, including counsel fees and expenses, shipping or insurance. If any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, instead of issuing a Bond in exchange or substitution therefor, the City may pay or authorize the payment of such Bond (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the City and to the Bond Registrar and Paying Agent such security or indemnity as they may require to save them harmless, and evidence to the satisfaction

of the City and the Bond Registrar and Paying Agent of the mutilation, destruction, loss or theft of such Bond.

SECTION 7. Except as provided hereinafter or in a resolution or resolutions of the Mayor and City Council adopted prior to the issuance of the Bonds, each series of the Bonds shall be issued in substantially the form attached hereto as Exhibit A and incorporated by reference herein. Appropriate variations, deletions and insertions may be made by the Mayor to provide names, dates, numbers and amounts applicable to a specific series of the Bonds, to carry into effect the purposes of this Resolution, including (without limitation) to reflect matters determined in accordance with Sections 2, 3, 4, 5 and 8 hereof, to comply with recommendations of legal counsel, as required by any rating agency as a condition precedent to, or as otherwise related to, obtaining a rating on such series of the Bonds from such rating agency, or as may be required by any provider of municipal bond insurance for all or any portion of such series of the Bonds. All of the covenants contained in Exhibit A hereto are hereby adopted by the City as and for the forms of obligations to be incurred by the City, and the covenants and conditions contained therein are hereby made binding upon the City, including the promise to pay therein contained. The execution and delivery of a series of the Bonds by the Mayor in accordance with this Resolution shall be conclusive evidence of the approval by the Mayor of the final form of such series of the Bonds and any variations, deletions, insertions, omissions, notations, legends or endorsements authorized by this Resolution.

SECTION 8. (a) Subject to the provisions of Section 19 of this Resolution, the Mayor and City Council hereby determines that it shall be in the best interest of the City to sell each series of the Bonds by private (negotiated) sale due to the fact the City would like to sell tax-exempt and taxable bonds at the same time, the difficulties experienced by the City in attempting to sell the Bonds at a public sale by the solicitation of competitive bids, the relatively small (for purposes of

the U.S. and Maryland municipal markets) size of each series of the Bonds and the ability to time the market, particularly in light of the contemplated advance refunding of applicable portions of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds from proceeds of the Taxable Bonds. Based on a recommendation of the financial advisor to the City, Robert W. Baird & Co. Incorporated was asked to submit a proposal to undertake a negotiated underwriting of the Bonds. The financial advisor to the City recommends, and the City Administrator, the Director of Administrative Services and the Comptroller concur, that Robert W. Baird & Co. Incorporated demonstrates the necessary knowledge of the Maryland and U.S. municipal bond markets and has the financial wherewithal and experience to serve as the underwriter of the Bonds. Accordingly, the Mayor and City Council hereby determines that the Bonds shall be sold by the City to Robert W. Baird & Co. Incorporated (by whatever legal name known, the "Underwriter") by private (negotiated) sale in the form of a negotiated underwriting pursuant to the terms and conditions of a bond purchase agreement (by whatever name known, the "Bond Purchase Agreement"). Within the limitations provided for in this Resolution, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to approve the final original aggregate principal amounts of each series of the Bonds, the serial and/or term structure for each series of the Bonds, the original aggregate principal amounts of each maturity of and/or mandatory sinking fund redemption payments for each series of the Bonds, the price payable for each series of the Bonds (which may be at, above or below par value), the interest rate or rates payable on each series of the Bonds, any modifications to the optional redemption features of each series of the Bonds, the outstanding callable principal installments or maturities, as applicable, of the 2011 Infrastructure

Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds to be refunded in whole or in part, the components of the 2021 Tax-Exempt Project and the 2021 Taxable Project to which proceeds of the Tax-Exempt Bonds and the Taxable Bonds shall be applied, the components of the 2021 Tax-Exempt Project and/or the 2021 Taxable Project to which any other available moneys are to be applied, if applicable, and all other matters incident to the sale of the Bonds to the Underwriter, and to negotiate, approve, execute and deliver the Bond Purchase Agreement with such provisions as do not materially adversely affect the interests of the City and as are necessary to reflect the terms of pricing and sale of the Bonds, such approval to be evidenced conclusively by the City Administrator's execution and delivery of the Bond Purchase Agreement. In approving the terms of the Bond Purchase Agreement, the City Administrator shall consult with the financial advisor to the City regarding the reasonableness of the pricing terms provided for in the Bond Purchase Agreement, taking into account then-current market conditions, any financial or operating conditions then impacting the City, the ratings on the Bonds and, to the extent applicable, the ratings on the provider of any municipal bond insurance for all or a portion of either series of the Bonds. It is currently intended that the Bonds shall be priced and sold to the Underwriter on or about April 15, 2021, but the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized to agree to any earlier or later date of pricing and sale recommended by the Underwriter based on market conditions or other scheduling considerations, such agreement to be evidenced conclusively by the execution and delivery by the City Administrator of the final form of the Bond Purchase Agreement reflecting the finally determined date of pricing, sale and delivery of the Bonds. In addition, the City Administrator, on behalf of the City, with the advice of the Director

of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is authorized to include in the Bond Purchase Agreement any provisions necessary to ensure compliance with the issue price regulations of the U.S. Treasury, and to provide for any costs to be paid from any other available moneys.

- (b) In the event the Underwriter recommends that either series of the Bonds be sold with a municipal bond insurance policy insuring or guaranteeing the regularly scheduled payment of all or a portion of the principal of and interest on such series of the Bonds, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized to approve the selection of the provider of such municipal bond insurance for such series of the Bonds and any terms and conditions relating to such municipal bond insurance, such approval to be evidenced conclusively by the execution and delivery by the Mayor or the City Administrator of any proposal therefor and any documents, certificates or instruments relating thereto. Appropriate provisions relating to any such provision of municipal bond insurance shall be reflected in the final form of the Bond Purchase Agreement approved, executed and delivered by the City Administrator in accordance with the provisions of this Section 8, in the final form of the affected series of the Bonds, and, as applicable, in the Preliminary Official Statement and/or the Official Statement.
- (c) Notwithstanding anything to the contrary contained in this Resolution, in the event it is determined in accordance with the provisions of this Section 8 that sale of the Bonds shall occur on a date later than May 1, 2021, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to approve different dates

for the payment of principal of and interest on the Bonds, a different first date on which payment of interest on the Bonds will be made and different dates for the optional redemption features of the Bonds. In the event such determination is made prior to the date of release of the Preliminary Official Statement, approval of any such changes shall be evidenced conclusively by the provisions of the Preliminary Official Statement reflecting the same. In the event any such determination is made after the date of release of the Preliminary Official Statement but before the date of sale of the Bonds, any such approval shall be evidenced conclusively by the execution and delivery by the City Administrator of the final Bond Purchase Agreement reflecting such changes and by the provisions of the Official Statement reflecting such changes.

(d) The City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is further authorized and empowered to negotiate, approve, execute and deliver any supplements or amendments to the originally executed Bond Purchase Agreement deemed necessary or desirable including, without limitation, to correct any errors or inconsistencies therein, any such approval shall be evidenced conclusively by the execution and delivery by the City Administrator of such supplement or amendment. In such case, references in this Resolution to the Bond Purchase Agreement shall be construed to mean the originally executed Bond Purchase Agreement, as so supplemented or amended, to the extent applicable.

SECTION 9. (a) The preparation and distribution of a Preliminary Official Statement of the City in connection with the offering and sale of the Bonds (the "Preliminary Official Statement"), substantially in such form as has been previously circulated to City officials (without Appendix A, the Comprehensive Annual Financial Report for fiscal year 2020, included in such circulated form, although such Comprehensive Annual Financial Report or applicable portions

thereof shall be included in the final Preliminary Official Statement (including by setting forth in the final Preliminary Official Statement the website address at which such Comprehensive Annual Financial Report is available or providing a link thereto) and with such changes, corrections, insertions, deletions and clarifications as are necessary to reflect any determinations made in accordance with the provisions of this Resolution or prior to the release of such Preliminary Official Statement or as may be approved by the Mayor, the City Administrator and the Comptroller with the advice of the City's financial advisor and legal counsel. The Mayor, the City Administrator and the Comptroller, on behalf of the City, are hereby authorized and directed to approve the final form of the Preliminary Official Statement in accordance with this Section 9(a) and to make any appropriate variations, insertions or modifications to the form of Preliminary Official Statement previously circulated not inconsistent with the provisions of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3881, Ordinance No. 3882, Ordinance No. 3725 and/or Ordinance 3731 or this Resolution, as applicable, or to comply with the recommendations of legal counsel or the City's financial advisor, or as required by any rating agency as a condition precedent to, or as otherwise related to, obtaining a rating on either series of the Bonds from any such rating agency, or as required by any provider of municipal bond insurance as a condition precedent to, or as otherwise related to, obtaining municipal bond insurance for all or any portion of either series of the Bonds from any such provider of municipal bond insurance, such approval to be evidenced conclusively by the execution and delivery by the Mayor, the City Administrator and the Comptroller, on behalf of the City, of a certificate deeming the Preliminary Official Statement to be final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1), subject to revision, completion and amendment in the final Official Statement referred to in subsection (b) below. The Preliminary Official Statement shall be posted

electronically and/or printed as the City's financial advisor shall recommend and the Underwriter shall require.

- (b) The preparation and distribution of a final Official Statement relating to the Bonds (the "Official Statement"), substantially in the form of the Preliminary Official Statement, with such changes, corrections, additions and deletions not inconsistent with the provisions of the Enabling Act, the Refunding Act, Sections 81 and 82A of the Charter, Ordinance No. 3881, Ordinance No. 3882, Ordinance No. 3725 and/or Ordinance 3731 or this Resolution, as applicable, to reflect matters determined in connection with the sale of the Bonds, or to comply with the recommendations of legal counsel or the City's financial advisor, or as required by any rating agency as a condition precedent to, or as otherwise related to, obtaining a rating on either series of the Bonds from any such rating agency, or as required by any provider of municipal bond insurance as a condition precedent to, or as otherwise related to, obtaining municipal bond insurance for all or any portion of either series of the Bonds from any such provider of municipal bond insurance, as the Mayor, the City Administrator and the Comptroller shall approve on behalf of the City, is hereby authorized and approved. The Mayor, the City Administrator and the Comptroller are hereby authorized and directed to approve the final form of the Official Statement on behalf of the City, such approval to be evidenced conclusively by the Mayor's, the City Administrator's and the Comptroller's execution and delivery of the Official Statement (which execution may be made in facsimile or indicated by any customary signature convention). The Official Statement shall be printed and/or posted electronically as recommended by the financial advisor to the City and as required by the Underwriter.
- (c) The Mayor, the City Administrator and the Comptroller, or any two of such officials acting in concert, with the advice of the financial advisor to the City and bond counsel to

the City, are hereby authorized and directed to approve any supplements or amendments to the Preliminary Official Statement or the Official Statement deemed necessary or desirable after the printing or posting of the same (including, without limitation, to correct any material misstatement or omission or to provide any information that was not available at the time such Preliminary Official Statement or Official Statement was released), such approval to be evidenced conclusively by the execution and delivery of any such supplement or amendment by the Mayor, the City Administrator and the Comptroller, or any two of such officials acting in concert, on behalf of the City (which execution may be made in facsimile or indicated by any customary signature convention). Any such supplement shall be printed and/or posted electronically as advised by the financial advisor to the City and as required by the Underwriter.

SECTION 10. (a) Manufacturers and Traders Trust Company, with offices in Baltimore, Maryland and Buffalo, New York, any affiliate thereof, or any successor thereto, by merger, consolidation, or otherwise, is hereby designated as Bond Registrar and Paying Agent (the "Bond Registrar and Paying Agent") for the Bonds. The Mayor and the City Administrator are each hereby authorized to negotiate, approve, execute and deliver such written agreement with the Bond Registrar and Paying Agent as either such official shall deem to be necessary or appropriate. The City may designate another entity as Bond Registrar and Paying Agent upon 30 days prior written notice to the registered owners of the Bonds.

(b) Prior to each semi-annual interest payment date, the Treasurer of the City (the "Treasurer") or other appropriate City official shall deposit with the Bond Registrar and Paying Agent, from the tax proceeds described in Section 15 below and from any other funds then legally available for such purpose, the amounts needed to pay interest on and any principal of the Bonds coming due on each such interest payment date. All moneys so deposited with the Bond

Registrar and Paying Agent shall be deemed and treated by the Bond Registrar and Paying Agent as trust funds for the use and benefit of the registered owners from time to time of the Bonds. Any such trust funds held by the Bond Registrar and Paying Agent for the payment of particular Bonds for periods of more than three years from their maturities or such other period as may be required by applicable law, because of the failure of the registered owners of such Bonds to present them for payment or because checks issued by the Bond Registrar and Paying Agent in payment of interest shall not have been cashed and no registered owner of a Bond shall have established a right to payment of interest within such period, shall be returned by the Bond Registrar and Paying Agent to the City and, thereafter, the registered owners of any such Bonds shall have claims only against the City for payment of the obligations held by them, and the Bond Registrar and Paying Agent shall be relieved of the trust hereby imposed.

SECTION 11. As soon as may be practicable after the date of execution of the Bond Purchase Agreement, the Bonds of each series shall be suitably prepared in definitive form, executed and delivered to the Underwriter upon receipt of the respective net purchase prices therefor. It is anticipated that the date of issuance of the Bonds will be April 29, 2021; provided that, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, may determine to move the date of issuance of the Bonds to another date satisfactory to such persons and to the Underwriter and, to the extent that proceeds of the Bonds are applied to refund any portion of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond and/or the 2014 Infrastructure A-3 Bond, to a date satisfactory to the Administration. Any such determination as to a change in the date of issuance of the Bonds shall be evidenced conclusively by the terms of the executed Bond Purchase Agreement; provided that, notwithstanding anything to the contrary

contained in this Resolution, in the event of market disruptions, disruptions in or failure of the federal wire system, or the occurrence of any other event or condition that makes it impossible or impracticable to issue the Bonds on the date provided for in the originally executed Bond Purchase Agreement, the City Administrator, on behalf of the City, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, is hereby authorized and empowered to reschedule the date of issuance of the Bonds to a date satisfactory to the City, the Underwriter and, to the extent applicable, the Administration, and any such change in the date of issuance of the Bonds may be reflected in a supplement or amendment to the Bond Purchase Agreement negotiated, approved, executed and delivered by the City Administrator, in an order of the City Administrator, or by any other means as advised by legal counsel. The Mayor, the City Administrator, the Treasurer, the Director of Administrative Services, the Comptroller, the City Clerk and all other appropriate officials and employees of the City, as applicable, are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bonds to the Underwriter and to negotiate, approve, execute and deliver all documents, certificates and instruments not otherwise provided for herein that are necessary or appropriate in connection therewith, including, without limitation, executing and delivering any agreements required by DTC with respect to the book-entry system of registration of the Bonds or any documents relating to municipal bond insurance to be provided with respect to either series of the Bonds.

SECTION 12. (a) That portion of the proceeds of the sale of the Tax-Exempt Bonds (including, to the extent applicable, allocable original issue premium but excluding allocable Underwriter's discount and any allocable expenses of sale payable to or on behalf of the Underwriter) to be applied for purposes of the New Money Projects and costs of issuance of the

Tax-Exempt Bonds, shall be paid to the Comptroller or other appropriate City official. Such portion of the proceeds of the Tax-Exempt Bonds shall be applied to Costs of the New Money Projects and costs of issuance of the Tax-Exempt Bonds. The Comptroller or other appropriate City official may invest any such Tax-Exempt Bond proceeds not immediately needed in accordance with applicable law and subject to Sections 16 and 17 of this Resolution, and any such investment earnings may be applied to Costs of the New Money Projects, to pay costs of issuance of the Tax-Exempt Bonds and, to the extent not needed for either such purpose, to pay debt service on the Tax-Exempt Bonds, unless the Mayor and City Council direct otherwise in accordance with applicable law.

- (b) That portion of the proceeds of the sale of the Tax-Exempt Bonds (including, to the extent applicable, allocable original issue premium but excluding allocable Underwriter's discount and any allocable expenses of sale payable to or on behalf of the Underwriter) to be applied for the purpose of effecting a current refunding of the outstanding callable principal installments of the 2011 Infrastructure Bond in whole or in part shall be paid to the Escrow Deposit Agent (as defined in Section 13 hereof) to be used and applied solely as provided for in the Escrow Deposit Agreement (as defined in Section 13 hereof).
- (c) That portion of the proceeds of the sale of the Taxable Bonds (including, to the extent applicable, allocable original issue premium but excluding allocable Underwriter's discount and any allocable expenses of sale payable to or on behalf of the Underwriter) to be applied to costs of issuance of the Taxable Bonds, shall be paid to the Comptroller or other appropriate City official. Such portion of the proceeds of the Taxable Bonds shall be applied to costs of issuance of the Taxable Bonds. The Comptroller or other appropriate City official may invest any such Taxable Bond proceeds not immediately needed in accordance with applicable

law, and any such investment earnings may be applied to pay costs of issuance of the Taxable Bonds and, to the extent not needed for such purpose, to pay debt service on the Taxable Bonds, unless the Mayor and City Council direct otherwise in accordance with applicable law.

- (d) That portion of the proceeds of the sale of the Taxable Bonds (including, to the extent applicable, allocable original issue premium but excluding allocable Underwriter's discount and any allocable expenses of sale payable to or on behalf of the Underwriter) to be applied for the purpose of effecting an advance refunding of the outstanding callable principal installments or maturities, as applicable, of the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds in whole or in part shall be paid to the Escrow Deposit Agent to be used and applied solely as provided for in the Escrow Deposit Agreement.
- (e) Notwithstanding the foregoing provisions of this Section 12, any portion of the proceeds of either series of the Bonds to be applied to pay costs of issuance other than the Underwriter's discount with respect to such series, may be paid by the Underwriter directly to the person or entity entitled thereto at the written direction of the Mayor, the City Administrator or the Comptroller. Costs and expenses payable to the Administration, the financial advisor to the Administration, bond counsel to the Administration, Manufacturers and Traders Trust Company, as trustee for the applicable bonds issued by the Administration, or any other parties required to received payment under the applicable Repayment Agreement in connection with any refunding of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond

or the 2014 Infrastructure A-3 Bond, as applicable, shall be paid by the City or upon the written direction of the Mayor, the City Administrator or the Comptroller.

SECTION 13. (a) Manufacturers and Traders Trust Company, any affiliate thereof, or any successor thereto, by merger, consolidation, or otherwise, is hereby appointed as escrow deposit agent (the "Escrow Deposit Agent") under the Escrow Deposit Agreement or Escrow Deposit Agreements (referred to in this Resolution in either such case as the "Escrow Deposit Agreement") to be entered into between the City and the Escrow Deposit Agent (and, to the extent required by the Administration, by the Administration) for the purposes described in Section 12 of this Resolution. The Escrow Deposit Agent shall receive a portion of the net proceeds of the Tax-Exempt Bonds and a portion of the net proceeds of the Taxable Bonds and use and apply such proceeds in accordance with the Escrow Deposit Agreement to the purposes described in Section 12 of this Resolution. The Mayor and the City Administrator, on behalf of the City, are each hereby authorized and empowered to negotiate, approve, execute and deliver the Escrow Deposit Agreement, such approval on behalf of the City to be evidenced conclusively by either such official's signature on the Escrow Deposit Agreement. The determination of whether the City will enter into one or more Escrow Deposit Agreements with the Escrow Deposit Agent will be made by the Mayor or the City Administrator, as applicable, in consultation with bond counsel to the City, and subject to the approval of the Administration to the extent any such Escrow Deposit Agreement relates to the refunding of bonds of the Administration corresponding to the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond or the 2014 Infrastructure A-3 Bond, respectively.

(b) Bingham Arbitrage Rebate Services, Inc. (by whatever name legally known), is hereby selected to provide escrow verification services in connection with the current

refunding and the advance refunding of the outstanding callable principal installments or maturities, as applicable, of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds in whole or in part. In the event Bingham Arbitrage Rebate Services, Inc. is unable to provide such services, for whatever reason, the City Administrator is hereby authorized and empowered to replace as he may deem necessary, in any manner he deems appropriate, the provider of escrow verification services. The Mayor and/or the City Administrator is hereby authorized to negotiate, approve, execute and deliver such written agreement with the entity providing escrow verification services as he shall deem necessary or appropriate. To the extent any City official has already executed any such agreement with the provider of escrow verification services, such approval and execution is hereby ratified, confirmed and approved.

(c) In connection with the issuance of the Tax-Exempt Bonds and the Taxable Bonds, each of the Mayor, the City Administrator and the Comptroller, is hereby authorized and empowered to provide for the bidding for and/or execute or file on behalf of the City, as applicable, any necessary investment agreements or any necessary subscriptions and any amendments thereto to purchase United States Treasury Obligations – State and Local Government Series ("SLGS"), and/or any direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America in such amounts and maturing at such times so that sufficient moneys will be available from such maturing principal and interest and any cash held uninvested to be held under the Escrow Deposit Agreement, and to take any other action or to execute any further instrument on behalf of the City necessary to purchase such obligations. Any such obligations shall be deposited with the Escrow Deposit Agent.

(d) In the event that at the applicable time SLGS are unavailable for purposes of any escrow funds established and maintained under the provisions of the Escrow Deposit Agreement, or in the event the financial advisor to the City recommends that open market securities be bid for in order to fund any portion of the escrows established under the Escrow Deposit Agreement, Davenport & Company LLC is hereby selected to provide open market bidding services in connection therewith. In the event Davenport & Company LLC is unable to provide such services, for whatever reason, the City Administrator is hereby authorized to replace as he may deem necessary, in any manner he deems appropriate, the provider of open market bidding services. The Mayor and/or the City Administrator is hereby authorized to negotiate, approve, execute and deliver any written agreement with the entity providing open market bidding services as he shall deem necessary or appropriate. Any such open market securities shall be deposited with the Escrow Deposit Agent.

SECTION 14. (a) Conditioned only upon the delivery of and payment for the Tax-Exempt Bonds for purposes of currently refunding the outstanding callable principal installments of the 2011 Infrastructure Bond in whole or in part, the Mayor and City Council hereby elects to prepay on June 1, 2021 such refunded portions of the 2011 Infrastructure Bond finally selected for prepayment in accordance with the provisions of Section 8 of this Resolution; provided that, in the event the Tax-Exempt Bonds are to be issued and delivered on a date later than April 29, 2021, the City Administrator, with the advice of the Director of Administrative Services, the Comptroller, the financial advisor to the City and bond counsel to the City, may elect a later date permitted by the 2011 Repayment Agreement for prepayment of the refunded portions of the 2011 Infrastructure Bond finally selected for prepayment, any such later date to be reflected in the Bond Purchase Agreement executed and delivered by the City Administrator in accordance with the provisions of

Section 8 of this Resolution and in the Official Statement provided for in Section 9 of this Resolution.

- (b) Conditioned only upon the delivery of and payment for the Taxable Bonds for purposes of advance refunding the outstanding callable principal installments of the 2012 Infrastructure Bond in whole or in part, the Mayor and City Council hereby elects to prepay on June 1, 2022 such refunded portions of the 2012 Infrastructure Bond finally selected for prepayment in accordance with the provisions of Section 8 of this Resolution.
- (c) Conditioned only upon the delivery of and payment for the Taxable Bonds for purposes of advance refunding the outstanding callable principal installments of the 2014 Infrastructure A-2 Bond in whole or in part, the Mayor and City Council hereby elects to prepay on June 1, 2023 such refunded portions of the 2014 Infrastructure A-2 Bond finally selected for prepayment in accordance with the provisions of Section 8 of this Resolution.
- (d) Conditioned only upon the delivery of and payment for the Taxable Bonds for purposes of advance refunding the outstanding callable principal installments of the 2014 Infrastructure A-3 Bond in whole or in part, the Mayor and City Council hereby elects to prepay on June 1, 2023 such refunded portions of the 2014 Infrastructure A-3 Bond finally selected for prepayment in accordance with the provisions of Section 8 of this Resolution.
- (e) Conditioned only upon the delivery of and payment for the Taxable Bonds for purposes of advance refunding the outstanding callable maturities of the 2013 Taxable Bonds in whole or in part, the Mayor and City Council hereby elects to redeem on November 1, 2023 such refunded portions of the 2013 Taxable Bonds finally selected for redemption in accordance with the provisions of Section 8 of this Resolution.

- (f) The Mayor and/or the City Administrator may give notice of the prepayment, redemption or refunding of any portion of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond, or the 2013 Taxable Bonds finally selected for refunding in accordance with the provisions of this Resolution or the Escrow Deposit Agreement may provide that the Escrow Deposit Agent shall give all or any of such notices.
- Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, and/or the 2014 Infrastructure A-3 Bond and the refunding of the bonds of the Administration corresponding thereto, the Mayor and/or the City Administrator, with the advice of bond counsel to the City and as may be required by the Administration or bond counsel to the Administration, is hereby authorized and empowered to negotiate, approve, execute and deliver any amendments, modifications or supplements to, or replacements of, any of the agreements, documents or certificates and instruments executed and delivered by the City in connection with the issuance of the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, and/or the 2014 Infrastructure A-3 Bond, including, without limitation, any applicable Repayment Agreement, and any Pledge Agreement entered into by the City and the Administration. Any such amendments, modifications, supplements or replacements may also be executed and delivered by any other applicable officials of the City.

SECTION 15. For the purpose of paying the principal of and interest on the Bonds when due, the City shall impose for each and every fiscal year during which the Bonds may be outstanding, ad valorem taxes upon all real and tangible personal property in the City that is subject to assessment for unlimited municipal taxation at a rate and in an amount sufficient to provide for the payment,

when due, of the principal of and interest on the Bonds in each such fiscal year. In the event the proceeds from the collection of the taxes so imposed may prove inadequate for such purposes in any fiscal year, additional taxes shall be imposed in the subsequent fiscal year to make up such deficiency. The full faith and credit and unlimited taxing power of the City are hereby pledged to the payment of the principal of and interest on the Bonds as and when the same become due and are payable and to the imposition of the taxes hereinabove prescribed as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bonds. The City hereby covenants with the registered owners of the Bonds to take any further action that may be lawfully appropriate from time to time during the period that the Bonds remain outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and interest due thereon. Subject to the provisions of Sections 16 and 17 hereof with respect to the Tax-Exempt Bonds, the foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on the Bonds from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose, including any sources of funds from which the City has been paying allocable portions of debt service on the 2011 Infrastructure Bond, the 2012 Infrastructure Bond, the 2014 Infrastructure A-2 Bond, the 2014 Infrastructure A-3 Bond and/or the 2013 Taxable Bonds, as applicable. The City may apply to the payment of the principal of or interest on the Bonds any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, and to the extent of any such funds received or receivable in any fiscal year or otherwise available for such purpose, the taxes hereby required to be imposed may be reduced proportionately.

<u>SECTION 16</u>. (a) Any two or more of the Mayor, the Treasurer, the Director of Administrative Services and the Comptroller are the officials of the City responsible for the issuance

of the Tax-Exempt Bonds within the meaning of Section 1.148-2(b)(2) of the Treasury Regulations (defined below). Any two or more of the Mayor, the Treasurer, the Director of Administrative Services and the Comptroller also shall be the officials of the City responsible for the execution and delivery (on the date of the issuance of the Tax-Exempt Bonds) of a certificate of the City (the "Section 148 Certificate") that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations with respect to the Code (the "Treasury Regulations"), and such officials are hereby authorized and directed to execute and deliver the Section 148 Certificate to counsel rendering an opinion on the validity and tax-exempt status of the Tax-Exempt Bonds on the date of the issuance of the Tax-Exempt Bonds.

- (b) The City shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Tax-Exempt Bonds or of any monies, securities or other obligations to the credit of any account of the City which may be deemed to be proceeds of the Tax-Exempt Bonds pursuant to Section 148 or the Treasury Regulations (collectively, the "Tax-Exempt Bonds Proceeds"). The City covenants with the registered owners of the Tax-Exempt Bonds that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the City's reasonable expectations on the date of issuance of the Tax-Exempt Bonds and will be, to the best of the certifying officials' knowledge, true and correct as of that date.
- (c) The City covenants with the registered owners of the Tax-Exempt Bonds that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Tax-Exempt Bonds Proceeds that would cause the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Treasury Regulations, and that it will comply with those provisions of Section 148 of the Code and the Treasury Regulations as may be applicable

to the Tax-Exempt Bonds on the date of issuance and which may subsequently lawfully be made applicable to the Tax-Exempt Bonds as long as the Tax-Exempt Bonds remain outstanding and unpaid.

(d) In connection with their execution and delivery of the Section 148 Certificate, the authorized officials identified in this Section 16 are hereby authorized and empowered, on behalf of the City, to make any designations, elections, determinations or filings on behalf of the City provided for in or permitted by the Code and the Treasury Regulations and to reflect the same in the Section 148 Certificate and/or the IRS Form 8038-G filed in connection with the issuance of the Tax-Exempt Bonds or any other documentation deemed appropriate by bond counsel to the City; provided that, only one of such identified officials must sign the IRS Form 8038-G.

SECTION 17. The City specifically covenants that it will comply with the provisions of the Code and the Treasury Regulations applicable to the Tax-Exempt Bonds, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds of the Tax-Exempt Bonds, the use of such proceeds and the projects financed and refinanced with such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of the Tax-Exempt Bonds or payments in lieu thereof. The City further covenants that it shall make such use of the proceeds of the Tax-Exempt Bonds, regulate the investment of the proceeds thereof and take such other and further lawful actions as may be required to maintain the exemption from federal income taxation of interest on the Tax-Exempt Bonds. All officials, officers, employees and agents of the City are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Tax-Exempt Bonds as may be necessary or appropriate.

SECTION 18. The Mayor and the City Administrator are hereby authorized and directed to approve, execute and deliver in the name of and on behalf of the City a continuing disclosure undertaking for the benefit of the owners and beneficial owners of the Bonds in order to assist the Underwriter in complying with paragraph (b)(5) of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"). The City shall covenant in the continuing disclosure undertaking that the City will provide to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") and/or to any additional or different depositories designated in accordance with Rule 15c2-12 (the "Additional Repositories"), if any, certain annual financial information and operating data and annual audited financial statements. The City shall further covenant in the continuing disclosure undertaking to provide notice of specified events as required by Rule 15c2-12 to EMMA and/or to any Additional Repositories as required by Rule 15c2-12, if any. The continuing disclosure undertaking may provide that the place or places of delivery of such information shall be subject to change in accordance with the rules and pronouncements of the Securities and Exchange Commission or other appropriate authority.

SECTION 19. By adoption of this Resolution, it is not the intention of the Mayor and City Council to revoke Resolution No. R2021-02 or to countermand the authority for the issuance of the Tax-Exempt Bonds and the Taxable Bonds as provided for and defined in Resolution No. R2021-02. Resolution No. R2021-02 provides for the issuance of such Tax-Exempt Bonds and such Taxable Bonds for the same purposes as provided for herein with respect to the Tax-Exempt Bonds and the Taxable Bonds (as defined herein); provided that, Resolution No. R2021-02 provides that the Tax-Exempt Bonds and the Taxable Bonds authorized thereby would be sold at a public sale by solicitation of competitive bids rather than through a negotiated underwriting. While the City now expects to sell the Tax-Exempt Bonds and the Taxable Bonds through a

negotiated underwriting as provided for in this Resolution, it is leaving the provisions of Resolution No. R2021-02 in place in the unlikely event that the Tax-Exempt Bonds and/or the Taxable Bonds are not sold and issued pursuant to the provisions of this Resolution and so that, in such event, if the financial advisor to the City recommends, the City may schedule a new sale date for the Tax-Exempt Bonds and/or the Taxable Bonds pursuant to the authority of Resolution No. R2021-02 and sell and issue either such series under the authority of Resolution No. R2021-02 rather than under the authority of this Resolution; provided that, in no event shall (i) the authority for the sale and issuance of the Tax-Exempt Bonds provided for herein and in Resolution No. R2021-02 be exercised under both such Resolutions, and (ii) the authority for the sale and issuance of the Taxable Bonds provided for herein and in Resolution No. R2021-02 be exercised under both such Resolutions.

<u>SECTION 20</u>. The provisions of this Resolution shall be liberally construed in order to effectuate the transactions contemplated hereby.

[CONTINUED ON FOLLOWING PAGE]

## $\underline{SECTION\ 21}.$ This Resolution shall become effective immediately upon its adoption.

	MAYOR AND CITY COUNCIL OF CUMBERLAND
(SEAL)	
	Raymond M. Morriss, Mayor
ATTEST:	
Marjorie A. Woodring City Clerk	
Introduced:	, 2021
Adopted:	, 2021
Effective:	, 2021

#221500;10002.072/073

## **EXHIBIT A**

## FORM OF BOND

Note: Bracketed language is intended to reflect that such provisions apply only to one series of the Bonds or apply only in certain circumstances, and such language shall be deleted from or included in the final form of Bond for the series of the Bonds to which it is inapplicable or applicable, as appropriate. Any other applicable revisions to this form may be made in accordance with the provisions of this Resolution to reflect other provisions permitted by the provisions of this Resolution.

	UNITED STATES	OF AMERICA	
No. R-	STATE OF MA	ARYLAND	\$
]	MAYOR AND CITY COUN	CIL OF CUMBERLAND	
[TAX-EXEMP	T PUBLIC IMPROVEMENT [TAXABLE REFUNDIN		D OF 2021]
		Dated	
Maturity Date	Interest Rate	Date	CUSII
June 1,	%	, 2021	
Registered Owner:			
Principal Sum:			DOLLARS

Mayor and City Council of Cumberland, a municipal corporation organized and existing under the Constitution and laws of the State of Maryland (the "City"), hereby acknowledges itself indebted for value received and promises to pay to the Registered Owner shown above, or registered assigns or legal representatives, on the Maturity Date specified above (unless this bond shall be redeemable prior to maturity, shall have been called for prior redemption, and payment of the redemption price shall have been made or provided for), the Principal Sum shown above, and to pay interest on such Principal Sum from and including the interest payment date next preceding the date of registration and authentication of this bond, unless this bond is registered and authenticated as of an interest payment date, in which case it shall bear interest from such interest payment date, or unless this bond is registered and authenticated prior to the first interest payment date, in which event this bond shall bear interest from the Dated Date identified above, or unless, as shown on the records of the Bond Registrar and Paying Agent (as hereinafter defined), interest on this bond shall be in default, in which event this bond shall bear interest from the date on which interest was last paid on this bond, at the Interest Rate per annum shown above, payable on December 1, 2021 and on each June 1 and December 1 thereafter until the Principal Sum of this bond is paid in full. Interest shall be computed on the basis of a 360-day year comprised of 12 30-day months.

Both the principal or redemption of and interest on this bond shall be payable in lawful money of the United States of America. The principal or redemption price of this bond shall be payable by check or draft at the designated corporate trust office of Manufacturers and Traders Trust Company, as bond registrar and paying agent (the "Bond Registrar and Paying Agent") in Wilmington, Delaware or in such other office as the Bond Registrar and Paying Agent may designate. Interest on this bond shall be payable by check or draft of the Bond Registrar and Paying Agent mailed to the Registered Owner in whose name this bond is registered on the registration books maintained by the Bond Registrar and Paying Agent for the series of bonds of which this bond is a part as of the close of business on the 15<sup>th</sup> day of the month prior to the month in which each interest payment date occurs (the "Regular Record Date"). Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Registered Owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered as of the close of business on a special record date to be fixed by the Bond Registrar and Paving Agent for the payment of such defaulted interest (the "Special Record Date"), notice whereof being given by letter mailed first class, postage prepaid, to the registered owner not less than ten (10) days prior to such Special Record Date, at the address of such Registered Owner appearing on the registration books maintained by the Bond Registrar and Paying Agent. If a principal payment date or interest payment date falls on a Saturday, Sunday or a day on which the City or the Bond Registrar and Paying Agent is not required to be open, payment may be made on the next succeeding day that is not a Saturday, Sunday or a day on which the City or the Bond Registrar and Paying Agent is not required to be open, and no interest shall accrue for the intervening period.

IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR A PORTION OF THE PRINCIPAL SUM OR REDEMPTION PRICE HAS BEEN PAID. EACH PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF THIS BOND SHALL BE NOTED HEREON, BUT THE FAILURE OF THE REGISTERED OWNER OF THIS BOND TO NOTE SUCH PAYMENT SHALL NOT AFFECT THE VALID PAYMENT AND DISCHARGE OF SUCH OBLIGATION EFFECTED BY SUCH PAYMENT.

This bond is the duly authorized bond of a series of general obligation bonds of the City, original aggregate principal aggregating in amount, , 2021 and designated "Mayor and City Council of Cumberland [Tax-Exempt Public Improvement [and Refunding] Bonds of 2021][Taxable Refunding Bonds of 2021]" (the "Bonds"). This bond is issued pursuant to and in full conformity with the provisions of Sections 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland (previously codified as Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland), as replaced, supplemented or amended, [Section 19-207 of the Local Government Article of the Annotated Code of Maryland (previously codified as Section 24 of Article 31 of the Annotated Code of Maryland), as replaced, supplemented or amended,] and Sections 81 and 82A of the Charter of the City of Cumberland, as replaced, supplemented or amended, and by virtue of due proceedings had and taken by the Mayor and City Council of the City (the "Mayor and City Council"), particularly [Ordinance No. 3881, passed by the Mayor and City Council on January 5, 2021 and effective on February 4, 2021, [Ordinance No. 3882, passed by the Mayor and City Council on January 5, 2021 and effective on February 4, 2021,][Ordinance No. 3725, passed by the Mayor and City Council on October 9, 2012 and effective on November 8, 2012, [Ordinance No. 3731, passed by the Mayor and City Council on January 29, 2013 and effective on February 28, 2013,] ([collectively,] the

/			-	ted by the Mayor ar 2021 (the "Resolution	•
The Bonds mature and are payable on June 1 in the following years and amounts and bear interest at the following rates per annum:					
<u>Date</u>	Principal Amount	Interest Rate	<u>Date</u>	Principal Amount	Interest Rate
The Bonds that mature prior to June 1, 2032 shall not be subject to redemption prior to maturity at the option of the City. The Bonds that mature on or after June 1, 2032 shall be subject to redemption prior to their stated maturities at the option of the City, in whole or in part, on June 1, 2031 or on any date thereafter, in the order of maturity specified by the City, at a redemption price of 100% of the principal amount of the Bonds (or portions thereof) to be redeemed, plus interest on such principal amount accrued to the date fixed for redemption, without penalty or premium. [MAY BE MODIFIED IN ACCORDANCE WITH THE PROVISIONS OF THE RESOLUTION]					
[TO BE COMPLETED FOR ANY TERM BONDSThe Bonds maturing on June 1, are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount specified below, together with interest accrued on such principal amount to the date fixed for redemption, on the dates and in the principal amounts set forth below:					
	<u>Date</u>		Mandato	ry Sinking Fund Ins <u>Principal Amount</u>	stallment

\* Final maturity

If fewer than all of the outstanding Bonds shall be called for redemption at the City's option, the City shall choose the maturities to be redeemed and the principal amount of each such maturity in its sole discretion, and if any such maturity consists of term Bonds, the City shall choose the mandatory sinking fund redemption installments of such term Bonds to be reduced and the amount of each such reduction in its sole discretion.] If fewer than all of the Bonds of any one maturity shall be called for [optional] [or] [mandatory sinking fund] redemption, the particular Bonds or portions of Bonds to be redeemed from such maturity shall be selected by lot by the Bond Registrar and Paying Agent.

When less than all of a Bond in a denomination in excess of \$5,000 is redeemed, then, upon surrender thereof, there shall be issued without charge to the registered owner thereof, for the unredeemed balance of the principal amount of such Bond, at the option of such owner, Bonds in any of the authorized denominations specified by the registered owner. The aggregate face amount of Bonds so issued shall be equal to the unredeemed balance of the principal amount of the Bond surrendered, and the Bonds issued shall bear interest at the same rate and shall mature on the same date as the unredeemed balance of the Bond surrendered.

When any Bonds are to be redeemed, the City shall cause a redemption notice to be given to the registered owners of the Bonds to be redeemed in whole or in part by notice mailed by first class mail, postage prepaid, at least thirty (30) days prior to the date fixed for redemption to the addresses of such registered owners appearing on the registration books kept by the Bond Registrar and Paying Agent; provided, however, that the failure to mail a redemption notice or any defect in a notice so mailed, or in the mailing thereof, shall not affect the validity of the redemption proceedings. The redemption notice shall state (i) whether the Bonds are to be redeemed in whole or in part and, if in part, the maturities, numbers, principal amounts, interest rates and CUSIP numbers of the Bonds to be redeemed, (ii) that interest on the Bonds (or portions thereof) to be redeemed shall cease to accrue on the date fixed for redemption, (iii) the date fixed for redemption, (iv) the address of the office of the Bond Registrar and Paying Agent with a contact person and phone number, (v) that the Bonds to be redeemed in whole or in part shall be presented for redemption and payment on the date fixed for redemption at the designated corporate trust office of the Bond Registrar and Paying Agent, and (vi) any conditions to such redemption. From and after the date fixed for redemption, if funds sufficient for the payment of the principal or redemption price of and accrued interest on the Bonds or portions thereof to be redeemed are available on such date, the Bonds or portions thereof to be redeemed shall cease to bear interest. Upon presentation and surrender for redemption, the Bonds or portions thereof to be redeemed shall be paid by the Bond Registrar and Paying Agent at the redemption price plus accrued interest. If they are not paid upon presentation, the Bonds or portions thereof designated for redemption shall continue to bear interest at the rate stated therein until paid.

This bond is transferable only upon the registration books kept at the designated corporate trust office of the Bond Registrar and Paying Agent, by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer in the form attached hereto and satisfactory to the Bond Registrar and Paying Agent and duly executed by the registered owner or his duly authorized attorney.

This bond may be transferred or exchanged at the designated corporate trust office of the Bond Registrar and Paying Agent. Upon any such transfer or exchange, the City shall issue, and the Bond Registrar and Paying Agent shall authenticate and deliver, a new registered bond or bonds of the same series in authorized denominations equal to the aggregate principal amount of the bond so transferred or exchanged, with the same maturity and bearing interest at the same rate. In each case, the Bond Registrar and Paying Agent may require payment by the registered owner of this bond requesting transfer or exchange hereof of any tax, fee or other governmental charge, shipping charges and insurance that may be required to be paid with respect to such transfer or exchange, but otherwise no charge shall be made to the registered owner hereof for such transfer or exchange.

The Bond Registrar and Paying Agent shall not be required to transfer or exchange this bond after the mailing or giving of notice calling this bond or any portion hereof for redemption.

The City and the Bond Registrar and Paying Agent may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption price hereof and interest due hereon and for all other purposes.

This bond is initially issued in book-entry only form and registered under a book-entry only system maintained by The Depository Trust Company ("DTC"). Notwithstanding anything to the contrary contained in this bond, for so long as this bond is registered in book-entry form under a book-entry only system maintained by DTC, any successor thereto, or any replacement securities depository, payments of the principal or redemption price of and interest on this bond, the selection of all or any portion of this bond to be redeemed, and any notice required herein shall be made or given as provided by the rules and regulations of such securities depository, and all references to the registered owner of this bond shall mean such securities depository or its partnership nominee. During such period, the City and the Bond Registrar and Paying Agent will recognize such securities depository or its partnership nominee as the owner of this bond for all purposes.

The full faith and credit and unlimited taxing power of Mayor and City Council of Cumberland are hereby pledged to the payment of the principal of and interest on this bond according to its terms, and the City does hereby covenant and agree to pay punctually the principal of and the interest on this bond, at the dates and in the manner mentioned herein, according to the true intent and meaning hereof.

It is hereby certified and recited that each and every act, condition and thing required to exist, to be done, to have happened or to be performed precedent to and in the issuance of this bond, does exist, has been done, has happened and has been performed in full and strict compliance with the Constitution and laws of the State of Maryland, the Ordinance[s] and the Resolution, and that this bond, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of Maryland and that due provision has been made for the imposition of ad valorem taxes on all real and tangible personal property in the City that is subject to assessment for unlimited municipal taxation at a rate and in an amount sufficient to provide for the payment, when due, of the principal of and interest on this bond.

IN WITNESS WHEREOF, Mayor and City Council of Cumberland has caused this bond to be executed in its name by the [manual or facsimile] signature of the Mayor and its corporate seal to be affixed hereto [manually or in facsimile], attested by the [manual or facsimile] signature of the City Clerk, all as of the Dated Date set forth above.

(SEAL)	
ATTEST:	MAYOR AND CITY COUNCIL OF CUMBERLAND
City Clerk	By: Mayor

## CERTIFICATE OF AUTHENTICATION

This bond is one of the registered bonds of Mayor and City Council of Cumberland designated "Mayor and City Council of Cumberland [Tax-Exempt Public Improvement [and Refunding] Bonds of 2021][Taxable Refunding Bonds of 2021]".

	as Bond Registrar and Paying Agent
	By:
	Authorized Officer
Date of Authentication:	

## (Form of Instrument of Transfer)

### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

# PLEASE INSERT SOCIAL SECURITY OR OTHER

IDENTIFYING NUMBER OF ASSIGNEE	
(PLEASE PRINT OR TYPEWR	•
INCLUDING ZIP CO	•
the within bond and all rights thereunder and does h	nereby constitute and appoint
attorney to transfer the within bond on the books ke substitution in the premises.	ept for the registration thereof, with full power of
Dated:	
Signature Guaranteed:	
Notice: Signatures must be guaranteed by a member or participant of a signature guaranty program.	Notice: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

## [TO BE USED WHEN BONDS MAINTAINED UNDER BOOK-ENTRY ONLY SYSTEM]

### PAYMENT GRID

Date of Payment Or Redemption	Principal Amount Paid or Redeemed	Principal Amount Outstanding	Holder <u>Signature</u>

#### **File Attachments for Item:**

. Ordinance No. 3885 (*1st reading*) - granting Shenandoah Cable Television, LLC the non-exclusive right to use the city's public rights-of-way for the delivery of high-speed internet service to Frostburg State University

#### ORDINANCE NO. 3885

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE GRANTING SHENANDOAH CABLE TELEVISION, LLC THE NON-EXCLUSIVE RIGHT, PURSUANT TO THE TERMS OF A NON-EXCLUSIVE PUBLIC RIGHTS-OF-WAY ACCESS AGREEMENT, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE CITY FOR ITS POLES, WIRES, CONDUITS, CABLES AND APPURTENANT FACILITIES FOR THE DELIVERY OF HIGH-SPEED INTERNET SERVICE TO FROSTBURG STATE UNIVERSITY."

WHEREAS, pursuant to Section 5-204(d) of the Local Government Article of the Maryland Annotated Code and Section 125 of the City Charter, the City is authorized to grant nonexclusive rights for the use of its public rights-of-way.

WHEREAS, Shenandoah Cable Television, LLC ("Shenandoah") desires to construct, install and maintain fiber optic network facilities for the delivery of high-speed internet service to the University System of Maryland at Frostburg State University; and

WHEREAS, Shenandoah requires non-exclusive rights in the City's public rights-of-way for its poles, wires, conduits, cables and appurtenant facilities in order to deliver the aforesaid internet service.

#### NOW THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and City Council pass this Ordinance for the purposes set forth above and, accordingly, the Mayor is hereby authorized to execute the Non-Exclusive Public Rights-of-Way Access Agreement attached hereto on the City's behalf.

SECTION 2: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect on the date of its passage.

Passed this day of April, 2021.

		Raymond	Μ.	Morriss,	Mayor
ATTEST:					
AIIESI.					
Marjorie A. Woodri	ng, City Cl	erk			

THIS NON-EXCLUSIVE PUBLIC RIGHTS OF WAY ACCESS AGREEMENT ("Agreement") is made this \_\_\_day of \_\_\_\_\_\_\_, 2021, by and between Mayor and City Council of Cumberland (the "City"), a Maryland municipal corporation, and Shenandoah Cable Television, LLC ("Shenandoah"), a Virginia limited liability company.

#### **RECITALS**

**WHEREAS**, Shenandoah intends to construct, install and maintain certain Facilities (as defined below) within the City's rights-of-way to enable it to provide high speed internet services to the University System of Maryland at Frostburg State University;

**WHEREAS**, these lines are not intended to and shall not be used for any other purpose other than fiber optic network facilities as described herein;

**WHEREAS**, pursuant to Section 5-204(d) of the Local Government Article of the Maryland Annotated Code and Section 125 of the Charter of the City, it is authorized to grant nonexclusive rights for the use of its below-defined PROWs; and

**WHEREAS**, this Agreements sets forth the terms and conditions for Shenandoah's use of the City's rights-of-way.

#### WITNESSETH

**NOW, THEREFORE**, in consideration of the recitals and the mutual covenants contained herein, the receipt and sufficiency of which are acknowledged by the parties hereto, they agree to the following:

- **1. Recitals.** The Recitals set forth above are not merely prefatory. They are incorporated by reference herein and form a part of this Agreement.
- **2. <u>Definitions.</u>** The following words, terms and phrases, as used in this Agreement have the meanings set forth below, except where the context clearly indicates a different meaning:
  - **2.1.** "Affiliate" means any person or legal entity who/which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with Shenandoah.
  - **2.2.** "Applicable Law" means any local (municipal), state or federal legislative, judicial, or administrative order, certificate, decision, statute, constitution, ordinance, resolution, law, regulation, rule, tariff, guideline, or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Agreement.

- **2.3.** "Facilities" means fiber optic network facilities, including fiber optic cables, conduits, splice boxes, poles, cabinets, handholes, equipment, surface location markers, appurtenances, and related facilities located or to be located by Shenandoah in the PROW's.
- **2.4.** "Interference" means the interference described in Section 4 of hereinafter.
- **2.5.** "IRU" means the indefeasible right of use of the Strands Shenandoah is granting the City under the terms of this Agreement, the said use being exclusive and irrevocable for so long as the Facilities remain in the PROWs.
- **2.6.** "PROWs" means public rights-of way which include the surface of and space above and below any public right-of-way (including, highways, roads, streets, lanes, alleys, paths, curbs and sidewalks) now or hereafter held by the City for the purpose of public travel. The term PROW's applies exclusively to those public-rights of way which are shown to constitute the pathway for Shenandoah's fiber optic line as shown in the drawings attached hereto and incorporated by reference herein as **Exhibit A** or as are signed and approved by the City Engineer and City Administrator.
- **2.7.** "Strands" means the twelve (12) strands of fiber optic cable in the fiber optic network in the Facilities the indefeasible right of use of which Shenandoah is granting the City under the terms of this Agreement.
- **2.8.** "Term" means the initial term together with renewal term(s), if any, described in Section 7 hereinafter.

#### 3. Grant of Access.

**3.1.** Only Nonexclusive Rights Granted. Subject to the terms of this Agreement, the City hereby grants Shenandoah the nonexclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace Facilities within the PROWs of the City. It also grants Shenandoah the right of ingress and egress to and from such PROWs over and across the adjacent properties of the City as Shenandoah may need to exercise its rights under this Agreement. All rights the City grants Shenandoah under the terms of this Agreement are nonexclusive.

#### 3.2. Rights Not Granted.

- (i) This Agreement does not affect the grant of a fee simple interest in any lands owned by the City.
- (ii) Nothing in this Agreement confers any right on Shenandoah to enter onto or to

traverse any other lands within the City.

- (iii) The City makes no representations, warranties or guarantees that its interest in or right to control any rights-of-way to which it does not hold title by fee simple conveyance is sufficient to permit Shenandoah to use of the same. Shenandoah shall gain only those rights to those rights-of-way which are within the City's power to convey.
- (iv) Shenandoah and its Affiliates may not use any PROW's or other City property for any purpose other than those expressly set forth herein. No implied permission or authority is granted under the terms of this Agreement. Specifically, but without any limitation as to the preceding two (2) sentences, this Agreement does not grant Shenandoah the right use PROWs to conduct business as an internet, cable television or telecommunications service provider inside the City or to conduct any business in association with the provision of such services. Unless the parties agree otherwise, an agreement relative to the provision of internet service inside the City shall be established as an amendment to this Agreement and agreements relative to cable television and telecommunications shall be set forth as separate stand-alone agreements. The terms of this Section 3.2 shall not be interpreted to require Shenandoah to provide internet, cable television or telecommunications service in the City or to require the City to enter into agreements relative to such services; rather, it is intended to set forth the format in which such agreements shall be made.
- **3.3.** Only Subordinate Rights Granted. This Agreement is made subject and subordinate to the prior and continuing rights of the City to use PROW's as streets and roadways and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, public utilities and for other municipal uses together and with rights of ingress and egress, along, over, across and in said PROWs.

#### 4. No Interference.

**4.1.** Generally. That in the performance and exercise of its rights and obligations under this Agreement, Shenandoah shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, storm sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television cables, and other telecommunications utilities and City property without the approval of the owner(s) of the affected property or properties. The City reserves the right to establish by ordinance or resolution, and Shenandoah hereby agrees to comply with, any reasonable regulation for the convenience, safety, and protection of its citizens as now in effect or as may be adopted in the future, including, without limitation, requiring substitution of underground cable for overhead

cable or vice-versa, or requiring transfer of cable from the front or rear of property.

- **4.2. Poles.** All poles erected by Shenandoah shall be neat and symmetrical, and shall, together with fixtures thereon and the appurtenance thereto, be located so as not to interfere with the safety or convenience of persons traveling on or over the City's streets, alleys, highways, and other public places.
- **4.3. Streets.** In the installation and maintenance of any underground system, Shenandoah shall not open or encumber more of any street, alley, highway, or other public place than will be necessary to enable it to perform the work.
- **5.** <u>Location of Facilities</u>. The path the Facilities will follow are shown on the **Exhibit A** attached hereto and made a part hereof. Any changes in this path shall be set forth in an amended Exhibit A which shall be subject to the approval of and signed by the City Engineer and City Administrator and appended to this Agreement. Said approval shall not be unreasonably withheld or delayed.

#### 6. Mandatory Relocation/Repair of Facilities.

- **6.1.** Generally. As requested by the City, Shenandoah shall relocate Facilities (i) for the reasonable convenience of the City or (ii) when made necessary by any lawful change of grade, alignment, or width of any street, including the construction, maintenance, or operation of any underground subway or viaduct by the City and/or the construction, maintenance, or operation of any other of the City underground or above-ground facilities or any of the City's capital improvement projects. The City may not require Shenandoah to relocate the Facilities unless other similarly situated utilities are required to do the same. Utilities the City lacks the authority to compel are not similarly situated to Shenandoah. Shenandoah shall complete the relocation of its Facilities as expeditiously as circumstances allow. All costs for the work described in this Section 6 shall be borne by Shenandoah. Any of the changes referenced herein shall be set forth in an amended Exhibit A which shall be subject to the approval of and signed by the City Engineer and City Administrator and appended to this Agreement. Said approval shall not be unreasonably withheld or delayed.
- **6.2. Aerial Attachments.** In addition to all other requirements set forth in this section, for aerial attachments, Shenandoah shall cooperate with the pole owner(s) to perform such relocation.
- **6.3.** <u>Improperly Installed Facilities.</u> If, at any time, it is discovered or determined that Shenandoah improperly installed Facilities in the manner required by this Agreement, Applicable Law or the City's construction requirements (including: standards and specifications for construction, policies and guidelines enacted by the City, and the

conditions of permits that may be issued), Shenandoah shall repair and, to the extent required, relocate those portions of the improperly installed Facilities as expeditiously as practicable.

- 6.4. Standards for Performance of Relocation & Repair Work. All relocation and repair work and any other work Shenandoah performs under the terms of this Agreement shall be performed in accordance with Applicable Law and the construction requirements of the City (including: standards and specifications for construction, policies and guidelines enacted by the City, and the conditions of permits that may be issued) to the reasonable satisfaction of the City Engineer or his/her authorized representative(s). The City Engineer's review will be for the benefit of the City exclusively and it shall not be a substitute for any permits or approvals described in Section 8 hereinafter.
- 7. Term. The initial term of this Agreement shall commence on its effective date as set forth herein and shall expire five (5) years hence. Unless either party gives ninety (90) days' written notice of its intention to terminate this Agreement prior to the end of the initial term or any renewal term, the Agreement shall thereafter automatically renew and continue on an annual basis from year-to-year. Notwithstanding anything herein to the contrary, either party may terminate this Agreement upon 30 days' written notice upon the other party's material breach of a term, unless such breach has been cured during such 30 day period. Otherwise, either party may terminate this Agreement for any reason or no reason at all, by providing the other party with ninety (90) days' advance written notice thereof. Upon the termination or expiration of this Agreement, Shenandoah shall be prohibited from further accessing or utilizing the PROWs and shall remove its above-ground Facilities from the PROWs. It shall also remove its in-ground fiber leaving behind any conduits, which conduits shall become the City's property. It must also remove such Facilities as requested by the City.
- **8.** Permits. Shenandoah shall be solely responsible for obtaining any and all approvals and permits required under Applicable Law or by private parties to the extent that its operations affect any of them. As required by Applicable Law, Shenandoah shall apply for permits for all work it intends to perform within the PROWs, and it shall comply with all of the terms and conditions of said permits. Notwithstanding anything herein to the contrary, the City's rights with respect to the processing of permits are not restricted or limited by the terms of this Agreement.
- **9.** <u>Undergrounding of Facilities</u>. Shenandoah shall place its Facilities underground if required by the City, Applicable Law or as a matter of necessity for Shenandoah.
- 10. <u>Restoration of PROWs</u>. After the removal, relocation, or construction of the Facilities, Shenandoah shall, at its own cost, repair, and return the PROWs to the same or better condition than that which existed before such removal, relocation, or construction. All work shall be completed in accordance with the Ordinances, construction requirements of the City (including: standards and specifications for construction, policies and guidelines enacted by the City, and the conditions of

permits that may be issued), to the satisfaction of the City Engineer or his/her authorized representative or representatives, and in accordance with Applicable Law. Shenandoah shall be responsible for damage to the City's streets, existing utilities, curbs, gutters, and sidewalks due to its installation, maintenance, repair, or removal of its Facilities in PROWs, and shall repair, replace, and restore in kind to the satisfaction of the City Engineer or his authorized representative or representatives, the said damaged property at its sole expense. If Shenandoah fails to restore PROWs after twenty (20) days' notice from the City, the City may repair such portions of the PROWs that may have been disturbed by Shenandoah and Shenandoah shall reimburse the City for those costs. If the City performs this work on its own, Shenandoah's reimbursement obligations shall include the salaries of the staff performing the work, the costs of payroll taxes for those employees which are paid by the City, the cost of those employees' benefits, and the costs of all City equipment used (at rates that would have been charged had they been rented) the costs of all equipment rented, and the costs of all materials.

Manner of Construction. The construction, installation, operation, maintenance, and removal of the Facilities shall be accomplished without cost or expense to the City and in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or, other access thereon within the PROWs. A its own expense, Shenandoah shall be responsible for retaining the services of a third-party inspector reasonably acceptable to the City for the purpose of providing inspections of all construction and installation of the Facilities and the restoration of PROWs to ensure that their employees and/or contractors are in compliance with Applicable Law and the construction requirements of the City (including: standards and specifications for construction, policies and guidelines enacted by the City, and the conditions of permits that may be issued), to the satisfaction of the City Engineer or his authorized representative or representatives, and in accordance with other appropriate county, state and federal regulations. Inspections shall be conducted upon the completion of the work and at such other times as may be required by the City. The reports of inspectors shall be submitted to the City promptly upon their completion. Notwithstanding the foregoing, the City reserves the right to inspect or retain a third-party inspector to conduct the inspections required hereunder. all construction to ensure compliance and for the protection of its facilities. If it is determined that Shenandoah is not in compliance, or has caused damage to City property, then the City may elect to provide part-time or full-time inspection of the construction and restoration, with its own personnel or by hiring a third party, and all costs and expenses of the inspections shall be the responsibility of Shenandoah. If the City performs the inspections on its own, Shenandoah's reimbursement obligations shall include the salaries of the staff performing the work, the costs of payroll taxes for those employees which are paid by the City, and the cost of those employees' benefits.

12. Reservation of Police Powers. The City reserves the right, by ordinance, resolution or otherwise, to establish and enforce any reasonable regulations for the convenience, safety, and protection of its inhabitants under its police powers. The rights herein reserved are subject to the exercise of such police powers as the same now are, or may hereafter be, conferred upon the City. Without limitation as to the generality of the foregoing, the City reserves the full scope of its power

to require, by ordinance, substitution of underground service for overhead service and vice-versa, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City.

**13.** <u>Condition of Facilities</u>. That Shenandoah will maintain the Facilities in good repair and maintenance, operating condition and safe condition, throughout the term of this Agreement.

#### 14. Use of Poles.

- **14.1.** Shenandoah's Poles. Shenandoah shall, on demand, during the life of this Agreement, where available, provide space on each pole, if any, owned by Shenandoah, on which the City may desire to attach its own network facilities and telecommunications facilities which facilities, shall be limited to use by the City for fire, police and/or emergency services, but without cost to the City. Should existing space not readily be available, the City would reimburse Shenandoah for actual material and labor costs to make the desired space available to the City. All such use of Shenandoah's facilities by the City shall be in accordance with the National Electric Code, National Electric Safety Code, and other federal and state regulations. Prior approval by Shenandoah is required before the City utilizes any of the Facilities. All material and labor used for any approved attachments and/or use must have prior approval from Shenandoah. The requirements of this section shall not extend to conduit, poles, or fixtures used by Shenandoah but owned by others. To the extent allowable by Applicable Law, the City agrees to indemnify and hold harmless Shenandoah, its officers, employees, and agents from, and against, any and all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, arising exclusively out of the City's use of Shenandoah's conduit, poles, or fixtures.
- **14.2.** <u>Utility Companies' Poles.</u> Shenandoah shall provide reasonable assistance to the City, to secure utility companies' permission for the attachment of the City's video equipment and related equipment on poles where Shenandoah's facilities are located. If that is not possible, then Shenandoah shall assist the City in finding alternative connection points and is shall provide the City with access to the fiber optic network all at Shenandoah's cost.
- 15. Preservation of Trees. That in placing or maintaining its structures, upon and along the streets, alleys, and/or public places of the City or otherwise, Shenandoah shall not injure, or in any manner, cut or trim the trees, branches of trees along and in such streets, alleys, and/or public places without the previous permission of the City Administrator or his/her designee. All such trimmings shall be performed in a safe and orderly manner and, to the extent practicable for the proper maintenance and use of Shenandoah's lines or other Facilities, in compliance with the guidelines set forth in the City of Cumberland Code and any other Applicable Law. At its cost, Shenandoah shall be responsible for the removal of the trimmings. Said trimmings shall be removed before Shenandoah

performs any other work.

- 16. Facilities Map. Shenandoah shall maintain an accurate map showing the as-built location and depth of its Facilities. As-built drawings of any new construction of Facilities shall be furnished to the City within sixty (60) days of the completion of such construction. The obligation to produce as-built drawings must be met, regardless of whether the City makes such a request. Said map shall be provided in a format mutually agreed upon by the parties, which may include an acceptable GIS format. As-built information shall include but not be limited to, horizontal locations, vertical locations (especially for underground), size and type. The as-built drawings shall be completed in accordance with City standards, as amended from time-to-time. Shenandoah shall be responsible for obtaining a list of the requirements in advance of preparing its as-builts for the initial and any follow-up construction of Facilities.
- 17. <u>Costs in Processing this Agreement</u>. Shenandoah shall pay the City's reasonable attorneys' fees that were incurred in the negotiation and drafting of the terms of this Agreement and any amendment to its terms, said sums to be paid upon the execution of this Agreement and from time-to-time thereafter as amendments to its terms are made.
- 18. <u>Strands of Fiber Optic Cable as Consideration</u>. In consideration of the rights granted under the terms of this Agreement, at the time the Facilities are constructed, Shenandoah will provide the City with the IRU of the Strands for the use of the City, as described below. The Strands shall be provided to the City without cost. Shenandoah is providing the City with the IRU of the Strands which are described in this section in lieu of paying a franchise fee and/or any annual fees the City might charge.
  - 18.1. Granting of Strands. Shenandoah has (or will have constructed by August 1, 2021) a fiber optic network that permits the connection of the following Facilities along the constructed path as listed in the Exhibit 2 attached hereto and made part hereof: six (6) splice (connection) points for the connection of traffic signals and traffic cameras, as more particularly described on Exhibit 2, which is incorporated by reference into the terms of this Agreement. Shenandoah shall provide the City with the IRU of the Strands at not less than six (6) locations (as shown on the Exhibit 3 attached hereto and made a part hereof), using the twelve (12) strands of fibers. The Strands shall be of the same quality of the other strands composing Shenandoah's fiber optic network in the City and shall be compatible with Shenandoah's network to the maximum extent commercially feasible. Shenandoah shall continue to provide the City with the IRU of the Strands for the term of this Agreement. This IRU of Shenandoah's fiber optic network does not convey ownership or legal title to Shenandoah's network or Facilities. The terms and provisions of this section shall not be interpreted to limit the City's use of the Strands beyond the limitations set forth elsewhere in this Agreement.
  - **18.2. Fiber Handoff.** Shenandoah and the City will work toward mutually agreeable timing,

and other business terms for fiber handoff details including the following: all connecting points will be placed at splice points; the work to effect the connections will be performed by Shenandoah; Shenandoah will provide the City with reasonable access to connecting points at all times on a twenty-four (24) hours per day/ seven (7) days per week basis; Shenandoah will provide its own fiber from the connecting points to the City's equipment based on an evaluation of shared costs.

- **18.3.** Exclusivity as to Use of Fibers. The Strands are being provided to the City for its exclusive use. The City shall not use any duct or the Strands to provide telecommunications services for hire, sale or resale to the public or to any third party.
- **18.4.** Fiber Maintenance & Repair. Shenandoah will be responsible for all maintenance, repairs and alteration of the fiber optic network described in this section during the term of this Agreement, including the Strands. Such repairs shall be performed promptly (as a high priority matter) and in a good and workmanlike manner. It shall notify the City of the start date and time for the performance of the work sufficiently in advance of its commencement so that the City can take such measures (at Shenandoah's expense), beyond those Shenandoah may be permitted to supply, as are necessary to protect the public while the work is ongoing. Shenandoah's failure to complete repairs affecting the City's use of the Strands within forty-eight (48) hours of notice of the need therefor shall constitute a default under the terms of this Agreement unless such failure is caused by an event or circumstance reasonably beyond the control of Shenandoah. Shenandoah shall endeavor to resolve the event or circumstance as quickly as possible. The City may not perform any maintenance, repairs or alterations to the Facilities except the event it is given written authorization to do so.
- **18.5.** City's Work on Streets. The City shall use its best efforts to provide Shenandoah with notice and the opportunity to install additional fibers and/or conduit and related Facilities, including, but not limited to vaults, handholds and pole vaults, any time the City's streets are trenched or bored, subject to the terms of this Franchise and at no cost other than permitting costs and the costs associated therewith.

Inconsistency with State/Federal Law. In the event the requirements of this Section 18 are found by a court of competent jurisdiction to be inconsistent with state or federal law, Shentel agrees to (i) comply with all applicable requirements of local, state and federal law with respect to compensation for the use of the City's streets and (ii) lease to the City the twelve (12) fiber strands referenced herein for an amount not to exceed one hundred dollars (\$100) per year, which lease shall extend though the date the Agreement expires or is terminated.

19. Other Fees and Taxes. Shenandoah shall pay all standard permit and user fees to the City and all taxes in accordance with Applicable Law.

20. <u>Indemnification</u>. Shenandoah agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, contractors, representatives and agents from and against any and all injuries, claims, demands, judgments, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, arising out of, as a result of, or as an incident to Shenandoah's and/or its Affiliates' officers' employees', contractors', representatives' or agents' negligence or intentionally harmful acts in the performance of its obligations under the terms of this Agreement and/or the installation, construction operation, maintenance, removal, repair or replacement of the Facilities, except to the extent any of the foregoing arise wholly from the willful misconduct or negligent acts or omissions of the City, its officers, employees, or agents. Shenandoah's obligations to indemnify the City shall extend to the acts and omissions of its and its Affiliates' officers, employees, contractors, representatives and agents.

#### 21. Insurance.

**21.1.** <u>Required Coverages.</u> Shenandoah shall maintain insurance coverages throughout the term of this Agreement in the minimum amounts as follows:

#### **Public Liability (Bodily Injury):**

Each person \$2,000,000

Each occurrence \$2,000,000

**Public Liability (Property Damage):** 

Each occurrence \$2,000,000

**Automobile (Bodily Injury):** 

Each person \$2,000,000 Each accident \$2,000,000

**Automobile (Property Damage):** 

Each accident \$2,000,000

**Worker's Compensation:** Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed, with an employer's liability limit of not less than \$500,000 per accident

- **21.2. Required Terms.** The foregoing insurance contracts will contain the following provisions:
  - (i) The City and its officers, agents, employees, board members and elected officials shall be named as additional insured's (as the interests of each may appear); and
  - (ii) Thirty (30) days' notice shall be provided to the City prior to cancellation, revocation, non-renewal or material change.
- **21.3.** <u>Insurance Certificates.</u> Shenandoah shall deliver a certificate of insurance to the City, which is satisfactory in form and content, as proof that the foregoing insurance is in force. It shall provide such additional certificates as may be necessary to provide the City continuing evidence that the required insurance remains in place. The City may request annually an update of insurance terms and conditions.
- **22.** Construction Bond. Before commencement of construction of the Facilities, Shenandoah shall deposit with the City a surety bond or irrevocable letter of credit naming the City as an obligee in the amount of Fifty Thousand Dollars (\$50,000.00) to cover any losses or liabilities the City may incur during the course or as a result of Shenandoah's construction of the Facilities. The Surety Bond shall be in a form reasonably acceptable to the City. Shenandoah's' obligation to maintain the surety bond shall terminate thirty (30) days following completion of construction of the Facilities.
  - **23.** Notices. That notices pursuant to this Agreement shall be in writing and addressed as follows: To the City:

City of Cumberland 57 N. Liberty Street Cumberland, MD 21502 ATTN: City Administrator

To Shenandoah:

Shenandoah Cable Television, LLC 500 Shentel Way Edenburg, VA 22824

ATTN: Larry Hubbard

Any and all notices required herein shall be given in writing and sent to the addressee identified above by overnight mail or hand-delivery. Alternatively, either party may give notice to the other

by e-mail provide the other provides written acknowledgment of the receipt of the message. Automatically generated responses to emails shall not be sufficient as evidence of receipt of an email. Either party may change the address at which it will receive notices related to this Agreement by providing written notice of the change to the other party.

- **24.** <u>Assignment.</u> That notwithstanding any provision of this Agreement, Shenandoah may assign or collaterally assign, in whole or in part, its rights, interests, and obligations hereunder without limitation to any of its Affiliates, any party providing financing to Shenandoah and any successors and assigns of the foregoing without the consent of the City. Shenandoah shall provide the City with notice of any such assignment. Assignment to any other party shall require the City's consent and the City shall have the discretion to deny the request therefor for any reason or no reason at all. Any assignee or lessee shall be bound by the terms of this Agreement to the same extent as Shenandoah.
- 25. <u>Attorneys' Fees/Costs</u>. In the event of a breach in the terms of this Agreement and litigation is instituted as a result thereof, the breaching party shall be liable for the other party's reasonable attorneys' fees, court costs, experts' fees.
- **26.** <u>Survival of Agreement Terms.</u> Any duty, obligation, or debt and any right or remedy arising hereunder and not otherwise consummated and/or extinguished by the express terms hereof at or as of the time of the termination or expiration of this Agreement shall survive such termination or expiration as continuing duties, obligations, and debts of the obligated party to the other or continuing rights and remedies of the benefitted party against the other.
- 27. Governing Law and Venue. This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of Maryland, without regard to its conflicts of laws principles. Venue for any action arising hereunder shall be filed, heard, and determined in the federal courts located in Baltimore City, Maryland, or in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County.
- **28.** <u>Non-Waiver</u>. Neither any failure nor any delay on the part of either party in exercising any right, power or remedy hereunder or under applicable law shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default.
- 29. Entire Agreement and Modification. This Agreement and the Exhibits attached hereto contain the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Agreement mutually agree that it is binding upon them and their respective successors and assigns.

- **30.** <u>Captions: Section Headings.</u> The marginal captions and section headings of this Agreement are for convenience only, shall not be considered in interpreting and construing this Agreement, and in no way define or limit the intents, rights or obligations of the parties hereunder.
- **31.** <u>Gender/Tense/Conjugation</u>. The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses, and conjugations. The use of the singular shall include the plural and the plural shall include the singular.
- **32. Joint Drafting.** The parties hereto agree that this document reflects the joint drafting efforts of each party, and any ambiguities shall not be construed against either party.
- **33.** <u>Counterparts.</u> This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Appending the signature and notary pages of one counterpart to the other complete counterpart shall suffice for these purposes. Signed facsimile, email or electronic counterparty shall be treated the same as originals.
- 34. Waiver of Trial by Jury. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE CITY OR SHENANDOAH MAY BE PARTIES ARISING OUT OF, AS AN INCIDENT TO OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY PROVISION THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

REMANDER OF PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and delivered as of the date and year first above written.

WITNESS/ATTEST:

## 

## COMMONWEALTH OF VIRGINIA, SHENANDOAH COUNTY, TO WIT:

	day of, 2021, before me, the
	e and County aforesaid, personally appeared
	sfactorily identified to be the person whose name is
	of Shenandoah Cable Television, a limited
	nia, and acknowledged the foregoing to be the act and
· · · · · · · · · · · · · · · · · · ·	same time made oath that he is duly authorized by it to
make this acknowledgment.	
WITNESS my hand and Notarial Seal.	
	NOTARY PUBLIC
My Commission Expires:	
STATE OF MARYLAND,	
ALLEGANY COUNTY, TO WIT:	
ALLEGANI COUNTI, 10 WII.	
I HERERY CERTIFY that on this	day of, 2021, before me, the
	aforesaid, personally appeared <b>Raymond M. Morris</b> ,
•	rson whose name is subscribed to the within instrument,
· · · · · · · · · · · · · · · · · · ·	a municipal corporation of the State of Maryland, and
	I of said Mayor and City Council; and at the same time
made oath that he is duly authorized by it to make	•
WITNESS my hand and Notarial Seal.	uns acknowledgment.
WITHESS my hand and Notaliai Seal.	
	NOTARY PUBLIC
My Commission Expires:	

#### File Attachments for Item:

. Order 26,768 - accepting the bid from Carl Belt, Inc. for Koon Dam Concrete Repairs (11-20-WFP) in the estimated lump sum cost of \$571,330.00, for necessary repairs at the Koon Dam structure to include patching large spalls on the spillway and replacing approx. 5,000 sq. ft. of deteriorated sidewalk along the bridge

## - Order -

of the

## **Mayor and City Council of Cumberland**MARYLAND

ORDER NO. 26,768 DATE: \_April 6, 2021\_

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

THAT, the bid from Carl Belt, Inc., 11521 Milnor Avenue, Cumberland, MD 21502, for City Project "Koon Dam Concrete Repairs (11-20-WFP) in the estimated lump sum cost of Five Hundred Seventy-one Thousand, Three Hundred Thirty Dollars and No Cents (\$571,330.00) be and is hereby accepted; and,

**BE IT FURTHER ORDERED,** that all other bids for this project be and are hereby rejected.

Raymond M. Morriss, Mayor

#### Bids:

Contractor	Amount
Carl Belt, Inc.	\$571,330.00
Restoration East, LLC	\$2,112,300.00
Triton Construction	\$859,200.00
Kiewit Corporation	\$999,540.00
EWR Virginia	\$899,210.00
Mar-Allen Concrete Products, Inc.	

Budget: 002.299E.63000



	PROJECT INFORMATION					
Project Title:	Project Title: Koon Dam Concrete Repairs					
City Project:	11-20-WFP					
Contract Length:	h: 90 Calendar Days					
	BID OPENING					
Date & Time:	March 3, 2021 2:30 PM EDT					
Location: Council Chambers, City Hall Cumberland, MD 21502						

CERTIFIED BID TABULATION								
BIDDER	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER			
Carl Belt, Inc.	Restoration East, LLC	Triton Construction	Kiewit	EWR Virginia	Mar-Allen			
11521 Milnor Ave. Cumberland, MD 21502	9209 Philadelphia Road Rosedale, MD 21237	1944 Winfield Rd PO Box 1360 Saint Albans, WV 25177	7250 Parkway Drive Suite 310 Hanover, MD 21076	8018 Hankins Indisutrial Park Road, Unit B7 Toano, VA 23168	490 Millway Rd Ephrata, PA 17522			

			Carl Belt, Inc. Restoration East, LLC		Triton Construction		Kiewit		EWR Virginia		Mar-Allen					
BIDS AND ALTERNATES																
BID NO.	DESCRIPTION OF BID	UNITS	QTY.	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	
1001	Mobilization	LS	1	\$ 79,000.00	\$ 79,000.00	\$ 836,400.00	\$ 836,400.00	\$ 52,660.00	\$ 52,660.00	\$ 10,000.00	\$ 10,000.00	\$ 93,000.00	\$ 93,000.00	\$ 79,365.00	\$ 79,365.00	
1002	Maintenance of Traffic	LS	1	\$ 45,000.00	\$ 45,000.00	\$ 147,700.00	\$ 147,700.00	\$ 50,000.00	\$ 50,000.00	\$ 77,000.00	\$ 77,000.00	\$ 43,000.00	\$ 43,000.00	\$ 59,330.00	\$ 59,330.00	
1003	Access to Dam Structure Repairs	LS	1	\$ 31,150.00	\$ 31,150.00	\$ 263,000.00	\$ 263,000.00	\$ 60,000.00	\$ 60,000.00	\$ 198,000.00	\$ 198,000.00	\$ 56,000.00	\$ 56,000.00	\$ 105,860.00	\$ 105,860.00	
2001	Concrete Patching on Dam Structure	SF	350	\$ 146.00	\$ 51,100.00	\$ 380.00	\$ 133,000.00	\$ 310.00	\$ 108,500.00	\$ 210.00	\$ 73,500.00	\$ 105.00	\$ 36,750.00	\$ 307.00	\$ 107,450.00	
2002	Concrete Patching on Bridge Structure Bents	SF	500	\$ 120.00	\$ 60,000.00	\$ 260.00	\$ 130,000.00	\$ 290.00	\$ 145,000.00	\$ 250.00	\$ 125,000.00	\$ 100.00	\$ 50,000.00	\$ 282.00	\$ 141,000.00	
2003	Concrete Crack Repairs on Bridge Structure	LF	60	\$ 150.00	\$ 9,000.00	\$ 26.00	\$ 1,560.00	\$ 160.00	\$ 9,600.00	\$ 335.00	\$ 20,100.00	\$ 6.00	\$ 360.00	\$ 198.00	\$ 11,880.00	
3001	6-Inch Concrete Sidewalk (Overhang)	SF	1120	\$ 98.00	\$ 109,760.00	\$ 148.00	\$ 165,760.00	\$ 94.00	\$ 105,280.00	\$ 118.00	\$ 132,160.00	\$ 145.00	\$ 162,400.00	\$ 225.00	\$ 252,000.00	
3002	6-Inch Concrete Sidewalk (Enclosed)	SF	3120	\$ 46.00	\$ 143,520.00	\$ 118.00	\$ 368,160.00	\$ 95.00	\$ 296,400.00	\$ 96.00	\$ 299,520.00	\$ 130.00	\$ 405,600.00	\$ 119.50	\$ 372,840.00	
3003	6-Inch Concrete Sidewalk (On Grade)	SF	580	\$ 35.00	\$ 20,300.00	\$ 84.00	\$ 48,720.00	\$ 47.00	\$ 27,260.00	\$ 57.00	\$ 33,060.00	\$ 35.00	\$ 20,300.00	\$ 62.00	\$ 35,960.00	
3004	Sidewalk Expansion Join Covers	EA	30	\$ 750.00	\$ 22,500.00	\$ 600.00	\$ 18,000.00	\$ 150.00	\$ 4,500.00	\$ 1,040.00	\$ 31,200.00	\$ 1,060.00	\$ 31,800.00	\$ 543.00	\$ 16,290.00	

Carl E	Belt, Inc.	Restoration	on East, LLC	Triton Construction		Triton Construction		Kiewit		EWR Virginia		Mar-Allen	
Bid	1	Bid	✓	Bid	1	Bid	1	Bid	1	Bid	1		
AQB	1	AQB	1	AQB	1	AQB	1	AQB	1	AQB	<b>*</b>		
LPC	1	LPC	N/A	LPC	1	LPC	N/A	LPC	N/A	LPC	N/A		
ARVF	1	ARVF	1	ARVF	1	ARVF	1	ARVF	1	ARVF	1		
\$	571,330.00	\$ 2	2,112,300.00	\$	859,200.00	\$	999,540.00	\$	899,210.00	\$	1,181,975.00		

I HEREBY CERTIFY THE ABOVE IS A TRUE AND CORRECT SUMMARY OF THE PROPOSALS RECEIVED:

Matt Idleman, PE

Senior Engineer

MINIMUM BID

## **Council Agenda Summary**

Meeting Date: 4/6/2021

Key Staff Contact: Matt Idleman, PE

#### Item Title:

Award Koon Dam Concrete Repairs Contract

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

Award Koon Dam Concrete Repairs Contract to low responsive bidder, Carl Belt, Inc., in the lump sum cost of \$571,330.

Project involves necessary repairs at the Koon Dam structure in Bedford County, PA. Specifically, project includes patching large spalls on the spillway of the dam, and replacing almost 5,000 square feet of deteriorated sidewalk along the bridge. Both of these repairs were recommended by recent annual third-party inspections. If the sidewalk is not replaced this year, the City will be required to shut down pedestrian traffic over the bridge (per PennDOT).

This project was advertised for bid on 2/1/21. Bids closed on 3/3/21, with six qualified bids being received. The low bidder was Carl Belt, Inc. with an acceptable bid of \$571,330. The other acceptable bids ranged from \$859,200 to \$2,112,300.

The project is budgeted for this fiscal year, and utilizes City funds (water). It is expected that construction would begin immediately after execution of the Contract.

**Amount of Award:** \$571,330

**Budget number:** 002.299E.63000

Grant, bond, etc. reference: N/A

#### File Attachments for Item:

. Order 26,769 - accepting the bid from Carl Belt, Inc. for the "Flood Control System Concrete Repairs Project" (01-13-FPM) in the estimated lump sum cost of \$148,650.00 for repairing or replacing existing concrete structures related to the Flood Control System in Cumberland and Ridgeley, with the work occurring across 6 locations of the City, requiring separate mobilizations

### - Order -

of the

## **Mayor and City Council of Cumberland**MARYLAND

ORDER NO. 26,769 DATE: \_April 6, 2021\_

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

THAT, the bid from Carl Belt, Inc., 11521 Milnor Avenue, Cumberland, MD 21502, for City Project "Flood Control System Concrete Repairs" (01-13-FPM) in the estimated lump sum cost of One Hundred Forty-eight Thousand, Six Hundred Fifty Dollars and No Cents (\$148,650.00) be and is hereby accepted; and,

**BE IT FURTHER ORDERED,** that all other bids for this project be and are hereby rejected.

Raymond M. Morriss, Mayor

#### Bids:

Contractor	Amount
Carl Belt, Inc.	\$148,650.00
Johnston Const. Co	\$267,446.00
Concrete Services Division	
Mar-Allen Concrete, Inc.	\$330,622.00

Budget: 003.399XF.63000 MDE Grant Funding



PROJECT INFORMATION					
Project Title: Flood Control System Concrete Repairs					
City Project:	1-13-FPM				
Contract Length:	Contract Length: 90 Calendar Days				
BID OPENING					
Date & Time:	March 17, 2021 2:30 PM EDT				
Location:	Council Chambers, City Hall Cumberland, MD 21502				

CERTIFIED BID TABULATION					
BIDDER	BIDDER	BIDDER			
Carl Belt, Inc.	Concrete Services Division	Mar-Allen			
11521 Milnor Ave. Cumberland, MD 21502	4331 Fox Run Rd Dover, PA 17315	490 Millway Rd Ephrata, PA 17522			

		Carl Belt, Inc.		Concrete Services Division		Mar-Allen			
BIDS AND ALTERNATE	S AND ALTERNATES								
BID NO.	DESCRIPTION OF BID	UNITS	QTY.	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Replace Concrete Gutter	LS	1	\$ 13,250.00	\$ 13,250.00	\$ 44,413.00	\$ 44,413.00	\$ 40,694.00	\$ 40,694.00
2	Retaining Wall Cap Repairs	LS	1	\$ 9,900.00	\$ 9,900.00	\$ 18,031.00	\$ 18,031.00	\$ 14,785.00	\$ 14,785.00
3	Replace Section of Slab at Trash Rack	LS	1	\$ 20,750.00	\$ 20,750.00	\$ 27,342.00	\$ 27,342.00	\$ 46,109.00	\$ 46,109.00
4	Paint Trash Rack	LS	1	\$ 50,000.00	\$ 50,000.00	\$ 26,707.00	\$ 26,707.00	\$ 59,057.00	\$ 59,057.00
5	Repair Entrance to Dry Run Conduit	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 3,085.00	\$ 3,085.00	\$ 3,555.00	\$ 3,555.00
6	Repair Retaining Wall Joint	LS	1	\$ 5,400.00	\$ 5,400.00	\$ 33,314.00	\$ 33,314.00	\$ 17,735.00	\$ 17,735.00
7	Retaining Wall Repair	LS	1	\$ 10,700.00	\$ 10,700.00	\$ 29,913.00	\$ 29,913.00	\$ 18,746.00	\$ 18,746.00
8	Conduit Repair	LS	1	\$ 9,800.00	\$ 9,800.00	\$ 14,574.00	\$ 14,574.00	\$ 12,278.00	\$ 12,278.00
9	Retaining Wall Repair	LS	1	\$ 15,600.00	\$ 15,600.00	\$ 45,676.00	\$ 45,676.00	\$ 102,998.00	\$ 102,998.00
10	Install Concrete Gutter	LS	1	\$ 6,250.00	\$ 6,250.00	\$ 4,391.00	\$ 4,391.00	\$ 5,885.00	\$ 5,885.00
10A	Install Riprap along Slope	LS	1	\$ 5,000.00	\$ 5,000.00	\$ 20,000.00	\$ 20,000.00	\$ 8,780.00	\$ 8,780.00

Carl Belt, Inc.		Concrete Ser	vices Division	Mar-Allen		
Bid	✓	Bid	✓	Bid	✓	
AQB	✓	AQB	✓	AQB	✓	
LPC	County	LPC	N/A	LPC	N/A	
ARVF	1	ARVF	✓	ARVF	1	
\$	143,650.00	\$	247,446.00	\$	321,842.00	
\$	148,650.00	\$	267,446.00	\$	330,622.00	

BASE BID ALTERNATE BID

I HEREBY CERTIFY THE ABOVE IS A TRUE AND CORRECT SUMMARY OF THE PROPOSALS RECEIVED: Matt Idleman, PE Senior Engineer

## **Council Agenda Summary**

Meeting Date: 4/6/2021

Key Staff Contact: Matt Idleman, PE

#### Item Title:

Award Flood Control System Concrete Repairs Contract

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

Award Flood Control System Concrete Repairs Contract to low responsive bidder, Carl Belt, Inc., in the lump sum cost of \$148,650.

Project involves repairing or replacing existing concrete structures related to the Flood Control System in Cumberland, MD and Ridgeley, WV. The work shall occur across six locations of the city, which will each require a separate mobilization.

This project was advertised for bid on 2/8/21. Bids closed on 3/17/21, with three qualified bids being received. The low bidder was Carl Belt, Inc. with an acceptable bid of \$148,650. The other acceptable bids ranged from \$247,446 to \$330,622.

The project is budgeted for this fiscal year, and utilizes grant funds. It is expected that construction would begin immediately after execution of the Contract.

**Amount of Award:** \$148,650

Budget number: 003.399XF.63000

Grant, bond, etc. reference: MDE Grant Funding

#### File Attachments for Item:

. Order 26,770 - authorizing the City Administrator to execute a letter of agreement with Verizon Maryland, LLC acknowledging Verizon's intent to renew for one (1) year its lease of 3 (three) parking spaces in the George St. Parking Garage for a cost of \$75/each per month, and granting the option to renew for one additional year under the same terms and conditions

- Order -

**Mayor and City Council of Cumberland** 

ORDER NO. <u>26,770</u>

**DATE:** April 6, 2021

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

THAT, The City Administrator be and is hereby authorized to execute a letter of

agreement with Verizon Maryland LLC acknowledging Verizon's election to exercise its

option to renew for one year, to be effective July 1, 2021 through June, 30, 2022, the term

of the Lease originally dated November 13, 2007, for three (3) parking spaces in the George

Street Parking Garage for Seventy-Five Dollars (\$75.00) per space; and

**BE IT FURTHER ORDERED**, that, per terms of the letter of agreement,

Verizon shall have the option to further renew the term of said Lease for one (1)

additional year under the same terms and conditions

Raymond M. Morriss, Mayor

One Verizon Way VC11W021C Basking Ridge, NJ 07920 Michael Hudson Director - Global Real Estate

Octor 22, 2020

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Track # 7618 1130 0002 1192 5357 Track # 7018 1130 0002 1192 5333

Mayor & City Council of Cumberland c/o City Hall Cumberland, MD 21902 57 N. Liberty Street Cumberland, MD 21502 Mayor & City Council of Cumberland c/o City Hall Attn: Jeff Rhodes

Subject: Notice of Lessee's exercise of option to renew under that certain Parking Lease dated November 13, 2007, as amended and/or extended by a First Amendment of Parking Lease dated September 2, 2008, Second Amendment of Parking Lease dated June 9, 2009, and letters dated October 19, 2010, October 31, 2011, June 8, 2012, September 20, 2013, September 26, 2014, August 25, 2015, August 15, 2016, August 28, 2017, August 30, 2018 and July 26, 2019 (collectively, the "Lease") between the Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland ("Lessor") and Verizon Maryland LLC, a Delaware limited liability company, ("Lessee") and concerning the three parking spaces located in the George Street Parking Garage, Cumberland, Allegany County, Maryland, as further described in the Lease. Verizon Property ID No. 230059

#### Dear Lessor:

The term of the above-referenced Lease is scheduled to expire on June 30, 2021. Lessee elects to exercise its option to renew the term of the Lease for an additional one year period. Accordingly, the Lease shall remain in full force and effect under all the same terms and conditions set forth in the Lease, except the Lease term shall be extended twelve (12) months from July 1, 2021 through June 30, 2022 (the "Additional Extension Term") and monthly rent shall remain \$75 per parking space, for a total monthly rent of \$225.

Additional Renewal Option: Provided no default has occurred and is continuing beyond any applicable grace period, Lessee shall have the option to further renew the term of the Lease for one additional period of one year, on the same terms and conditions contained in the Lease, including monthly rent which shall remain \$75.00 per parking space, for a total monthly rent of \$225. Lessee may exercise such renewal option by giving written notice to Lessor of its election to renew on or before sixty (60) days prior to expiration of the then current Lease term.

Please note that under the Lease, Lessor's signature is not required for the valid exercise of Lessee's option to renew the Lease for the Additional Extension Term. However, if you are in agreement with the terms set forth in the paragraph above entitled "Additional Renewal Option", please sign below to acknowledge your agreement and return a fully executed copy of this letter to Lessee in the enclosed return envelope.

Please contact Jeff Salino, a member of my team, with CBRE at 703-212-6859 if you have any questions concerning this matter.



Mayor & City	Council of Cumberland
	, 2020
Page 2	

This letter may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. For these purposes, "electronic signature" shall mean electronically scanned and transmitted versions (e.g., via pdf file) of an original signature, signatures electronically inserted and verified by software such as Adobe Sign, or faxed versions of an original signature.

AGREED AND ACCEPTED:

VERIZON MARYLAND LLC

MAYOR & CITY COUNCIL OF CUMBERLAND

By:	By:
Printed Name: Michael Hudson	Printed name:
Its: Dir - Real Estate Portfolio Management	Title:

#### File Attachments for Item:

. Order 26,771 - approving an amendment to the 2020 CDBG Annual Plan to allocate CDBG CARES Act Funds in the amount of \$113,160 to the Allegany Youth Enrichment Program and \$6,750 to the YMCA Transitional Homeless Sanitizer Project

## - Order -

of the

## **Mayor and City Council of Cumberland**MARYLAND

ORDER NO. <u>26,771</u> DATE: April 6, 2021

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

**THAT**, the following Amendment to the 2020 Community Development Block Grant Annual Plan to allocate CDBG CARES Act Funds in response to the needs of residents affected by the Coronavirus pandemic be and is hereby approved:

#### Substantial Amendment #2 03162021

Public Facility / Infrastructure Improvements					
Allegany Youth Enrichment Program YOUTH CENTER	\$113,160				
Subtotal	\$113,160				
Public Services					
YMCA Transitional Homeless Sanitizer	\$6,750				
Subtotal	\$6,750				
TOTAL	\$119,910				
Total 2020 CV3 Allocation	\$119,910				

Raymond M. Morriss, Mayor

#### **Public Notice of Intent to Program Community Development Block Grant Funds**

#### **PY 2020 City of Cumberland CARES Act Amendment**

#### Substantial Amendment #2 03162021

In accordance with federal regulations governing the Consolidated Planning process, the City of Cumberland is notifying the public regarding a proposal to program Community Development Block Grant CARES Act funds (CDBG-CV3) by amending the 2020 Annual Action Plan in response to the needs of residents affected by the Coronavirus pandemic. As a result of community outreach and evaluation of the community's greatest needs, the City will be coordinating with the Cumberland YMCA to provide safe transitional homeless shelter and the Allegany Youth Enrichment Program to provide public services for at-risk youth suffering from the effects of the COVID -19 pandemic in the manner outlined below.

Public Facility/Infrastructure Improvement	8				
Allegany Youth Enrichment Program YOUTH CENTER	\$113,160				
Subtotal	\$113,160				
Public Services					
YMCA Transitional Homeless sanitizer	\$6,750				
Subtotal	\$6,750				
TOTAL	\$119,910				
Total 2020 CV3 Allocation	\$119,910				

As a result of the aforementioned proposed changes to the 2020 Annual Action Plan, the PY 2020 CDBG-CV3 funds are proposed to provide COVID-19 related relief to about 100 youth and 600 homeless persons

Cumberland's Citizen Participation Plan was approved by Cumberland Mayor and City Council on May 5, 2020 and allows for expedited procedures for public notification for Emergency Action Plan Amendments. The City of Cumberland invokes the right to shorten the public comment period to 17 days though only a 5-day notice is required. The Mayor and City Council will hold a public hearing on the proposed amendment on Tuesday, April 6, 2021, in order to expedite relief to persons in need and will consider any comments or views from its citizens received in writing or orally, at the public hearing.

Written comments concerning the proposed amendment may be provided effective Saturday, March 20, 2021 through 4 PM Tuesday, April 6, 2021. Provide written comments to the City of Cumberland, Department of Community Development by mail to 57 N. Liberty Street, Cumberland, Maryland or by email to <a href="mailto:lee.borror@cumberlandmd.gov">lee.borror@cumberlandmd.gov</a>. This Amendment to the 2020 Community Development Block Grant Annual Action Plan will be considered for approval by Mayor and City Council at the regular livestreamed meeting on Tuesday, April 6, 2021 at 6:15 PM.

ADV: Saturday, March 20, 2021

#### File Attachments for Item:

. Order 26,772 - authorizing the Mayor's execution of a letter of engagement with Saxton & Stump and the Evitts Creek Water Company outlining terms for the provision of professional legal services in connection with compliance with the laws and regulations of the PA Public Utilities Commission and the PA Department of Environmental Protection relative to the operations of the Evitts Creek Water Company

- Order -

**Mayor and City Council of Cumberland** 

ORDER NO. <u>26,772</u>

**DATE:** April 6, 2021

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

**THAT**, the Mayor be and is hereby authorized to execute a letter of engagement

by and between the Mayor and City Council of Cumberland, the Evitts Creek Water

Company, and Saxton & Stump, 4250 Crums Mill Road, Suite 201, Harrisburg, PA 17112,

outlining terms for the provision of professional legal services in connection with

compliance with the PA Public Utility Commission laws and regulations and the PA

Department of Environmental Protection laws and regulations relative to the operations of

the Evitts Creek Water Company; and

BE IT FURTHER ORDERED, that the Mayor and City Council approve the

Evitts Creek Water Company's retention of Saxton & Stump for the provision of

professional legal services in connection with the same issues noted above.

Raymond M. Morriss, Mayor

#### File Attachments for Item:

. Order 26,773 - authorizing the execution of Change Order No. 8 with Leonard S. Fiore, Inc. for City Project "Phase I CSO Storage Facility - WWTP" in the decreased amount of (\$7,240.00) due to unused contingent items, bringing the current contract price to \$26,357,616.88

## - Order -

# **Mayor and City Council of Cumberland**

ORDER NO. <u>26,773</u>

**DATE:** April 6, 2021

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

THAT the City Administrator be and is hereby authorized to execute Change Order No. 8 to the existing contract with Leonard S. Fiore, Inc., 5506 Sixth Avenue Rear, Altoona, PA, 16602, for City Project "Phase 1 CSO Storage Facility at WWTP" (01-10-WWTP) to decrease the amount of the contract by Seven Thousand, Two Hundred Forty Dollars and No Cents (\$7,240.00) due to unused contingent items, bringing the current contract price to Twenty-six Million, Three Hundred Fifty-seven Thousand, Six Hundred Sixteen Dollars and Eighty-eight Cents (\$26,357,616.88).

Raymond M. Morriss, Mayor

Leonard S. Fiore, Inc. 01-10-WWTP	Contract Price
Original Contract Price	\$26,416,340.00
Change Order No. 1	\$0.00
Change Order No. 2	\$16,582.53
Total Contract Price after CO 1 & 2	\$26,432,922.53
Change Order No. 3 "decrease"	(\$92,409.94)
Change Order No. 4	\$21,523.46
Change Order No. 5	\$2,820.83
Change Order No. 6 "no increase"	\$0.00
Change Order No. 7 "no increase"	\$0.00
Change Order No. 8 "decrease"	\$7,240.00
New Total Contract Price to-date	\$26,357,616.88

Budget: 003.399CS.63000



Date of Issuance: August 31, 2020

Owner: City of Cumberland, MD

Contractor: Leonard S. Fiore, Inc.

Engineer: Whitman, Requardt, and Associates, LLP

Effective Date: August 31, 2020

Owner's Contract No.: 01-10-WWTP

Contractor's Project No.: CT-0365

Engineer's Project No.: 13993-003

Project: Phase 1 CSO Storage Facility at the Contract Name: Phase 1 CSO Storage Facility at the

Wastewater Treatment Plant Wastewater Treatment Plant

The Contract is modified as follows upon execution of this Change Order:

1) Includes a decrease to contract price due to unused contingent items.

Attachments: None.

Date: 8/31/20 Date 9/1/2020 Date 9/1/2020 Date 07.01, 2020  Approved by Funding Agency (if applicable)  By: Date:	Tittaciii	ichts. None.				
Original Contract Price: \$ 26,416,340.00  Special Contract Times: Substantial Completion: Jefo Agys  [Increase] [Decrease] from previously approved Change Orders No. 0 to No. 7 : Substantial Completion: 488 Ready for Final Payment: 443 days  Contract Price prior to this Change Order: Substantial Completion: 488 Ready for Final Payment: 443 days  Contract Price prior to this Change Order: Substantial Completion: 1,230 Ready for Final Payment: 1,245 days  [Increase] [Decrease] of this Change Order: Substantial Completion: 1,230 Ready for Final Payment: N/A Substantial Completion: 1,230 Ready for Final Payment: N/A Ready for Final Payment: N/A Days  Contract Price incorporating this Change Order: Substantial Completion: 1,230 Ready for Final Payment: N/A Days  Contract Price incorporating this Change Order: Substantial Completion: 1,230 Ready for Final Payment: N/A Days  Contract Times with all approved Change Orders: Substantial Completion: 1,230 Ready for Final Payment: 1,245 Days  ACCEPTED: By: Contract Times Associate Date Director of Engineering Payment: 1,245 Date: Director of Engineering Payment: Date Date: Date		CHANGE IN CONTRACT P	RICE			
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# **Council Agenda Summary**

Meeting Date: 4/6/2021

Key Staff Contact: Robert Smith, PE

#### Item Title:

Change Order No. 8 CSO Storage Construction

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

The City of Cumberland must amend the original contract with Leonard S. Fiore, Inc. in order to include the decrease in contract price due to unused contingent items in the amount of \$7,240. This will bring the total contract price to \$26,357,616.88 which includes all previous change orders 1-7.

**Amount of Award:** \$(7,240)

**Budget number:** 003.399CS.63000

Grant, bond, etc. reference: Grant - MDE

## **File Attachments for Item:**

. Order 26,774 - accepting the sole source proposal from Robinson Pipe Cleaning to clean the Evitts Creek sewer main at a cost not-to-exceed  $$50,\!000$ 

- ORDER -

Mayor and City Council of Cumberland

ORDER NO. <u>26,774</u>

**DATE:** April 6, 2021

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

THAT, the Sole Source proposal from Robinson Pipe Cleaning, 2656 Idlewood

Road, Pittsburgh, PA, 15205, to perform cleaning of approximately 1,000 – 2,000 feet of

24" – 27" sewer pipe located along Evitts Creek, upstream from the Evitts Creek Pump

Station, is hereby accepted in the amount not-to-exceed Fifty Thousand Dollars and No

Cents (\$50,000.00).

Raymond M. Morriss, Mayor

Budget: 003.320-20100

March 16, 2021

2656 Idlewood Road Pittsburgh, PA 15205 (412) 921-2100 (412) 921-3600 www.robinsonpipe.com

Proposal # 2021-163

Tim Murphy Sewer/Flood Superintendent City of Cumberland, MD phone (301)759-6630 fax (301)759-6632 cell (301)707-5147 email tim.murphy@cumberlandmd.gov

SCOPE OF WORK

RPC understands that City of Cumberland requests cleaning of approximately 1,000 to 2,000 ft of 24" - 27" sanitary sewers pipes located along Evitts Creek in Cumberland, MD as directed.

The sewer was observed is believed to contain heavy root growth and debris. We can propose to set up the cleaning effort via combination of cleaning methods and equipment depending on what is discovered internally and the ability to gain access to the manhole structures. Typically, any hydro jet cleaning / flushing is performed from the downstream end of the pipe and the hose is then pressurized with water. The nozzle at the end of the hose is designed to jet water backwards as it propels the hose up through the pipe. The material in the pipe is then suspended in water and flushed downstream as the hose is pulled back. A vacuum hose or pipe can then be placed in the invert to vacuum remove the debris as it is flushed back. If it is determined that the root growth is larger than what the hydraulic cutters are capable of removing, Heavy Duty Mechanical Winch Bucket Machines could be utilized for the removal effort. Typically, the crew must establish a cable line through the pipeline. A sewer jet will be used to thread the cable through the storm sewer. After the cable line is installed winch machines would be set up at upstream and downstream manholes with at least one intermediate manhole between. Specialized pipe scrappers tools, brushes will be placed into the line and attached to each winch machine by cables. These scraper tools may be pulled toward the intermediate manhole with roots, dirt/debris being removed at that point via either a vacuum truck. Generally, if flows are higher it is understood that the operation may require additional setup time and assistance from the township will be required.

# ROBINSON PIPE CLEANING COMPANY WILL FURNISH

RPC will provide 3-4 Men, High Velocity Jet Vac Truck, 4WD High Velocity Water Jetter, Off Road Easement Machine with Hydraulic reel, Off Road Polaris CCTV Truck, Root Cutters

To perform the CCTV inspection utilizing the self propelled camera equipment, the piping must be free of dirt and debris which may obstruct the camera forward motion, flows should be minimal (< 30% pipe flow), and grade or slope of the line should not be severe in design. Sufficient access must be available to place the camera unit inside the pipe; the camera unit is approximately 32" in length and is height adjustable for 8" to 60" pipe inspections. The self-propelled, multi-angle camera is capable of traversing line segments up to 1,000 feet in length, but cannot make turns. The camera will be capable of panning 275 degrees and rotating 360 degrees to provide complete viewing of the internal pipe wall areas.

## TO BE FURNISHED BY Purchaser

- Unhindered truck access and rights of way to all work areas, including temporary roadway
- Exposure and opening of manholes and pipe access points. Permission to park our truck on the city streets, if necessary, without any special permits. Notification of property owners as necessary or required
- Permission to use local fire hydrants to fill the 1,500-gallon holding tank of our high-velocity water jetting equipment or make local arrangements to supply our operator with a clean water source if cleaning is requested Bypass pumping if required
- Suitable location for disposal of debris removed from the sewers, structures, or inlets during cleaning
- All traffic control and permits for anything more than use of standard traffic cones and truck-mounted arrow boards at no
- Restoration of property due to vehicle or pedestrian traffic to the work area
- Personnel to assist our crew if necessary
- Any special permits or local licenses required at no additional charge to us, including wetlands encroachment and/or

#### COST PROPOSAL

RPC will provide mobilization, labor and equipment to perform work as specified herein for the following prices:

\$195.00 Per Hour
\$195.00 Per Hour \$185.00 Per Hour
\$175.00 Per Hour
\$150.00 Per Hour
\$125.00 Per Man / Night
\$185.00 Per Hour \$175.00 Per Hour \$150.00 Per Hour \$150.00 Per Hour \$125.00 Per Man / Night prival to portal

We can not accurately estimate the time it may require to clean the pipeline. The volume and size of debris / blockage is not known. While we cannot guarantee the volume of dirt/debris that we can remove in a day utilizing mechanical cleaning due to the variance in site conditions at various work locations, we have been able in the past to remove up to 6 tons of material in

RPC appreciates the opportunity of providing this proposal. If you wish to accept the proposal, please indicate your acceptance, subject to the terms and conditions attached, with an authorized signature in the space provided. Return via email to long@robinsonpipe.com . At that time please provide your correct billing address if it is different than the address appearing at the top of this proposal. If you have any questions about our proposal, please feel free to contact us at 412-921-2100. Thank you for considering Robinson Pipe Cleaning Company.

Client Assentance	
Cliefit Acceptance	
Signature/date	_
	Client Acceptance Signature/date

# ASSUMPTIONS AND CONDITIONS

RPC has made the following assumptions in developing this proposal:

Offer presented herein is valid for 60 days from the date of this proposal.

Daily charges are for standard, weekday work based on up to eight hours onsite and will be prorated hourly, subject to a four-hour minimum portal-to-portal from our facility near Carnegie, PA after the first day.

Total hours cannot exceed 14 hours. The 14-hour rule prohibits a property-carrying driver from operating a commercial motor vehicle after being on-duty for 14 consecutive hours. This proposal is subject to the availability of appropriate personnel and equipment.

Cleaning will be via high-pressure water jetting each section of pipe in an attempt to remove any loose material and does not include the removal of any hardened material requiring mechanical cleaning tools or any extended confined space entry. All loose sediment in the pipe may not be able to be completely removed if the pipe's configuration exceeds the operational abilities of our equipment.

Pricing does not include any flow control, bypass pumping or additional labor unless requested

Additional project work not specifically addressed by this proposal will be charged at a time and materials rate. Purchaser will authorize additional work that may be required prior to initiation.

Prices are based on non-holiday, non-union rates with NO provision made for "prevailing wage" rates

In the progress of our services, should we encounter any structural failures or defects (i.e. broken, collapsed, or damaged sewers, manholes or other drainage structures), such will be reported to the Purchaser, but under no conditions are we to be responsible for any corrections or repairs under this agreement. We have the capabilities to repair defects and cracked or damaged pipe sections and can advise you on various methods of repair or rehabilitation should site conditions reveal failures or problems within the conduit system. GENERAL TERMS AND CONDITIONS

- General Conditions: These general conditions are incorporated by reference into the proposal and are part of the Agreement under which services are to be performed by the Contractor for the Customer. Contractor will follow Customer's instructions both verbal H.
- Customer Supplied Labor: Where the Customer provides labor for the Contractor, the Customer will indemnify the Contractor for liability, loss or expense for work related injuries to those laborers not provided by the Contractor. The Customer agrees to waive all rights of subrogation against the Contractor arising out of the work in this Agreement. III.

Customer's Responsibilities: Customer will provide mechanical services. Operation and control of equipment is the Customer's responsibility. If Contractor cannot continue its work due to circumstance caused or allowed by Customer and of which Contractor was not apprised prior to starting the work, an hourly fee will be charged. IV.

Damage Limitations: Under no circumstances will the Contractor be responsible for indirect, incidental or consequential damages. The Contractor also is not responsible for the rendering of or failure to render architectural, engineering or surveying professional ٧.

Pre-existing Conditions: The Contractor will not be responsible for liability, loss or expense (including damage caused by the backup of basement sewers) where the primary cause of the claim or damage is preexisting conditions including faulty, inadequate or defective design, construction, maintenance or repair of property or contamination of the subsurface where the condition existed prior to the start of the Contractor's work. Customer is responsible for loss of service equipment caused by the pre-existing VI.

Environmental Conditions: The debris is represented to Contractor to be non-hazardous, requiring no manifesting or special permitting. The Customer will be responsible for any additional costs or claims associated with the treatment, storage, disposal of the removed debris, or breach of the above representation, at any time during or after the completion of this project. VII.

Indemnification: The Customer and Contractor will each indemnify the other in proportion to relative fault for liability, loss and expense incurred by the other party resulting from a negligent act or omission in performance of work under this Agreement. The Customer also will indemnify Contractor for liability, loss and expense resulting from Contractor's services if the Contractor is acting at the direction or instruction of the Customer, or where the primary cause of any damages is due to information provided by the Customer. Contractor agrees to indemnify and hold Subcontractor harmless, including paying legal fees, for any claims arising out of or related to traffic control, even if the claim alleges Subcontractor's negligence in part caused the claim to arise. VIII.

Credit Policy: Regular Terms are Net 30 Days. The company may charge interest at the rate of 1-1/2% per month on all invoices

Entire Agreement: This proposal together with any written documents which may be incorporated by specific reference herein IX. constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. The waiver by Contractor of any term, condition or provision herein stated shall not be construed to be a waiver of any other



# **Sanitary Sewer Contractual Services**

3 messages

**Brooke Cassell** <br/>
Strooke.cassell@cumberlandmd.gov> Wed, Mar 17, 2021 at 9:09 AM To: Ken Tressler <ken.tressler@cumberlandmd.gov>, Mark Gandolfi <mark.gandolfi@cumberlandmd.gov> Cc: Tim Murphy <tim.murphy@cumberlandmd.gov>

Good Morning Ken and Mark,

Is the requested money (\$50,000) available from Sanitary Sewer Contractual Services (003.320.20100) to have Robinson Pipe Cleaning perform work on Evitts Creek Sewer Main? I have to request a sole source approval from Jeff, then Mayor and Council, for this work. I wanted to confirm funding from the current budget before I proceed. This work needs to be done soon, as everytime it rains the manholes along the creek overflow and we are concerned about getting fined.

Thanks, Brooke

Brooke Cassell
Public Works Operations Manager
City of Cumberland, MD
phone (301)759-6624
fax (301)759-6632
cell (240)580-0755
email brooke.cassell@cumberlandmd.gov

Mark Gandolfi <mark.gandolfi@cumberlandmd.gov>

Wed, Mar 17, 2021 at 9:26 AM

To: Brooke Cassell <a href="mailto:brooke.cassell@cumberlandmd.gov">brooke.cassell@cumberlandmd.gov</a>

Cc: Ken Tressler <ken.tressler@cumberlandmd.gov>, Tim Murphy <tim.murphy@cumberlandmd.gov>

Good morning Brooke,

Presently, the available budget in 003.320.20100 is \$63,850. Your budgeted transactions for this year include \$50,000 for Robinson Pipe Cleaning. It is available.

Kind Regards,

Mark

[Quoted text hidden]



# **Approval Request for Sole Source**

5 messages

Brooke Cassell <br/> <br/> brooke.cassell@cumberlandmd.gov>

Fri, Mar 26, 2021 at 8:08 AM

To: Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>

Cc: Ken Tressler <ken.tressler@cumberlandmd.gov>, Mark Gandolfi <mark.gandolfi@cumberlandmd.gov>, Tim Murphy <tim.murphy@cumberlandmd.gov>

Good morning Jeff,

The Sewer Department has \$50,000 budgeted for the current FY 2021 in Contractual Services (003.320.20100) for cleaning of the Evitts Creek Sewer Main. I am requesting sole source approval for this work to be completed by Robinson Pipe Cleaning, A Carylon Company.

The work to be completed includes cleaning of approximately 1,000 to 2,000 ft of 24" - 27" sewer pipe located along Evitts Creek, upstream from the Evitts Pump Station. The sewer is believed to contain heavy root growth and debris. The roots and debris have clogged the sewer pipe causing the sewer pipe to overflow into the field along Evitts Creek during a heavy rain event. If this is not addressed soon, MDE may take action against the City.

The City, nor the Contractor, has the ability to know the exact length of the area to be cleaned due to the large volume of flow in this sewer pipe. The work by the Contractor, Robinson Pipe Cleaning, is not to exceed \$50,000.

The last time this work was completed was in 2003 and was performed by Robinson Pipe Cleaning. They are familiar with the area and the difficulty of the project.

I am requesting that Robinson Pipe Cleaning perform the work as a sole source contractor due to the emergency nature of the work. Also, Robinson is familiar with the work and location of the project due to past experience. In addition, the City Sewer Department will be assisting the contractor with providing temporary access roads and removal of the debris found in the pipe.

I have attached a copy of the proposal from Robinson Pipe Cleaning for review.

Please let me know if you have additional questions or concerns.

Brooke Cassell
Public Works Operations Manager
City of Cumberland, MD
phone (301)759-6624
fax (301)759-6632
cell (240)580-0755
email brooke.cassell@cumberlandmd.gov



Ken Tressler <ken.tressler@cumberlandmd.gov>

Fri, Mar 26, 2021 at 8:17 AM

To: Brooke Cassell <a href="mailto:brooke.cassell@cumberlandmd.gov">brooke.cassell@cumberlandmd.gov</a>

Cc: Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>, Mark Gandolfi <mark.gandolfi@cumberlandmd.gov>, Tim Murphy <tim.murphy@cumberlandmd.gov>

Hello Brooke,

How are we planning to monitor their activity and compare to bills submitted?

[Quoted text hidden]

Ken Tressler, CPA
Director of Administrative Services
57 N. Liberty Street
Cumberland, MD 21502
Office (301) 759-6406
Cell (304) 813-6470

Brooke Cassell <a href="mailto:content-align: cumberlandmd.gov">brooke.cassell@cumberlandmd.gov</a>

Fri, Mar 26, 2021 at 9:00 AM

To: Ken Tressler <ken.tressler@cumberlandmd.gov>

Cc: Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>, Mark Gandolfi <mark.gandolfi@cumberlandmd.gov>, Tim Murphy <tim.murphy@cumberlandmd.gov>

Tim and Jerry will be with the contractor during the work to confirm the length of the pipe that is being cleaned. I believe that we could do additional work, but we told them we can not exceed \$50,000 at this time.

[Quoted text hidden]

[Quoted text hidden]

#### Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>

Fri, Mar 26, 2021 at 9:29 AM

To: Brooke Cassell <a href="mailto:brooke.cassell@cumberlandmd.gov">brooke.cassell@cumberlandmd.gov</a>

Cc: Ken Tressler <ken.tressler@cumberlandmd.gov>, Mark Gandolfi <mark.gandolfi@cumberlandmd.gov>, Tim Murphy <tim.murphy@cumberlandmd.gov>

Approved

Sent from my iPhone

On Mar 26, 2021, at 9:00 AM, Brooke Cassell <a href="mailto:srooke.cassell@cumberlandmd.gov">brooke.cassell@cumberlandmd.gov</a> wrote:

[Quoted text hidden]

# **Council Agenda Summary**

Meeting Date: April 6, 2021

Key Staff Contact: Brooke Cassell

Item Title: Sole Source request for the cleaning of Evitts Creek Sewer Main

**Summary of project/issue/purchase/contract, etc for Council:** I am requesting sole source approval for the Evitts Creek Sewer Main to be cleaned and unclogged by a contractor, Robinson Pipe Cleaning.

The work to be completed includes cleaning of approximately 1,000 to 2,000 ft of 24"-27" sewer pipe located along Evitts Creek, upstream from the Evitts Creek Pump Station. The sewer is believed to contain heavy root growth and debris that are restricting the flow of the main. As a result of this restriction and blockage, the sewer pipe overflows into the field along the creek during a heavy rain event.

The City, nor the contractor, has the ability to know in advance of the work the exact length of the area to be cleaned due to the large volume of flow in the sewer main. The project will be monitored by the Sewer Department daily. The work by the Contractor, Robinson Pipe Cleaning, is not to exceed \$50,000. The \$50,000 is budgeted in the current FY 2021 in Contractual Services (003.320.20100).

The last time this work was completed was in 2003 and was performed by Robinson Pipe Cleaning. They are familiar with the area and the difficulty of the project.

I am requesting that Robinson Pipe Cleaning perform the work as a sole source contractor due to the emergency nature of the work. If the issue is not addressed soon, MDE may take action against the City. Also, the contractor is familiar with the work and location of the due to past experience. In addition, the City Sewer Department will be assisting the contractor with providing temporary access roads and removal of the debris found in the pipe.

**Amount of Award:** Not to exceed \$50,000

Budget number: 003.320.20100 Contractual Services

Grant, bond, etc. reference:

#### File Attachments for Item:

. Order No. 26,775 - authorizing execution of a Facility Encroachment Agreement with CSX Transportation, Inc. for an area near the Gene Mason Sports Complex, relative to the project to install a 78" Parallel Pipeline from Mill Race to CSO Storage Tank (19-16-S)

- Order -

**Mayor and City Council of Cumberland** 

ORDER NO. <u>26,775</u> **DATE:** April 6, 2021

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

**THAT**, the Mayor be and is hereby authorized to execute a Facility Encroachment Agreement by and between CSX Transportation, Inc. and the Mayor and City Council of Cumberland for an area near the Gene Mason Sports Complex, relative to the project to install a 78" Parallel Pipeline from Mill Race to the CSO Storage Tank (19-16-S)

Raymond M. Morriss, Mayor

#### **FACILITY ENCROACHMENT AGREEMENT**

THIS AGREEMENT, Made and effective as of February 6, 2021, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and MAYOR AND CITY COUNCIL OF CUMBERLAND, a municipality corporation, political subdivision or state agency, under the laws of the State of Maryland, whose mailing address is 57 N. Liberty Street, Cumberland, Maryland 21502, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) seventy-eight inch (78") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Cumberland, Allegany County, Maryland, - Latitude N39:37:19., Longitude W78:45:55.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

#### 1. LICENSE:

- 1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:
- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including but not limited to Licensor's track(s) structure(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus, or any appurtenances thereto ("Licensor's Facilities") and any other facilities as now exist or which may in the future be located in,upon, over, under or across the property;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee and its agent or contractor ("Licensee's Contractor") with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

- 1.2 The term <u>Facilities</u>, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.
- 1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.
- 1.4 The term <u>Licensor Facilities</u>, as used herein shall include Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property.

### 2. ENCROACHMENT FEE; TERM:

- 2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIFTEEN THOUSAND THREE HUNDRED AND 00/100 U.S. DOLLARS (\$15,300.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.
- 2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.
- 2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.
- 2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees it shall not assess Licensor any stormwater or drainage fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater or drainage fees assessed by any County or State agency managing such systems.

#### 3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's

particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

- 3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.
- 3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.
- 3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.
- 3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.
- 3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.
- 3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.
- 3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.
- 3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.
- 3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the

completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

#### 4. PERMITS, LICENSES:

- 4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" "Call Before You Dig" requirements.
- 4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

#### 5. MARKING AND SUPPORT:

- 5.1 With respect to any <u>subsurface</u> installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:
  - (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.
  - 5.2 After construction or maintenance of the Facilities, Licensee shall:
    - (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

#### 6. TRACK CHANGES:

- 6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.
- 6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

#### 7. FACILITY CHANGES:

- 7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.
- 7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

#### 8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's Facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor's Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

#### 9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

- 9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.
- Licensee's Contractor shall hereby agree to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whosoever, arising out of resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.
- 9.3 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon

Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

- 9.4 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.
- 9.5 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.
- 9.6 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.
- 9.7 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.
- 9.8 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

#### 10. INSURANCE:

- 10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of
  - (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).
  - (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS

(\$5,000,000.00)in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOl@csx.com.

- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.
- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensor may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.
- 10.2 If Licensee's Contractor's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee's Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.
- 10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.
- 10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.
- 10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require Licensee's Contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

- ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.
- (B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.
- 10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

#### 11. GRADE CROSSINGS; PROTECTION SERVICES:

- 11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.
- 11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

#### 12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor's Facilities shall also be paid by Licensee.

- 12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.
- 12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

### 13. DEFAULT, BREACH, WAIVER:

- 13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.
- 13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.
- 13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

#### 14. TERMINATION, REMOVAL:

- 14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.
- 14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to

Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

#### 15. NOTICE:

- 15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing <u>any</u> work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:
- a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link: https://propertyportal.csx.com/pub ps res/ps res/jsf/public/index.faces
- b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 301-759-6601.
- 15.2 All other notices and communications concerning this Agreement shall be addressed to <u>Licensee</u> at the address above, and to <u>Licensor</u> at the address shown on Page 1, c/o CSXT Contract Management, J180; <u>or</u> at such other address as either party may designate in writing to the other.
- 15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

#### 16. ASSIGNMENT:

- 16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.
- Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
- 16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.
- 16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

#### 17. TITLE:

- 17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.
- 17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.
- 17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.
- 17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

- 17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.
- 17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.
- 17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.
- 17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

#### 18. GENERAL PROVISIONS:

- 18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.
- 18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.
- 18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.
- 18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.
- 18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

- 18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.
- 18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.
- 18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.
- 18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.
- 18.10 This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto, each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

#### 19. CONTRACTOR'S ACCEPTANCE:

19.1 Licensee shall observe and abide by, and shall require Licensee's Contractors to observe and abide by the terms, conditions and provisions set forth in this Agreement. Prior to any commencement of work under this Agreement by Licensee's Contractor, Licensee shall require Licensee's Contractor to execute and deliver to Licensor the Contractor Acceptance form attached hereto as Schedule A to acknowledge Licensee's Contractor's agreement to observe and abide by terms and conditions of the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:	CSX TRANSPORTATION, INC.
	By:
	Print/Type Name:
	Print/Type Title:
Witness for Licensee:	MAYOR AND CITY COUNCIL OF CUMBERLAND
	By:
	Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.
	Print/Type Name:
	Print/Type Title:
	Tax ID No.:

#### Schedule "A"

#### **CONTRACTOR'S ACCEPTANCE**

This Amendment is and shall be a part of Agreement No. CSX922629, and is incorporated therein.

To and for the benefit of CSX TRANSPORTATION, Inc. (Licensor") and to induce Licensor to permit Contractor on or about Licensor's property for the purposed of performing work in accordance with the Agreement dated February 6, 2021, between Licensee and Licensor, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10 of the Agreement.

Witness for Licensor:	CSX TRANSPORTATION INC.
	Ву:
	Print/Type Name:
	Print/Type Title:
Witness for Licensee's Contractor	LICENSEE'S CONTRACTOR
	By:
	NAME:
	TITLE:
	DATE:



**Page** 1 of 1

Account/Contract No. Tracking No.

CSX922629 1042282

Invoice Date 02/06/2021

## Customer

MAYOR AND CITY COUNCIL OF CUMBERLAND 57 N LIBERTY ST CUMBERLAND, MD 21502

Please submit a copy of this statement with payment submission to the "Remit To" address shown below.

### Fees-At-A-Glance

Amount Due in U.S. dollars

23300.0

### **Fees Summary**

Review Fee	\$8,000.00
Railroad Protective Liability (Only if RPL is not provided)	
Expedited Review Fee	
License Fee	\$15,300.00
Sales Tax*	
Money on File	

<sup>\*</sup>Florida Sales tax applies to the license fee

#### Total Current Fees in U.S. dollars

23300.0

CSX Federal ID No. CSX Canadian ID No. CSX Quebec ID No.

Please remit payment to:

Legal Address: 500 Water Street

500 Water Street, J180 Jacksonville, FL 32202 Questions? Contact:

54-6000720 105203095 RC 0001 1022434469 IC 0001

**CSX Transportation, Inc.** 

Mailing Address: 500 Water Street, J180 Jacksonville, FL 32202 Anne\_Jackson@csx.com

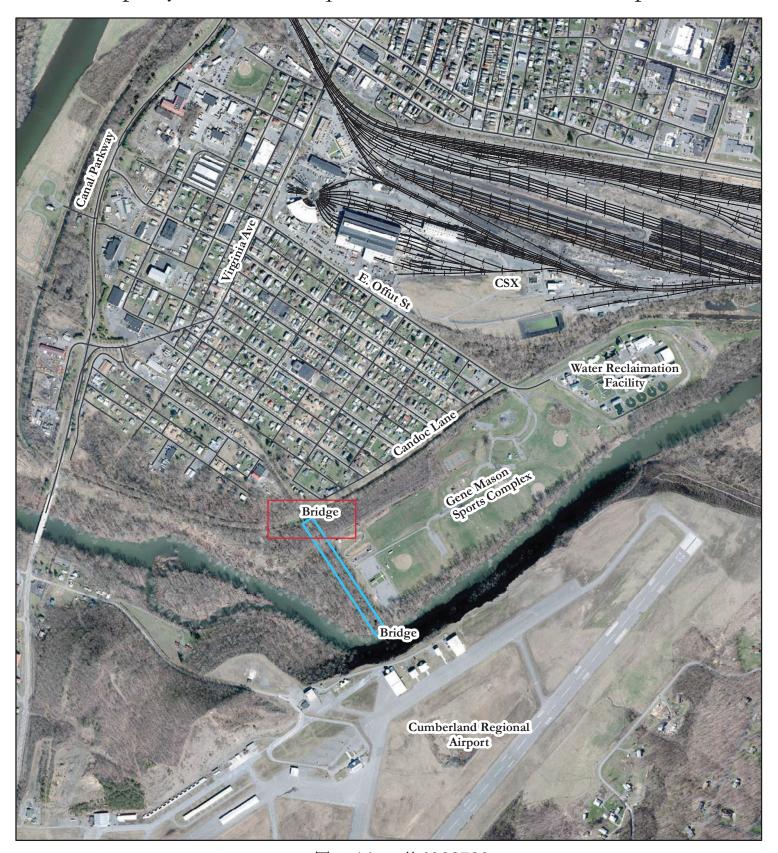
904.279.3953

#### CSX Transportation (CSX) General Notes Microtunneling Boring Machine (MTBM):

- 1) CSX owns its right-of-way for the primary purpose of operating a railroad, and shall maintain unrestricted use of its property for current and future operations. In the event that relocation of facilities becomes necessary to accommodate the movement of rail traffic, Licensee, at its sole risk and expense, shall be required to relocate and/or remove facilities from the rail corridor of Licensor within a time frame mutually agreed.
- 2) CSX's consent applies to the design and construction of the utility located solely in the right-of-way owned by CSX and assures that CSX and AREMA Standard Specifications are met for tracks owned by others over which CSX operates. It is the utility Owner's (Applicant) responsibility to get permission from the property owner that is other than CSX to access and construct on their property.
- 3) Refer to the CSX's "<u>Design & Construction Standard Specifications Wireline Occupancies</u>" revised December 16, 2016 and "<u>Design & Construction Standard Specifications Pipeline Occupancies</u>" revised June 5, 2018 (4.1.2)
- 4) CSX's signal facilities and/or warning devices at proposed facility crossing, i.e. cantilevers, flashers, and gates are to be located prior to installation.
- 5) No entry or construction on CSX's railroad corridor is permitted until the utility encroachment review and approval process is completed, you are in receipt of a fully executed License agreement and you have obtained authority from the local Road Master.
- 6) At locations where open cut is permitted on CSX's right-of-way and/or railroad corridor, contractor must comply with CSX's D&C Standard Specifications section 4.1.7 Open Cut. Please reference this guidance for instructions on restoring site.
- 7) Soil that cannot be used or disposed on CSX's right-of-way must be properly disposed at a CSX approved disposal facility.
- 8) If bottom of the pit excavation(s) intersect the TREL, interlocking steel sheet piling, driven prior to excavation, must be used. Design plans and computations, sealed by a Licensed Professional Engineer, for steel sheet piles must be provided prior to construction for review and approval.
- 9) Manholes shall not be located on CSX's property where possible. At locations where this is not practical, including longitudinal occupancies, manholes shall be precast concrete sections conforming to ASTM Designation C 478, "Specification for Precast Concrete."
- 10) Pipeline encroachment shall be prominently marked at both sides of the CSX's property lines by durable, weatherproof signs located over the centerline of the pipe in accordance with CSX's D&C Standard Specifications.
- 11) If required, a dewatering plan in accordance with CSX's D&C Standard Specifications will be submitted to the CSX representative for review and approval prior to any dewatering operations.
- 12) Blasting is not permitted on CSX's property.
- 13) Abandoned pipelines shall be removed or completely filled with cement grout, compacted sand, or other methods, as approved by CSX. Abandoned manholes and other structures shall be removed to a minimum depth of 2 feet below finished grade and completely filled with cement grout, compacted sand, or other methods as approved by CSX.
- 14) For tunneling installations, a tunneling shield shall be used for all liner plate installations unless otherwise approved by CSXT.
- 15) Microtunneling boring machine (MTBM) must be configured with picks and disc cutters to excavate the encountered soils or rock while simultaneously supporting the face.
- 16) A fraction mitigation plan, (reference CSX's Fraction Mitigation Plan), shall be developed to address events such as inadvertent returns due to the loss of drilling fluids.
- 17) CSX does not grant or convey an easement for this installation.
- 18) The use of construction safety fencing is required when a CSX Flagman is not present. Distance of fencing from nearest rail to be determined by the CSX Roadmaster and shall be removed upon completion of the project.

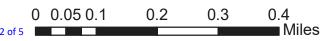
# City of Cumberland

# Property Purchase Request / General Location Map



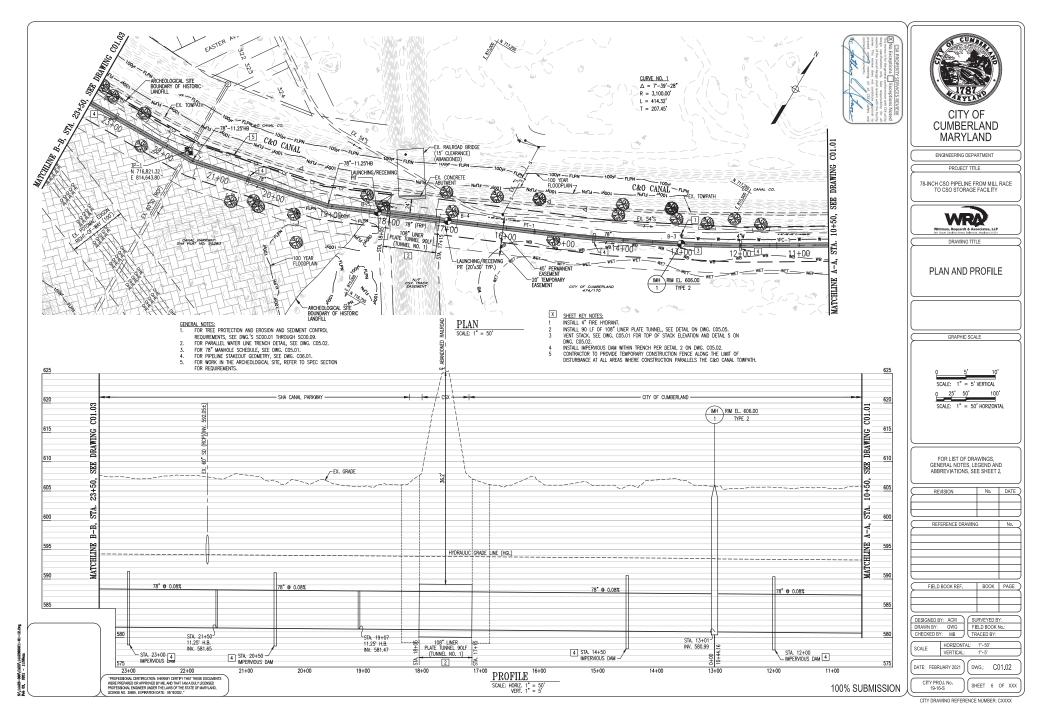
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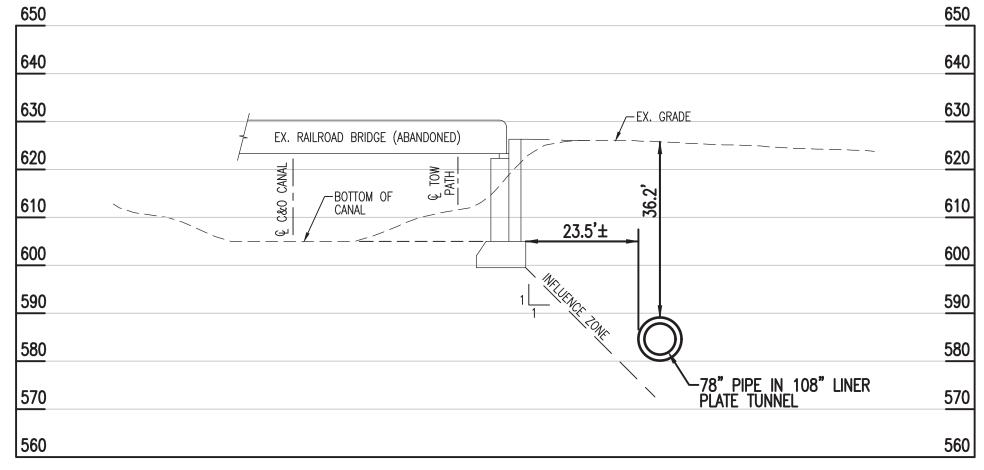












CSX922629

SCALE: 1" = 20

#### **NOTES:**

- 1. EXISTING RAILROAD BRIDGE IS ABANDONED. THE RAILS HAVE BEEN REMOVED.
- 2. ORIGINAL DESIGN DRAWINGS FOR THE BRIDGE ARE NOT AVAILABLE. CONCRETE BRIDGE ABUTMENT IS SHOWN BASED ON AT GRADE SURVEYED LOCATION AND THE B&O R.R. CO. CONCRETE ABUTMENT TYPICAL DETAIL FROM 1906 FOR BELOW GRADE STRUCTURE.
- 3. THE BRIDGE ABUTMENT LOCATION IS FOR ILLUSTRATION PURPOSES AND IS BASED ON BEST INFORMATION AVAILABLE PER NOTE 2. THE CONCRETE ABUTMENT AS SHOWN IS CONSIDERED TO BE THE MOST CONSERVATIVE, WITH A LARGER ZONE OF INFLUENCE.



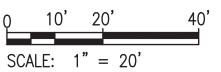




TABLE 1: TUNNEL 1 PIPING INFORMATION					
PIPELINE CONTENT DETAILS					
Commodity Description:	Combined Sewer Overflow Pipeline	Combined Sewer Overflow Pipeline			
Maximum Operating Pressure:	3 psi				
Is Commodity Flammable:	Yes No				
CARRIER/CASING PIPE DETAILS					
	Carrier Pipe	Casing Pipe			
Pipe Material:	Fiber Reinforced Polymer (FRP)	Steel			
Material Specifications&Grade:	ASTM D3263, Stiffness Class SN72, PN50	ASTM A1011 & AASHTO M 167			
Specified Minimum Yield Strength:	7,000 psi	28,000 psi			
Nominal Size Outside Diameter (Inches):	78-inches	108-inches			
Wall Thickness (Inches):	2.8	0.1664			
Type of Seam:	N/A	Lapped			
Type of Joint:	Push On	4-Flange, Bolts and nuts			
Tunnel Liner Plate Required:	No Yes				
Cathodic Protection:	No Yes Type:				
Protective Coating:	No Yes Type: Galvanized AASHTO M167				
Temp Track Support or Rip-Rap Req.:	No Yes Must Describe&Show on Drawings: N/A				

# **Council Agenda Summary**

Meeting Date: 4/6/2021

Key Staff Contact: Robert Smith, PE

#### Item Title:

CSX Facilities Encroachment Agreement for 78" Parallel Pipeline from Mill Race to CSO Storage Project, CSX Bridge near the Gene Mason Sports Complex.

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

The City of Cumberland must enter into a Facilities Encroachment Agreement with CSX in order to acquire authorization to install the new 78" Parallel Pipeline from Mill Race to CSO Storage. In addition to signing the Encroachment Agreement with CSX, the City of Cumberland is to pay a review and licensing fee in the total amount of \$23,300.00.

The location of the encroachment is the CSX bridge near the Gene Mason Sports Complex.

The project is budgeted for this fiscal year, and utilizes City (sewer) funds.

**Amount of Award:** \$23,300.00

Budget number: 003.399.SS2.63000

Grant, bond, etc. reference: N/A

#### File Attachments for Item:

. Order No. 26,776 - authorizing execution of a Facility Encroachment Agreement with CSX Transportation, Inc. for an area near the CSX Bridge near the Western MD Scenic Railroad, relative to the project to install a 78" Parallel Pipeline from Mill Race to the CSO Storage Tank (19-16-S)

- Order -

of the

Mayor and City Council of Cumberland

ORDER NO. <u>26,776</u> DATE: April 6, 2021

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

THAT, the Mayor be and is hereby authorized to execute a Facility Encroachment Agreement by and between CSX Transportation, Inc. and the Mayor and City Council of Cumberland for an area near the CSX Bridge near the Western Maryland Scenic Railroad, relative to the project to install a 78" Parallel Pipeline from Mill Race to the CSO Storage Tank (19-16-S)

Raymond M. Morriss, Mayor

#### FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and effective as of February 6, 2021, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and MAYOR AND CITY COUNCIL OF CUMBERLAND, a municipal corporation, political subdivision or state agency, under the laws of the State of Maryland, whose mailing address is 57 North Liberty Street, Cumberland, Maryland 21502, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) sixty-six inch (66") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Cumberland, Allegany County, Maryland, Baltimore Division, Cumberland Terminal Subdivision, Milepost BA-177.96, Latitude N39:38:43.:23, Longitude W78:45:48.63;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

#### 1. LICENSE:

- 1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:
- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including but not limited to Licensor's track(s) structure(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus, or any appurtenances thereto ("Licensor's Facilities") and any other facilities as now exist or which may in the future be located in,upon, over, under or across the property;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee and its agent or contractor ("Licensee's Contractor") with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

- 1.2 The term <u>Facilities</u>, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.
- 1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.
- 1.4 The term <u>Licensor Facilities</u>, as used herein shall include Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property.

#### 2. ENCROACHMENT FEE; TERM:

- 2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of TEN THOUSAND TWO HUNDRED AND 00/100 U.S. DOLLARS (\$10,200.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.
- 2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.
- 2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.
- 2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees it shall not assess Licensor any stormwater or drainage fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater or drainage fees assessed by any County or State agency managing such systems.

#### 3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's

particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

- 3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.
- 3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.
- 3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.
- 3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.
- 3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.
- 3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.
- 3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.
- 3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.
- 3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the

completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

#### 4. PERMITS, LICENSES:

- 4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" "Call Before You Dig" requirements.
- 4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

#### 5. MARKING AND SUPPORT:

- 5.1 With respect to any <u>subsurface</u> installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:
  - (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.
  - 5.2 After construction or maintenance of the Facilities, Licensee shall:
    - (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

#### 6. TRACK CHANGES:

- 6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.
- 6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

#### 7. FACILITY CHANGES:

- 7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.
- 7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

#### 8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's Facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor's Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

#### 9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

- 9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.
- 9.2 Licensee's Contractor shall hereby agree to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whosoever, arising out of resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.
- 9.3 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon

Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

- 9.4 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.
- 9.5 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.
- 9.6 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.
- 9.7 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.
- 9.8 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

#### 10. INSURANCE:

- 10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of
  - (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).
  - (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS

(\$5,000,000.00)in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOl@csx.com.

- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.
- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensor may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.
- 10.2 If Licensee's Contractor's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee's Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.
- 10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.
- 10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.
- 10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require Licensee's Contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

- ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.
- (B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.
- 10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

#### 11. GRADE CROSSINGS; PROTECTION SERVICES:

- 11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.
- 11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

#### 12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor's Facilities shall also be paid by Licensee.

- 12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.
- 12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

#### 13. DEFAULT, BREACH, WAIVER:

- 13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.
- 13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.
- 13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

#### 14. TERMINATION, REMOVAL:

- 14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.
- 14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to

Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

#### 15. NOTICE:

- 15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing <u>any</u> work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:
- a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link: https://propertyportal.csx.com/pub\_ps\_res/ps\_res/jsf/public/index.faces
- b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 301-759-6601.
- 15.2 All other notices and communications concerning this Agreement shall be addressed to <u>Licensee</u> at the address above, and to <u>Licensor</u> at the address shown on Page 1, c/o CSXT Contract Management, J180; <u>or</u> at such other address as either party may designate in writing to the other.
- 15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

#### 16. ASSIGNMENT:

- 16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.
- Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
- 16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.
- 16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

#### 17. TITLE:

- 17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.
- The term "license," as used herein, shall mean with regard to any portion of 17.2 the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.
- 17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.
- 17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

- 17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.
- Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.
- 17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.
- 17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

#### 18. GENERAL PROVISIONS:

- 18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.
- 18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.
- 18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.
- 18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.
- 18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

- 18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.
- 18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.
- 18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.
- 18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.
- This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto, each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

#### 19. CONTRACTOR'S ACCEPTANCE:

19.1 Licensee shall observe and abide by, and shall require Licensee's Contractors to observe and abide by the terms, conditions and provisions set forth in this Agreement. Prior to any commencement of work under this Agreement by Licensee's Contractor, Licensee shall require Licensee's Contractor to execute and deliver to Licensor the Contractor Acceptance form attached hereto as Schedule A to acknowledge Licensee's Contractor's agreement to observe and abide by terms and conditions of the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:	CSX TRANSPORTATION, INC.	
	By:	
	Print/Type Name:	
	Print/Type Title:	
Witness for Licensee:	MAYOR AND CITY COUNCIL OF CUMBERLAND	
	Ву:	
	Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.	
	Print/Type Name:	
	Print/Type Title:	
	Tax ID No.:	

#### Schedule "A"

#### **CONTRACTOR'S ACCEPTANCE**

This Amendment is and shall be a part of Agreement No. CSX923488, and is incorporated therein.

To and for the benefit of CSX TRANSPORTATION, Inc. (Licensor") and to induce Licensor to permit Contractor on or about Licensor's property for the purposed of performing work in accordance with the Agreement dated February 6, 2021, between Licensee and Licensor, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10 of the Agreement.

Witness for Licensor:	CSX TRANSPORTATION INC.
	By:
	Print/Type Name:
	Print/Type Title:
Witness for Licensee's Contractor	LICENSEE'S CONTRACTOR
	By:
	NAME:
	TITLE:
	DATE:



Account/Contract No.
Tracking No.

**Page** 

CSX923488 1042244

1 of 1

Invoice Date 02/06/2021

#### Customer

MAYOR AND CITY COUNCIL OF CUMBERLAND 57 N LIBERTY ST CUMBERLAND, MD 21502

Please submit a copy of this statement with payment submission to the "Remit To" address shown below.

#### Fees-At-A-Glance

Amount Due in U.S. dollars

16200.0

#### **Fees Summary**

Review Fee	\$6,000.00
Railroad Protective Liability (Only if RPL is not provided)	
Expedited Review Fee	
License Fee	\$10,200.00
Sales Tax*	
Money on File	

<sup>\*</sup>Florida Sales tax applies to the license fee

Total Current Fees in U.S. dollars

16200.0

CSX Federal ID No. CSX Canadian ID No. CSX Quebec ID No.

Please remit payment to:

**Legal Address:** 500 Water Street, J180 Jacksonville, FL 32202

Questions? Contact:

54-6000720 105203095 RC 0001 1022434469 IC 0001

**CSX Transportation, Inc.** 

Mailing Address: 500 Water Street, J180 Jacksonville, FL 32202 Anne\_Jackson@csx.com 904.279.3953

# **Council Agenda Summary**

Meeting Date: 4/6/2021

Key Staff Contact: Robert Smith, PE

#### Item Title:

CSX Facilities Encroachment Agreement for 78" Parallel Pipeline from Mill Race to CSO Storage Project, CSX Bridge near the Western Maryland Scenic Railroad.

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

The City of Cumberland must enter into a Facilities Encroachment Agreement with CSX in order to acquire authorization to install the new 78" Parallel Pipeline from Mill Race to CSO Storage. In addition to signing the Encroachment Agreement with CSX, the City of Cumberland is to pay a review and licensing fee in the total amount of \$16,200.00.

The location of the encroachment is the CSX bridge near the Western Maryland Scenic Railroad.

The project is budgeted for this fiscal year, and utilizes City (sewer) funds.

**Amount of Award:** \$16,200.00

Budget number: 003.399.SS2.63000

Grant, bond, etc. reference: N/A

#### File Attachments for Item:

. Order 26,777 - authorizing execution of a grant agreement between the Downtown Development Commission and the MD Department of Housing and Community Development for the receipt of \$55,461 through the DHCD Maryland Strong Economic Recovery Initiative to be used to award downtown businesses with Covid economic relief funds

- Order -

of the

# Mayor and City Council of Cumberland MARYLAND

**DATE:** April 6, 2021

ORDER NO. <u>26,777</u>

ORDERED, By the Mayor and City Council of Cumberland, Maryland
THAT, the City Administrator be and is hereby authorized to execute a grant
agreement by and between the Cumberland Downtown Development Commission and the
MD Department of Housing and Community Development for the receipt of Fifty-Five
Thousand, Four Hundred Sixty-one Dollars (\$55,461) through the DHCD Maryland Strong
Economic Recovery Initiative to be used for
Darman I M. Mannier Marra
Raymond M. Morriss, Mayor

**Funding Requested** 

Use of Funds

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**Funding Requested** 

Use of Funds

\$0

**Total Requested Amount:** 

\$100,000

#### **DHCD Email Opt-in**

This form was changed on Nov 20, 2020. View original version.



#### Award Agreement to Awardee

Based upon your application and supporting documentation (collectively, the "Application") for a Maryland Strong Economic Recovery Initiative (the "Program") grant to the Maryland Department of Housing and Community Development, a principal department of the State of Maryland (the "Department"), the Department has determined that the entity identified below as the grantee (the "Grantee") is eligible for a grant in the amount set forth below (the "Grant") from the State funds allocated to the Department for the Program and federal funds allocated to the Department pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No: 116-136), or from such other source of funds that the Department determines is appropriate.

The "Grantee" and the "Grant" are as follows:

Grantee:

Grant:

Mayor & City Council of Cumberland, Maryland

\$55,461

By signing this agreement (this "Agreement"), Grantee agrees as follows:

- 1. The information set forth in the Application is and remains true and correct.
- 2. This Agreement has been duly authorized, executed, and delivered by Grantee, and is the valid and legally binding act and agreement of Grantee. The person signing this Agreement on behalf of Grantee has the requisite authority to bind Grantee as set forth in this Agreement.
- 3. Grantee is, and will remain, in compliance with federal, state of Maryland (the "State"), and local laws, including, but not limited to, all applicable laws prohibiting discrimination in employment, housing, and credit practices on the basis of race, color, religion, ancestry, creed or national origin, sex, marital status, physical or mental handicap, sexual orientation, or age.
- 4. In connection with the Grant and the Application, the Department has the right to audit the books and records of Grantee and Grantee shall give the Department access to Grantee's books and records for a period of 5 years following the disbursement of the Grant proceeds.
- 5. Within 30 days after Grantee expends the Grant, Grantee shall submit to the Department a final report, in a manner and form to be determined by the Department, that contains the information required by the Department. In addition, Grantee shall provide the Department with such

additional records, reports, and other documentation related to the Grant as may be required by the Department.

- 6. If any information or certification in the Application, in any attachments to the Application, or in this Agreement is false or materially misleading, or Grantee fails to meet the terms set forth in this Agreement, Grantee shall repay the amount of the Grant to the Department. If the Department demands repayment of all or any portion of the Grant under any of the terms of this Agreement and Grantee fails to repay the Grant amount within 15 days after demand for repayment is sent by the Department to Grantee, interest shall accrue on the amount of the unpaid Grant at the rate of 12% per annum beginning on the 15th day after demand was made until the date that the Grant and accrued interest are fully repaid.
- 7. In addition to exercising any or all of the rights and remedies contained in this Agreement, the Department at any time may proceed to protect and enforce all rights available to the Department by suit in equity, action at law, or by any other appropriate proceeding.
- 8. Grantee certifies that Grantee is (a) a local government that has been designated by the State as a main street organization (a "Designated Main Street Local Government"), or an entity that is Maryland-based or has operational responsibilities for a Maryland-based entity (an "Eligible Entity"); (b) has or will experience financial stress or disrupted operations due to COVID-19 between the period of March 1, 2020 through December 30, 2020 as represented by reduced revenue and/or increased expenses; and (c) is currently operating and open and intends to remain open.
- 9. If Grantee is an Eligible Entity, Grantee certifies that it (a) (i) has been designated by the State (or by a State-designated local government or Baltimore City) as a main street organization ("Main Street Nonprofit Organizations," and, together with the Designated Main Street Local Governments, the "Designated Main Street Entities"), (ii) is a live performance entertainment venue, a promoter that operates on behalf of live performance entertainment venues, or an independently owned movie theater (each, an "Entertainment Venue"), or (iii) a nonprofit tourism venue ("Tourism Venue"); (b) is in good standing with the Maryland State Department of Assessments and Taxation ("SDAT") or, if a general partnership or sole proprietorship, is registered with SDAT; and (c) was established before March 9, 2020.
- 10. If the Eligible Entity set forth in Section 9 is also a nonprofit entity, Grantee certifies that it: (a) is in compliance with the Maryland Solicitations Act, including any required registration with the Maryland Office of the Secretary of State and is, and shall remain, in compliance with all requirements of that registration; (b) is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and related Treasury regulations (as any of them may be amended, the "IRC"); (c) has a current exempt status that has not been adversely modified, limited, or revoked; (d) has not substantially changed the facts and circumstances which form the basis of Grantee's tax-exempt letter as represented to the Internal Revenue Service; and (e) shall maintain Grantee's status as a tax-exempt entity under the IRC.
- 11. If Grantee is a Tourism Venue, all Grant funds must be expended on or before December 30, 2020. If Grantee is an Entertainment Venue or a Designated Main Street Entity, all Grant funds must be expended on or before June 30, 2021. Any Grant funds not expended by the applicable date set forth in this Section 11 shall be returned to the Department immediately.
- 12. Grantee will use the Grant funds only for the purposes set forth in the Application, and such purposes shall be for incurred losses or increased expenses as a direct result of the COVID-19 pandemic. If Grantee is a Designated Main Street Entity, at least 85% of the Grant funds must be used for sub-grants to support the entities located within the geographic area designated as its main street that have incurred losses or increased expenses as a direct result of the COVID-19 pandemic. Grantee may use up to 15% of the Grant funds for Grantee's operating expenses related to administering such sub-grants, including, but not limited to, expenses for existing staff administering the sub-grants or such other of Grantee's operating expenses related to Grantee's support of the entities described in this Section.
- 13. The Grant may not be used to pay for activities that are part of a particular religious practice. Therefore, if Grantee is, or is related to, a religious or faith-based organization, Grantee shall use Grant funds solely to support its nonsectarian activities (for example, childcare, a food pantry, or providing meeting space for self-help groups).
- 14. Grantee may receive only one grant from the Program. Grantee agrees that if at any time it receives, or has received, more than one grant from the Program, Grantee shall repay the Department the amount of all additional grants received.
- 15. Grantee is in compliance with all of the requirements of the Program.
- 16. Grantee will cooperate fully with any requirements of the federal or State governments related to the source of the Grant funds and will repay any Grant funds which are required to be repaid by the federal or State governments.
- 17. (a) Grantee releases the Department from, agrees that the Department shall not have any liability for, and agrees to protect, indemnify, and hold the Department harmless from and against any and all liabilities, suits, actions, claims, demands, losses, expenses, and costs of every kind and nature incurred by, or asserted or imposed against the Department as a result of or in connection with the Grant. All monies expended by the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, including reasonable attorney's fees, together with interest at a rate not to exceed the maximum interest rate permitted by law, shall constitute an indebtedness of Grantee and shall be immediately and without notice due and payable by Grantee to the Department.
- (b) If Grantee is a local government, any indemnification or other obligation to reimburse or compensate the Department provided by the Grantee pursuant to this Agreement exists only to the extent permitted by law and is subject to appropriations as well as the notice requirements and

damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (2006 Repl. Vol.) (the "LGTCA"); Md. Code Ann. Art. 25A, Sec. 1A (2005 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-509 (2006 Repl. Vol.), all as amended from time to time (together, the "Local Government Indemnification Statutes"), and is not to be deemed as a waiver of any immunity that may exist in any action against a government agency for its officers, agents, volunteers and employees.

- 18. The Department intends to make available to the public certain information regarding the Grant and the Grantee. In addition, the Department may be required to disclose information about the Grant to the Board of Public Works and the Maryland General Assembly and may desire to disclose such information to other State officials or their staff, local government officials or their staff, and other lenders and funding sources. The Department is also required to disclose information in response to a request for information made pursuant to the Public Information Act, §4-101 et seq. of the General Provisions Article, Annotated Code of Maryland (the "PIA"). Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the date and amount of the Grant; the terms of the Grant; use of funds; information contained in the Application; and a copy of the Application. Certain information may be exempt from disclosure under the PIA. Requests for disclosure of information made pursuant to the PIA are evaluated on an individual basis by the Department.
- 19. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
- 20. The parties agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes, and shall have the same force and effect as an original handwritten signature. Without limitation, "electronic signature" shall include: faxed versions of an original handwritten signature; electronically scanned and transmitted versions (e.g., via PDF) of an original handwritten signature; and any typed signature (including any electronic symbol or process attached to, or associated with, the Agreement) adopted by the parties with the intent to sign the Agreement.
- 21. The award of this Grant and the terms of this Agreement shall be construed in accordance with and governed by the laws of the State without regard to the State's conflict of laws provisions.
- 22. Disbursement of Grant proceeds is in the absolute and sole discretion of the Department and is subject to the continuing availability of funds for such purpose and compliance with all applicable laws.
- 23. CONFESSION OF JUDGMENT. IF THE PRINCIPAL AMOUNT OF THE GRANT, OR ANY OTHER PAYMENT DUE UNDER THIS AGREEMENT IS NOT PAID WHEN DUE, WHETHER BY MATURITY, ACCELERATION OR OTHERWISE, GRANTEE HEREBY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR CLERK OF ANY COURT OF RECORD IN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR AND, WITH OR WITHOUT DECLARATION FILED, CONFESS JUDGMENT AGAINST IT AND IN FAVOR OF THE HOLDER OF THIS AGREEMENT (THE "HOLDER"), AT ANY TIME, WITHOUT A PRIOR HEARING, AND IN THE AMOUNT OF THE OUTSTANDING PRINCIPAL BALANCE OF THIS AGREEMENT, ALL ACCRUED AND UNPAID INTEREST, OUTSTANDING FEES AND LATE CHARGES, AND ALL OTHER AMOUNTS PAYABLE TO THE HOLDER UNDER THE TERMS OF THIS AGREEMENT, INCLUDING COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES INCURRED AS A RESULT OF, RELATED TO, OR IN CONNECTION WITH ANY DEFAULT UNDER THIS AGREEMENT AND ANY EFFORTS TO COLLECT ANY AMOUNT DUE UNDER THIS AGREEMENT OR ANY JUDGMENTS ENTERED THEREON. THE AUTHORITY AND POWER TO APPEAR FOR AND ENTER JUDGMENT AGAINST ANY OBLIGOR ON THIS AGREEMENT SHALL NOT BE EXHAUSTED BY ONE OR MORE EXERCISES THEREOF OR BY ANY IMPERFECT EXERCISE THEREOF; SUCH AUTHORITY MAY BE EXERCISED ON ONE OR MORE OCCASIONS OR FROM TIME TO TIME IN THE SAME OR DIFFERENT JURISDICTION AS OFTEN AS HOLDER SHALL DEEM NECESSARY AND DESIRABLE, FOR ALL OF WHICH THIS AGREEMENT SHALL BE SUFFICIENT WARRANT; IF ENFORCEMENT OF THIS AGREEMENT RESULTS IN HOLDER OBTAINING A MONEY JUDGMENT AGAINST ANY OBLIGOR ON THIS AGREEMENT, HOLDER'S RIGHT TO APPEAR AND CONFESS JUDGMENT FOR AMOUNTS DUE, INCLUDING THE PAYMENT AND REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS ARISING AFTER THE ENTRY OF JUDGMENT (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COSTS INCURRED TO COLLECT THE JUDGMENT) SHALL NOT BE EXTINGUISHED BY OR MERGED INTO ANY SUCH JUDGMENT BUT SHALL SURVIVE THE JUDGMENT AS A CLAIM AGAINST ANY SUCH OBLIGOR. GRANTEE HEREBY WAIVES AND RELEASES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL PROCEDURAL ERRORS AND ALL RIGHTS OF EXEMPTION, APPEAL, STAY OF EXECUTION, INQUISITION, AND EXTENSION UPON ANY LEVY ON REAL ESTATE OR PERSONAL PROPERTY TO WHICH GRANTEE MAY OTHERWISE BE ENTITLED UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR OF ANY STATE OR POSSESSION OF THE UNITED STATES OF AMERICA NOW IN FORCE AND WHICH MAY HEREINAFTER BE ENACTED.

This Section 23 does not apply to Grantees that are local governments.

- 24. By signing this Agreement Grantee is also requesting that the Department disburse the Grant funds to Grantee and confirming that all of the information in Grantee's form W-9 submitted at time of Application and in this Agreement is correct.
- 25. This Agreement must be accepted, signed and returned to the Department within 5 business days after the date this Agreement is received by the Grantee or this Agreement will become null and void.
- 26. This Agreement is effective as of the date it is executed by the Department (the "Effective Date").

Each of the parties hereto has caused this Agreement to be executed under seal and as of the Effective Date.

#### Grantee

Mayor & City Council of Cumberland, Maryland

#### Title of authorized signee

City Administrator

By:

# Jeffrey Rhodes

I agree to be legally bound by this document.

(SEAL)

Today's Date

Mar 22, 2021

will specifically benefit Main Street businesses. funding for operating resources, please put 0. NOTE: No more than 15% of the total requested funds may be used for operating support that How much of the total amount of your grant request is for Main Street Operating Resources to Support Businesses? If you are not requesting

\$0

# **Grant Narrative**

Requested funding amounts should be based on the applicant's ability to:

- 1. Document the impact and leverage of their existing or planned COVID-19 relief fund for businesses AND/OR
- 2. Document the demand for additional operating resources (training, technical assistance and/or marketing) to support the Main Street's ability to support local businesses AND
- 3. Make relief funds and/or operating resources available to businesses responsibly and as soon as possible

Operations Summary: Please provide a brief description for **EACH** of the following:

- (a) Applicant's recent accomplishments in the in the last twelve months and plan for operations in Calendar Year 2021,
- in Calendar Year 2021, AND (b) Information about the applicant's efforts to provide support to Main Street businesses since the COVID-19 pandemic began and plan for operations
- operate and produce economic impact in Maryland. (c) Applicant's current financial condition and ability to continue operations. This funding is aimed to support organizations that can continue to

#### File Attachments for Item:

. Order 26,778 - authorizing the execution of an Arts and Entertainment Districts Operating Support Letter of Agreement for the period July 1, 2021 - June 30, 2022, defining the City's role and estimated in-kind support of \$500 for the Cumberland Arts and Entertainment District

- Order -

**Mayor and City Council of Cumberland** 

MARYLAND

ORDER NO. <u>26,778</u>

**DATE:** April 6, 2021\_

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

THAT, the Mayor be and is hereby authorized to execute an FY22 Arts and

Entertainment Districts Operating Support Letter of Agreement for the period July 1,

2021 – June 30, 2022, to define the City's role and estimated in-kind support of \$500 (Five

Hundred Dollars) for the Cumberland Arts and Entertainment District.

Raymond M. Morriss, Mayor

### Arts & Entertainment Districts Operating Support Letter of Agreement FY2022

District Name: (Limberland	Support Period: July 1, 2021-June 30, 2022
agreements between the county or municipal agency, office, position, or organization(s) de	s required in order for the management entity to
approved by the Secretary of Comme designate a local government agency out the district's activities and plans, and Local Government(s): (111)	responsibility of the local government that was erce for designation. The local government must office, position, or 501(c)(3) non-profit(s) to carry as submitted to MSAC.
Program: to develop, promote, and su communities throughout Maryland that	Is work to meet the goals of the A&E Districts upport diverse artistic and cultural centers in at preserve a sense of place, provide unique local reconomic revitalization and neighborhood pride.
A&E District Goals  - The A&E District's management entity district's application for designation, rewhichever is most recent.	/ will work to meet the goals submitted in the edesignation, or general operating support,
as outlined below (complete all that a) - Funding for Operations and Ac - Funding for Programs or Proje - Estimated Value of In-Kind Su - Description of In-Kind S - AGMODISTICAL If a management entity is a 501(c)(3) if Understanding or Contract between the designation and the non-profit outlining	povernment will provide support for the A&E District oply); dministration: \$

#### A&E Board or Advisory Board

Signature:

- The local government or management entity(les) will maintain a Board of Directors or Advisory Board of at least five (5) individuals to oversee and/or advise on A&E District activities. A Board or Advisory Board should be composed of community members who represent the diversity of the populations in the district and its surrounding communities

#### P

as well as the various constituencies (artists, arts organization the district serves.	is, businesses, etc.) that
Paid Employee  The local government or management entity will employ at least minimum of 15 hours per week whose job responsibilities Including District activities.  Employee Name: Title B. Westendorff Title: Executive Nuccion Employer: Alicany Evis Council	
Attachment A outlines the expectations of A&E Districts and Mare meant to guide the relationship between districts and MSA.	
Signatures Local Government CEO(s)  X Name: Kaymond M. Marwing Mayor	= }
Signature: Raymond M. Morriss, Mayor  Name:	Date: 3/30/2/
Name:	Date:
Management Entity(ies) Leader(s) Name: West Control of the Control	Date:
Signature: Jun 2	Date: 3/30/31

Date: