



MAYOR

Brian K. Grim

CITY ADMINISTRATOR

Jeff Rhodes

CITY SOLICITOR

Michael Scott Cohen

COUNCIL

Seth D. Bernard

David Caporale

Richard J. "Rock" Cioni

Eugene T. Frazier

CITY CLERK

Marjorie A. Woodring

AGENDA

**Mayor and City Council of Cumberland
City Hall Council Chambers
Room 212
6:15 P.M.**

DATE 10/3/2017

***Pledge of Allegiance**

I. ROLL CALL

II. CERTIFICATES, AWARDS AND PRESENTATIONS

- (A) Mayor Grim to administer the Oath of Office for the Cumberland Police Department to Officers Todd D. Pressman, Derrick N. Pirolozzi, and Ashlee N. Stumbaugh

III. APPROVAL OF MINUTES

(A) Routine

1. Statement regarding complaint filed with the Open Meetings Compliance Board
2. Approval of the Regular Session Minutes of August 15, 2017

(B) Administrative / Executive

1. Approval of the Closed Session Minutes of July 18 and August 15, 2017

IV. NEW BUSINESS

(A) Orders (Consent Agenda)

1. Order authorizing the Chief of Police to accept a Maryland Highway Safety Office Grant for FY18 in the amount of \$2,000 for police overtime concentrating on aggressive driving, distracted driving, and DUI enforcement for the project period 10/1/17 - 9/30/18
2. Order authorizing the execution of a Contract of Sale with Howard M. Bohn and Mary Kathleen Bohn for the City's purchase of 6 Virginia Avenue for the price of \$52,500 which shall be paid by means of a forgivable loan towards the Bohn's purchase of 911 Michigan Avenue, providing for certain contingencies of sale, and authorizing the City Administrator and City Solicitor to execute documents pertaining to the transfer

3. Order authorizing the Mayor to execute a Main Street Maryland Letter of Agreement with the MD Department of Housing and Community Development outlining terms by which the City of Cumberland shall participate in the program
4. Order rescinding Order No. 26,190 due to an error in the award amount of \$301,678.53 and re-approving the proposal from The EADS Group, Inc. for the engineering design of the New Baltimore Street Town Center Project (12-16-M) in the estimated contract price of \$314,796.53 and authorizing execution of an Agreement for Professional Services regarding the project
5. Order authorizing execution of an Employment Agreement with Jeffrey D. Rhodes for the position of City Administrator to be effective October 3, 2017 through June 30, 2021 with automatic one (1) year renewals unless terms are renegotiated per terms of the agreement

V. PUBLIC COMMENTS

All public comments are limited to 5 minutes per person

VI. ADJOURNMENT



Regular Council Agenda
October 3, 2017

Description

Mayor Grim to administer the Oath of Office for the Cumberland Police Department to Officers Todd D. Pressman, Derrick N. Piroluzzi, and Ashlee N. Stumbaugh

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
October 3, 2017

Description

Statement regarding complaint filed with the Open Meetings Compliance Board

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
October 3, 2017

Description

Approval of the Regular Session Minutes of August 15, 2017

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



MAYOR
Brian K. Grim

CITY ADMINISTRATOR
Jeffrey D. Rhodes

CITY SOLICITOR
Michael Scott Cohen

COUNCIL
Seth D. Bernard
David J. Caporale
Richard J. Cioni, Jr.
Eugene T. Frazier

CITY CLERK
Marjorie A. Woodring

MINUTES

MAYOR AND CITY COUNCIL OF CUMBERLAND
City Hall Council Chambers
Room 212
6:15 p.m.

DATE: 8/15/17

***Pledge of Allegiance**

I. ROLL CALL

The meeting convened at 6:20 p.m.

PRESENT: Brian K. Grim, President; Council Members Seth Bernard, David Caporale, Richard Cioni, Eugene Frazier

ALSO PRESENT: Marjorie Woodring, Assistant City Administrator; Michael S. Cohen, City Solicitor; Charles Hinnant, Chief of Police, Donald Dunn, Fire Chief

II. CERTIFICATES, AWARDS AND PRESENTATIONS

- (A) Presentation from David Hall, Order of the Eastern Star, to the Cumberland Police and Fire Departments in recognition of their work as first responders

David Hall, representative of the Order of the Eastern Star, discussed the service project being sponsored by the Eastern Star to honor first responders for the important work they do. He presented Police Chief Hinnant and Fire Chief Dunn with a plaque in recognition of their service to the community.

- (B) Presentation of the "The Mason Cup" to the Mayor and City Council in preparation for the U.S. Marble Championship event to be held on August 26th at the Proudfoot Marble Rings in Constitution Park

Renee Mawhinney Truly announced that the U.S. Marbles Championship, known as The Mason Cup, will be held in Cumberland and hosted jointly by the Cumberland Marbles Program and the Cumberland Parks & Recreation Department on August 26 and 27 at the Proudfoot Marbles Ring in Constitution Park. Ms. Mawhinney shared that the 3-foot tall Mason Cup was named in honor of Cumberland resident and former Parks & Recreation Director Eugene C. Mason. Ms. Mawhinney presented the Mason Cup to the Mayor and Council and advised that it would make its way to the park prior to the tournament. In the meantime, she asked that the Cup be displayed

in City Hall, which the Mayor and Council agreed to. Councilman Bernard invited Ms. Mawhinney to the next Recreation Board meeting to talk about the tournament.

III. DIRECTOR'S REPORT

(A) Fire

1. Fire Department monthly report for July, 2017

Item Action: Approved

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

(B) Public Works

1. Utilities Division & Central Services monthly report for July, 2017

Item Action: Approved

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

2. Maintenance Division monthly report for July, 2017

Item Action: Approved

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

IV. APPROVAL OF MINUTES

(A) Routine

1. Approval of the Regular Session Minutes of June 20, 2017

Item Action: Approved

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

(B) Administrative / Executive

1. Summary Statement of the Closed Meeting held August 15, 2017

Mayor Grim read.....

2. Approval of the Closed Session Minutes of June 6, 2017

Item Action: Approved

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

V. NEW BUSINESS

(A) Orders (Consent Agenda)

Item Action:

Ms. Woodring reviewed each item on the Consent Agenda prior to vote and Mayor Grim called for questions or comments. Motion to approve Consent Agenda Items 1-5 was made by Caporale, seconded by Cioni, and was passed on a vote of 5-0.

1. Order authorizing Special Taxing District Residential Exemptions for the 2017-2018 tax year for 27 N. Centre St. in the amount of \$413.59, 107 S. Centre St. in the amount of \$320.70, and 33 N. Centre Street in the amount of \$711.95

ORDER NO. 26,169

2. Order authorizing the abatement of 2017-2018 taxes for City-owned properties containing cellphone towers at 600 Bishop Walsh Road, Eleanor Terrace, and Seneca Avenue

ORDER NO. 26,170

3. Order approving the award of \$10,000 to the Central Business District Facade Improvement Program project application for 45 North Centre Street, owned by Daniel Rhee, to be funded through the State of Maryland Community Legacy Program

ORDER NO. 26,171

4. Order authorizing the Chief of Police to sign a Memorandum of Understanding with the Family Crisis Resource Center, Inc. (FCRC) pertaining to the provision of security for supervised visitation and exchange for the period of June 1, 2017 through July 30, 2018, with FCRC reimbursing the City for services rendered in the amount not to exceed \$14,583

ORDER NO. 26,172

5. Order authorizing execution of an Employee Assistance Program Service Agreement with the Western MD Health System Corp. to provide assistance services to City employees and employee's spouses and dependents for a 1- year term retroactive to July 1, 2017 at the cost of \$27.00/year per employee

ORDER NO. 26,173

(B) Letters, Petitions

1. Request from Meghan O'Connor, Activism Coordinator for the Institute for Justice, to close Emily Street on Saturday, September 23, 2017 from 12:00 p.m. until 4:00 p.m. for the purpose of a block party

The letter was acknowledged and entered into public record. It was the consensus of the Mayor and Council to approve the use of the public right of way for the event

2. Letter from Jennifer Spriggs, Programming Director for the Allegany County Library System, requesting permission to close Seymour Street in front of the South Cumberland Library's main entrance on September 15, 2017 from 4:00 p.m. - 9:00 p.m. for the purpose of a block party

The letter was acknowledged and entered into public record. It was the consensus of the Mayor and Council to approve the use of the public right of way for the event

VI. PUBLIC COMMENTS

All public comments are limited to 5 minutes per person

Wayne Hedrick, 206 Oak Street, asked how much the City had invested in the Cumberland Economic Development Corporation and whether the abatement of CEDC taxes at the last meeting was in addition to that amount. He was advised that the budgeted amount for FY18 had been reduced to \$300,000 and the tax abatement was in addition to that.

Paul Notarianni 819 Fayette Street, raised several questions regarding the Cumberland Economic Development Corporation, stating that although the board of directors pay \$5,000 to participate in the corporation, the CEDC's articles of incorporation allow the directors to be compensated by the corporation. He questioned how much they were being paid back. Mr. Cohen advised that he did not have personal knowledge of the CEDC but did know that it was not unusual for by laws for corporations to have such provisions. Mr. Notarianni stated that his concern was that the Times News portrayed the board as altruistic members and questioned Council as to their knowledge of certain CEDC actions.

Carey Walker, 201 S. Massachusetts Avenue, advised that he had written a letter to the Mayor and Council in June with questions regarding the City's street paving priority list and had not yet received a response. Mr. Walker asked several questions regarding the criteria used to determine the priority list for street paving, noting several that were not listed that he felt should be a priority. Council advised that they would make sure he received answers to his questions.

VII. ADJOURNMENT

With no further business at hand, the meeting adjourned at 6:47 p.m.

Minutes approved on _____

Brian K. Grim, Mayor _____

ATTEST: Marjorie A. Woodring, City Clerk _____



Regular Council Agenda
October 3, 2017

Description

Approval of the Closed Session Minutes of July 18 and August 15, 2017

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

Mayor and City Council of Cumberland

Closed Session Minutes

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

Second Floor Conference Room

Tuesday, July 18, 2017

5:30 p.m.

PRESENT: Brian K. Grim, President; Council Members Seth Bernard and Eugene T. Frazier

ABSENT: Council Members David Caporale and Richard Cioni

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

MOTION: Motion to enter into closed session to discuss negotiation issues pertaining to the bargaining agreement with the International Association of Fire Fighters (IAFF) #1715 was made by Councilman Bernard, seconded by Councilman Frazier, and was passed on a vote of 3-0

Annotated Code of Maryland, State Government

- Section 10-508 (a) (9): to conduct collective bargaining negotiations or consider matters that relate to negotiations

Minutes approved: _____

Brian K. Grim, Mayor _____

Mayor and City Council of Cumberland

Closed Session Minutes

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

Second Floor Conference Room

Tuesday, August 15, 2017

5:30 p.m.

PRESENT: Brian K. Grim, President; Council Members Seth Bernard, David Caporale, Richard Cioni, and Eugene T. Frazier

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

MOTION: Motion to enter into closed session to discuss amendments to the City Administrator’s contract and to confer with the City Solicitor regarding a pending legal matter was made by Councilman Frazier, seconded by Councilman Cioni, and was passed on a vote of 5-0.

Annotated Code of Maryland, State Government

- Section 10-508 (a) (1): to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals;
- Section 10-508 (a) (7): to consult with counsel to obtain legal advice on a legal matter

Minutes approved: _____

Brian K. Grim, Mayor _____



Regular Council Agenda
October 3, 2017

Description

Order authorizing the Chief of Police to accept a Maryland Highway Safety Office Grant for FY18 in the amount of \$2,000 for police overtime concentrating on aggressive driving, distracted driving, and DUI enforcement for the project period 10/1/17 - 9/30/18

Approval, Acceptance / Recommendation

- Budgeted

- 1st Reading
- 2nd Reading
- 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

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

ORDER NO. _____

DATE: October 3, 2017

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

THAT, the Chief of Police be and is hereby authorized to execute a Project Agreement by and between the Cumberland Police Department and the Maryland Highway Safety Office of the State Highway Administration (MHSO) to accept a 2018 Maryland Highway Safety Grant for Two Thousand Dollars and No Cents (\$2,000.00) for police overtime support concentrating on aggressive driving, distracted driving, and DUI enforcement for the project period October 1, 2017 through September 30, 2018.

Mayor Brian K. Grim

Project Title: Cumberland Police Department 2018 Highway Safety Grant
Project No. LE-Cumberland PD-2018-116



Maryland
Highway
Safety
Office

PROJECT AGREEMENT
One Orchard Road, Second Floor
Glen Burnie, MD 21060
PHONE 410-787-4050 FAX 410-787-4020

The formal approval of this Project Agreement and the obligation of funds to it are contingent upon the availability of anticipated federal funds, as determined by Congress, Maryland statute, or other federal or state action.

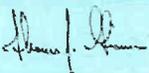
PROJECT TITLE: Aggressive Driving	FOR MHSO USE ONLY
	PROJECT NUMBER: LE-Cumberland PD-2018-116
PROJECT AGENCY: Cumberland Police Department	
PROJECT AGENCY ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FUND RECIPIENT: Cumberland Police Department	
FUND RECIPIENT ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FEDERAL IDENTIFICATION NUMBER: 52-6000786	

The undersigned agree that the Project Agency will carry out the Project within the dates of the Project Period, in accord with the general programmatic and financial requirements set forth in the agreement, and in compliance with the Project Conditions. Reimbursement is limited to actual eligible expenditures, the total of which is not to exceed the amount of Funds Obligated from MHSO. Furthermore, the Project Agency certifies that it is eligible under grant guidelines to receive grant funds; can accept a reimbursable grant; can successfully implement the project at the indicated funding level; and accepts the provisions of the entire Agreement including its Project Conditions. Costs cannot be incurred prior to the Project Start Date listed below.

BUDGET CATEGORIES	MHSO FUNDS
Salary and Benefits	\$0.00
Law Enforcement Overtime	\$500.00
Training / Conference and Accommodations	\$0.00
Mileage	\$0.00
Contractual Services	\$0.00
Equipment	\$0.00
Other Direct Costs	\$0.00
Indirect Costs	\$0.00
Total	\$500.00

The Project Director and Authorizing Official signing below cannot be the same person, nor can they be the Financial Official listed in the grant.

PROJECT DIRECTOR & AUTHORIZING OFFICIAL SIGNATURES			
PROJECT DIRECTOR		AUTHORIZING OFFICIAL	
NAME: Chuck Ternent		NAME: Charles Hinnant	
TITLE: Lieutenant		TITLE: Chief	
AGENCY: Cumberland Police Department		AGENCY: Cumberland Police Department	
ADDRESS:		ADDRESS:	
PHONE: (301) 759-6475	FAX:	PHONE: (301) 759-6475	FAX:
E-MAIL: chuck.ternent@cumberlandmd.gov		E-MAIL: charles.hinnant@cumberlandmd.gov	
SIGNATURE & DATE:		SIGNATURE & DATE:	
Chuck Ternent (Electronically Signed) 08/08/2017		Charles Hinnant (Electronically Signed) 08/08/2017	

FOR MHSO USE ONLY	
PROJECT PERIOD START DATE: 10/01/2017	FUNDS OBLIGATED FROM MHSO:
PROJECT PERIOD END DATE: 09/30/2018	\$500.00
MHSO CHIEF APPROVAL (SIGNATURE & DATE)	
 09/20/2017	



Maryland
Highway
Safety
Office

PROJECT AGREEMENT
One Orchard Road, Second Floor
Glen Burnie, MD 21060
PHONE 410-787-4050 FAX 410-787-4020

The formal approval of this Project Agreement and the obligation of funds to it are contingent upon the availability of anticipated federal funds, as determined by Congress, Maryland statute, or other federal or state action.

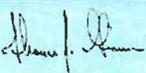
PROJECT TITLE: Distracted Driving	FOR MHSO USE ONLY
	PROJECT NUMBER: LE-Cumberland PD-2018-117
PROJECT AGENCY: Cumberland Police Department	
PROJECT AGENCY ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FUND RECIPIENT: Cumberland Police Department	
FUND RECIPIENT ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FEDERAL IDENTIFICATION NUMBER: 52-6000786	

The undersigned agree that the Project Agency will carry out the Project within the dates of the Project Period, in accord with the general programmatic and financial requirements set forth in the agreement, and in compliance with the Project Conditions. Reimbursement is limited to actual eligible expenditures, the total of which is not to exceed the amount of Funds Obligated from MHSO. Furthermore, the Project Agency certifies that it is eligible under grant guidelines to receive grant funds; can accept a reimbursable grant; can successfully implement the project at the indicated funding level; and accepts the provisions of the entire Agreement including its Project Conditions. Costs cannot be incurred prior to the Project Start Date listed below.

BUDGET CATEGORIES	MHSO FUNDS
Salary and Benefits	\$0.00
Law Enforcement Overtime	\$500.00
Training / Conference and Accommodations	\$0.00
Mileage	\$0.00
Contractual Services	\$0.00
Equipment	\$0.00
Other Direct Costs	\$0.00
Indirect Costs	\$0.00
Total	\$500.00

The Project Director and Authorizing Official signing below cannot be the same person, nor can they be the Financial Official listed in the grant.

PROJECT DIRECTOR & AUTHORIZING OFFICIAL SIGNATURES			
PROJECT DIRECTOR		AUTHORIZING OFFICIAL	
NAME: Chuck Ternent		NAME: Charles Hinnant	
TITLE: Lieutenant		TITLE: Chief	
AGENCY: Cumberland Police Department		AGENCY: Cumberland Police Department	
ADDRESS:		ADDRESS:	
PHONE: (301) 759-6475	FAX:	PHONE: (301) 759-6475	FAX:
E-MAIL: chuck.ternent@cumberlandmd.gov		E-MAIL: charles.hinnant@cumberlandmd.gov	
SIGNATURE & DATE:		SIGNATURE & DATE:	
Chuck Ternent	(Electronically Signed) 08/08/2017	Charles Hinnant	(Electronically Signed) 08/08/2017

FOR MHSO USE ONLY	
PROJECT PERIOD START DATE: 10/01/2017	FUNDS OBLIGATED FROM MHSO:
PROJECT PERIOD END DATE: 09/30/2018	\$500.00
MHSO CHIEF APPROVAL (SIGNATURE & DATE)	
	
09/20/2017	



Maryland
Highway
Safety
Office

PROJECT AGREEMENT
One Orchard Road, Second Floor
Glen Burnie, MD 21060
PHONE 410-787-4050 FAX 410-787-4020

The formal approval of this Project Agreement and the obligation of funds to it are contingent upon the availability of anticipated federal funds, as determined by Congress, Maryland statute, or other federal or state action.

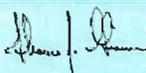
PROJECT TITLE: Impaired Driving	FOR MHSO USE ONLY
	PROJECT NUMBER: LE-Cumberland PD-2018-118
PROJECT AGENCY: Cumberland Police Department	
PROJECT AGENCY ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FUND RECIPIENT: Cumberland Police Department	
FUND RECIPIENT ADDRESS: 20 Bedford Street, Cumberland, MD-21502	
FEDERAL IDENTIFICATION NUMBER: 52-6000786	

The undersigned agree that the Project Agency will carry out the Project within the dates of the Project Period, in accord with the general programmatic and financial requirements set forth in the agreement, and in compliance with the Project Conditions. Reimbursement is limited to actual eligible expenditures, the total of which is not to exceed the amount of Funds Obligated from MHSO. Furthermore, the Project Agency certifies that it is eligible under grant guidelines to receive grant funds; can accept a reimbursable grant; can successfully implement the project at the indicated funding level; and accepts the provisions of the entire Agreement including its Project Conditions. Costs cannot be incurred prior to the Project Start Date listed below.

BUDGET CATEGORIES	MHSO FUNDS
Salary and Benefits	\$0.00
Law Enforcement Overtime	\$1,000.00
Training / Conference and Accommodations	\$0.00
Mileage	\$0.00
Contractual Services	\$0.00
Equipment	\$0.00
Other Direct Costs	\$0.00
Indirect Costs	\$0.00
Total	\$1,000.00

The Project Director and Authorizing Official signing below cannot be the same person, nor can they be the Financial Official listed in the grant.

PROJECT DIRECTOR & AUTHORIZING OFFICIAL SIGNATURES			
PROJECT DIRECTOR		AUTHORIZING OFFICIAL	
NAME: Chuck Tement		NAME: Charles Hinnant	
TITLE: Lieutenant		TITLE: Chief	
AGENCY: Cumberland Police Department		AGENCY: Cumberland Police Department	
ADDRESS:		ADDRESS:	
PHONE: (301) 759-6475	FAX:	PHONE: (301) 759-6475	FAX:
E-MAIL: chuck.tement@cumberlandmd.gov		E-MAIL: charles.hinnant@cumberlandmd.gov	
SIGNATURE & DATE:		SIGNATURE & DATE:	
Chuck Tement (Electronically Signed) 08/08/2017		Charles Hinnant (Electronically Signed) 08/08/2017	

FOR MHSO USE ONLY	
PROJECT PERIOD START DATE: 10/01/2017	FUNDS OBLIGATED FROM MHSO:
PROJECT PERIOD END DATE: 09/30/2018	\$1,000.00
MHSO CHIEF APPROVAL (SIGNATURE & DATE)	
 09/20/2017	



Regular Council Agenda
October 3, 2017

Description

Order authorizing the execution of a Contract of Sale with Howard M. Bohn and Mary Kathleen Bohn for the City's purchase of 6 Virginia Avenue for the price of \$52,500 which shall be paid by means of a forgivable loan towards the Bohn's purchase of 911 Michigan Avenue, providing for certain contingencies of sale, and authorizing the City Administrator and City Solicitor to execute documents pertaining to the transfer

Approval, Acceptance / Recommendation

- Budgeted

- 1st Reading
- 2nd Reading
- 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

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

ORDER NO. _____

DATE: October 03, 2017

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

THAT the Mayor be and is hereby authorized to execute a Contract of Sale by and between the Mayor and City Council of Cumberland (“Buyer”) and Howard M. and Mary Kathleen Bohn (“Sellers”) for the property and improvements thereon located at 6 Virginia Avenue, Cumberland, as recorded among the Land Records of Allegany County, Maryland in Deed Liber 643, folio 191, Tax Account No. 04-033531, for the purchase price of Fifty-Two Thousand, Five Hundred Dollars (\$ 52,500.00), by means of a forgivable loan which shall be paid by the City to the Seller’s settlement agent for the purchase of real property at 911 Michigan Avenue, Cumberland; and

BE IT FURTHER ORDERED, that the City shall accept the deed effecting the transfer of said property, provided settlement contingencies are met; and

BE IT FURTHER ORDERED, that, should it be necessary to extend the date for closing under the terms of the Contract, the City Administrator and City Solicitor are jointly and severally granted the authority to enter into agreements for said purpose, provided the date of the closing is not extended more than sixty (60) days from the originally scheduled closing date; and

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

Brian K. Grim, Mayor

CONTRACT OF SALE

THIS CONTRACT OF SALE (“Contract”) is made by and between **Mayor and City Council of Cumberland** (“Buyer”) and **Howard M. Bohn and Mary Kathleen Bohn** (“Sellers”) and is effective as of the date its execution is completed as shown in the signature provisions on the last page of this Contract before the Addenda.

1. Property Description. Sellers do agree to sell to Buyer, and Buyer does agree to purchase from Sellers, all of the following tracts or parcels of land, together with the improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereto or in anywise appertaining which are owned by Sellers and are hereinafter referred to collectively as the “Property”:

6 Virginia Avenue, Cumberland, MD 21502, Allegany County Land
Records Deed Liber 643, folio 191, Tax Account No. 04-033531.

2. Purchase Price. The purchase price for the Property (the “Purchase Price”) is Fifty-Two Thousand Five Hundred Dollars (\$52,500.00), the said Purchase Price to be paid by means of a forgivable loan made by Buyer to Sellers under the terms of the attached Repayment Agreement/Promissory Note. The forgivable loan proceeds shall be paid by Buyer’s settlement agent, its City Solicitor, Michael Scott Cohen, to Sellers’ settlement agent for Sellers’ purchase of the real property located at 911 Michigan Avenue, Cumberland, MD 21502.

3. Payment Terms. The Purchase Price shall be paid at settlement.

4. Estate. The Property is being conveyed in fee simple.

5. Contingencies. This Contract and the consummation of the transaction contemplated by its terms are contingent upon the following:

- A. Sellers shall deliver the Property to Buyer free of tenants or inhabitants of any kind, with all of any such individuals’ personal property and belongings having been removed. Sellers shall be responsible for legally evicting any tenants who may have been leasing the Property.
- B. Sellers shall be responsible for the termination of all utility services to the Property.
- C. Settlement shall be contingent upon Buyer’s performance of a walk-through inspection of the Property within 48 hours prior to settlement in order to confirm that the Property will be delivered to Buyer in accordance with the terms of Sections 5 and 8 of this Contract. Buyer shall have the right to waive this contingency and proceed to settlement without conducting the said inspection.

Notwithstanding the foregoing, Buyer shall have the right to insist that Sellers perform as required in subparagraphs A and B above. In that regard, Buyer shall have the right to bring an action to

specifically enforce those provisions in the event they are not met within the time frame set for settlement as provided for hereinafter.

6. Representations & Warranties. The Property is being sold in as-is condition, without any express or implied warranties or representations made as to its condition or otherwise, and subject to all defects, if any, known or unknown.

7. Risk of Loss. The Property is to be held at the risk of Sellers until legal title has passed or possession has been given to Buyer.

8. Possession. Sellers agree to give Buyer possession and occupancy of the Property at the time of settlement. Sellers will deliver the Property in substantially the same physical condition as of the date of his/her/their/its execution of this Contract but free of Sellers' personal property and all junk, trash and debris. Any personal property, junk, trash or debris shall be deemed to be abandoned and Buyer may dispose of it in any manner it sees fit, including, but not limited to, selling it or disposing of it as rubbish.

9. Adjustments. All general or special taxes, rents, ground rents, public, private or community water and/or sewer charges, including any deferred sewer and water tap fees, homeowners association charges and all other public, private or governmental charges or assessments, excluding liens which must be paid prior to deed recordation, which may exist, whether such have been levied or not, are to be adjusted and apportioned as of the date of settlement, and will be assumed and paid thereafter by Buyer.

10. Deed and Title. Upon payment of the Purchase Price, a deed conveying the Property from Sellers to Buyer containing covenants of special warranty and further assurances shall be executed by Sellers with Buyer bearing the expense of deed preparation. Title to the Property shall be good and merchantable, free of liens and encumbrances, except as specified herein and except use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the Property.

11. Agency/Real Estate Commission. Sellers and Buyer warrant and represent that no real estate broker participated in the procurement or negotiation of this Contract. Each party agrees to defend, indemnify, and hold the other harmless for any claim for real estate commissions arising by reason of the indemnifying party's breach of this warranty. The provisions of this paragraph shall survive settlement and the delivery, acceptance and recordation of the deed for the Property or the termination of this Contract.

12. Settlement. Settlement shall occur no later than sixty (60) days after the effective date of this Contract. Buyer's City Solicitor is authorized to consent to extensions of the date for settlement on behalf of Buyer.

13. Notice Of Disclosure Or Disclaimer Statements. Buyer is advised that under Maryland law (Real Property Article, Section #10-702), a purchaser is entitled to receive from a

seller a written Residential Property Condition Disclosure Statement on a form provided by the Maryland Real Estate Commission or a Written Residential Property Disclaimer Statement on a form provided by the Maryland Real Estate Commission. A seller must deliver the completed Disclosure or Disclaimer Statement to a purchaser on or before the buyer enters into a contract of sale (with the exception of a Land Installment Contract, an Option to Purchase Agreement and a Lease Agreement containing an option to purchase provision in which case the disclosure or disclaimer statement must be delivered to the purchaser before the execution of the contract).

If the Disclosure or Disclaimer Statement is delivered by the seller later than 3 days after the seller enters into a contract of sale with a purchaser, the contract is void. A purchaser who does not receive the Disclosure or Disclaimer Statement on or before the execution of a contract by a purchaser has the unconditional right, upon written notice to the seller or the seller's agent, to rescind the contract of sale at any time before the receipt of the Disclosure or Disclaimer Statement or within five (5) days following receipt of the Disclosure or Disclaimer Statement and to the immediate return of any deposit. However, purchaser's right to rescind the contract terminates if not exercised before making a written application to a lender for a mortgage loan, if the lender discloses in writing at or before the time application is made that the right to rescind terminates upon submission of the application.

The following has also been made a part of this Contract:

- () Property Disclosure Statement
- (X) Property Disclaimer Statement

14. Documentary Stamps, Recordation, Transfer Taxes. All transfer and recordation taxes and fees payable in connection with the sale of the Property shall be split evenly between the parties.

15. Lead Based Paint Hazards. Title X, Section 1018, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Act"), requires the disclosure of certain information regarding lead-based paint and lead-based paint hazards in connection with the sale of residential real property. Unless otherwise exempt, the Act applies only to housing constructed prior to 1978. A seller of pre-1978 housing is required to disclose to the buyer, based upon the seller's actual knowledge, all known lead-based paint hazards in the property and provide the buyer with any available reports in the seller's possession relating to lead-based paint or lead-based paint hazards applicable to the property. The seller, however, is not required to conduct or pay for any lead-based paint risk assessment or inspection. At the time that the offer to purchase is entered into by the buyer, the seller is required to provide the buyer with the EPA pamphlet entitled "Protect Your Family From Lead In Your Home" and a "Disclosure of Information on Lead-Based Paint and Lead Based Paint Hazards" form.

The seller is required under the Act to provide the buyer with a ten (10) day time period (or other mutually agreeable time period) for the buyer, at the buyer's expense, to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards unless the buyer waives such assessment or inspection by indicating such waiver on the Lead-

Based Paint Disclosure form. The seller and any agent involved in the transaction are required to retain a copy of the completed Lead-Based Paint Disclosure form for a period of three (3) years following the date of settlement.

A SELLER WHO FAILS TO GIVE THE REQUIRED LEAD-BASED PAINT DISCLOSURE FORM AND EPA PAMPHLET MAY BE LIABLE UNDER THE ACT FOR THREE TIMES THE AMOUNT OF DAMAGES AND MAY BE SUBJECT TO BOTH CIVIL AND CRIMINAL PENALTIES.

Sellers represent and warrant to Buyer intending that Buyer rely upon such warranty and representation, that the property: was constructed prior to 1978. Sellers and Buyer agree, represent and warrant, each unto the other, that no binding and enforceable contract shall be deemed to exist or to have been formed unless the requirements of the Act have been complied with prior to the execution of this Contract by Sellers and Buyer. Seller and Buyer represent and warrant that each intended, as a material term of the offer and acceptance, that the requirements of the Act be complied with as an express condition of the formation of a binding and enforceable contract by and between the parties. Buyer and Sellers acknowledge by their respective initials below that they have read and understand the provisions of this section.

_____ Buyer's Initials _____ Sellers' Initials

16. Assignability. This Contract may not be assigned without the written consent of Sellers, said consent not to be unreasonably withheld.

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

18. Entire Agreement. This Contract and any addenda thereto 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.

19. Maryland Law Applies. This Contract shall be governed and construed according to the laws of the State of Maryland without regard to principles of conflict of laws. It shall be enforceable by means of an action commenced in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and both parties waive the right to claim that such a proceeding is commence in an inconvenient forum or one that lacks proper venue.

20. Breach of Contract and Default. Buyer and Sellers are required and agree to make full settlement in accordance with the terms of this Contract and acknowledge that failure to do so constitutes a breach hereof. In the event of a breach, each of the parties hereto is entitled to pursue such rights and remedies as may be available, in law or in equity, including, without limitation, an action for specific performance of this Contract and/or monetary damages. If either party defaults, the party committing the default, whether Buyer or Sellers, shall reimburse the non-defaulting party for the reasonable attorneys' fees that party incurred as a result of the default.

21. **Binding Effect.** This Contract shall be binding upon the parties hereto and each of their respective heirs, personal representatives, administrators, executors, successors, assigns, and guardians

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

23. **Jury Trial Waiver.** **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS CONTRACT. 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 CONTRACT.**

24. **Counterparts.** This Contract 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.

25. **Signing by Facsimile or Other Electronic Means.** Each of the parties hereto expressly authorizes and agrees to sign facsimile and/or other electronically transmitted copies of this Agreement. Facsimile and/or other electronically transmitted copies shall have the same binding effect as would a signed original counterpart of the Agreement once delivered to the other party.

26. **Addenda.** The Contract is subject to the following attached Addenda which are made a part hereof: (1) Maryland Residential Disclaimer Statement; (2) Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard; and (3) Repayment Agreement/Promissory Note.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto as of the date written beneath those signatures.

WITNESS:

MAYOR AND CITY COUNCIL OF CUMBERLAND

By: _____

Brian K. Grim, Mayor

Date

Howard M. Bohn

Date

Mary Kathleen Bohn

Date

MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT

Property Address: 6 Virginia Avenue, Cumberland, MD 21502

Legal Description: Allegany County Land Records Deed Liber 643, folio 191

NOTICE TO SELLER AND PURCHASER

Section 10-702 of the Real Property Article, *Annotated Code of Maryland*, requires the owner of certain residential real property to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner is selling the property "as is" and makes no representations or warranties as to the condition of the property or any improvements on the real property, except as otherwise provided in the contract of sale, or in a listing of latent defects; or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects or other information about the condition of the real property actually known by the owner. Certain transfers of residential property are excluded from this requirement (see the exemptions listed below).

10-702. EXEMPTIONS. The following are specifically excluded from the provisions of §10-702:

1. The initial sale of single family residential real property:
 - A. that has never been occupied; or
 - B. for which a certificate of occupancy has been issued within 1 year before the seller and buyer enter into a contract of sale;
2. A transfer that is exempt from the transfer tax under §13-207 of the Tax-Property Article, except land installment contracts of sales under §13-207(a) (11) of the Tax-Property Article and options to purchase real property under §13-207(a)(12) of the Tax-Property Article;
3. A sale by a lender or an affiliate or subsidiary of a lender that acquired the real property by foreclosure or deed in lieu of foreclosure;
4. A sheriff's sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee;
5. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
6. A transfer of single family residential real property to be converted by the buyer into use other than residential use or to be demolished; or
7. A sale of unimproved real property.

Section 10-702 also requires the owner to disclose information about latent defects in the property that the owner has actual knowledge of. The owner must provide this information even if selling the property "as is." "Latent defects" are defined as: Material defects in real property or an improvement to real property that:

- (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and
- (2) Would pose a direct threat to the health or safety of:
 - (i) the purchaser; or
 - (ii) an occupant of the real property, including a tenant or invitee of the purchaser.

MARYLAND RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

NOTICE TO OWNER(S): Sign this statement only if you elect to sell the property without representations and warranties as to its condition, except as otherwise provided in the contract of sale and in the listing of latent defects set forth below; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

Except for the latent defects listed below, the undersigned owner(s) of the real property make no representations or warranties as to the condition of the real property or any improvements thereon, and the purchaser will be receiving

the real property "as is" with all defects, including latent defects, which may exist, except as otherwise provided in the real estate contract of sale. The owner(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

The owner(s) has actual knowledge of the following latent defects: _____

Owner _____ Date _____
Howard M. Bohn

Owner _____ Date _____
Mary Kathleen Bohn

The purchaser(s) acknowledge receipt of a copy of this disclaimer statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Purchaser _____ Date _____
Mayor and City Council of Cumberland,
by Brian K. Grim, Mayor

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure (initial)

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) ___ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) ___ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and report available to the seller (check (i) or (ii) below):

(i) ___ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) ___ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Buyer's Acknowledgment (initial)

(c) Buyer has received copies of all information listed above.

(d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Buyer has (check (i) or (ii) below):

(i)___ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii)___ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent’s Acknowledgment (initial)

(f)___ Agent has informed the seller of the seller’s obligations under 42 U.S.C. 485 2d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer: _____ Date: _____
Mayor and City Council of Cumberland,
by Brian K. Grim, Mayor

Seller: _____ Date: _____
Howard M. Bohn

Seller: _____ Date: _____
Mary Kathleen Bohn

IMPORTANT!

Lead From Paint, Dust, and Soil in and Around Your Home Can Be Dangerous if Not Managed Properly

- Children under 6 years old are most at risk for lead poisoning in your home.
- Lead exposure can harm young children and babies even before they are born.
- Homes, schools, and child care facilities built before 1978 are likely to contain lead-based paint.
- Even children who seem healthy may have dangerous levels of lead in their bodies.
- Disturbing surfaces with lead-based paint or removing lead-based paint improperly can increase the danger to your family.
- People can get lead into their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.
- People have many options for reducing lead hazards. Generally, lead-based paint that is in good condition is not a hazard (see page 10).



Protect Your Family From Lead in Your Home



Are You Planning to Buy or Rent a Home Built Before 1978?

Did you know that many homes built before 1978 have **lead-based paint**? Lead from paint, chips, and dust can pose serious health hazards.

Read this entire brochure to learn:

- How lead gets into the body
- About health effects of lead
- What you can do to protect your family
- Where to go for more information

Before renting or buying a pre-1978 home or apartment, federal law requires:

- Sellers must disclose known information on lead-based paint or lead-based paint hazards before selling a house.
- Real estate sales contracts must include a specific warning statement about lead-based paint. Buyers have up to 10 days to check for lead.
- Landlords must disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a specific warning statement about lead-based paint.

If undertaking renovations, repairs, or painting (RRP) projects in your pre-1978 home or apartment:

- Read EPA's pamphlet, *The Lead-Safe Certified Guide to Renovate Right*, to learn about the lead-safe work practices that contractors are required to follow when working in your home (see page 12).



Consumer Product Safety Commission (CPSC)

The CPSC protects the public against unreasonable risk of injury from consumer products through education, safety standards activities, and enforcement. Contact CPSC for further information regarding consumer product safety and regulations.

CPSC

4330 East West Highway
Bethesda, MD 20814-4421
1-800-638-2772
cpsc.gov or saferproducts.gov

U. S. Department of Housing and Urban Development (HUD)

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Contact HUD's Office of Healthy Homes and Lead Hazard Control for further information regarding the Lead Safe Housing Rule, which protects families in pre-1978 assisted housing, and for the lead hazard control and research grant programs.

HUD

451 Seventh Street, SW, Room 8236
Washington, DC 20410-3000
(202) 402-7698
hud.gov/offices/lead/

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U. S. EPA Washington DC 20460
U. S. CPSC Bethesda MD 20814
U. S. HUD Washington DC 20410

EPA-747-K-12-001
September 2013

Simple Steps to Protect Your Family from Lead Hazards

If you think your home has lead-based paint:

- Don't try to remove lead-based paint yourself.
- Always keep painted surfaces in good condition to minimize deterioration.
- Get your home checked for lead hazards. Find a certified inspector or risk assessor at epa.gov/lead.
- Talk to your landlord about fixing surfaces with peeling or chipping paint.
- Regularly clean floors, window sills, and other surfaces.
- Take precautions to avoid exposure to lead dust when remodeling.
- When renovating, repairing, or painting, hire only EPA- or state-approved Lead-Safe certified renovation firms.
- Before buying, renting, or renovating your home, have it checked for lead-based paint.
- Consult your health care provider about testing your children for lead. Your pediatrician can check for lead with a simple blood test.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children avoid fatty (or high fat) foods and eat nutritious meals high in iron and calcium.
- Remove shoes or wipe soil off shoes before entering your house.

Lead Gets into the Body in Many Ways

Adults and children can get lead into their bodies if they:

- Breathe in lead dust (especially during activities such as renovations, repairs, or painting that disturb painted surfaces).
- Swallow lead dust that has settled on food, food preparation surfaces, and other places.
- Eat paint chips or soil that contains lead.

Lead is especially dangerous to children under the age of 6.

- At this age, children's brains and nervous systems are more sensitive to the damaging effects of lead.
- Children's growing bodies absorb more lead.
- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.



Women of childbearing age should know that lead is dangerous to a developing fetus.

- Women with a high lead level in their system before or during pregnancy risk exposing the fetus to lead through the placenta during fetal development.

U. S. Environmental Protection Agency (EPA) Regional Offices

The mission of EPA is to protect human health and the environment. Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact
U.S. EPA Region 1
5 Post Office Square, Suite 100, OES 05-4
Boston, MA 02109-3912
(888) 372-7341

Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 205, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

Region 3 (Delaware, Maryland, Pennsylvania, Virginia, DC, West Virginia)

Regional Lead Contact
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2088

Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact
U.S. EPA Region 4
AFC Tower, 12th Floor, Air, Pesticides & Toxics
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-7836

Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 Tribes)

Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-2704

Region 7 (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact
U.S. EPA Region 7
11201 Renner Blvd.
WWPD/TOPE
Lenexa, KS 66219
(800) 223-0425

Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
(303) 312-6966

Region 9 (Arizona, California, Hawaii, Nevada)

Regional Lead Contact
U.S. EPA Region 9 (CMD-4-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4280

Region 10 (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact
U.S. EPA Region 10
Solid Waste & Toxics Unit (WCM-128)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
(206) 553-1200

For More Information

The National Lead Information Center

Learn how to protect children from lead poisoning and get other information about lead hazards on the Web at epa.gov/lead and hud.gov/lead, or call **1-800-424-LEAD (5323)**.

EPA's Safe Drinking Water Hotline

For information about lead in drinking water, call **1-800-426-4791**, or visit epa.gov/lead for information about lead in drinking water.

Consumer Product Safety Commission (CPSC) Hotline

For information on lead in toys and other consumer products, or to report an unsafe consumer product or a product-related injury, call **1-800-638-2772**, or visit CPSC's website at cpsc.gov or saferproducts.gov.

State and Local Health and Environmental Agencies

Some states, tribes, and cities have their own rules related to lead-based paint. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your state or local contacts on the Web at epa.gov/lead, or contact the National Lead Information Center at **1-800-424-LEAD**.

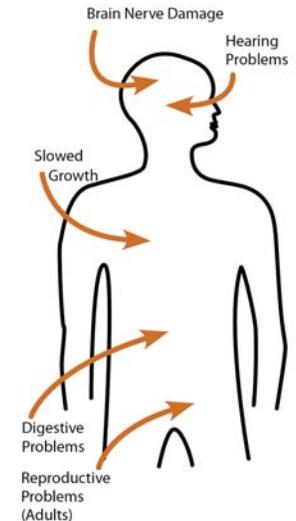
Hearing- or speech-challenged individuals may access any of the phone numbers in this brochure through TTY by calling the toll-free Federal Relay Service at **1-800-877-8339**.

Health Effects of Lead

Lead affects the body in many ways. It is important to know that even exposure to low levels of lead can severely harm children.

In children, exposure to lead can cause:

- Nervous system and kidney damage
- Learning disabilities, attention deficit disorder, and decreased intelligence
- Speech, language, and behavior problems
- Poor muscle coordination
- Decreased muscle and bone growth
- Hearing damage



While low-lead exposure is most common, exposure to high amounts of lead can have devastating effects on children, including seizures, unconsciousness, and, in some cases, death.

Although children are especially susceptible to lead exposure, lead can be dangerous for adults, too.

In adults, exposure to lead can cause:

- Harm to a developing fetus
- Increased chance of high blood pressure during pregnancy
- Fertility problems (in men and women)
- High blood pressure
- Digestive problems
- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain

Check Your Family for Lead

Get your children and home tested if you think your home has lead.

Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect lead. Blood lead tests are usually recommended for:

- Children at ages 1 and 2
- Children or other family members who have been exposed to high levels of lead
- Children who should be tested under your state or local health screening plan

Your doctor can explain what the test results mean and if more testing will be needed.

Other Sources of Lead

While paint, dust, and soil are the most common sources of lead, other lead sources also exist:

- **Drinking water.** Your home might have plumbing with lead or lead solder. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might contain lead:
 - Use only cold water for drinking and cooking.
 - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.Call your local health department or water supplier to find out about testing your water, or visit [epa.gov/lead](https://www.epa.gov/lead) for EPA's lead in drinking water information.
- **Lead smelters** or other industries that release lead into the air.
- **Your job.** If you work with lead, you could bring it home on your body or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.
- **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture. Call your local health department for information about hobbies that may use lead.
- Old **toys** and **furniture** may have been painted with lead-containing paint. Older toys and other children's products may have parts that contain lead.⁴
- Food and liquids cooked or stored in **lead crystal** or **lead-glazed pottery or porcelain** may contain lead.
- Folk remedies, such as "**greta**" and "**azarcon**," used to treat an upset stomach.

⁴ In 1978, the federal government banned toys, other children's products, and furniture with lead-containing paint (16 CFR 1303). In 2008, the federal government banned lead in most children's products. The federal government currently bans lead in excess of 100 ppm by weight in most children's products (76 FR 44463).

Renovating, Remodeling, or Repairing (RRP) a Home with Lead-Based Paint

If you hire a contractor to conduct renovation, repair, or painting (RRP) projects in your pre-1978 home or childcare facility (such as pre-school and kindergarten), your contractor must:

- Be a Lead-Safe Certified firm approved by EPA or an EPA-authorized state program
- Use qualified trained individuals (Lead-Safe Certified renovators) who follow specific lead-safe work practices to prevent lead contamination
- Provide a copy of EPA's lead hazard information document, *The Lead-Safe Certified Guide to Renovate Right*



RRP contractors working in pre-1978 homes and childcare facilities must follow lead-safe work practices that:

- **Contain the work area.** The area must be contained so that dust and debris do not escape from the work area. Warning signs must be put up, and plastic or other impermeable material and tape must be used.
- **Avoid renovation methods that generate large amounts of lead-contaminated dust.** Some methods generate so much lead-contaminated dust that their use is prohibited. They are:
 - Open-flame burning or torching
 - Sanding, grinding, planing, needle gunning, or blasting with power tools and equipment not equipped with a shroud and HEPA vacuum attachment and
 - Using a heat gun at temperatures greater than 1100°F
- **Clean up thoroughly.** The work area should be cleaned up daily. When all the work is done, the area must be cleaned up using special cleaning methods.
- **Dispose of waste properly.** Collect and seal waste in a heavy duty bag or sheeting. When transported, ensure that waste is contained to prevent release of dust and debris.

To learn more about EPA's requirements for RRP projects visit [epa.gov/getleadsafe](https://www.epa.gov/getleadsafe), or read *The Lead-Safe Certified Guide to Renovate Right*.

Where Lead-Based Paint Is Found

In general, the older your home or childcare facility, the more likely it has lead-based paint.¹

Many homes, including private, federally-assisted, federally-owned housing, and childcare facilities built before 1978 have lead-based paint. In 1978, the federal government banned consumer uses of lead-containing paint.²

Learn how to determine if paint is lead-based paint on page 7.

Lead can be found:

- In homes and childcare facilities in the city, country, or suburbs,
- In private and public single-family homes and apartments,
- On surfaces inside and outside of the house, and
- In soil around a home. (Soil can pick up lead from exterior paint or other sources, such as past use of leaded gas in cars.)

Learn more about where lead is found at [epa.gov/lead](https://www.epa.gov/lead).

¹ "Lead-based paint" is currently defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter (mg/cm), or more than 0.5% by weight.

² "Lead-containing paint" is currently defined by the federal government as lead in new dried paint in excess of 90 parts per million (ppm) by weight.

Identifying Lead-Based Paint and Lead-Based Paint Hazards

Deteriorating lead-based paint (peeling, chipping, chalking, cracking, or damaged paint) is a hazard and needs immediate attention. **Lead-based paint** may also be a hazard when found on surfaces that children can chew or that get a lot of wear and tear, such as:

- On windows and window sills
- Doors and door frames
- Stairs, railings, banisters, and porches

Lead-based paint is usually not a hazard if it is in good condition and if it is not on an impact or friction surface like a window.

Lead dust can form when lead-based paint is scraped, sanded, or heated. Lead dust also forms when painted surfaces containing lead bump or rub together. Lead paint chips and dust can get on surfaces and objects that people touch. Settled lead dust can reenter the air when the home is vacuumed or swept, or when people walk through it. EPA currently defines the following levels of lead in dust as hazardous:

- 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) and higher for floors, including carpeted floors
- 250 $\mu\text{g}/\text{ft}^2$ and higher for interior window sills

Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. EPA currently defines the following levels of lead in soil as hazardous:

- 400 parts per million (ppm) and higher in play areas of bare soil
- 1,200 ppm (average) and higher in bare soil in the remainder of the yard

Remember, lead from paint chips—which you can see—and lead dust—which you may not be able to see—both can be hazards.

The only way to find out if paint, dust, or soil lead hazards exist is to test for them. The next page describes how to do this.

Reducing Lead Hazards, continued

If your home has had lead abatement work done or if the housing is receiving federal assistance, once the work is completed, dust cleanup activities must be conducted until clearance testing indicates that lead dust levels are below the following levels:

- 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors, including carpeted floors
- 250 $\mu\text{g}/\text{ft}^2$ for interior windows sills
- 400 $\mu\text{g}/\text{ft}^2$ for window troughs

For help in locating certified lead abatement professionals in your area, call your state or local agency (see pages 14 and 15), or visit epa.gov/lead, or call 1-800-424-LEAD.

Reducing Lead Hazards

Disturbing lead-based paint or removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.

- In addition to day-to-day cleaning and good nutrition, you can **temporarily** reduce lead-based paint hazards by taking actions, such as repairing damaged painted surfaces and planting grass to cover lead-contaminated soil. These actions are not permanent solutions and will need ongoing attention.
- You can minimize exposure to lead when renovating, repairing, or painting by hiring an EPA- or state-certified renovator who is trained in the use of lead-safe work practices. If you are a do-it-yourselfer, learn how to use lead-safe work practices in your home.
- To remove lead hazards permanently, you should hire a certified lead abatement contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent control.



Always use a certified contractor who is trained to address lead hazards safely.

- Hire a Lead-Safe Certified firm (see page 12) to perform renovation, repair, or painting (RRP) projects that disturb painted surfaces.
- To correct lead hazards permanently, hire a certified lead abatement professional. This will ensure your contractor knows how to work safely and has the proper equipment to clean up thoroughly.

Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Checking Your Home for Lead

You can get your home tested for lead in several different ways:

- A lead-based paint **inspection** tells you if your home has lead-based paint and where it is located. It won't tell you whether your home currently has lead hazards. A trained and certified testing professional, called a lead-based paint inspector, will conduct a paint inspection using methods, such as:
 - Portable x-ray fluorescence (XRF) machine
 - Lab tests of paint samples
- A **risk assessment** tells you if your home currently has any lead hazards from lead in paint, dust, or soil. It also tells you what actions to take to address any hazards. A trained and certified testing professional, called a risk assessor, will:
 - Sample paint that is deteriorated on doors, windows, floors, stairs, and walls
 - Sample dust near painted surfaces and sample bare soil in the yard
 - Get lab tests of paint, dust, and soil samples
- A combination inspection and risk assessment tells you if your home has any lead-based paint and if your home has any lead hazards, and where both are located.



Be sure to read the report provided to you after your inspection or risk assessment is completed, and ask questions about anything you do not understand.

Checking Your Home for Lead, continued

In preparing for renovation, repair, or painting work in a pre-1978 home, Lead-Safe Certified renovators (see page 12) may:

- Take paint chip samples to determine if lead-based paint is present in the area planned for renovation and send them to an EPA-recognized lead lab for analysis. In housing receiving federal assistance, the person collecting these samples must be a certified lead-based paint inspector or risk assessor
- Use EPA-recognized tests kits to determine if lead-based paint is absent (but not in housing receiving federal assistance)
- Presume that lead-based paint is present and use lead-safe work practices

There are state and federal programs in place to ensure that testing is done safely, reliably, and effectively. Contact your state or local agency for more information, visit epa.gov/lead, or call **1-800-424-LEAD (5323)** for a list of contacts in your area.³

What You Can Do Now to Protect Your Family

If you suspect that your house has lead-based paint hazards, you can take some immediate steps to reduce your family's risk:

- If you rent, notify your landlord of peeling or chipping paint.
- Keep painted surfaces clean and free of dust. Clean floors, window frames, window sills, and other surfaces weekly. Use a mop or sponge with warm water and a general all-purpose cleaner. (Remember: never mix ammonia and bleach products together because they can form a dangerous gas.)
- Carefully clean up paint chips immediately without creating dust.
- Thoroughly rinse sponges and mop heads often during cleaning of dirty or dusty areas, and again afterward.
- Wash your hands and your children's hands often, especially before they eat and before nap time and bed time.
- Keep play areas clean. Wash bottles, pacifiers, toys, and stuffed animals regularly.
- Keep children from chewing window sills or other painted surfaces, or eating soil.
- When renovating, repairing, or painting, hire only EPA- or state-approved Lead-Safe Certified renovation firms (see page 12).
- Clean or remove shoes before entering your home to avoid tracking in lead from soil.
- Make sure children avoid fatty (or high fat) foods and eat nutritious meals high in iron and calcium. Children with good diets absorb less lead.

³ Hearing- or speech-challenged individuals may access this number through TTY by calling the Federal Relay Service at 1-800-877-8399.

REPAYMENT AGREEMENT/PROMISSORY NOTE

This Repayment Agreement/Promissory Note ("Note") is made this ____ day of _____, 2017, by and between the MAYOR AND CITY COUNCIL OF CUMBERLAND, a municipal corporation of the State of Maryland, (the "Lender") and the undersigned HOWARD M. BOHN and MARY KATHLEEN BOHN (collectively, the "Borrowers").

WITNESSETH: That for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender and the Borrower hereby agree as follows:

The Lender is providing the Borrowers with funds in the amount of **Fifty-Two Thousand Five Hundred Dollars (\$52,500.00)** to assist them in the acquisition of the real property and improvements thereon located at 911 Michigan Avenue, Cumberland, MD 21502 (the "Property") which they shall utilize as their residence during the hereinafter-identified Recapture Period. The source of funds for the subsidy is the Community Development Block Grant Program of the Maryland Department of Housing and Community Development as made available to the Borrowers through the Lender.

1. The Lender is to be given notice of any sale or refinancing of the unit occurring prior to the end of the five (5) year period following the date of this Note (Attachment number 2 in Page 2 the "Recapture period").
2. In the case of a sale prior to the end of the Recapture Period, an amount equal to a pro rata share of the amount of this Note, reduced for every year the Borrowers owned the Property, shall be repaid to the Lender from any net gain realized upon the sale of the Property after deduction for sales expenses.
3. In the case of a refinancing prior to the end of the Recapture Period, an amount equal to a pro rata share of the amount of this Note, reduced for every year the Borrowers have occupied the Property, shall be repaid to the Lender from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism, as described in these four paragraphs.
4. The obligation to repay the loan evidenced by this Note shall terminate if the Property is foreclosed upon.

If the Borrowers sell or refinance the Property, they shall provide notice of such sale or refinancing to the Lender. If the Borrowers sell, refinance or rent the Property or misuse the funds loaned hereunder in any other way, the Lender may recapture the loan from the Borrower ("Event of Recapture"). If an Event of Recapture occurs, the Borrowers promise to repay to the Lender the then remaining funds in accordance with the schedule set forth below.

Unless an Event of Recapture occurs, the Lender shall forgive the loan in an amount equal to **Ten Thousand Five Hundred Dollars (\$10,500.00)** per year on the first day of each Year, starting with the first day of Year 2 in accordance with the following schedule (each "Year" is defined as consecutive annual periods with Year 1 beginning on the date of this Note and ending on the anniversary of that date):

YEAR OF EVENT OF RECAPTURE	AMOUNT TO BE REPAYED	AGGREGATE AMOUNT OF FORGIVENESS OF SUBSIDY
1	\$52,500.00	\$0
2	\$42,000.00	\$10,500.00
3	\$31,500.00	\$21,000.00
4	\$21,000.00	\$31,500.00
5	\$10,500.00	\$42,000.00
6	\$0.00	\$52,500.00

This Note is secured by a Deed of Trust of even date herewith, and recorded among the Land Records of Allegany County, Maryland, from the Borrowers to a certain Trustee for the benefit of Lender, conveying to the Trustee all of Borrowers' right, tile and interest in the Property.

This Repayment Agreement/Promissory Note shall be construed in accordance with the laws of the State of Maryland.

WITNESS:

Howard M. Bohn

Mary Kathleen Bohn

STATE OF MARYLAND
COUNTY OF ALLEGANY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2017, before me, the subscriber, a Notary Public in and for the State of Maryland, County of Allegany, personally appeared **Howard M. Bohn** and **Mary Kathleen Bohn** known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the foregoing Repayment Agreement/Promissory Note, and acknowledged the said Repayment Agreement/Promissory Note to be his/her/their act and deed.

Witness my hand and notarial seal.

Notary Public

My Commission Expires:_____



Regular Council Agenda
October 3, 2017

Description

Order authorizing the Mayor to execute a Main Street Maryland Letter of Agreement with the MD Department of Housing and Community Development outlining terms by which the City of Cumberland shall participate in the program

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

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

ORDER NO. _____

DATE: October 03, 2017

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

THAT, the Mayor be and is hereby authorized to execute a Main Street Maryland Letter of Agreement with the MD Department of Housing and Community Development outlining terms by which the City of Cumberland shall participate in the Main Street Program.

Brian K. Grim, Mayor

Main Street Maryland Letter of Agreement for Designated Communities

Community Name: _____

Effective: January 1 – December 31, 2018

Maryland Department of Housing and Community Development DESIGNATED MAIN STREET MARYLAND (MSM) COMMUNITY REQUIREMENTS	
Work in a traditional Main Street district	Business districts must be a physical setting conducive to applying the Main Street Approach™, including a pedestrian scale and orientation; critical mass of buildings and businesses; and critical mass of structures that would be eligible for frequently used rehabilitation incentives. Districts must also demonstrate a historic preservation ethic that protects the local community identity.
Use the Main Street Approach™, including Maryland's "Fifth Point"	Main Street provides the only comprehensive approach specifically designed to address the issues and opportunities of traditional downtown commercial districts. It is proven to work and following the approach is a requirement of initial and on-going designation. Economic development in the context of historic preservation is central to the approach as are four active, standing committees: Design, Organization, Economic Vitality and Promotion. Maryland's Clean, Safe and Green committee may be a fifth standing committee or incorporated within each of the four others.
Local Government Commitment	The MSM designation for the city/town is the responsibility of the local government. The local government may choose to identify a nonprofit partner to administer the local MSM effort. In addition to providing funding to support the city's/town's MSM activities, the local government will strive to provide infrastructure improvements and business incentives that enhance the Main Street district.
Have a downtown organization	The downtown constituency is unique and has not been adequately served by traditional economic and business development groups. A separate, independent organization with a mission to act as the advocate for downtown is the best way to reverse decline and foster progress. The downtown organization should include a wide variety of stakeholders and have strong support from both public and private sectors.
Have sustainable program funding	Financial stability of the Main Street organization is crucial to staying focused on the program's mission. Besides covering salaries, downtown organizations must provide an adequate source of funding to cover an active program of work, clerical assistance, and travel and training for staff. Budgets will vary by community and samples are available from MSM. MSM strongly encourages local programs follow the following model for funding: a third from the local government; a third from grants and foundations; and a third from the private sector.
Employ an executive director	Paid professional staff to manage the downtown and the revitalization work is critical. Communities can have some success with a part-time executive director, but MSM strongly encourages communities to have or work toward having full-time management to be most effective. Salaries should be commensurate with public-oriented professionals in the area. When the local program hires an executive director, it should involve MSM in the selection process to review and make suggestions for job description and/or provide resume review.
Have organizational systems and structures	Administrative systems and tools help effectively manage program activities throughout the organization while benchmarking progress. Each year a comprehensive work plan and budget should outline activities of the organization and working committees as well as those of signature programs or events. Nonprofits should operate in compliance with organizational bylaws.
Sign a Letter of Agreement (LOA)	Local commitment and support is critical to Main Street success. In designated communities, local government, the downtown organization (if applicable) and DHCD sign a letter of agreement that clearly specifies the responsibilities of each. Designated communities sign a letter of agreement annually.
Maintain standards of excellence, professional development and training	Each designated community must be recognized as a Main Street America nationally accredited program at least once every three years in order to demonstrate the performance standards of the local program; national recognition is an additional benefit. Building skills through regular, mandatory attendance, by paid Main Street staff, at MSM Quarterly Meetings is required. Executive Directors should attend the national Main Street Now Conference annually. This is the best opportunity to receive professional development and training in the field. At a minimum attendance should be bi-annually.
Submit information to MSM	All designated Main Street communities must submit the following each year: 1) twelve monthly reports (submitted quarterly); 2) annual contact and program information form and all required documents that includes: a) committee work plans, b) the actual budget, including revenues and expenses, c) a list of the board of directors, d) local Design Guidelines, e) Façade Improvement Grant application, and f) if local MSM program is administered by a nonprofit – most recent IRS Form 990, Bylaws and articles of Incorporation, proof of good standing and charitable registration in the State of Maryland.

As long as communities continue to meet the Requirements, MSM will provide the services listed below using a performance-based approach that will require discussions between the community and MSM to set appropriate targets and outcomes. Although MSM does not provide operating support, designated communities do receive priority consideration for funding from DHCD's programs as well as those from and other State agencies.

Maryland Department of Housing and Community Development DESIGNATED MAIN STREET MARYLAND COMMUNITY SERVICES	
Specialist Services and Technical Assistance	
Design Assistance	As resources allow MSM will provide architectural services to support requests for façade drawings and phone assistance as needed.
Specialist Visits	Main Street Maryland Staff available on request. Specialists, based on need and as resources allow.
Organizational Assessments	As needed.
Research	Staff will conduct research on issues or topics of interest using state and national contacts.
Program Support and Professional Development	
Program Manager Training	Regular training by state and national experts is provided.
Quarterly Meetings	Training and opportunities by State staff and experienced Specialists.
Main Street 101	State staff and specialists train local programs in the Main Street Approach™ and Maryland's Clean, Safe and Green.
Topical Training	State staff and specialists train local programs in specific revitalization topics. Program managers, board and committee members are encouraged to attend.
Membership	MSM pays Main Street America Designated Member dues (\$350) for National Main Street Center, Inc. annually.
Work Planning Assistance	State staff is available to facilitate local strategic and work planning.
Remote Consultation	State and National Main Street Center staff members are available by phone and e-mail.
Resource & Information Sharing	State staff and specialists prepare timely e-mail updates of opportunities for services and funding available to Maryland's downtowns. Networking with other communities is encouraged using MSM maintained contact lists.
Main Street Maryland Library	A variety of presentations and training materials are available for loan.
Marketing	
Public Relations	Regular press coverage and exposure is provided through media releases and marketing materials and maintenance of MSM website.
Use of Main Street Logo	Electronic artwork and style guide are provided.

Main Street Maryland is committed to maintaining long-term relationships with designated communities and, if a community is having difficulty meeting the Requirements in one or more areas, the city/town and/or organization should contact MSM as soon as possible to discuss the situation, arrange assistance and develop a schedule to address the issues in a timely manner.

Please provide signature, title and date:

BY: _____ DATE: _____
(Local Government – Mayor or *if not a municipality*, County Executive)

BY: _____ DATE: _____
(*if applicable*: Board President: Local Main Street Organization)

BY: _____ DATE: _____ **Item # 7**
(Main Street Maryland State Coordinator – Maryland Department of Housing and Community Development)



Regular Council Agenda
October 3, 2017

Description

Order rescinding Order No. 26,190 due to an error in the award amount of \$301,678.53 and re-approving the proposal from The EADS Group, Inc. for the engineering design of the New Baltimore Street Town Center Project (12-16-M) in the estimated contract price of \$314,796.53 and authorizing execution of an Agreement for Professional Services regarding the project

Approval, Acceptance / Recommendation

An error was made in the amount of award to The EADS Group that was authorized on September 19, 2017 in the amount of \$301,678.53. The correct amount of award should have been \$314,796.53. This Order will correct the award amount.

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

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

ORDER NO. _____

DATE: October 03, 2017

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

THAT, Order No. 26,190 approved on September 19, 2017 be and is hereby rescinded to correct an error in the award amount; and

BE IT FURTHER ORDERED, that the proposal from The EADS Group, Inc., 1126 8th Avenue, Altoona, PA 16602, for the engineering design of the New Baltimore Street Town Center Project (12-16-M) be and is hereby accepted in the estimated contract price of Three Hundred Fourteen Thousand, Seven Hundred Ninety-Six Dollars and Fifty-Three Cents (\$314,796.53); and

BE IT FURTHER ORDERED, that the Mayor be and is hereby authorized to execute an Agreement for Professional Services regarding this project.

Brian K. Grim, Mayor

Bids:

<i>Company</i>	<i>Bid</i>
EADS, Inc.	\$301,678.53
	\$314,796.53
McCormick & Taylor	\$535,563.64

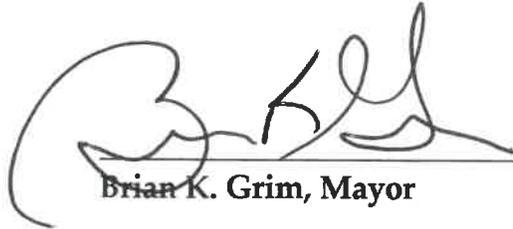
Attachment I

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

ORDER NO. 26,190DATE: September 19, 2017

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

THAT, the proposal from The EADS Group, Inc., 1126 8th Avenue, Altoona, PA 16602, for the engineering design of the New Baltimore Street Town Center Project (12-16-M) be and is hereby accepted in the estimated contract price of Three Hundred One Thousand, Six Hundred Seventy-Eight Dollars, and Fifty-Three Cents (\$301,678.53).



 Brian K. Grim, Mayor

Bids:

<i>Company</i>	<i>Bid</i>
EADS, Inc.	\$301,678.53
McCormick & Taylor	\$535,563.64

APPROVED SEP 19 2017

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 26, 2017 (“Effective Date”) between
Mayor and City Council of Cumberland (“Owner”) and
The EADS Group, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Baltimore Street Improvements – Planning and Design, Allegany County, MD (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Refer to “Scope of Services” included herein as “Attachment 1” in Exhibit A for the services being provided by The EADS Group, Inc. for this project under this agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and as listed in the “Scope of Services” as indicated in the attached “Attachment 1” in Exhibit A to this agreement.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer’s services;

2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to

Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 1. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 2. upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 3. Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
 1. Attachment 1
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
 1. Appendix 1 – Price Proposal Summary
 2. Appendix 2 – Reimbursable Expenses Schedule

- D. ~~Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~ - Deleted.
- E. Exhibit E, Notice of Acceptability of Work.
- F. ~~Exhibit F, Construction Cost Limit.~~ - Deleted.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Mayor and City Council of Cumberland

By: _____

Print name: Brian K. Grim

Title: Mayor

Date Signed: _____

Address for Owner's receipt of notices:

57 North Liberty Street

Cumberland, MD 21502

Designated Representative (Paragraph 8.03.A):

Paul J. DePalatis, P.E.

Title: Owner's Representative

Phone Number: 301-722-2000

E-Mail Address: paul.depalatis@cumberlandmd.gov

Engineer:

The EADS Group, Inc.

By: _____

Print name: Thomas M. Reilly, P.E.

Title: President & CEO

Date Signed: _____

Engineer License or Firm's Certificate No.
(if required):

41585

State of: Maryland

Address for Engineer's receipt of notices:

450 Aberdeen Drive

Somerset, PA 15501

Designated Representative (Paragraph 8.03.A):

Nicholas A. Wagner, P.E.

Title: Project Manager

Phone Number: 814-445-6551

E-Mail Address: nwagner@eadsgroup.com

This is **EXHIBIT A**, consisting of 12 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below and as further defined in "Attachment 1" to this Exhibit.

PART 1 – BASIC SERVICES

A1.01 ~~Study and Report Phase - Deleted.~~

A1.02 ~~Preliminary Design Phase - Deleted.~~

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables: N/A
 10. Furnish for review by Owner, its legal counsel, and other advisors, one (1) copy of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within two-hundred twenty (220) days of authorization to proceed with the Final Design Phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit ten (10) final copies of such documents to Owner within ten (10) days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: N/A
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. ~~*Resident Project Representative (RPR):*~~ - Deleted.
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
 7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of

Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: N/A
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the

acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 ~~*Post-Construction Phase - Deleted.*~~

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner’s Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project’s design requirements, including, but not limited to, changes in size, complexity, Owner’s schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer’s control.
 4. Services resulting from Owner’s request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
 8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **Attachment 1** to Exhibit A, consisting of 06 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

METHODOLOGY

PROJECT OVERVIEW

This proposal and scope of work have been prepared based upon the published *Request for Proposals (RFP)*, guidance provided at the Pre-Proposal Meeting held August 24, 2016, additional data provided by the City subsequent to the meeting, a review of field conditions conducted by the design team, and our knowledge of the area and of City & Maryland State Highway Administration (MDSHA) requirements. The following scope of work is intended to supplement the published *RFP* and provide details as to how *The EADS Group (EADS)* will approach the project to meet the needs of the City. *EADS* will complete all Professional Services work items, with the exception of the traffic signal design, in-house in our Altoona, Cumberland and Somerset offices. Cardno will serve as a sub-consultant and will provide the subsurface utility investigation service. French Engineering, LLC will serve as a design sub-consultant and will provide the traffic and pedestrian signal design at the Mechanic Street / Baltimore Street Intersection.

The intent of the *Baltimore Street Improvements - Planning and Design, Allegany County, MD New Baltimore Street Town Center* project is to reopen Baltimore Street, which is currently a pedestrian mall, to vehicular and bicycle traffic while maintaining elements of the mall. The project will facilitate development of and improve access to the mall. The proposed limits for the project include Baltimore Street from Canal Street to Queen City Drive, Liberty Street from Pershing Street to Frederick Street and Centre Street from Pershing Street to Frederick Street.

Proposed work on Baltimore Street between Mechanic Street and Liberty Street as well as between Centre Street and George Street will include reopening the street to accommodate one-way vehicular traffic with parking on one side as well as provide bicycle access. This will be achieved by removing the existing brick sidewalk and installing full depth pavement as well as new concrete curb. Additional improvements will include new brick sidewalk, new ADA compliant curb ramps, new pedestrian lighting and related landscaping improvements.

Proposed work on Baltimore Street between Liberty Street and Centre Street, known as Iseminger Square, will include a brick promenade, tree planting strips, patterned and tinted concrete sidewalk, a flexible community space with moveable furniture and removable street bollards.

Proposed work on Liberty Street and Centre Street within the project limits will include removal of the existing concrete roadway surface and placement of full depth pavement. Additional improvements will include new brick sidewalk, new ADA compliant curb ramps, new pedestrian lighting and related landscaping improvements.

Other items of work to be incorporated into the plans will be replacement of the storm sewer system including inlet trap installation on combination sewers, bicycle friendly inlet grates, evaluation/replacement of the sanitary sewers and waterline, installation of a concrete encased

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conduit bank to accommodate future telecommunications and electric service, installation of a new outdoor electric power system, installation of gateway elements, tree plantings, new pavement markings and traffic signs.

As stated in the *RFP*, the existing utility information that is available in the project area is not optimum. Therefore, **EADS** will be teaming up with Cardno to provide a subsurface utility investigation. Once the existing utility information is assembled, placed on the base mapping and verified by the utility companies, **EADS** will identify potential areas of conflict with the installation of new storm sewer, a new duct bank as well as new underground electric to supply power to the new pedestrian lighting. Cardno will then take this information and perform a Quality Level A subsurface investigation in order to limit the potential for conflicts with utilities and the construction delays that would result from them.

The traffic signal as well as the pedestrian signals and push buttons at the Mechanic Street / Baltimore Street intersection will need to be redesigned to accommodate the new traffic patterns as a result of reopening the section of Baltimore Street between Mechanic Street and Liberty Street. **EADS** will be teaming up with French Engineering, LLC to provide the traffic signal and pedestrian signal design.

It is expected that the improvements will be made to Baltimore Street in several phases and will result in sidewalk closures/shifts. These sidewalk closures will be implemented using MDSHA standards. The traffic signal work at the Mechanic Street / Baltimore Street intersection as well as the work to take place on Liberty Street and Centre Street will require advanced warning signs, barriers and channelizing devices necessary to complete the work under current traffic conditions.

Construction plans and specifications will be prepared in accordance with the standards and requirements of the City of Cumberland and the Maryland State Highway Administration. Design will be in accordance with minimum AASHTO design standards. **EADS** has reviewed the City's software standards and will provide documents in those formats. **EADS** has the necessary computer hardware in-house to produce the complete set of construction documents as are defined within the *Request for Proposals* and this proposal. The funding sources for construction are currently unknown. **EADS** will provide assistance to the City in its efforts to acquire funding.

Work Quality is a continuous initiative at **EADS**. Our Quality Management System has been ISO 9001 registered since 2004. Our ISO certification further enhances and strengthens our commitment to quality. The Quality Policy at **EADS** includes a commitment by management and all employees to provide our services on time, in an efficient, cost-effective manner and that those services meet your requirements as we strive to exceed your expectations. High quality construction documents remove ambiguity and drive a construction project that reduces or eliminates surprises and extensive change orders.

The **EADS** Cumberland office located at 50 N. Mechanic Street is within walking distance to the City Engineering Office and to the roads affected by this project. Our Somerset staff is taking the lead role in assisting this office with our goal to further develop the services provided in the Cumberland area. Although experienced staff members in Somerset and Altoona are instrumental to meeting the project

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schedule, incorporation of Cumberland office staff in the project will be one of our internal goals throughout the project duration – for both our efficiency and your convenience.

SCOPE OF SERVICES

1. PROJECT MANAGEMENT & COORDINATION

Nicholas A. Wagner, P.E. will serve as the Project Manager and will be the primary contact person throughout the project. He will maintain communications with the City and MDSHA. He will be responsible for the project schedule and budget. Monthly invoices will be prepared and submitted to the City along with status reports as needed to keep the City apprised of the progress and findings. Nick will attend project meetings and review all submissions prior to submittal.

Andrew M. Fedorko, P.E., the Structures & Highways Department Manager, will support **EADS'** personnel with supervisory management activities, ensure compliance with the engineering agreement, attend project meetings as needed and will oversee the quality assurance reviews.

Michael J. McLucas, will serve as the electrical designer. He will maintain communications with the City and Maryland SHA as it pertains to the lighting and electric service design. He will attend project meetings that pertain to the lighting or electrical service design.

2. PUBLIC INVOLVEMENT

This task includes the attendance and preparation of informational materials to be viewed and/or displayed to the general public at public meetings. Task also includes a meeting prior to the public plans display with City Officials.

3. FIELD SURVEYS & BASE MAPPING

A field survey of the project area will be performed by our survey corps in accordance with recognized survey standards. This activity will be done using an electronic data collector as well as conventional survey methods. Documentation will be provided in the form of a survey report generated by the survey software program. Control elevations and benchmarks will be established by direct levels and based on the City's datum. A construction centerline will be established along each street in the surveyed areas and tied to reference points set in the field.

Prior to performing the field surveys, **EADS** will place a call with Miss Utility and will contact utility companies that may have underground facilities in the project area and request that locations be marked in the field so the survey corps can include these in data collection. We will work with the City water and sewer personnel to locate existing facilities.

Traffic control will be provided while conducting the field survey in accordance with MDSHA standards or other acceptable procedures. It is assumed that all field surveys will be conducted in public right-of-way and there will be no need to enter private property. Therefore notice of intent to enter letters to property owners will not be necessary.

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Base plan drawings will be developed utilizing AutoCAD Civil 3D computer modeling software that stores survey point elevations and coordinates. Plans will be compatible with the City's AutoCAD 2013 software. **EADS** will coordinate drawing scales with the City.

This task does not include construction stakeout. However, the construction specifications will address requirements for the contractor's construction stakeout.

4. UTILITIES

Investigation and verification of utilities within the project area will be completed. This task involves contacting utility companies to obtain the location of their facilities. Contact with utility companies through Miss Utility will be one of the first tasks to be initiated so that underground utilities can be located and marked in the field prior to or during the field survey process. Utility companies will be provided with a color copy of the project mapping with field located facilities shown for verification and to complete any missing information relating to their facilities.

As a follow-up to the utility notifications and verifications, **EADS** will meet with utility companies to determine and discuss impacts resulting from this project. Documentation will be obtained to define impacts and/or obtain clearance from the utility companies. Correspondence will be compiled and submitted to the City. If impacts are defined, final plans will be adjusted in accordance with the plan checks received from the individual utility companies. Verification of impacts will be field checked.

Also, **EADS** will inspect the sanitary sewer lines utilizing CCTV to assess the condition of the facilities and determine sections of the line that need to be replaced. **EADS** will evaluate the existing waterline and distribution system and make recommendations to the City for potential areas of improvement. It is understood the City has identified specific needs for the water system as described in the 8/24/16 pre-proposal meeting minutes, which **EADS** will incorporate into the project.

In addition to these non-invasive investigations, **EADS** will be teaming up with Cardno to provide a subsurface utility investigation. Once the existing utility information is assembled, placed on the base mapping and verified by the utility companies, **EADS** will identify potential areas of conflict with installation of new storm sewer, a new duct bank as well as new underground electric to supply power to the new pedestrian lighting. Cardno will then take this information and perform a Quality Level A subsurface investigation in order to limit the potential for conflicts with utilities and the construction delays that would result from them.

5. CONSTRUCTION PLANS

EADS will prepare roadway construction plans, profiles, details and cross sections in accordance with City of Cumberland and the MDSHA standards. All construction work is to be done within existing roadway right-of-way. There will be no additional takings from adjoining property owners. Work will include accommodations for ADA and bicycle traffic. Work will also include landscaping improvements to include the installation of tree planting strips and removable bollards at Iseminger

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Square as well as benches, trash receptacles, bike racks, tree planters and trees throughout the rest of the project.

It is anticipated that no stormwater management best management practices will be required for this project. However, as an environmentally friendly option *EADS* would still consider incorporating rain gardens or similar features into the design to allow runoff from the sidewalks to be absorbed into planted areas that are aesthetically pleasing.

6. MAINTENANCE AND PROTECTION OF TRAFFIC PLAN

The final construction plans will include a Maintenance of Traffic (MOT) plan conforming to MDSHA criteria. It is anticipated that most of the work on Baltimore Street will only need to account for the detour of pedestrian traffic during construction. The plan will show the location of required advanced warning signs, barriers and channelizing devices necessary to complete the work under traffic along Liberty Street and Centre Street as well as the Mechanic Street / Baltimore Street intersection.

7. SIGNING & PAVEMENT MARKING PLAN

EADS will prepare a Signing and Pavement Marking plan in accordance with City of Cumberland and MDSHA standards. These plans will include tabulations for the items required for proposed signs as well as proposed pavement markings as well as any needed details for construction.

8. E&S CONTROL PLANS & PERMITS

EADS will coordinate all work with the City and MDSHA and make required submittals. Development of the plans and construction documents will be in conformance with MDSHA policies. An erosion and sediment pollution control plan will be required for the construction. This plan will be developed and submitted to the Allegany Soil Conservation District for approval.

9. HIGHWAY LIGHTING & ELECTRIC SERVICE

EADS will prepare Highway Lighting and Electric Service plans in accordance with City of Cumberland and the MDSHA standards. Work will include design of the highway lighting and electric service. This work will be coordinated with the City to make sure that the light posts and luminaires as well as the electric system meet the needs of the project.

10. TRAFFIC SIGNAL DESIGN

EADS will be teaming up with French Engineering, LLC to provide the traffic signal and pedestrian signal design. This project includes opening up the east leg of the intersection of Mechanic Street / Baltimore Street to one-way eastbound traffic on Baltimore Street. Anticipated changes to the traffic signals and pedestrian signals included in the design would be as follows: change the lane use sign on the Baltimore Street mast from a left turn lane sign to a thru and left turn lane sign, add pedestrian signal heads and push buttons for the new Baltimore Street leg and adjust the timing of all signals.

11. CONSTRUCTION SPECIFICATIONS

Where possible, the Maryland State Highway Administration's *Standard Specifications for Construction and Materials* will be used as the construction specifications for this project. **EADS** will prepare special provisions to the standard specifications to cover items of work and materials exclusive to this project. The Specification, Proposal and Contract documents will include City of Cumberland as well as MD SHA documents, similar to the recent Baltimore Avenue Improvements as well as the Mechanic Street Access Road Improvements project that were recently designed by **EADS** for the City.

12. CONSTRUCTION CONSULTATION

Our design staff will be available to review, comment on and approve shop drawing submittals and proposed field modifications. **EADS** will attend preconstruction meetings and field meetings during construction and will be available to the City's construction inspection staff for consultation via telephone, electronic communications or personal visits to the project site. Upon completion of construction, we will attend the final inspection.

CITY'S REQUEST FOR PROPOSALS

The EADS Group has received the following documents and has based this proposal submission on the direction provided therein:

RFP for City Project No. 12-16-M
Addendum No. 1 dated 8/29/16 Pre-Proposal Meeting Report email
Addendum No. 2 dated 9/14/16 email

These documents are included in this submission on the following pages and are incorporated into this scope of work by reference.

This is **EXHIBIT B**, consisting of 03 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: N/A

This is **EXHIBIT C**, consisting of 05 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-4: Basic Services – Direct Labor Costs Times a Factor

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Direct Labor Costs Times a Factor Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to Engineer’s Direct Labor Costs times a factor of 3.0 for the services of Engineer’s personnel engaged on the Project, plus Reimbursable Expenses, estimated to be \$0.00, and Engineer’s Consultant’s charges, if any, estimated to be \$34,728.57.
2. Engineer’s Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$314,796.53 based on the following distribution of compensation (see Appendix 1 to Exhibit C for the Price Proposal Summary):

a. Study and Report Phase	n/a
b. Preliminary Design Phase	n/a
c. Final Design Phase	\$243,434.38
d. Bidding or Negotiating Phase	\$17,840.48
e. Construction Phase	\$18,792.60
f. Post-Construction Phase	n/a
g. Consultant Charges	\$34,728.57

Consisting of:

- 1) Traffic Signal Design by French Engineering, LLC. - \$13,128.57;
- 2) Subsurface Utility Investigation by CARDNO, Inc. - \$18,100.00; and
- 3) CCTV of sanitary sewer line by an entity to be determined - \$3,500.00.

Exhibit C – Compensation Packet BC-5: Basic Services (other than RPR) – Direct Labor Costs Plus Overhead Plus a Fixed Fee Method of Payment.

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4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See Paragraph C2.03.C.2 below.
5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3, incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant's charges.
6. The portion of the amounts billed for Engineer's services which are related to services rendered on a Direct Labor Costs times a Factor basis will be billed based on the applicable Direct Labor Costs for the cumulative hours charged to the Project by Engineer's principals and employees multiplied by the above-designated factor, plus Reimbursable Expenses and Engineer's Consultant's charges incurred during the billing period.
7. Direct Labor Costs means salaries and wages paid to Engineer's employees but does not include payroll-related costs or benefits.
8. Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of February 1st) to reflect equitable changes to the compensation payable to Engineer.

C2.02 *Compensation for Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 2 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 2 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of February 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.

- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts: (See Exhibit J, Special Provisions, 2.)*
1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
 3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-2:
Additional Services – Direct Labor Costs Times a Factor**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Direct Labor Costs Times a Factor Method of Payment

D. Owner shall pay Engineer for Additional Services as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A of the Agreement, except for services as a consultant or witness under Paragraph A2.01.A.24 (which if needed shall be separately negotiated based on the nature of the required consultation or testimony), an amount equal to Engineer's Direct Labor Costs times a factor of 3.0, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

E. *Compensation for Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 2 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 2 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for and the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of February 1st) to reflect equitable changes in the compensation payable to Engineer.

F. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

Exhibit C – Compensation Packet AS-2: Additional Services –
Direct Labor Costs Times a Factor Method of Payment.

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3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1** to Exhibit C, consisting of 01 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

PRICE PROPOSAL SUMMARY

The EADS Group, Inc.		Baltimore Street Improvements - Planning and Design, Allegany County, MD											Date: Aug-17	Sht 3 of 3
T A S K S	Employee Classification	Project Manager	QA/QC Engineer	Highway Engineer	Civil/San Engineer	Landscape Architect	Lighting Engineer	Chief of Surveys	Surveyor	Survey Tech	CADD Tech	Clerical	Total Hours /Task	Cost Per Task
	Billing Rate/Hour	\$131.18	\$146.28	\$131.18	\$148.19	\$189.85	\$111.30	\$148.98	\$59.78	\$97.63	\$77.12	\$54.86		
DESCRIPTIONS														
1	Project Management & Coordination	176	40				40						256	\$33,390.88
2	Public Involvement	8	8	16			10						42	\$5,431.56
3	Field Surveys & Base Mapping			4				8	200	40			252	\$17,577.76
4	Utilities		6	170	80		8					6	270	\$36,253.04
5	Construction Plans		4	656		40					40		740	\$97,318.00
6	Maintenance & Protection of Traffic Plans		2	88							8		98	\$12,453.36
7	Signing & Pavement Marking Plans		2	88							8		98	\$12,453.36
8	E&S Control Plans & Permits		2	72							8		82	\$10,354.48
9	Highway Lighting & Electric Service		4	16			130						150	\$17,153.00
10	Traffic Signal Design			8									8	\$1,049.44
11	Construction Specifications			136									136	\$17,840.48
12	Construction Consultation		22	78			48						148	\$18,792.60
TOTAL HOURS		184	90	1332	80	40	236	8	200	40	64	6	2280	
TOTAL COST		\$24,137.12	\$13,165.20	\$174,731.76	\$11,855.20	\$7,594.00	\$26,266.80	\$1,191.84	\$11,956.00	\$3,905.20	\$4,935.68	\$329.16		\$280,067.96
EADS Engineering Cost Subtotal													\$280,067.96	

Professional Services by Sub-Consultants			
Traffic Signal Design by French Engineering, LLC			
Traffic Signal Design (See Section 8 for Technical and Price Proposal)	<u>Qty</u>	<u>Unit Price</u>	<u>Cost Per Task</u>
	1 LS	\$13,128.57	\$13,128.57
Professional Services by Sub-Consultants Cost Subtotal			\$13,128.57

Non-Professional Services			
Subsurface Utility Investigation by CARDNO, INC.			
Subsurface Utility Investigation QL-A (See Section 9 for Technical and Price Proposal)	<u>Qty</u>	<u>Unit Price</u>	<u>Cost Per Task</u>
	1 LS	\$18,100.00	\$18,100.00
CCTV of Sanitary Sewer			
CCTV of sanitary sewer line	<u>Qty</u>	<u>Unit Price</u>	<u>Cost Per Task</u>
	1 LS	\$3,500.00	\$3,500.00
Non-Professional Services Cost Subtotal			\$21,600.00

Total Not To Exceed Engineering Fee \$314,796.53

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This is **Appendix 2 to EXHIBIT C**, consisting of 01 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

Mileage (auto)	\$0.54/mile*
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging	at cost

****Mileage amount will be adjusted accordingly by Pennsylvania Department of Transportation's (PENNDOT) published mileage reimbursement.***

This is **EXHIBIT E**, consisting of 02 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
_____ Owner

And To: _____
_____ Contractor

From: _____
_____ Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated September 26, 2017, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer’s professional opinion.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of 02 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

- A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:
1. By Engineer:
 - a. Workers' Compensation: Statutory
 - b. Employer's Liability --
 - 1) Bodily injury, each accident: \$500,000
 - 2) Bodily injury by disease, each employee: \$500,000
 - 3) Bodily injury/disease, aggregate: \$500,000
 - c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
 - d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$5,000,000
 - 2) General Aggregate: \$5,000,000
 - e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
 - f. Professional Liability --
 - 1) Each Claim Made \$2,000,000
 - 2) Annual Aggregate \$2,000,000
 - g. Other (specify): N/A

2. By Owner:

- | | | |
|----|---|--------------|
| a. | Workers' Compensation: | Statutory |
| b. | Employer's Liability -- | |
| | 1) Bodily injury, Each Accident | Self-Insured |
| | 2) Bodily injury by Disease, Each Employee | Self-Insured |
| | 3) Bodily injury/Disease, Aggregate | Self-Insured |
| c. | General Liability -- | |
| | 1) General Aggregate: | Self-Insured |
| | 2) Each Occurrence (Bodily Injury and Property Damage): | Self-Insured |
| d. | Excess Umbrella Liability | |
| | 1) Per Occurrence: | Self-Insured |
| | 2) General Aggregate: | Self-Insured |
| e. | Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage): | |
| | Each Accident | \$1,000,000 |
| f. | Other (specify): | N/A |

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a.	N/A	_____
		Engineer
b.	N/A	_____
		Engineer's Consultant
c.	N/A	_____
		Engineer's Consultant
d.	N/A	_____
		[other]
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 01 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 01 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of 01 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

Special Provisions

The following Paragraph(s) of the Agreement are amended to include the following agreement(s) of the parties:

1. Paragraph(s) 6.01 G of the Agreement under Article 6 – General Considerations, is amended to include the following as an alternative means of the construction general conditions to the construction contract:

*City of Cumberland Maryland, Department of Engineering
Required Provisions;
General Provisions; and
Special Provisions*

The aforementioned *Provisions* may be used in lieu of EJCDC-700 “Standard General Conditions of the Construction Contract” (2013 Edition) in the construction contract documents specifications for this project; when used these provisions shall include the terms and conditions and the regulations for the Contractor(s) to adhere to for the construction and completion of the project.

2. *Remove Paragraph “C. Estimated Compensation Amounts”, under section C2.03 of Exhibit C, Article 2 - Owner’s Responsibilities from the Agreement.*

Insert the following as Paragraph:

“C. Compensation Amounts:

1. This Agreement is for a “Maximum Not to Exceed” compensation amount. Engineer agrees that services shall be paid in accordance with Article 2., except the total compensation amount shall not exceed the “Maximum Not to Exceed” contract value unless mutually agreed by Owner and Engineer due to a scope of work change.”

This is **EXHIBIT K**, consisting of 02 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ____ Additional Services to be performed by Engineer
- ____ Modifications to services of Engineer
- ____ Modifications to responsibilities of Owner
- ____ Modifications of payment to Engineer
- ____ Modifications to time(s) for rendering services
- ____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

City of Cumberland

By: _____
 Print
 name: _____

Title: _____

Date Signed: _____

ENGINEER:

The EADS Group, Inc.

By: _____
 Print
 name: _____

Title: _____

Date Signed: _____



Regular Council Agenda
October 3, 2017

Description

Order authorizing execution of an Employment Agreement with Jeffrey D. Rhodes for the position of City Administrator to be effective October 3, 2017 through June 30, 2021 with automatic one (1) year renewals unless terms are renegotiated per terms of the agreement

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

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

ORDER NO. _____

DATE: October 03, 2017

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

THAT, the Mayor be and is hereby authorized to execute an Employment Agreement by and between the Mayor and City Council of Cumberland and Jeffrey D. Rhodes for the position of City Administrator to be effective October 3, 2017 through June 30, 2021 with automatic one (1) year renewals unless terms are renegotiated per terms of the agreement.

Brian K. Grim, Mayor

CITY ADMINISTRATOR EMPLOYMENT AGREEMENT

THIS CITY ADMINISTRATOR EMPLOYMENT AGREEMENT (“Agreement”), by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND** (the “City”), a municipal corporation duly formed and existing under the laws of the State of Maryland, and **JEFFREY D. RHODES** (“Rhodes”) is made and effective this 3rd day of October, 2017.

RECITALS:

WHEREAS, the City desires to employ Rhodes as its City Administrator pursuant to Section 18 of the Charter of the City of Cumberland (the “City Charter”);

WHEREAS, Section 39 of the City Charter provides that the position of City Administrator is a contractual position rather than a civil service position;

WHEREAS, the City has determined that it is in the best interests and welfare of the City to employ Rhodes as its City Administrator; and

WHEREAS, it is the desire of Rhodes to accept such employment subject to the terms and conditions of this Agreement, all of which are acceptable to the parties hereto.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

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

2. Appointment/Term of Employment. The City hereby employs Rhodes for the position of City Administrator, and Rhodes hereby accepts the said employment, which said employment shall be subject to the terms and conditions of this Agreement. Said employment shall commence effective the date of this Agreement and extend through the close of business on June 30, 2021, unless otherwise earlier terminated pursuant to the provisions of this Agreement. Upon the expiration of the initial term of this Agreement, it shall automatically renew from year to year for successive one (1) year renewal terms, unless terms are renegotiated, upon the same terms and conditions as set forth herein unless the City provides written notice to Rhodes at least one hundred eighty (180) days prior to the expiration of the initial term or any renewal term, as the case may be, of his/its decision not to renew this Agreement. It is understood and agreed that notwithstanding the notice provision set forth herein, the City has the right to terminate Rhodes’ employment at any time, for cause or without cause, with or without notice.

3. Duties of Rhodes. Rhodes shall perform those duties set forth in the City Charter and City Code as being the responsibility of the City Administrator, and he further shall perform

any and all such other duties as may be prescribed from time to time by the Mayor and City Council. He shall perform the functions and duties of his position honestly, fully, faithfully and loyally, acting at all times in the best interest of the City.

In the discharge of his duties, Rhodes shall be governed by the City Charter, the Cumberland City Code (the "City Code"), other ordinances, resolutions and orders of the City, and applicable state and federal laws and regulations, such as are now in effect or as may be enacted, amended or modified subsequent to the date of the execution of this Agreement. Furthermore, Rhodes shall render services pursuant to the terms of this Agreement in such executive, supervisory and general administrative capacities as the City shall from time to time determine.

It is understood and agreed that Rhodes shall devote his full-time employment and attention and his best efforts to the performance of his duties as set forth herein. He shall do no act or fail to perform any act where such act or failure to act operates to the detriment of the City.

4. Salary. Rhodes shall receive salary in the amount of One Hundred Twenty-Four Thousand Four Hundred Fifty-Four Dollars and Seventy (\$124,454.70) per annum, payable on regular paydays and in accordance with the payroll procedures of the City now in force or as may be amended from time to time. Said salary shall increase annually by the cost of living adjustment, if any, the City generally provides to its non-union employees. Rhodes shall first become eligible for a cost of living adjustment on July 1, 2018.

5. Office Support. The City shall provide an office, supplies and equipment therefore, as the same are necessary for Rhodes' professional and effective performance of his duties as City Administrator.

6. Benefits. Rhodes shall be entitled to the following benefits:

6.1. Holidays. He shall be entitled to time off for all holidays normally observed by the City.

6.2. Vacations. Effective July 1, 2017, Rhodes shall earn paid vacation up to a maximum of twenty-five (25) days per year, and which said vacation shall be non-cumulative and shall not carry over from year to year, unless agreed upon by the parties in writing. Upon the termination or expiration of this Agreement, Rhodes shall be entitled to compensation for any vacation leave he has accrued but not used.

6.3. Sick Leave. Rhodes was credited his then-current number of hours of sick leave as of the date of the commencement of his employment as City Administrator. Paid sick leave shall accrue at the rate it accrues generally for the City's non-union employees, currently one and one-fourth (1 ¼) days per month and shall be cumulative without limit as to carry-over from year to year. Upon the expiration or termination of this Agreement, Rhodes shall receive compensation for unused sick leave in accordance with the policy then generally applicable to the City's non-union employees under the terms of the City's Employee Handbook

and he shall be given credit for said sick leave for purposes of his State of Maryland Retirement System benefits to the same extent generally applicable to the City's non-union employees under the City's Employee Handbook.

6.4. Health Insurance. The City shall provide Rhodes with the same health insurance, including family coverage, the City generally provides for the benefit of its non-union employees and he shall contribute to the payment of the premiums in the same percentages applicable to those employees generally under the terms of the City's Employee Handbook. The costs of said premiums shall be deducted from his pay and he consents to the City effecting said deductions from his pay.

6.5. Retirement.

6.5.1. State Retirement. The City shall contribute to the State of Maryland Retirement System for the benefit of Rhodes in such amount as is prescribed by State law.

6.5.2. Deferred Compensation. The City shall contribute Two Thousand Six Hundred Dollars (\$2,600.00) in each Fiscal Year (\$100.00 per pay based upon current City pay periods) to a deferred compensation account of the City Administrator's choosing.

6.6. Disability Insurance. The City shall contribute the lesser of fifty percent (50%) of the premium or Six Hundred Dollars (\$600.00) annually towards a long-term disability insurance policy for the benefit of Rhodes.

6.7. Automobile Provisions.

6.7.1. Former Automobile Allowance. In the City Administrator Employment Agreement that was in effect prior to this Agreement, the City provided Rhodes with a Three Hundred Dollars (\$300.00) monthly automobile allowance. The parties agreed to terminate the automobile allowance and add the Three Thousand Six Hundred Dollar per year total amount of said benefit to Rhodes' annual salary, thereby increasing the annual amount from \$120,854.70 to the \$124,454.70 provided for in Section 4 of this Agreement.

6.7.2. Requirements. Rhodes shall be responsible for providing a vehicle for his use in carrying out his duties as City Administrator. Further, he shall be responsible for all operational, maintenance, repair and fuel costs for his vehicle as well the costs associated with the procurement of comprehensive insurance coverage for the said vehicle. Rhodes shall procure comprehensive insurance coverage for any vehicles he owns or uses naming the City as a co-insured and providing coverage in the amount of no less than \$250,000.00 per claim and \$500,000.00 per occurrence. Immediately upon the execution of this Agreement, Rhodes shall provide the City Clerk with a certificate of insurance evidencing his procurement of the required automobile insurance coverage

6.8. Miscellaneous Benefits. In addition to the benefits enumerated above, Rhodes shall receive such other benefits available to or which may be made available generally to the City's non-union employees under the City's Employee Handbook.

7. Performance Evaluations.

A. The City shall review and evaluate the performance of the City Administrator at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specified criteria developed by the City with the City Administrator's input. Said criteria may be added to or deleted from as the City may from time to time determine in consultation with the City Administrator. Further, the Mayor shall provide the City Administrator with a summary written statement of the findings of the Mayor and City Council and provide an adequate opportunity for the City Administrator to discuss the evaluation with the Mayor and City Council.

B. Annually, the Mayor and City Council shall define such goals and performance objectives that they determine necessary for the proper operation of the City and in the attainment of the Mayor and City Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budget appropriations provided.

C. In effecting the provisions of this Section, the City and City Administrator agree to abide by the provisions of applicable law.

8. Death & Disability.

8.1. Death. If Rhodes dies prior to expiration of the initial term or any renewal term of this Agreement, all obligations of the City to Rhodes will cease as of the date of his death.

8.2. Disability. If Rhodes is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, the City shall have the right to terminate this Agreement, said termination to be considered as other than for Cause, with benefits being paid in the manner set forth in Section 9.3 hereinafter.

9. Termination. This Agreement may be terminated upon any of the following reasons, subject to the following terms and conditions:

9.1. Termination Upon Mutual Consent. This Agreement may be terminated upon mutual consent of the City and Rhodes, upon such terms and conditions as agreed in writing by the parties hereto. Such a termination shall not be considered to be a termination for Cause. However, Rhodes shall not be entitled to the benefits set forth in Section 8.3 hereafter, unless the parties' written agreement includes said benefits.

9.2. Termination for Cause. The City may terminate Rhodes employment under the terms of this Agreement at any time for Cause. For the purposes of this Agreement, “Cause” shall be defined as:

(i) Rhodes’ failure to satisfactorily perform his obligations under the terms of this Agreement, the City Charter, as now in force or as may hereafter be amended, or the City Code, as now in force or as may be hereafter amended;

(ii) Rhodes’ conviction of a felony;

(iii) Rhodes’ conviction of any crime punishable as a felony or involving moral turpitude;

(iv) Rhodes’ use of alcohol or a controlled substance which impairs his ability to effectively perform his duties and obligations under this Agreement;

(v) Rhodes violation of the International City/County Management Association (“ICMA”) Code of Ethics; or

(vi) any action by Rhodes which is likely, in the City’s opinion, to significantly damage its public image and any such action has not been remediated or corrected, provided it is capable of being remediated or corrected, to the reasonable satisfaction of the City within ten (10) days of written notice thereof to Rhodes.

It is specifically agreed that upon termination for “cause”, Rhodes shall be entitled to receive his salary and benefits to the date of said termination but no longer.

It is further agreed by the parties that the effective execution of the position of City Administrator will require the reasonable use of personal judgment with respect to the interpretation and implementation of the City Charter, City Code, ordinances, and rules and regulations and that the reasonable use of said judgment may not constitute “cause” for termination.

9.3. Termination other than for Cause. In the event the City elects to terminate this Agreement other than for Cause before the expiration of the initial term or any renewal term of this Agreement and, at the time of the termination, Rhodes is willing and able to perform his duties under this Agreement but for his termination, it shall pay Rhodes a lump sum cash payment equal to one hundred eighty (180) days aggregate salary and benefits. He shall also be compensated for all earned and unused vacation and sick leave accrued as of the date of the termination. Otherwise, Rhodes shall be entitled to receive his salary and benefits to the date of said termination but no longer.

9.4. Resignation. In the event Rhodes resigns from his position with the City before the expiration of the initial term of this Agreement or any renewal term thereafter, he shall

provide the City with no less than ninety (90) days advance written notice of his resignation unless the parties agree otherwise in writing. Upon resignation, Rhodes shall be entitled to receive his salary and benefits through the effective date of said resignation, but no longer, and he shall have the right to receive compensation for any vacation leave he has accrued but not used. In the event Rhodes resigns without providing the required ninety (90) days written notice and the City does not waive the ninety (90) day notice requirement in writing, Rhodes will forfeit the right to receive compensation for accrued and unused vacation leave and he shall be subject to such other and further remedies as the City may have against him.

10. Suspension. The City may suspend the City Administrator with full pay and benefits at any time during the term of this Agreement. He shall be given written notice setting forth the bases for the suspension within a reasonable period of time following the commencement of said suspension.

11. Professional Associations, Memberships and Training. The City agrees to appropriate and expend funds for Rhodes to maintain his membership in ICMA and the Maryland City and County Management Association (“MCCMA”). At a minimum, the City agrees to provide for such training and professional education as is necessary for Rhodes to maintain his ICMA Credentialed Manager status.

12. Dues and Subscriptions. The City agrees to budget and pay for professional dues and subscriptions necessary for Rhodes’ continuation and full participation in national, regional, state and local organizations necessary and desirable for his continued professional growth and advancement and for the good of the City.

13. Civic Club Membership. The City recognizes the desirability of representation in and before local civic and other organizations, and Rhodes is authorized and encouraged to become a member of such civic clubs and organizations or to otherwise participate in their programs and meetings. With respect to memberships requiring the payment of dues, the Mayor shall be responsible for determining which organizations Rhodes may join.

14. Outside Employment Prohibited. It is further understood and agreed that Rhodes shall regularly be required to work more than forty (40) hour work weeks in the fulfillment of his duties as City Administrator. In furtherance of the fulfillment of the said duties, during the initial term and any renewal terms of this Agreement, he shall be prohibited from accepting any work other than his employment as City Administrator, whether as an employee or on an independent contractual basis, on a temporary or permanent basis, on a part-time or full-time basis, or otherwise, except as may be permitted by the City, the said grant of permission to be set forth in writing, subject to the limitation that said outside employment shall not interfere with Rhodes’ fulfillment of his obligations under the terms of this Agreement.

15. Compensatory Time. In recognition of the fact that Rhodes will devote a great deal of time to the performance of his duties as City Administrator outside of normal office hours, he shall be allowed to take compensatory time off as he shall deem appropriate during those normal office hours.

16. **Professional Liability.** The City agrees to defend, hold harmless and indemnify Rhodes for any and all claims brought against him arising out of his actions within the scope of the employment relationship with the City, subject to the exceptions and limitations set forth in the Local Government Tort Claims Act (Md. Cts. & Jud Proc. Code Ann. §§ 5-301, *et seq.*, as may be amended from time to time) and applicable law.

17. **City Residence.** Section 18 of the City Charter requires the City Administrator to become a resident of the City of Cumberland and maintain said residency throughout the term of his employment as such as a condition of his continued employment with the City as its City Administrator. It is understood that the City Administrator will have overnight stays at locations other than his principal residence in the City of Cumberland; however, he shall maintain his residence in the City of Cumberland and shall spend the majority of his overnight stays in the City of Cumberland.

18. **Use & Return of City Property.** Rhodes recognizes and agrees that personal property is provided to him by the City in connection with his employment as City Administrator, which personal property shall be and remain the property of the City. Further, Rhodes will preserve, use and hold the City's property for the benefit of the City for the purpose of carrying out the City's business, it being understood that reasonable personal use, consistent with City policies, is permitted. When Rhodes' employment under this Agreement terminates, he will immediately deliver to the City all City property he has in his possession or control.

19. **Bonding.** The City shall bear the full costs of any fidelity or other bonds required of the City Administrator required under any law or ordinance.

20. **No Reductions of Benefits.** The City shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of the City Administrator, except to the degree of such a reduction across the board for all non-union employees of the City.

21. **Relationship of the Parties.** The relationship between the parties hereto is that of employer and employee. Rhodes shall have no authority to enter into any contracts binding upon the City, except as shall be specifically authorized in writing by the City.

22. **Attorneys' Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement or as a result of a breach of its terms, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action as well as court costs and reasonable litigation expense.

23. **Modification or Amendments.** No amendment, change or modification of this Agreement shall be valid unless the said amendment, change or modification is in writing and signed by both of the parties hereto.

24. Entire Agreement/Prior Agreements. This Agreement constitutes the entire agreement between the parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations between the parties with respect to all or any part of the subject matter of this Agreement. This Agreement supersedes and takes the place of all prior agreements between the parties hereto relative to the City's employment of Rhodes and the terms and conditions thereof.

25. Waiver. Failure of either party at any time to require performance of any of the provisions of this Agreement shall not limit either party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision itself or of any other provision.

26. Severability. Each section of this Agreement shall be severable, and should any section hereof be deemed to be unconstitutional, illegal or void, said determination shall not affect the validity or enforceability of any other section. The parties hereto agree that should any such clause be declared to be unconstitutional, illegal or void, they shall attempt to renegotiate said term so as to effect the intent of the parties with respect to the terms of this Agreement under terms which are constitutional, legal and enforceable.

27. Binding Effect. This Agreement shall be binding upon the parties hereto, their respective heirs, personal representatives, administrators, executors, successors, assigns, and transferees in interest.

28. Assignability. This Agreement may not be assigned without the written consent of the parties hereto.

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

30. Notices. Notices required by the terms of this Agreement shall be given by deposit in the custody of the United State Postal Service, postage prepaid, addressed as follows:

If to the City, to:

City Clerk
57 N. Liberty Street
Cumberland, MD 21502

If to the City Administrator, to:

Jeffrey D. Rhodes
901 Camden Avenue
Cumberland, MD 21502

Alternatively, notices required pursuant to the terms of this Agreement may be hand-delivered to the persons identified above. Notice shall be deemed given as of the date of hand-delivery or as of the date of deposit of such written notice in the course of its transmission by means of the United States Postal Service. In the event either party changes their address, he/it shall provide the other party with written notice of the address change and the new address shall be that party's address of record for the purpose of the notice provisions set forth in this section.

31. Governing Law. This Agreement shall be governed and construed according to the laws of the State of Maryland without regard to principles of conflict of laws. It shall be enforceable by means of an action commenced in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and both parties waive the right to claim that such a proceeding is commence in an inconvenient forum or one that lacks proper venue.

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

33. Jury Trial Waiver. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. 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.

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

WITNESS/ATTEST:

_____(SEAL)
Jeffrey D. Rhodes

**MAYOR AND CITY COUNCIL OF
CUMBERLAND**

Marjorie E. Eirich, City Clerk

By: _____(SEAL)
Brian K. Grim, Mayor