



Town of Emmitsburg

Mayor Donald N. Briggs

Board of Commissioners,
Timothy O'Donnell, *President*
Joseph Ritz III, *Vice President*
Clifford Sweeney, *Treasurer*
Frank Davis
Amy Boehman-Pollitt

Town Manager
Cathy Willets
Town Clerk
Sabrina King

**TOWN MEETING AGENDA PACKET
TOWN OFFICE – 300A SOUTH SETON AVENUE
MONDAY, NOVEMBER 21ST – 7:30 P.M.**

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. FUTURE MEETINGS

Christmas Tree Lighting: Monday, December 5th, at 6:00 pm (Front of Community Center)

Town Board Meeting: Tuesday, December 6th, at 7:30 pm (Town Office and Zoom)

4. MEETING ITEMS

A. APPROVE MINUTES: OCTOBER 3RD, 2022

B. COMMISSIONER COMMENTS

C. MAYOR'S COMMENTS

D. PUBLIC COMMENTS

E. ADMINISTRATIVE BUSINESS (NONE)

F. CONSENT AGENDA

G. AGENDA ITEMS (DETAILS ATTACHED)

1) For consideration, approval of Rutter's pump station indemnification agreement.

2) For consideration, approval of Master Service Agreement with Barton and Loguidice for consulting services for stormwater management and MS-4 for Town of Emmitsburg.

H. SET AGENDA FOR NEXT MEETING: DECEMBER 6, 2022

5. SIGN APPROVED TEXT AMENDMENTS AND/OR RESOLUTIONS

6. ADJOURN

ZOOM INFORMATION

Join Zoom Meeting

<https://us02web.zoom.us/j/85163461577>

Meeting ID: 851 6346 1577

Passcode: 21727

One tap mobile

+16465588656,,85163461577#,,,,*21727# US (New York)

+16469313860,,85163461577#,,,,*21727# US

Dial by your location

+1 646 558 8656 US (New York)

+1 646 931 3860 US

+1 301 715 8592 US (Washington DC)

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 9128 US (San Jose)

+1 689 278 1000 US

+1 719 359 4580 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

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Meeting ID: 851 6346 1577

Passcode: 21727

Find your local number: <https://us02web.zoom.us/j/85163461577>

A. APPROVE MINUTE

**MINUTES
TOWN MEETING
OCTOBER 3, 2022
TOWN OFFICE – 300A SOUTH SETON AVENUE**

Present: *Elected Officials* - Mayor Donald Briggs; Commissioners: Timothy O'Donnell, President; Clifford Sweeney, Vice President; T.J. Burns, Treasurer, Joseph Ritz III; Frank Davis; and newly elected Amy Boehman-Pollitt. *Staff Present* - Cathy Willets, Town Manager; Amy Naill, Code Enforcement; Cole Tabler, Town Accountant, and Sabrina King, Recording Secretary and Town Clerk. *Others Present* – Deputy Jason Ahalt.

I. Call to Order

A quorum being present, Commissioner Timothy O'Donnell, President of the Board of Commissioners, called the October 3, 2022 town meeting to order at 7:30 p.m. Pledge of Allegiance was recited. Upcoming meetings were announced.

Approval of Minutes

Motion: Commissioner Ritz III motioned to accept the September 12, 2022 town meeting minutes as presented; second by Commissioner Sweeney. Yeas – 5; Nays – 0. The motion was adopted.

Police Report:

Deputy Ahalt presented the police report from September 2022 (exhibit attached).

Town Managers Report:

Ms. Willets, Town Manager, presented the Manager's Report from August 2022 (exhibit in agenda packet). Ms. Willets highlighted key points in her report. The contractor repaired section of streetlights on East Main St from Federal Ave. to Creamery Rd. Commissioner O'Donnell asked about the door hangers for water shut offs if they are successful, which Ms. Willets replied that they are and the Town only had two properties on the shut off list.

Grant Administrative Report:

Ms. Willets, Town Manager, presented Ms. Shaw's Grants Administrator Report. Key highlights are: USDA New Public Works Equipment is almost complete just waiting on the last piece of equipment which should arrive by November 10, 2022. For the Advanced License Plate Reader, the equipment has been installed and-only waiting on the network connections.

Town Planners Report:

Ms. Willets, Town Manager, presented the Town Planners Report from August 2022 (exhibit in agenda packet). She presented key highlights from the Board of Appeals. Staff received a variance application for 277 DePaul Street. For the planning commission Mr. Gulden has worked on Christ Community Church, 500 East Main Street Right-of-Way, Village Liquors, Emmitsburg East Industrial II projects. He began working with MD Department of Planning on the next steps to start the 2025 comprehensive plan update.

Commissioner Comments:

- Commissioner Ritz III: Would like to congratulate Commissioner Davis on his re-election and Commissioner-elect Amy Boehman-Pollitt for her victory. He attended the first meeting of the newly formed Emmitsburg Business Alliance. He attended the 100th year anniversary of the Emmitsburg High School/Community Building.
- Commissioner Davis: Also attended the Anniversary celebration and he wanted to give a big thank you to Dan Fissel who retired and will be missed. He gave his thoughts and prayers to the Boyle family for the passing of Mr. Mike Boyle, a long-time resident and business man.
- Commissioner Sweeney: Reminder that Halloween and the parade is approaching, on Monday, October 31st. Trick or Treating will be from 5:30 pm to 6:45 pm.
- Commissioner O'Donnell: Also attended the High School/Community Building 100th Anniversary. Reminder that Turkey Trot is on Thanksgiving. He has not found a sponsor in the community and welcomes any to step forward.
- Commissioner Burns: Start off by saying congratulations to Commissioner Davis and Commissioner Elect Boehman-Pollitt. Also a thank you to his fellow Commissioners, Mayor, Town Staff, and all the residents in Emmitsburg who has supported him over the years.

TJ Burns steps out after the Commissioners Comments at 7:56 p.m.

Mayor's Comments:

Mayor Briggs attended numerous meetings in September 2022 (meetings listed in agenda packet) The Mayor welcomed Commissioner Elect Amy Boehman-Pollitt and congratulated Commissioner Davis on his re-election. The Mayor had his podcast with Ron Siarnicki the Executive Director of the National Fallen Firefighters Foundation. The Mayor had another podcast with guest Reverend Timothy S. May, the Frederick County Volunteer Firefighters' Chaplain. He attended the MML dinner-meetings where the Town received a \$100,000 LPPI FY2022 Grant. He gave his thanks to Dan Fissel and his years of serving with the town.

Public Comments: *Dr. Samuel Christian, Julian Murray and Gregory McCullers, National Association of Black Veterans of Western, MD-* All voiced an opinion on the Dough Boy statue by asking that the Emmitsburg African American soldiers of World War I, designated as "Colored Soldiers" on the statue's plaque, be combined with the rest of the soldiers that served during that time. In conclusion all speakers agreed that all soldiers be unified as one and not separated. There will be a future meeting to discuss in more detail. *Eric Sloane, Emmitsburg MD-* Mr. Sloane expressed his concerns of how he has had many code complaints and asked that if someone calls in about his property that they would have a form with that persons contact information so they know who is complaining. He also voiced concerned of the speeding outside of his house across from the Dollar General. *Ray Buchheister, Emmitsburg, Welty Ave-* He gave his congratulations to the newly elect Commissioner Boehman-Pollitt and Commissioner Davis on being re-elected. He asked about a follow up on the painted lines on Welty Avenue because was under the impression that this was going to be done before this meeting. Ms. Willets answered, waiting for the contractor to confirm and reassuring that there will be a letter posted on each resident's door of the time and day of when line painting will begin. *Edward Wantz, Emmitsburg MD-* He asked if small gain hunting can be included in with deer season and end altogether on January 31st which still leaves time in February for the trails. Commissioner O'Donnell suggested we make this an agenda item for November.

Administrative Business:

For consideration, Proclamation declaring October 3rd, breast cancer awareness month.

Motion: Commissioner Sweeney motioned to accept the Proclamation as presented; seconded by Commissioner Ritz. Yeas - 4; Nays - 0 Absent - 1 Commissioner Burns.

Consent Agenda:

None

Treasurer's Report:

Cathy Willets, Town Manager, presented the Treasurer's Report for September 2022 (exhibit in agenda packet).

Planning Commission Report:

Commissioner Ritz III presented the report. Planning Commissioners did meet on September 26th, it was a busy night. They were presented a Zoning Text Amendment to allow private public shooting ranges in the industrial zone, after some lengthy discussion the applicant withdrew his application in order to include more in detail, noise abatement, hours of operation, safety etc. The Planning Commission conditionally approved the Final Forest Conservation Plan and Final Subdivision for lots 5 and 6 and remainder for the Emmitsburg East Industrial Park II. The Planning Commission was requested by the Board of Appeals to consider a potential zoning text amendment regarding fences on how it relates specifically to corner lots.

II. Agenda Items

Agenda #1 – Swearing in new elected commissioners. Mayor Briggs swore in Commissioner Frank Davis. Next the Mayor, swore in Commissioner Amy Boehman-Pollitt as her family stood beside.

Commissioner Boehman-Pollitt took her seat with the Board at 8:41 p.m.

Agenda #2 – For consideration Mayors recommendation for reorganization of the Board of Commissioners.

Presented by Mayor Donald Briggs, Timothy O'Donnell as President; Joseph Ritz III as Vice President and Planning Commission liaison; Clifford Sweeney as Treasurer; Frank Davis as Parks and Recreation Committee liaison; and Amy Boehman-Pollitt as Citizens Advisory Committee liaison. Motion: Commissioner Davis motioned to accept the Mayors recommendation as presented; seconded by Commissioner Amy Boehman-Pollitt. Yeas – 5; Nays – 0

Agenda #3 – ~~Hold a public hearing then consideration of Ordinance 2022-10, which would allow Private and public Shooting ranges in the Industrial Park zoning district.~~ WITHDRAWN BY APPLICANT

Agenda #4 – Discussion of possible water and sewer rate and connection fee increase options as a result of a recent study. Ms. Willets, Town Manger presented the following along with Mr. Maker (NewGen Strategies & Solutions). Ms. Willets wanted to point out that this meeting is to give an idea of where we are and where we need to go. Water fund has been at a loss for many. There are two proposed options, of a onetime rate increase of approximately 150% and then continue to increase 3%. Ms. Willets recommended to change the Town code to automatically increase 3% each year so that way can continue to maintain and not fall behind like they did. The second option would be to spread it out over the next three fiscal years, knowing that the water fund will still remain in the negative and will not see the 90 days of surplus until fiscal year 2025. Voting on the rates in December so they would go in effect on January 1st and reflected in the March water bill. Mr. Tabler expressed that the water fund is to the point where the cash balance moving forward is in the position ~~we will have~~ to have to borrow cash from the

general or sewer fund. The goal is to keep the funds separate and self-sustaining. Ms. Willets added that it is not recommended to not borrow from the sewer as it would lead to a “Black Mark” on your audit and any money borrowed has to be paid back. Mr. Tabler also added the water fund from year to year has consistent revenue from utility charges from water rates. One thing that is inconsistent are the tap fees that are collected on new buildings. Commissioner Ritz had questions in regards to the minimum usage of the gallons. Mr. Maker answered the 6,000 gallons as it is the fixed rate charged that goes towards the revenue. Mr. Maker stated many municipalities have increased their minimum fixed rate charge and usage. Commissioner O’Donnell also wanted clarification on current projects or future projects. Ms. Willets responded that on the books there is a five-year plan which the Board gets each budget year. Commissioner O’Donnell stated that the Board will revisit this at the November meeting.

Cole Tabler left at 9:25 p.m.

Agenda #5 For consideration, approval of a planning consultant contract.

Ms. Willets explained, that at the direction of the Board from the July meeting, the Mayor, and herself met with Mr. Jakubiak who has previously done work with the town. He comes highly recommended by the town attorney. He currently works with the Town of Thurmont. The agreement is for Mr. Jakubiak to be on call where he will provide town planning and zoning services. The consultant would report to the Town Manger. It would be a nine-month agreement and can be extended and renewed for another year if the money is in the budget. The compensation is billed by the hour at \$205.00 dollars per hour for approximately 16 hours a month. For the total of nine months it would be twenty-nine thousand five hundred and twenty dollars. Commissioner Davis and Commissioner O’Donnell support the idea of having a planning consultant. The Board had a consensus to wait for the audit to be complete to identify the funds from the 2022 budget being available for the planning consultant. Motion: Commissioner Davis motioned to accept the contract as presented; seconded by Commissioner Sweeney. Yeas – 5; Nays - 0

Agenda #6 – For consideration, approval of lease for 303 West Lincoln Ave. Ms. Willets advised Pastor John was present if there were any questions and read the terms of the lease. This is a lease addendum to the current lease and would take effect retroactively on October 1st, 2022. It shall expire on its own terms on the 30th day of September 2024. During the first year of the terms the rent will be \$2500.00 per month, which will be a \$300.00 rent increase. During the second year rent increase to \$3000.00. Ms. Willets mentioned both Pastor John and the Mayor came up with these agreements. Commissioner Davis suggested that they keep the rent the \$2,500.00 for the next two years. Commissioner O’Donnell asked for clarification - are we looking at the rental agreement to be \$2,500.00 monthly for the two years? Motion: To accept the contract as modified; Commissioner Davis motioned to accept the contract as modified; seconded by Commissioner Ritz. Yeas – 5; Nays - 0

Set Agenda Items for October 3, 2022 Town Meeting

Agenda Items:

- (1.) For discussion, increases to water/sewer rates.
- (2.) Hold a public hearing then consideration, of Ordinance of 2022-10 which would allow private shooting ranges in the industrial zone.
- (3.) For consideration, approval of Ordinance 2022-11 which would allow the use of firearms at private shooting ranges in Town of Emmitsburg.
- (4.) For consideration, policy P 22-01 hunting and recreational usage at Rainbow Lake and Watershed.
- (5.) For consideration, approval of Resolution 2022-05R which adopts the Frederick County Hazard Mitigation Plan.
- (6.) Rutters forest conservation easement removal request discussion and consideration.
- (7.) Discussion and consideration of amending town code to allow for fences greater than four feet tall in front of

yards. (9.) Welty Ave parking update. **Administrative Business:** (1.) Proclamation for Municipal Government Works Month November 2022 for consideration. (2.) Update on trail use, damage and repairs. **Consent Items:** (1.) Accept resignation of Dan Garnitz from the Board of Appeals. (2.) Appoint Dan Garnitz as a regular member of the Planning Commission with a term of November 8, 2022- January 18, 2027 for consideration. (3.) Appoint Jack Pollitt as an alternate member of the Board of Appeals term expires October 1, 2025 for consideration. **Motion:** Commissioner Davis motioned to accept the November 7th, 2022 town meeting agenda as presented; second by Commissioner Ritz. Yeas – 5; Nays – 0. The motion was adopted.

III. Sign Approved Text Amendments and/or Resolutions

IV. Adjournment

With no further business, Commissioner Sweeney motioned to adjourn the October 3rd, 2022 town meeting at 10:15 p.m.; second by Commissioner Boehman-Pollitt. Yeas – 5; Nays – 0. The motion was adopted.

Respectfully submitted,

Sabrina King, Recording Secretary
Minutes Approved On:

A. COMMISSIONERS COMMENTS

B. MAYORS COMMENTS

D. PUBLIC COMMENT

B. ADMINSTRATIVE BUSINESS (NONE)

C. CONSENT AGENDA (NONE)

D. AGENDA ITEMS

AGENDA ITEM# 1: For consideration, approval of Rutter's pump station indemnification agreement.

Presentation by Staff and Rutters' representative.

**PUMP STATION OPERATION AND
MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 2022 (the "Effective Date"), by and between M & G Realty, Inc., (the "Owner"), and Town of Emmitsburg, Frederick County, Maryland (the "Town") (individually, a "Party") (collectively, the "Parties").

WITNESSETH

WHEREAS, the Owner is the owner of certain real property in the Town of Emmitsburg Frederick County, Maryland, located at the intersection of US Route 15 and Route 140 with an address of 10201 Taneytown Pike, Emmitsburg, Maryland 21727 (the "Property"); and

WHEREAS, the Owner has constructed a pump station on the Property (the "Pump Station") in accordance with "Rutter's Store 84 Improvement Plan" approved by the Town on or about December 17, 2020 and approved by the County of Frederick on April 19, 2021, (the "Plans"), but has not yet installed the primary pumps included on the Plans; and

WHEREAS, the Pump Station is currently operating by utilizing its secondary pumps, as the primary pumps have not been received; and

WHEREAS, the Parties desire the Owner to operate and maintain the Pump Station for its intended use utilizing the secondary pumps until the date the primary pumps are installed and construction is completed, inspected and approved (the "Completion Date"); and

WHEREAS, the Parties desire the Owner to dedicate the Pump Station to the Town upon the Completion Date subject to the terms and conditions of the Public Works Agreement between the Owner and Town dated June 4, 2021 (the "PW A").

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The recitals above are true and correct and are hereby incorporated into and made a part of this Agreement.
2. The Owner shall, as soon as commercially reasonable, complete construction of the Pump Station in accordance with the Plans. Owner shall notify the Town of the completion of construction within five (5) business days of the Completion Date. Owner shall offer the Pump Station for dedication, in a form acceptable to the Town, and the Town shall accept dedication of the Pump Station and any appurtenances therewith without unreasonable delay subject to the Owner's compliance with all the terms of the PW A. The Date which the Town accepts dedication of the Pump Station shall be referred to as the "Dedication Date".

3. Owner's Responsibilities.

- a. The Owner shall operate, maintain, and bare all responsibility for the Pump Station until the Dedication Date, with responsibilities to include:
 - i. the payment of all costs associated with the operation, maintenance and repair of the Pump Station, including but not limited to any costs, fines, or penalties associated with sewage overflows; and
 - ii. to indemnify and hold harmless the Town from any third-party actions or claims resulting or arising from the use or operation of the Pump Station.
 - iii. to insure all improvements comprising the Pump Station.
- b. On and after the Effective Date the Owner will indemnify and hold harmless the Town from any third-party actions or claims resulting or arising from the Owner's negligence (gross, contributory, or otherwise) or misconduct in the fulfillment of its obligations under this Agreement or the PWA.

4. Town's Responsibilities.

- a. The Town shall operate, maintain, and bare all responsibility for the Pump Station on and after the Dedication Date, with responsibilities to include the payment of all costs associated with the operation, maintenance and repair of the Pump Station, including but not limited to any costs, fines or penalties associated with sewage overflows, except as provided by Paragraph 3.b.
 - b. On and after the Dedication Date, the Town shall indemnify and hold harmless the Owner from any third-party actions or claims resulting or arising from the use or operation of the Pump Station, except has provided by Paragraph 3.b.
5. Owner represents and warrants that it has received all necessary from State of local government entities, including the Maryland Department of the Environment, to operate the Pump Station utilizing the secondary pumps until the primary pumps are installed. Owner shall provide the Town all State and Local government approvals prior to the commencement of operation.
 6. This agreement shall inure to the benefit of and be binding upon the Town and the Property Owner, as well as their assigns and successors in interest.
 7. No joint venture or partnership is formed as a result of this Agreement. No officers, officials, employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.
 8. This agreement shall constitute the entire Agreement between the Parties and supersedes all prior written and oral communications, representations, warranties and agreements relating to the utilization of the secondary pumps until the primary pumps are installed.

No modifications or amendments to this Agreement, or any part hereof, shall be binding unless set forth in writing and signed on behalf of each Party.

9. The Parties may not assign or transfer this Agreement without the prior written consent of the other Party.
10. This agreement may be executed by digital or electronic means through commercially available electronic software, which results in confirmed signatures delivered electronically to each of the Parties.
11. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by .pdf, or other electronic means shall be equally as effective as delivery of a manually executed counterpart.
12. The Parties hereto represent that the respective persons executing this Agreement on their behalf are fully authorized to execute this Agreement.
13. This Agreement may be recorded at the Office of the Recorder of Deeds of Frederick County, Maryland, and shall constitute a covenant running with the Property, in perpetuity.

[Remainder of Page Intentionally Left Blank; Signatures Follow]

Draft

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

Witness



M & G Realty, Inc.



Name: Tim Rutter
Title: President

Witness

Town of Emmitsburg

Name: The Hon. Don Briggs
Title: Mayor

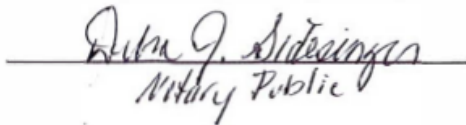
Approved for Legal Sufficiency:

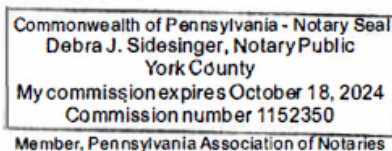
Town Attorney

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF YORK :

Before me, the undersigned Notary Public, personally appeared Tim Rutter, being the President of M & G Realty, Inc., who, being duly sworn according to law, hereby deposes and says the foregoing Agreement is complete and accurate in all respects.

SWORN to and SUBSCRIBED
Before me this 14 day of November
2022


Notary Public



Draft

STATE OF MARYLAND :
COUNTY OF _____ : SS:
:

Before me, the undersigned Notary Public, personally appeared Donald Briggs, being the mayor of the Town of Emmitsburg, who, being duly sworn according to law, hereby deposes and says the foregoing Agreement is complete and accurate in all respects.

SWORN to and SUBSCRIBED
Before me this _____ day of _____
2022

AGENDA ITEM#2: For consideration, approval of Master Service Agreement with Barton and Loguidice for consulting services for stormwater management and MS-4 for Town of Emmitsburg.

Presentation by Staff

To answer your question about what our fees may be on a monthly basis, that substantially depends on which elements the Town seeks for us to manage and/or complete on the Town's behalf. We estimate that the monthly fees may range between \$2,500 and \$25,000, depending on what was being worked on at the time, assuming some combination of the following tasks:

- A. MS4 annual reporting and related requirements,
- B. An updated impervious restoration plan and schedule,
- C. Updated baseline impervious assessment,
- D. Annual IDDE screenings,
- E. Support for stormwater billing disputes/appeals and database management,
- F. Grant support, and/or
- G. Other as-they-come-up needs.

**BETWEEN
TOWN OF EMMITSBURG, MARYLAND
AND
BARTON & LOGUIDICE, D.P.C.
FOR
PROFESSIONAL SERVICES**

draft

THIS IS AN AGREEMENT ("Agreement") effective as of November 7, 2022 ("Effective Date") between the Town of Emmitsburg, Maryland ("Owner") and Barton & Loguidice, P.C. A/K/A Barton & Loguidice, D.P.C. ("Consultant").

Consultant agrees to provide those professional services to Owner in accordance with separate written scope and fee authorizations ("Task Authorizations", also sometimes referred to herein as "Project") that will be agreed upon with Owner on an as requested basis, with the understanding that each Task Authorization will be mutually agreed upon in writing between Owner and Consultant.

Owner and Consultant further agree as follows:

1.01 Basic Agreement

- A. Consultant shall provide, or cause to be provided, the services set forth in each Task Authorization, and Owner shall pay Consultant for such services as set forth in Paragraph 4.01. Once duly signed by Owner and Consultant, each Task Authorization will be deemed a part of and incorporated in this Agreement by reference. A template for Task Authorizations is provided herein as Exhibit A. In the event of any inconsistency between a particular Task Authorization and the terms of this Agreement, the terms of this Agreement shall control.
- B. The use of standard business forms, including but not limited to Owner's purchase orders, are solely for the convenience of the parties and none of the provisions thereof shall in any way limit, alter or modify the terms of this Agreement whether or not any such document is signed.

2.01 General Considerations

- A. The standard of care for all professional or related services performed or furnished by Consultant 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. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.
- B. Consultant and its Subconsultants may use and rely upon the information, work product and services provided or performed by others, including, but not limited to, Owner's consultants, contractors, manufacturers, and suppliers.
- C. Consultant shall commence to provide its services upon the full execution of this Agreement and shall provide those services within a reasonable time. In no event shall Consultant be obligated to perform services on a schedule which, in the Consultant's professional judgement, does not provide Consultant sufficient time to perform in accordance with the aforesaid standard of care.
- D. If, through no fault of Consultant, the orderly and continuous progress of Consultant's services is impaired, its services are delayed or suspended, or the Owner authorizes changes in the scope,

extent, or character of the Project, then the time for completion of Consultant's services and the rates and amounts of Consultant's compensation shall be adjusted equitably.

- E. The Owner shall notify the Consultant within (7) days from when the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies on the Consultant's Instruments of Service.
- F. All design documents prepared or furnished by Consultant are instruments of service, and Consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Consultant grants Owner an unlimited license to use the instruments of service at Owner's own risk upon payment for the same.
- G. The Contract Documents for construction contracts prepared as a service under this Agreement are to be the Consultant's template Contract Documents, including but not limited to General Conditions, General Requirements, Information for Bidders and bidding documents, as may be amended by the Owner.
- H. Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- I. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- J. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Consultant's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decisions regarding, or interpretations or clarifications of, the construction contract or Instruments of Service made by Owner or any third party without the advice and consultation of Consultant.
- K. Consultant shall be responsible only for those Construction Phase services expressly required of Consultant by the Task Authorization. With the exception of such expressly required services in each Task Authorization, Consultant 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, unless otherwise added to the Task Authorization by supplemental agreement. Owner waives all claims against the Consultant that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Consultant in the Task Authorization.
- L. If the Construction Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Consultant shall specify the appropriate performance and design criteria that such services must satisfy. The Consultant shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted

to the Consultant. The Consultant's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

- M. Owner shall bear full responsibility and liability for the generation, existence, or presence of any toxic, hazardous, radioactive, infectious, mutagenic, teratogenic, carcinogenic, explosive, combustible, or other dangerous substances ("hazardous materials") pre-existing at the site. Owner affirms certain additional responsibilities under the Agreement, including without limitation the following:
- a. Owner shall grant or cause to be granted a license of right-of-way to Consultant to access all sites necessary for the performance of the Services under this Agreement.
 - b. Owner shall furnish or cause to be furnished to Consultant all documents and information known to Owner that relate to the identity, location, quantity, nature, or characteristics of any hazardous materials at or near the site(s).
 - c. Unless otherwise required by law or set forth in this Agreement, Owner shall be responsible for accurately locating and prominently marking all buried, concealed, or submerged pipes, tanks, cables, utilities or other man-made obstructions ("underground facilities") that may affect or be affected by Consultant's services.
- N. Unless otherwise included under this Agreement, the parties acknowledge that Consultant's Task Authorization does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). Owner represents to Consultant that, to the best of its knowledge, a Hazardous Environmental Condition does not exist at the Site, except as expressly disclosed to the Consultant in writing. If Consultant or any other party encounters a Hazardous Environmental Condition, Consultant 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 Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.
- O. The services to be provided by Consultant under this Agreement DO NOT INCLUDE advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by Consultant are understood by the parties to this Agreement to be strictly *engineering or other technical* opinions, advice, information or recommendations. Consultant is not a "municipal advisor" as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. The other parties to this Agreement should determine independently whether they require the services of a municipal advisor.
- P. The Consultant shall not be required to execute certificates, guarantees, warranties or make representations that would, in its professional judgment, require knowledge, services or responsibilities beyond the scope of this Agreement.
- Q. Owner and Consultant 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. If the Scope of Services does not establish protocols for electronic or digital transmittals, then Owner and Consultant shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to

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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.

3.01 Insurance

- A. Consultant shall procure and maintain insurance as set forth in Exhibit B, "Insurance". Consultant shall cause Owner to be listed as an additional insured on applicable general liability insurance policies carried by Consultant.
- B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Consultant's interests in the Project. Owner shall require Contractor to cause Consultant and its Subconsultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. Owner and Consultant shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit B. Such certificates shall be furnished prior to commencement of Consultant's services and at renewals thereafter during the life of the Agreement.
- D. 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 30 days prior written notice has been given to Owner and Consultant and to each other additional insured (if any) to which a certificate of insurance has been issued.

4.01 Payment for Services

- A. Payment: Owner shall pay Consultant in the amount and in the manner set forth in each signed Task Authorization. Unless indicated otherwise in a particular Task Authorization, Owner's payments to Consultant shall be on a time and expense basis in accordance with Consultant's hourly billing rates referenced in Exhibit C adjusted annually for the year the work is completed, plus reimbursable expenses and any subcontracted services, subject to any fee limit referenced in each Task Authorization. Unless specifically indicated otherwise in a particular Task Authorization, Consultant's charges for any subcontracted services shall be invoiced at cost plus fifteen percent. Consultant shall provide Owner at least sixty (60) days' notice of any changes in rates.
- B. Preparation of Invoices. Consultant will prepare invoices no more frequently than monthly for submittal to Owner for review. Unless otherwise directed by Owner, separate invoices shall be submitted for each Task Authorization, based on payment methods and amounts set forth in each Task Authorization. Supporting information will be provided with each invoice, to the extent requested by Owner in a Task Authorization.
- C. Payment of Invoices. Invoices are due and payable within thirty (30) days of the date of the invoice. If Owner fails to make a timely payment due Consultant, then Consultant may, without liability, after giving seven (7) days' written notice to Owner, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges.

5.01 Additional Services

- A. If mutually agreed by Owner and Consultant, or if required in Consultant's professional judgement because of changes in the Project, or unforeseen circumstances, Consultant shall furnish services in addition to those set forth in the executed Task Authorization via a written amendment thereto.

- B. When reasonably practicable in Consultant's professional judgment, Consultant shall provide Owner a written request for authorization to perform Additional Services and obtain Owner's written authorization before performing said Additional Services. Consultant's written request may be transmitted by electronic mail or regular mail. Consultant's request shall include a description of the Additional Services required and an estimate of the cost thereof. If the Owner fails to authorize the Additional Services within seven (7) days after Consultant's mailing or transmission of Consultant's request, said request will be deemed to have been denied and Consultant shall have no obligation to perform said Additional Services, nor shall Consultant bear any responsibility or liability for any costs, damages or delays resulting from the lack of said Additional Services.
- C. Owner shall pay Consultant for any Additional Services provided as follows: (1) as may be mutually agreed to in writing, or (2) in the absence of a mutual agreement an amount equal to the cumulative hours charged to the Project by each member or each class of Consultant's employees engaged in providing the Additional Services times the Consultant's hourly billing rates for each applicable billing class in effect at the time the Additional Services are performed; plus reimbursable expenses and charges for Consultant's Subconsultants, if any, at cost plus fifteen (15) percent.

6.01 Dispute Resolution

- A. Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice by either party of the existence of the dispute. If a dispute involves matters other than a claim by Consultant for payment of fees and the parties fail to resolve the dispute through negotiation then Owner and Consultant agree that they shall first submit any and all such 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 by a mutually acceptable mediator. Owner and Consultant agree to participate in the mediation process in good faith and to share the cost of the mediation equally. The process shall be conducted on a confidential basis, and shall be completed within 150 days of the date of notice by either party of the existence of the dispute. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to an alternative dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
- B. If a dispute involves a claim by Consultant for payment of fees and the parties fail to resolve the dispute through negotiation then Consultant may seek to have its claim for fees resolved by a court of competent jurisdiction without first participating in mediation.

7.01 Accrual of Claims

- A. Except in the case of latent design defects, all causes of action between the parties to this Agreement including those pertaining to acts, failures to act, or failures to perform in accordance with the obligations of the Agreement or failures to perform in accordance with the standard of care shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts, failures to act or failures to perform occurring prior to Substantial Completion, or the date of issuance of the Notice of Acceptability of Work (or similar notice of the final completion of the Project) for acts, failures to act or failures to perform occurring after Substantial Completion. In the case of latent design defects or design defects not reasonably discoverable, and only to the extent covered by insurance, the period of limitations shall commence at such time as the defect was or, with reasonable effort, could have been discovered.

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8.01 Controlling Law

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

9.01 Indemnification and Liability

- A. The Consultant and the Owner mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) but only to the extent caused by their own respective negligent acts, negligent errors or negligent omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this Agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.
- B. In addition to the indemnity provided under Paragraph 9.01 A and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Consultant and its officers, directors, partners, employees, and Consultant's Subconsultants from and against all costs (including attorneys' fees), losses, damages and liabilities arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, damage or liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Project itself), including the loss of use resulting therefrom.
- C. The parties hereto waive and release any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required under this Agreement that a party or their insurers may have at any time against the other party to the extent of such insurance and the parties shall cause their insurance policies to be so endorsed. In no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release a party or in any way diminish its liability or obligations under this Agreement, by way of indemnity or otherwise.

10.01 Successors, Assigns, and Beneficiaries

- A. Owner and Consultant each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 10.01.B the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the partners, 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 Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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. This provision shall not preclude Consultant from retaining Subconsultants as it deems reasonably necessary for the completion of the services rendered hereunder.

11.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:

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1. For cause,

- a. By either party upon fifteen (15) days' written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
- b. By Consultant:
 - 1) upon seven (7) days' written notice if Consultant believes that Consultant is being requested by Owner to furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon seven (7) days' written notice if the Consultant's services for the Project are delayed or suspended for more than 90 days for reasons beyond Consultant's control.
 - 3) Upon seven (7) days' written notice if Owner fails to pay an invoice when due.
 - 4) In the event Consultant terminates this agreement for either of the above-specified reasons, Consultant shall have no liability to Owner on account of such termination or any resulting costs, damages or delays.
- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 11.01.A.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than fifteen (15) days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such fifteen (15) 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, thirty (30) days after the date of receipt of the notice.

2. For convenience, by Owner effective seven (7) days after the receipt of written notice by Consultant.

- a. The terminating party under Paragraphs 11.01.A.1 or 11.01.A.2 may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Consultant to demobilize personnel and equipment from the Project 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. In the event of any termination under Paragraph 11.01.A.1, Consultant 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 an unlimited license to the use of Documents, at Owner's sole risk.

12.01 No Third Party Beneficiaries

- A. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against the Consultant.

13.01 Waiver

- A. Non-enforcement of any provisions by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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14.01 Confidentiality

A. Owner and Consultant agree that:

1. neither party nor any of their employees or authorized representatives will disclose, sell, transfer or make available to third parties any Confidential Information (as defined below) of the other party except to employees, agents or subconsultants who need to know such Confidential Information in the performance of their duties;
2. each party will use the Confidential Information solely for the purposes of carrying out their responsibilities and obligations under the terms of this Agreement or a Task Authorization;
3. each party will take those precautions reasonably necessary to maintain the confidentiality of the other party's Confidential Information; and
4. upon request from the other party, each party shall return, or at the request of the other party destroy, all copies of the other party's Confidential Information, once it is no longer needed or permitted for use.

B. For purposes of this Agreement, Confidential Information shall mean all trade secrets, proprietary information, know-how, processes, and other information and any tangible evidence, record or representation thereof, financial information, business information and documents, the intellectual property of each party and other information, not generally known to the public, which is confidential or proprietary. Confidential Information shall not, however, include information which:

1. was published or was otherwise available to the public prior to its being disclosed hereunder;
2. is published or otherwise becomes available to the public after its receipt from the disclosing party through no act or failure on the part of the receiving party;
3. was known to the receiving party prior to its receipt from the disclosing party as established by the recipient's written records; or
4. was acquired by the receiving party from a third party under no obligation to maintain its confidentiality.

C. Owner and Consultant agree that this confidentiality provision shall continue in force for a period of one year subsequent to the date of the last Project invoice sent by Consultant to Owner.

15.01 Total Agreement/Severability

A. This Agreement, including any expressly incorporated Exhibits, constitutes the entire Agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. If any term or condition of this Agreement shall, to any extent, be found invalid, void or unenforceable, the remaining provisions shall remain in full force and effect to the extent allowed by applicable law.

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

OWNER:	Town of Emmitsburg, Maryland	CONSULTANT:	Barton & Loguidice, D.P.C.
By:	_____	By:	<u>David R. Hanny</u>
	Cathy Willets		David R. Hanny
Title:	Town Manager	Title:	Senior Associate
Date	_____	Date	_____
Signed:	_____	Signed:	November 17, 2022

Address for giving notices:

Town of Emmitsburg, Attn: Town Manager
300A South Seton Avenue
Emmitsburg, MD 21727

Address for giving notices:

Barton & Loguidice, Attn: President
443 Electronics Parkway
Liverpool, New York

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Exhibit A – Template for Task Authorizations

Town of Emmitsburg, Maryland (“Owner”) entered in to a Master Services Agreement with Barton & Loguidice, D.P.C. (“Consultant” or “B&L”) with an effective date of November 7, 2022. In accordance with that Master Services Agreement, the following Task Authorization is hereby approved and Consultant is authorized by Owner to proceed with the services as delineated below. This is Consultant’s [e.g., 1st, 2nd] Task Authorization.

Effective Date of this Task Authorization:

B&L Project Name:

B&L Project Number:

B&L Project Manager:

Owner’s Project Manager:

Fee Limit for this Task Authorization, if any:

Payment Method: [e.g., *Time & Expense per hourly billing rates; lump sum*]

Consultant’s Scope of Services:

Approved for Owner By: _____
[insert signature and date of signature]

Type Name and Title of Owner’s Approver:

Approved for B&L By: _____
[insert signature and date of signature]

Type Name and Title of B&L Approver:

Exhibit B - Insurance

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The kinds and amounts of insurance required of the CONSULTANT are as follows:

- a) A policy or policies providing protection for employees of the CONSULTANT in the event of job-related injuries, generally referred to as "Worker's Compensation Insurance".
- b) Automobile Liability policies with a combined single limit of not less than \$1,000,000 for each person, or each accident because of bodily injury, sickness, or disease including death at any time resulting therefrom, sustained by any person, and for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.

c) Commercial General Liability Insurance shall be furnished with the limits of not less than:

General Aggregate	\$2,000,000	Each Occurrence	\$1,000,000
Products - Comp/Op Agg.	\$2,000,000	Damage to Rented Premises	\$100,000
Personal/Adv. Injury	\$1,000,000	Medical Expense	\$5,000

d) Excess Liability Insurance Umbrella Form, bodily injury and property damage combined:

Each Occurrence	Aggregate
\$1,000,000	\$1,000,000

e) Professional Liability Insurance, including errors and omissions, shall be maintained with minimum limits of not less than One Million Dollars (\$1,000,000).

Exhibit C – Consultant’s Hourly Billing Rates Schedule

Note: The billing rates schedule attached will be in effect for the entire calendar year indicated on the rates schedule, and will be replaced with Consultant’s new billing rates schedule effective on January 1st of each and every subsequent year of this Agreement.

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Barton & Loguidice
Billing Rates For Calendar Year 2022



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Travel by passenger vehicle* IRS standard mileage rate
 Overnight travel & subsistence at cost
 Telephone, postage, overnight delivery, etc. at cost
 In-house printing Unit rate schedule for printed material
 Field equipment & expendables.....Unit rate schedule
 Outside services including lab services & printing Cost plus 15%

INDIVIDUAL TECHNICAL EMPLOYEES AT THE FOLLOWING HOURLY RATES:

INDIVIDUAL TECHNICAL EMPLOYEES AT THE FOLLOWING HOURLY RATES:

Billing Title	Hourly Rate
Executive Manager	\$270.00
Manager V	\$232.00
Manager IV	\$210.00
Manager III	\$195.00
Manager II	\$183.00
Manager I	\$170.00
Professional VI	\$156.00
Professional V	\$140.00
Professional IV	\$126.00
Professional III	\$114.00
Professional II	\$99.00
Professional I	\$82.00
Technician VII	\$139.00
Technician VI	\$131.00
Technician V	\$115.00
Technician IV	\$107.00
Technician III	\$96.00
Technician II	\$80.00
Technician I	\$69.00
Construction III	\$131.00
Construction II	\$111.00
Construction I	\$99.00
Technical Assistant III	\$97.00
Technical Assistant II	\$82.00
Technical Assistant I	\$70.00

*IRS standard mileage rate in effect at time of travel (exclusive of operator time)

1) SET AGENDA FOR NEXT MEETING: December 6th, 2022 AT 7:30 PM

- 1.
- 2.
- 3.
- 4.
- 5.

Administrative Business:

- A.
- B.
- C.