

Town of Emmitsburg

300 A South Seton Avenue • Emmitsburg, MD 21727

Office: 301-600-6300 • Fax: 301-600-6313

www.emmitsburgmd.gov

TOWN MEETING AGENDA TOWN OFFICE – 300A SOUTH SETON AVENUE MONDAY FEBRUARY 6TH, 2023 AT 7:00 PM

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. FUTURE MEETINGS

Park's and Committee Meeting: Tuesday, February 21, 2023 at 7:30 pm (Town Office)

Planning Commission Meeting: Monday, February 27, 2023 at 7:00 pm (Town Office & Via Zoom)

Town Board Meeting: Monday, March 13, 2023 at 7:00 pm (Town Office & Zoom)

MEETING ITEMS

- A. APPROVE MINUTES: January 18, 2023
- B. POLICE REPORT
- C. TOWN MANAGER'S REPORT
- D. TOWN PLANNER'S REPORT
- E. COMMISSIONER COMMENTS
- F. MAYOR'S COMMENTS
- G. PUBLIC COMMENTS
- H. ADMINISTRATIVE BUSINESS (NONE)
- I. CONSENT AGENDA
 1. Appoint Shelia Pittinger, an out of Town representative, to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025.
 2. Appoint Amber Phillips to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025.
- J. TREASURER'S REPORT
- K. PLANNING COMMISSION REPORT
- L. AGENDA ITEMS (DETAILS ATTACHED)
 - 1) FY22 Audit Presentation by Deleon and Stang.
 - 2) Discussion related to increases to water and sewer rates.
 - 3) For consideration, approval of the Amendment to Loan and Financing agreement for the extension of credit made to the Vigilant Hose Company of Emmitsburg as the successor by merger to the Emmitsburg Volunteer Ambulance Co.
 - 4) For consideration, approval of engineering change order, amendment number 3, RK&K for the Creamery Road Pump Station replacement project.
- M. SET AGENDA FOR NEXT MEETING: MARCH 13, 2023

**ITEMS 2 & 3:
POSTPONED
TO 3/13/23**

4. SIGN APPROVED TEXT AMENDMENTS AND/OR RESOLUTIONS
5. ADJOURN

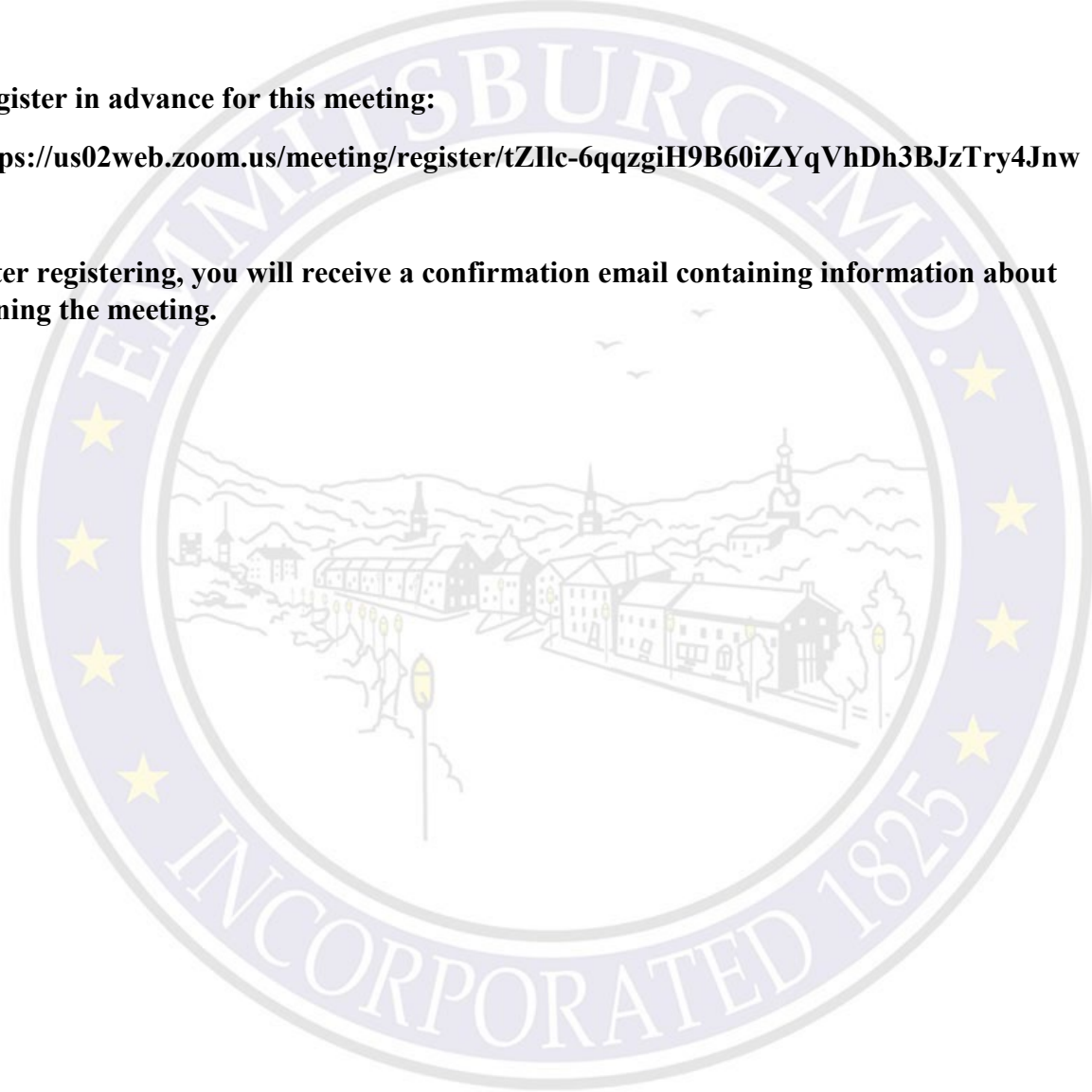
ZOOM MEETING:

When: Feb 6, 2023 07:00 PM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/tZIlc-6qqzgiH9B60iZYqVhDh3BJzTry4Jnw>

After registering, you will receive a confirmation email containing information about joining the meeting.



A. APPROVE MINUTES

**MINUTES
TOWN MEETING
JANUARY 18, 2023
TOWN OFFICE – 300A SOUTH SETON AVENUE**

Present: *Elected Officials* - Mayor Donald Briggs; Commissioners: Joseph Ritz III, Vice President; Clifford Sweeney, Treasurer, Frank Davis; and Amy Boehman-Pollitt. *Staff Present* - Cathy Willets, Town Manager; Najila Ahsan; Town Planner; Sabrina King, Town Clerk; Reese Fryer, Recorder. *Others Present* – Deputy Jason Ahalt; Absent with prior approval – Commissioner O'Donnell

I. Call to Order

A quorum being present, Commissioner Joseph Ritz III of the Board of Commissioners, called the January 18, 2023 town meeting to order at 7:02 p.m. Pledge of Allegiance was recited. Upcoming meetings were announced.

Approval of Minutes

Commissioner Davis motioned to accept the December 6, 2022 town meeting minutes; second by Commissioner Sweeney. Yeas – 4; Nays – 0; Absent – O'Donnell. The motion was accepted.

Commissioner Boehman-Pollitt motioned to accept the December 12, 2022 town meeting minutes; second by Commissioner Davis. Yeas – 4; Nays – 0; Absent – O'Donnell. The motion was accepted.

Town Managers Report:

Ms. Willets, Town Manager, presented the Manager's Report from November 2022 (exhibit in agenda packet). Ms. Willets highlighted key points in her report and noted that at the time of the report, Rainbow Lake was 2.1' feet below the spillway level which was 14.5 feet. She explained that the spillway was 16.6 feet and did not have updated numbers, however she knows it has recovered significantly. Ms. Willets also reported the Towns well levels are making progress and announced the voluntary restrictions can now be removed.

Grant Administrative Report:

Ms. Willets, Town Manager, presented Ms. Shaw's Grants Administrative Report. She highlighted the current grants that are taking place along with future projects.

Deputy Ahalt arrived at 7:12pm.

Police Report:

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

Town Planners Report:

Ms. Willets, Town Manager read the Town Planner's Report from October 2022 (exhibit in agenda packet). She introduced Najila Ahsan who is the new Town Planner. Ms. Willets highlighted current projects and the upcoming meeting with the Planning Commission. She mentioned how Rutters is open and has an Amendment for a site plan to remove the Forrest Conservation Easement plan.

Commissioner Comments:

- Commissioner Amy Boehman-Pollitt: She congratulated Rutters on their soft opening and that she attended the Vigilant Hose Company Banquet. She also gave an update on the Citizens Advisory Committee meeting.
- Commissioner Davis: He welcomed new staff and expressed the citizens had only positive feedback about everyone. He mentioned that the Frailey Farm Developer is no longer interested in the property. He has heard negative and positive feedback about the development.
- Commissioner Sweeney: He agreed with Commissioner Davis, that the Town needs to grow especially for schools. He announced the first fundraiser for Heritage Day which is Valentine's Day at the Ambulance building.
- Commissioner Ritz III: He congratulated Rutters in their opening, and he is also very pleased with the new staffing.

Mayor's Comments:

Mayor Briggs spoke of the Frailey Farm Developer withdrew due to changes in the economy. He also went to Rutters and said that it is immaculate and how busy it is. He mentioned the new staff and how fantastic each one of them are. He mentioned that the Town is working on the Pump Station and received a grant and loan from USDA for this project. He also mentioned that the Town received a grant for the water clarifier and will be applying for funding with MDE for the line on the mountain. He announced this year's Earth Day in Spring. Sabrina King the Town Clerk, will be representing the Town for the preparation for 4th of July 2026, 250th anniversary for the County.

Public Comments: *Eric Sloane, Emmitsburg MD*- He mentioned that he is having problems with his water pressure in the early morning.

Commissioner Ritz III told Mr. Sloane that Staff will contact him to look into this issue.

Administrative Business: (NONE)

Consent Agenda:

Motion: The Board of Commissioners unanimously accepted to appoint Melissa Mckenney to the Citizens Advisory Committee with a term of January 18, 2023 to January 18, 2025; Yeas – 4; Nays – 0; Absent – 1 (O'Donnell) The motion was adopted.

Treasurer's Report:

Commissioner Sweeney presented the Treasurer's Report for December 2022 (exhibit in agenda packet).

Planning Commission Report:

Commissioner Ritz III announced that they did not meet in November and were going to meet in December but the applicant was not ready. The next meeting will be January 30th, 2023.

II. Agenda Items

Agenda #1 – For consideration, approval of Bearing Construction change order for removal of trees on dam at the Silo Hill Basin. (A) Mandatory requirement from Frederick County Soil Conservation per MDE guidelines. Ms. Willets briefly reviewed the following documents in the agenda packet and explained that this is necessary to complete the project. She also mentioned if it is approved that the job would be completed in early Spring. *Motion:* Commissioner Sweeney motioned to accept the approval of the stump removal in the amount of \$47,185.00; second by Commissioner Boehman-Pollitt. Yeas – 4; Nay – 0; Absent – 1 (O'Donnell). The motion was adopted.

Agenda #2 – For consideration, approval of agreement with Barton and Loguidice for Silo Hill Basin tree removal engineering services. (A) Part of the change order request that was not in the initial scope of work. Ms. Willets presented the agenda item and highlighted that it is a dam safety measure which also needs engineering services. She explained that they over-see the guidelines put forth from Frederick County and the State of Maryland. She said that it would also be included in the grant 100%. Ms. Willets explained that this is Barton and Loguidice who manages the Stormwater program and the MS4. She highlighted on page 37 that the company cannot exceed the limit of \$19,000.00 without additional approvals. *Motion:* Commissioner Davis motioned to approve the agreement with Barton and Loguidice for Silo Hill Basin tree removal engineering services of \$19,000.00; second by Commissioner Davis. Yeas – 4; Nays – 0; Nay – 1 (O'Donnell). The motion was approved.

Agenda #3- For consideration, approval of the HACH estimate for the ChemScan upgrade at the WWTP. (A) The Board previously approved a similar upgrade at the WTP. This was included as an asset project for the WWTP in the FY23 budget. Ms. Willets presented the agenda item and explained that HACH did extend their quote and so the price is still good in the amount of \$56,937.00. She went over key highlights of the ChemScan upgrade project. She explained that the WWTP would be able to monitor their numbers at real time. *Motion:* Commissioner Boehman-Pollitt motioned to accept the approval of the HACH estimate for the ChemScan upgrade at the WWTP in the amount of \$56,937.00; second by Commissioner Davis. Yeas – 4; Nays – 0; Absent – 1 (O'Donnell). The motion was adopted.

Agenda #4- For consideration, approval of Resolution 2023-01 bond reduction request for the Irishtown Road project. *As-builts were received in the Town Office on 11/29/2022 satisfying item #28. Ms. Willets presented the agenda item and referred to page 54 in the agenda packet to clarify that Geolab was one of the outside engineers that was utilized for this project. She said Geolab sent a letter on December 5th to the Town, noting that per Fox Associates estimate items

1 through 27 and 29 through 41 were completed. *Motion:* Commissioner Sweeney motioned to accept the approval of Resolution 2023-01 bond reduction request for the Irishtown Road project; second by Commissioner Boehman-Pollitt. Yeas – 4; Nays – 0; Absent – 1 (O’Donnell). The motion was adopted.

Agenda #5- For approval, designation of the second tranche of the American Rescue Plan monies. Ms. Willets referred to the agenda packet and highlighted that, the American Rescue Plan Act of 2021 Coronavirus Local Fiscal Recovery Funds Disbursement. She said the Town of Emmitsburg was awarded a total of \$3,152,038.92 and on 07/26/2021 the Town received the first tranche in the amount of \$1,575,429.33. She explained that the Board of Commissioners approved a designation of the monies to the water clarifier pump station projects at the 10/04/2021 Town meeting. On 08/10/2022 the Town received the second tranche in the amount of \$1,576,608.99 and behalf of the Mayor and staff, they recommended the second tranche be used for water infrastructure project such as the 16” main water line. She also highlighted the allowable usages, which can be found in the agenda packet. *Motion:* Commissioner Boehman-Pollitt motioned to accept the approval of designation of the second tranche of the American Rescue Plan monies; second by Commissioner Davis. Yeas – 4; Nays – 0; Absent - 1 (O’Donnell). The motion was adopted.

Agenda #6- For consideration, approval of ordinance 2023-03 amendment to Title 16 changes to subdivision fees. (A) This Ordinance will amend subdivision, plan review and annexation, forest conservation procedures related to fees. This ordinance will amend subdivision, site plan, annexation and forest conservation procedures related to review fees. Ms. Willets explained that the Town pays out of pocket for all fees and does not see reimbursement except for engineer review fees. She gave a brief example from the previous development with the Frailey Farm project and how the Town was responsible for the legal fees associated. Ms. Willets read from the agenda packet explaining how the fees would be determined if approved.

Mayor Briggs expressed that there might be another annexation in the future. He feels that this is appropriate and does not want this to impact the Town. He expressed that the residents are the ones paying the fees and would like the developers to be responsible for those.

Motion: Commissioner Sweeney motioned to accept the approval of ordinance 2023-03 amendment to Title 16 changes to subdivision fees as presented; second by Commissioner Boehman-Pollitt. Yeas – 4; Nays – 0; Absent - 1 (O’Donnell). The motion was adopted.

Agenda #7- For consideration, approval of ordinance 2023-02 amendment to Title 17 changes to zoning fees. (A) This ordinance will amend the collection process for zoning fees. Ms. Willets explained that this is very similar to ordinance 2023-03. She highlighted and read from the ordinance of the new language. She explained that the Town already gets reimbursed for engineering fees. *Motion:* Commissioner Boehman-Pollitt motioned to accept the approval of ordinance 2023-02 amendment to Title 17 changes to zoning fees; second by Commissioner Davis. Yeas – 4; Nays – 0; Absent - 1 (O’Donnell). The motion was adopted.

Set Agenda Items for February 6th, 2023 Town Meeting

Consent Agenda: (1.) Appoint of Shelia Pittinger, an out of Town representative, to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025. (2.) Appoint of Amber Phillips to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025.

Agenda Items: (1.) FY22 Audit Presentation by Deleon and Stang. (2.) Discussion related to increases to water and sewer rates. (3.) For consideration, approval of the Amendment to Loan and Financing agreement for the extension of credit made to the Vigilant Hose Company of Emmitsburg as the successor by merger to the Emmitsburg volunteer Ambulance Co. (4.) For consideration, approval of engineering change order, amendment number 3, RK&K for the Creamery Road Pump Station replacement project.

Motion: Commissioner Sweeney motioned to accept the February 6th, 2023 town meeting agenda as presented; second by Commissioner Boehman-Pollitt. Yeas – 5; Nays – 0; Absent – 1 (O'Donnell). The motion was adopted.

III. Sign Approved Text Amendments and/or Resolutions

IV. Adjournment

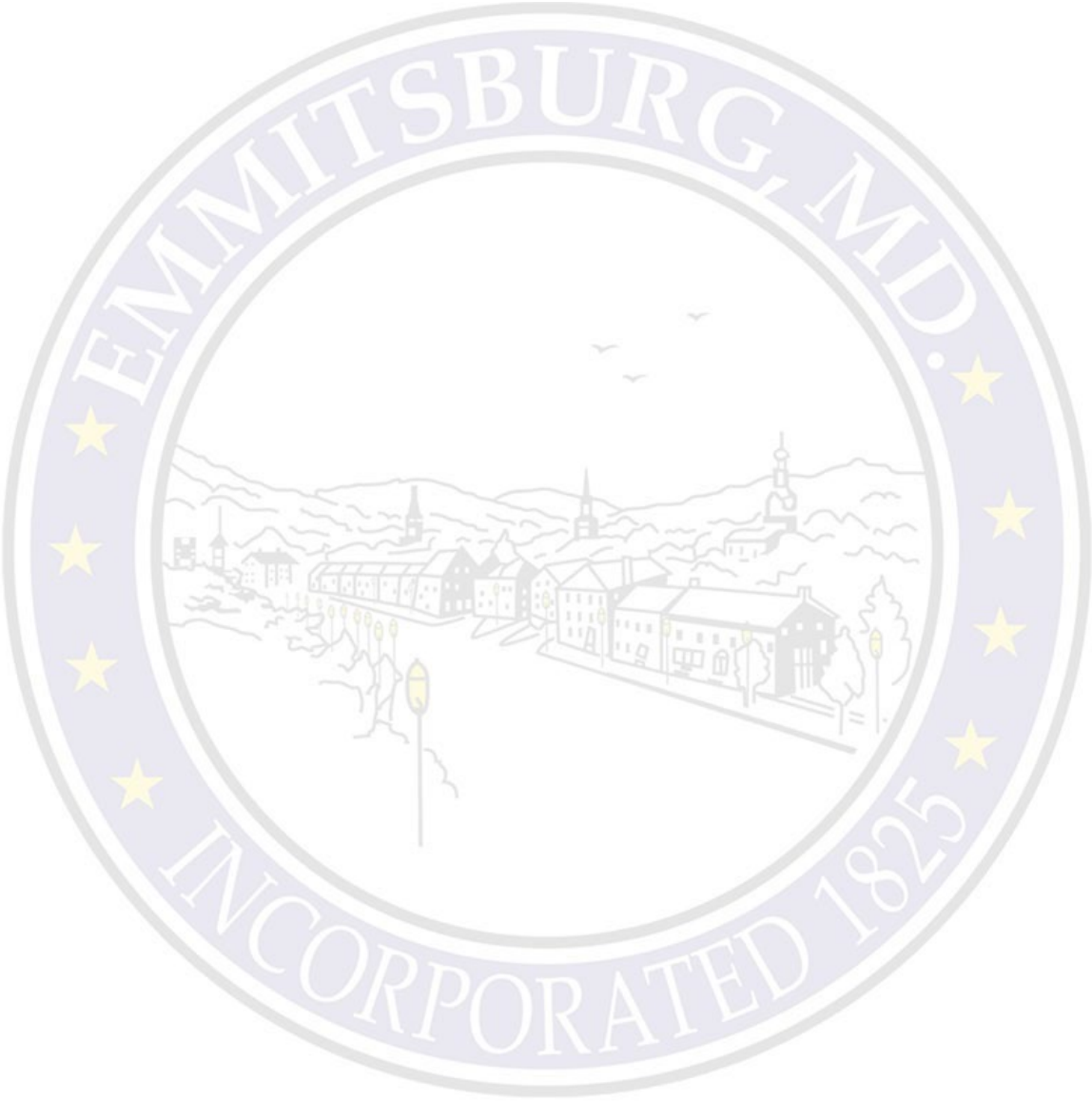
With no further business, Commissioner Davis motioned to adjourn the January 18th, 2023 town meeting at 8:29 p.m.; second by Commissioner Boehman-Pollitt. Yeas – 5; Nays – 0; Absent – 1 (O'Donnell). The motion was adopted.

Respectfully submitted,

Sabrina King, Town Clerk

Minutes Approved On:

B. POLICE REPORT



C. TOWN MANAGER’S REPORT

Town Manager’s Report

December 2022

Prepared by Cathy Willets

Streets:

- Staff replaced and repaired some street signs around town.
- Staff conducted monthly street sweeping.
- Staff repaired street lights.
- Staff conducted monthly storm drain inlet cleaning.
- Staff finished putting Christmas decorations up around Town and in front of Community Center.
- Staff assisted with Annual Christmas Tree Lighting.
- Staff put millings down on road beside 142 South School Lane.
- Staff collected and counted parking meter money.
- Staff painted curb yellow in front of 101 DePaul St.
- Staff cleaned debris and leaves on Irishtown Rd. (North Seton to Waycross Ct).
- Staff in over the Christmas weekend for ice, snow and wind event. Numerous events: fire alarm at CCC; broken sprinkler pipe Carriage house; downed trees and damaged Town billboard sign.
- Staff removed damaged street light from accident in front of 1 East Main St.

Parks:

- Staff conducted daily park checks – trash cans, cameras, dog waste stations, restrooms.
- Staff conducted monthly park maintenance – playground equipment, roads, fences, pavilions, etc.
- Contractor completed new bridge project in E. Eugene Myers Park.
- Staff cut down leaning tree branch at the dog park.

Water:

- Rainbow Lake is at the spillway level (16.6 feet).
- The roughing filters are being backwashed four times a day. The DE filters are getting one week runs.
- Well levels (optimum level was determined to be May 2011).

	<u>May 2011</u>	<u>December</u>	<u>Change</u>
○ Well #1:	35’	38’	-3’
○ Well #2:	8’	14’	-6’
○ Well #3:	12’	24’	-12’
○ Well #4:	108’	OFF’	N/A
○ Well #5:	10’	OFF’	N/A

- Water production and consumption. We produced an average of 227,905GPD. We consumed an average of 242,147 GPD (finish water + MSM). The amount of Backwash Water in the month of December is ... (18.22%).
 - 41.43% of this water came from wells.
 - 5.16% of this water came from Mt. St. Mary's.
 - 53.41% of this water came from Rainbow Lake.

We purchased 442,150 gallons of water from MSM this month.

Wastewater:

- We treated an average of 631,427 gpd (consumed 242,147 GPD) which means that 61.65% of the wastewater treated this month was "wild water".
- We had no spills of untreated sewage in the month of December.
- We exceeded the plant's design capacity nine times in the month of December.
 - 12/15 1,283,000 gpd 12/16 1,260,000 gpd 12/17 869,000 gpd
 - 12/22 1,294,000 gpd 12/23 816,000 gpd 12/28 824,000 gpd
 - 12/29 838,000 gpd 12/30 889,000 gpd 12/31 892,000 gpd
- We received about 5.75" of precipitation this month (the average is 3.3"). We have a precipitation **SURPLUS of 4.59"** over the last six months. The average precipitation for the period from July 1 through December 31 is 21.61". We have received 26.2" for that period.

Trash: Trash pickup will remain Mondays in the month of February.

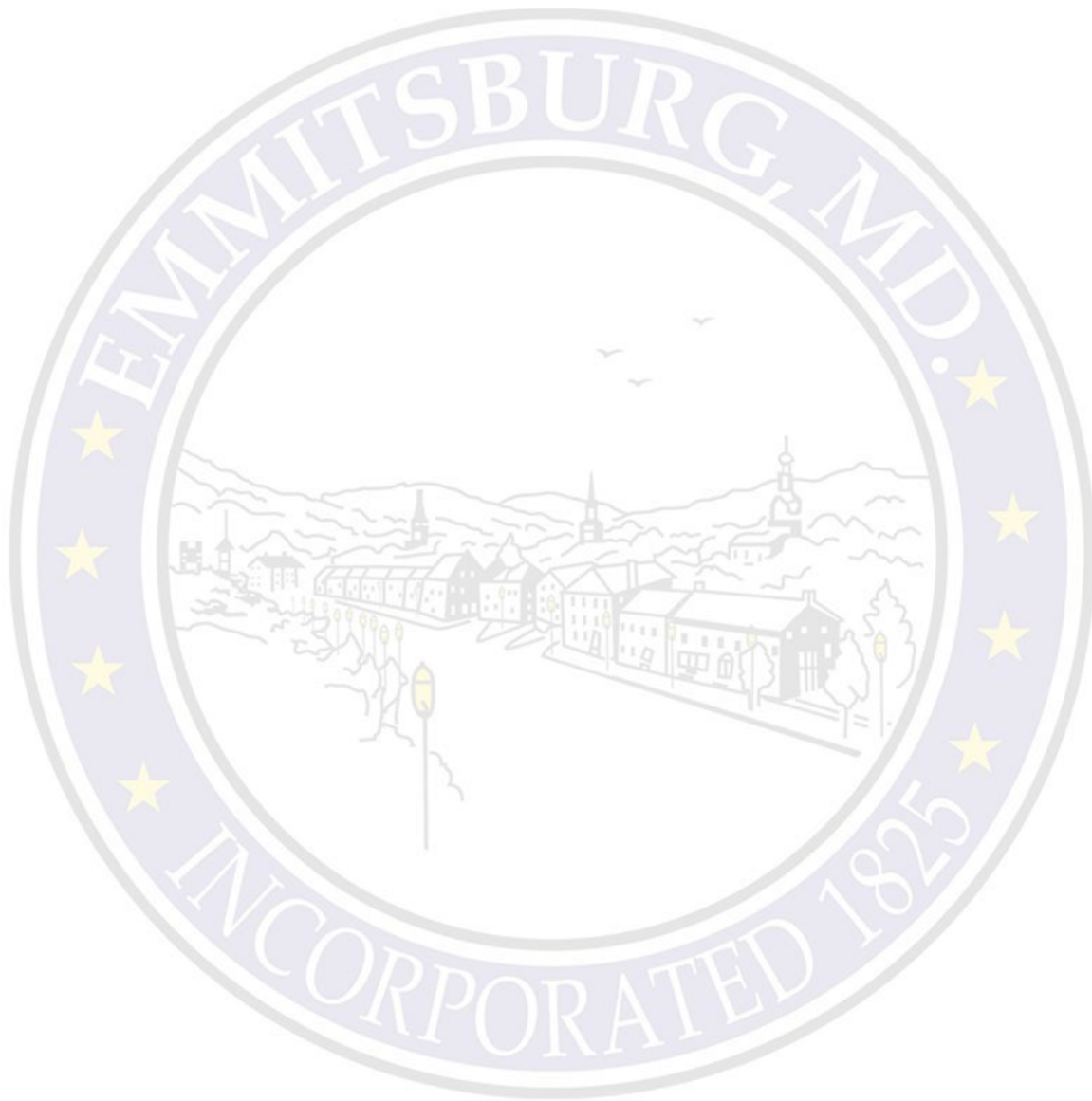
Meetings Attended:

- 12/06 Conference call w/ Mayor, Chris Jakubiak and Leslie Powell re: ongoing projects
- 12/06 Attended Town Meeting
- 12/08 Attended meeting with contractor re: stormwater and MS-4 projects and mandates
- 12/12 Attended Town Meeting
- 12/16 Conference call with Leslie Powell re: ongoing projects
- 12/20 Conference call with Leslie Powell re: ongoing projects

Noteworthy:

- Staff pumps holding tank every 10 days at 8533 Hampton Valley Rd.
- Staff worked the yard waste dumpster twice in December.
- Staff conducted monthly equipment and fire extinguisher maintenance.
- Staff did some water meter upgrades.
- Staff completed some use and occupancy permit inspections.
- Staff conducted quarterly water meter readings.
- Staff created standard operating procedures for changing a chlorine tank.
- W&S Superintendent and Lead Operator attended a chlorine disinfection class.
- W&S Trainees both received their temporary licenses.
- Staff working with contractor to develop maintenance schedule for LG Sonic.

- Backflow preventer replace at pump station.
- Leak at WWTP burst causing staff to shut off pumps. Repairs have been made and waterline fixed.



PARKING ENFORCEMENT REPORT

JANUARY 2023

<i>Overtime Parking</i>	65		
<i>Restricted Parking Zone</i>	2		
<i>Parked in Crosswalk</i>			
<i>Parked on Sidewalk/Curb</i>			
<i>Parked by Fire Hydrant</i>			
<i>Parked Blocking Street</i>			
<i>Parked Blocking Driveway</i>			
<i>Failure to Park between Lines</i>	2		
<i>Left Side Parking</i>	1		
<i>Parked in Handicapped Space</i>			
<i>48 Consecutive Hours</i>			
<i>Total Tickets - Warnings</i>	69	13	
<i>Meter Money</i>	\$1066.05		
<i>Meter Reservations</i>	Daily Reservations: 2 \$10	Funeral Home Reservations: 1 Time	
<i>Parking Permits by Type</i>	3M: 2	6M: 2	1Y: 0
<i>Parking Permits Money</i>	\$360		
<i>Violation Cost</i>	\$670		
<i>Late Fees Assessed</i>	\$90		
<i>Payment Received</i>	\$415		
<i>Dues Forward</i>	\$290		
<i>Totals January:</i>	<i>Made</i> \$1776.05		<i>Due</i> \$290
<i>Totals 2023</i>	<i>Violations Paid</i> \$415	<i>Outstanding Bal.</i> \$290	<i>Meter Money</i> \$1066.05

- Current meters are obsolete and I have been unable to find any one that repairs/adjusts current meters. We are long overdue to upgrade the meters.
- Contacted multiple companies about “Smart meters.” Smart meters can take card or electronic payments but come at a monthly cost and are expensive to purchase outright
- Mobile Parking applications are an option but would need a higher fare to be worth the investment
- Conclusion to be made, if we want to give consumers electronic means of payments we have to upgrade current meters and we need to raise parking meter rates to cover the cost of upgrading
- I also suggest adding a monthly Parking Permit option as well as lowering the cost of the long term parking permits

As of February 1, 2023
Grants Administrator Report

Prepared By: Madeline Shaw, Grants Administrator

ACTIVE GRANTS (11 TOTAL)

#22-1, USDA New Public Works Equipment for \$168,900 (match of \$128,500)

- For purchase of a 4x4 work truck, backhoe loader, multi-user tractor, WWTP SCADA.
- Status - Backhoe and multi-use tractor delivered. SCADA completed. Waiting on work truck to be delivered; delayed to Feb. 2023 now. Once all invoices are received final report will be submitted.

#22-6, POS New Bathroom/Concession Stand for \$147,980 (\$89,000 match)

#22-7, LPPI New Bathroom/Concession Stand for \$40,000 (no match)

- For construction of a new bathroom/concession stand combo building in Community Park.
- Status – Waiting on building permits and final plan edits. Need to order pre-fabricated building, then hire contractor to prepare site for delivery (water/sewer/electrical/stone pad).

USDA Creamery Road Pump Station Replacement \$863,000 grant, \$1,987,000 loan

- For replacement of Creamery Road Pump Station will new station.
- Status – Construction bids advertised Feb. 2 with a due date of March 22. Bids anticipated to come to board at May 1 town meeting. Continuing to submit monthly reports to USDA too.

#23-2, TRIPP Emmitsburg Advertising for \$2,963 (\$1,481 match)

- For advertising Emmitsburg in Celebrate Gettysburg, Visit Frederick and Montgomery Magazine.
- Status – ads placed in Celebrate Gettysburg (March/April edition) and Visit Frederick (2023) so far.

#23-4, CP&P Silo Hill Playground Improvements for \$146,263 (no match)

- To replace old swing set and playground tower and install half basketball court.
- Status – Playground and hoop installation completed 01/27. Waiting on ½ basketball court installation once weather is warmer, then project complete.

#23-8, MEA Streetlight & Outdoor Lighting Efficiency Pilot for \$27,500 (15% of total project cost match)

#23-10, USDA Downtown Streetlight Replacement for \$75,000

#23-11, USDA Downtown Streetlight Replacement for \$50,000

- Replace 102 streetlights along Main Street / Seton Avenue with new LED dimmable cutoff lights.
- Status – waiting on DHCD Operating Assistance grant award in early 2023 and town budget transfer to fund entire project est. at \$234,090.

#23-12, DHCD Business District and Neighborhood Safety Grant for \$85,000 submitted 10/21/22

- Purchase two portable radar speed trailers and two surveillance cameras for town square.
- Status – Waiting on grant agreement to be finalized, then will collect at least 3 written estimates for equipment and order equipment.

#23-3, DHCD Community Legacy Façade Improvements FY2023 for \$50,000

- Provide property owners in sustainable community's district with 50/50 funds to fix-up property
- Status – Sustainable Communities Committee met on Jan. 26th to vote on which properties would be awarded funds. Need to submit awarded properties to Maryland Historical Trust, then once we hear from MHT give the property owners the go-ahead to proceed.

NEWLY AWARDED GRANTS

#23-6, POS Community Park Cornhole for \$6,000 (\$2,00 match)

- For installing two pairs of permanent concrete cornhole boards in Community Park.
- Status – received Maryland Board of Public Works approval on Jan. 25. Waiting on warmer weather for concrete pads to be poured. Need to order equipment.

#23-7, POS Outdoor Storybook Trail for \$8,250 (\$2,750 match)

- For installation of 30 single pedestal exhibits that would display exchangeable storybook pages.
- Status – received Maryland Board of Public Works approval on Jan. 25. Coordinating installation with library. Need to order equipment.

PENDING GRANTS (WAITING FOR ANNOUNCEMENT) (12 TOTAL)

#23-5, POS Rainbow Lake Parking Lot for \$70,000 (\$37,500 match)

- For SWM plan and to pave a 10 to 12 space parking lot at Rainbow Lake. Maryland Board of Public Works to vote on tentatively Feb. 15.

DHCD Operating Assistance Grant – Main Street Improvement Grant for \$10,000

- Replace 102 streetlights along Main Street / Seton Avenue with new LED dimmable cutoff lights.

MWIFA Drinking Water Revolving Loan and/or Water Supply Grant for \$2,255,552 submitted 01/31/22

1. North Seton Avenue waterline replacement \$1,145,552
2. DePaul Street waterline replacement \$1,110,000

DNR Local Parks and Playgrounds Infrastructure Grant FY2023 – 4 Totaling \$100,000 submitted 07/06/22

1. Rainbow Lake Parking Lot to cover remainder of funds needed for project \$44,500
2. Community Park Pavilion Improvements to rehab pavilion and replace tables \$30,500
3. Memorial Park Pavilion Improvements to rehab pavilions and replace tables \$22,000
4. Baseball Bat/Helmet Racks to purchase racks for remaining 3 ballfields \$3,000

DNR Community Parks and Playgrounds FY2024 – 2 Totaling \$120,686 submitted 08/24/22

1. Install half basketball court in Memorial Park \$15,000
2. Install playground addition via Timber Stacks play equipment in Memorial Park \$105,686

KMB Citizen Stewardship Grant for \$5,000 submitted 11/14/2022

- Purchase 4 pet waste stations and 3 recycling containers to be installed at various areas in Town.

State Aid for Police Protection (SAPP) FY2024, submitted 12/13/2022

MEA Streetlight & Outdoor Lighting Efficiency Pilot FY2023, submitted 01/13/2023

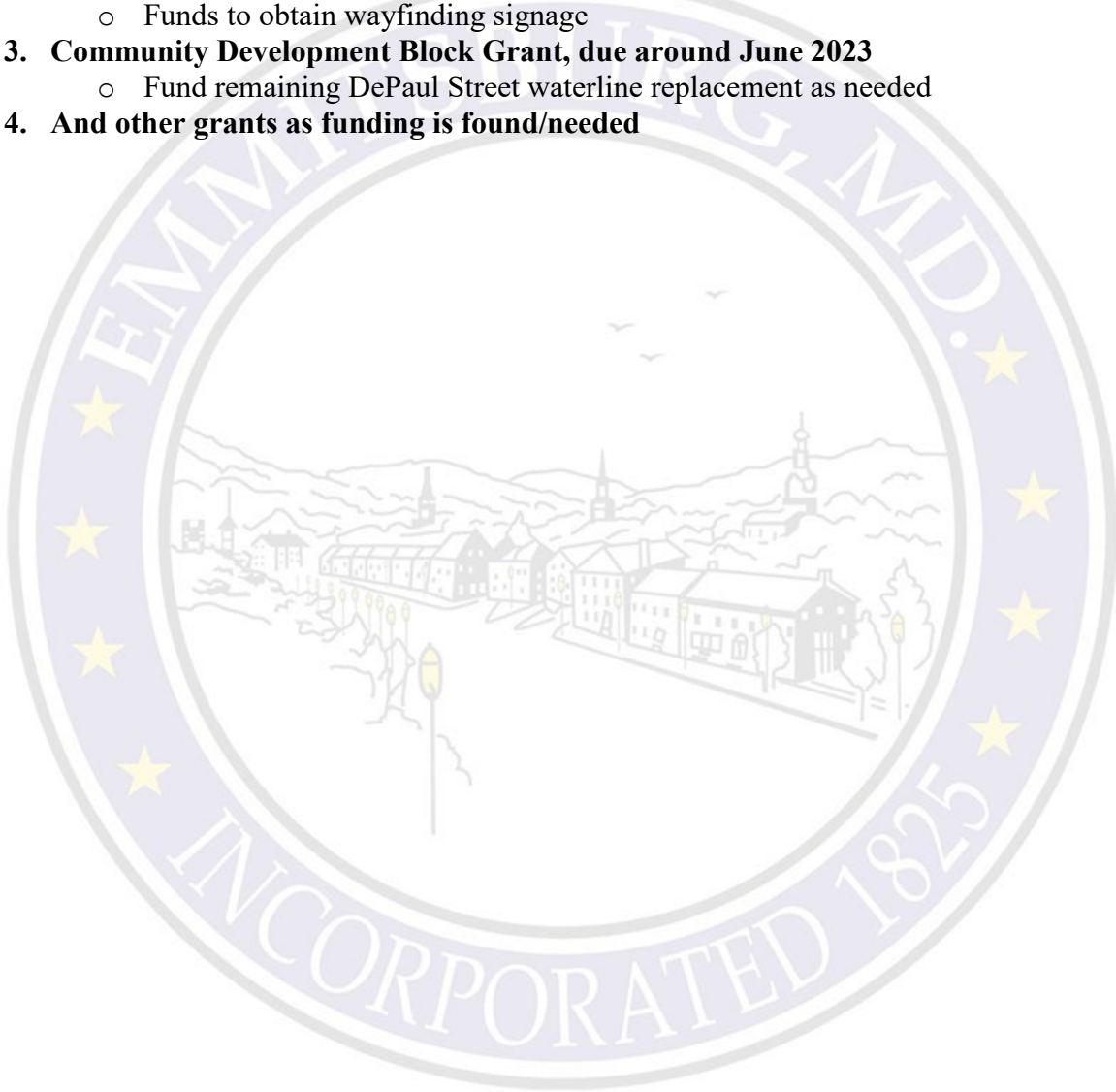
- *Not pursued anymore* due to stringent lighting requirements by grant organization. Would have funded replacement of street lights in neighborhoods.

MWIFA Emmitsburg Transmission Main Replacement, submitted 01/31/2023

- To replace 10-inch mountain main into Town with 16-inch to improve water quality and fire flow.

UPCOMING GRANTS (TO APPLY FOR)

- 1. Chesapeake Bay Trust Green Streets (G3) grant, due around March 8, 2023**
 - Funds to complete improvement plan & partial construction for N. Seton Green Street & waterline replacement.
- 2. TRIPP Tourism Grant, due around March 31, 2023**
 - Funds to obtain wayfinding signage
- 3. Community Development Block Grant, due around June 2023**
 - Fund remaining DePaul Street waterline replacement as needed
- 4. And other grants as funding is found/needed**



D. TOWN PLANNER'S REPORT

January 2023 Planners Report

1. Permits & Zoning

- ✓ 2 Cross-Connection
- ✓ Zoning
- ✓ 1 Street Closure
 - 101 W Main St.
- ✓ 1 Street Cut
 - 101 W Main St.
- ✓ 2 No Permits Required Letters
 - 133 W Main St.
 - 339 South Seton Avenue
 - 8 Zanzella Drive
- ✓ 2 Use & Occupancy Permits
 - 10201 Taneytown Pike
 - 322 South Seton Avenue

- Provided notice to the owner of 101 WMS about potential zoning violation.

2. Grants

- Community Legacy
 - Attended Sustainable Communities Board Meeting on 1/26/2023
- Chesapeake Bay Trust:
 - Silo Hill SWM basin retrofit (coordinating with Barton & Loguidice)

3. Planning Commission (PC)

- First meeting of the year on January 30th
 - Proposal by Rutter's store to remove a forest conservation easement to increase visibility of their commercial property was denied.
 - Revised Site Plan and Improvement Plans for Federal Stone Inc. and Creamery Court Extension were conditionally approved with the conditions that the applicant address the comments set forth in the Town Engineer's memorandum from January 12, 2023 and obtain all necessary County, State and federal approvals. Town staff will certify that the conditions have been met and ask the Mayor the Planning Commission Chair to sign the plans as usual
 - PC approved the two zoning text amendments presented by town staff—the first of the amendment addresses the placement of tall fences on corner lots and the second amendment provides a clearer way to define the front of the lot. This will be on the agenda for next month's Board of Commissioner's meeting for review and approval.
 - PC will meet again this month to work program to determine priorities and goals for this year. Additional meetings will be needed as we start working on the Comprehensive plan for 2025.

4. Municipal Separate Storm Sewer System (MS4)

- Progress report on Silo Hill Basin Retrofit

5. Miscellaneous

- Forest Banking Credits for Water Treatment Clarifier Project
- Attended Frederick County Municipal Planners' meeting on 1/27/23

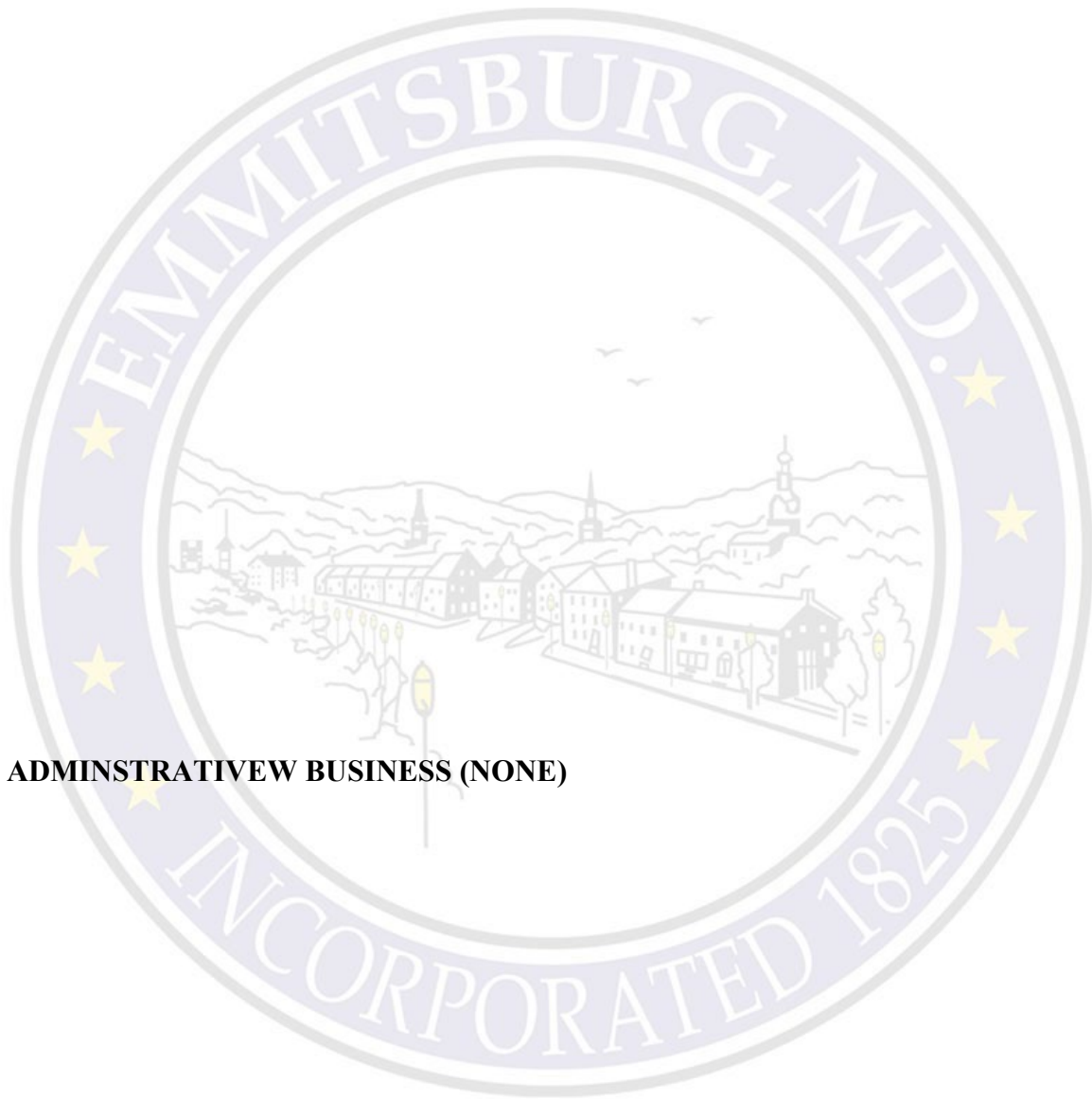
E. COMMISSIONERS COMMENTS

F. MAYORS COMMENTS

January activities for February 6th, 2023 Town meeting agenda

- Wednesday, January 18th, 7:00 PM, attended the rescheduled Town meeting.
- Thursday, January 26th, 12 AM, attended the Frederick County Building Association.
- Thursday, January 26th, attended dinner at the Winchester Hall with newly elected County Executive and Frederick County Mayors and Burgess.
- Friday, February 3, traveling to Washington DC for a Ukrainian Prayer Breakfast with Conrad Reaver.

G. PUBLIC COMMENTS



H. ADMINISTRATIVE BUSINESS (NONE)

I. CONSENT AGENDA

- 1) Appoint Shelia Pittinger, an out of Town representative, to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025.
- 2) Appoint Amber Phillips to the Citizens Advisory Committee with a term of February 6, 2023 to February 6, 2025.



J. TREASURER'S REPORT

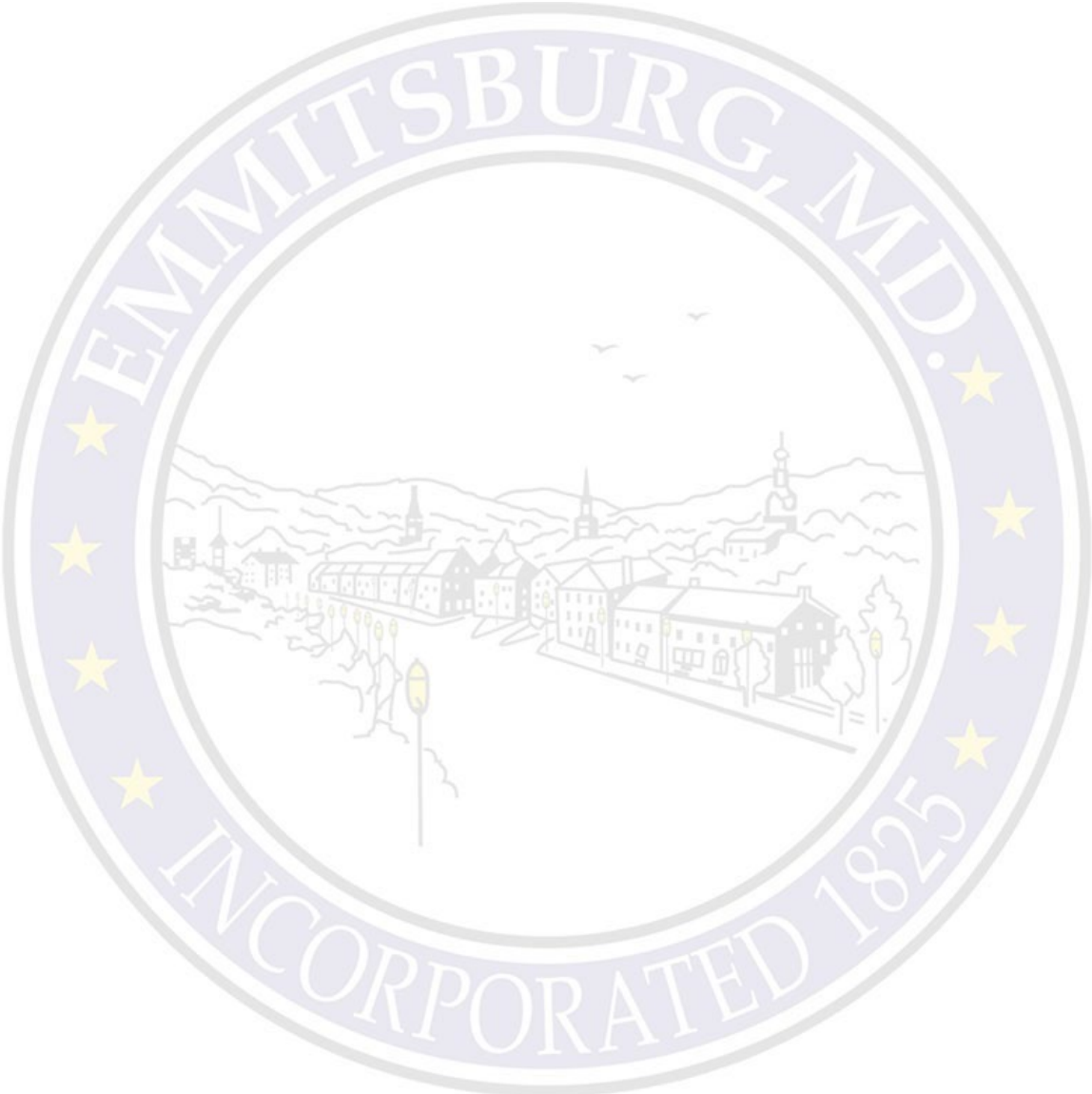
**TOWN OF EMMITSBURG
CASH ACTIVITY as of January 31, 2023**

\$8,907,763	Cash Balance January 1, 2023
611,499	Deposits
<u>-511,400</u>	Withdrawals
\$9,007,862	Operating Balance Forward

<u>Check Amount</u>	<u>Vendor Name</u>	<u>Description</u>	<u>Check Date</u>	<u>Check Number</u>
\$120,395	Bearing Construction, Inc	Silo Hill Basin Project	01.25.23	44623
\$67,868	Treasurer of Frederick County	Deputy Services	01.11.23	44576
\$42,555	Bearing Construction, Inc	Silo Hill Basin Project	01.11.23	44571
\$23,740	Comptroller of Maryland	2Q FY23 Bay Restoration Fee	01.04.23	44557
\$18,121	MD Dept of Budget & Mgmt	Dec 22 Health Insurance	12.28.22	44525
\$10,932	RK&K	Clarifier Project	01.04.23	44564
\$8,802	UGI Energy Services, LLC	Nov 22 Solar Field #1	01.04.23	44568
\$8,601	UGI Energy Services, LLC	Nov 22 Solar Field #2	01.04.23	44568
\$7,462	Republic Services	Dec 22 Refuse Services	01.18.23	44613
\$6,250	Applied Technology Services	License Plate Readers . Grant #22-5	01.04.23	44548

Ck dates 12.28.22 to 01.31.22

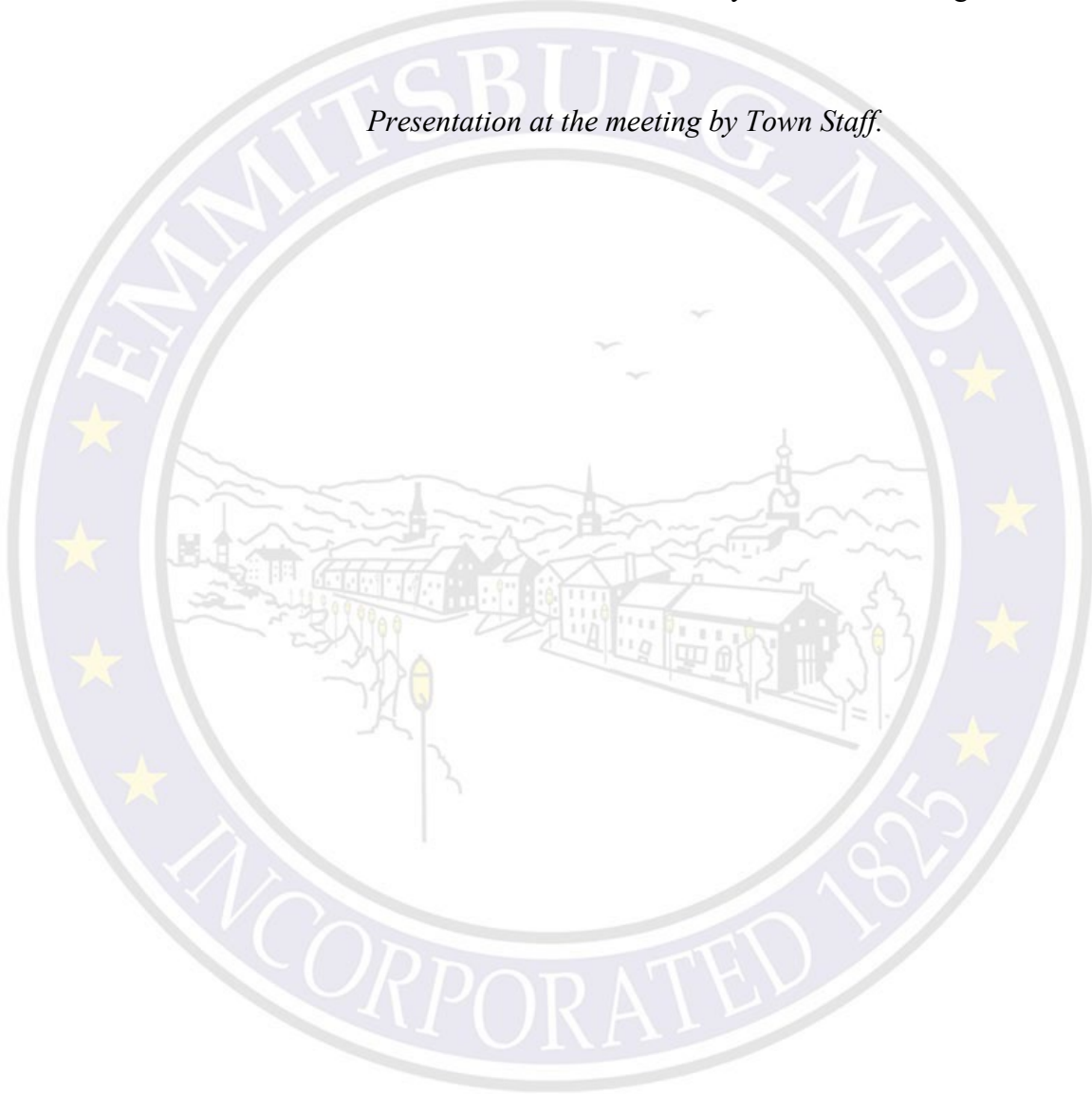
K. PLANNING COMMISSION REPORT



L. AGENDA ITEMS

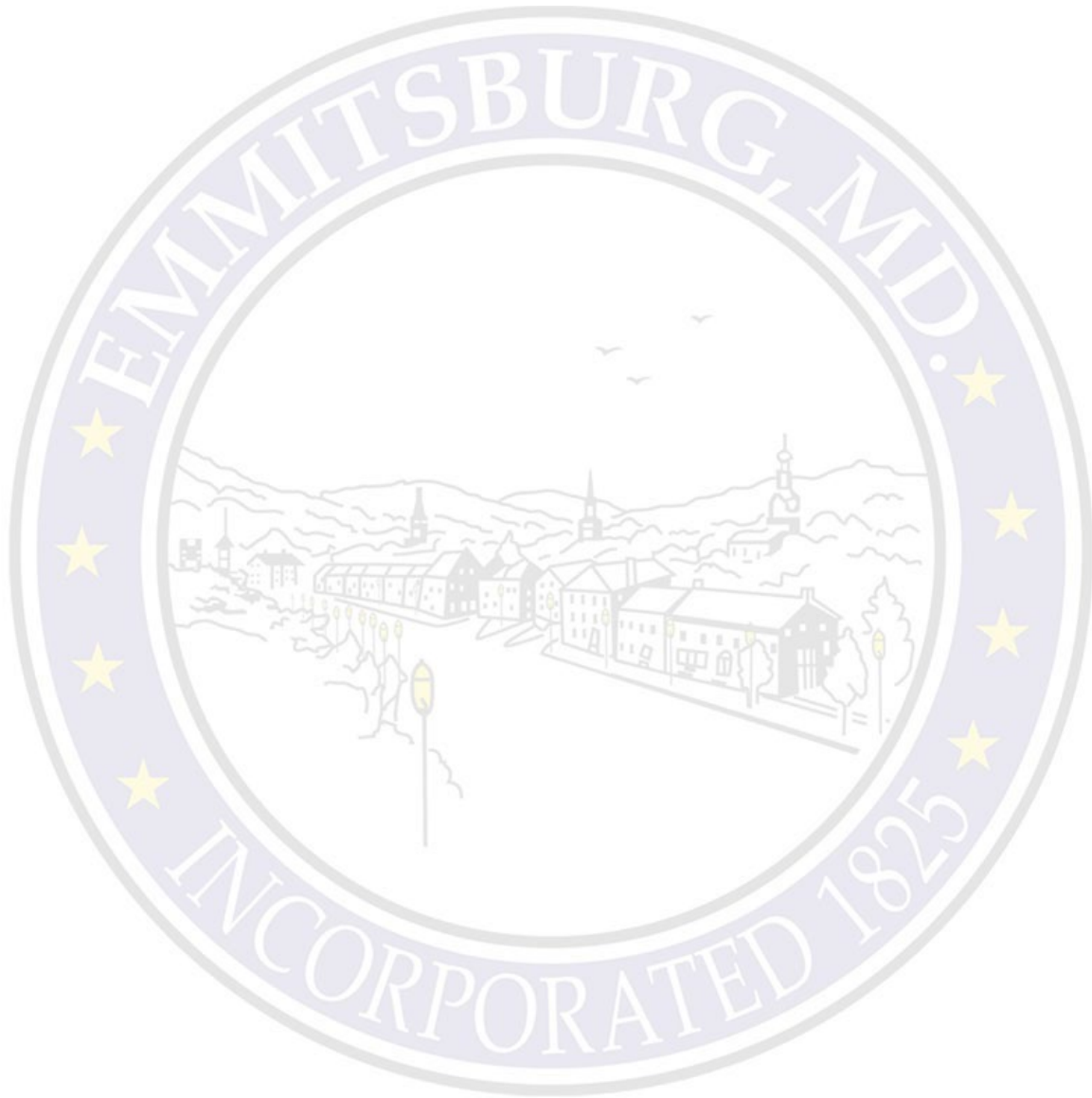
AGENDA ITEM #1: FY22 Audit Presentation by Deleon and Stang.

Presentation at the meeting by Town Staff.



AGENDA ITEM #2: Discussion related to increases to water and sewer rates.

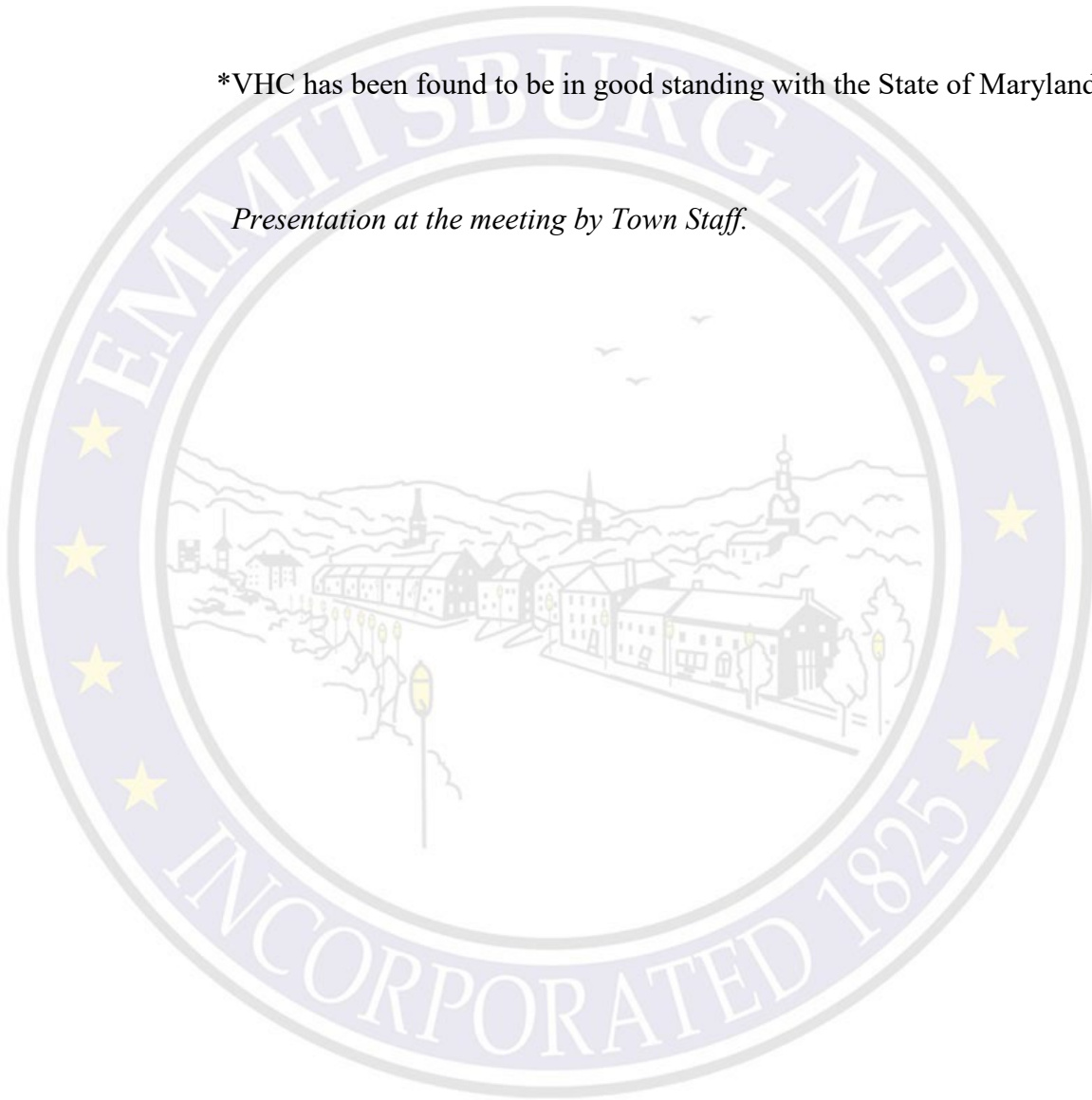
Presentation at the meeting by Town Staff.



AGENDA ITEM #3: For consideration, approval of the amendment to Loan and Financing agreement for the extension of credit made to the Vigilant Hose Company of Emmitsburg as the successor by merger to the Emmitsburg Volunteer Ambulance Company.

*VHC has been found to be in good standing with the State of Maryland

Presentation at the meeting by Town Staff.



AMENDMENT TO LOAN AND FINANCING AGREEMENT

This AMENDMENT TO LOAN AND FINANCING AGREEMENT (this "Amendment"), dated as of February __, 2023 (the "Effective Date"), is made and entered into by and among the TOWN OF EMMITSBURG (the "Issuer"), PNC BANK, NATIONAL ASSOCIATION, as successor to Farmers & Mechanics Bank (the "Holder" or the "Bank"), and THE VIGILANT HOSE COMPANY OF EMMITSBURG, as successor by merger to Emmitsburg Volunteer Ambulance Company, Inc. (the "Borrower").

WITNESSETH:

WHEREAS, the Issuer, the Holder and the Borrower previously entered into a Loan and Financing Agreement dated as of November 16, 2006 (the "Original LFA" and, as previously amended and as amended by this Amendment, the "LFA"), pursuant to which the Issuer issued and sold to the Holder the Issuer's Economic Development Revenue Bond (Emmitsburg Volunteer Ambulance Facility), Series 2006 in the original principal amount of \$2,065,500 (the "Original Bond"); and

WHEREAS, the proceeds of the sale of the Original Bond were loaned by the Issuer to the Borrower pursuant to the terms of the Original LFA; and

WHEREAS, the Borrower issued its promissory note under the Original LFA evidencing its promise to make payments sufficient to pay principal and interest on the Original Bond (the "Original Note," and together with the Original Bond and the Original LFA, the "Existing Agreements"); and

WHEREAS, the Original Bond and the Original Note (together with the Original LFA, the "Affected Loans"), issued under the Original LFA bear interest, and have fees, commissions or other amounts based on the London Interbank Offered Rate administered by the ICE Benchmark Administration ("LIBOR") in accordance with the terms and conditions of the Original LFA; and

WHEREAS, the parties to the Original LFA have determined that LIBOR hardwired replacement provisions that include a replacement waterfall that provides for a transition to a successor rate shall be incorporated into the Existing Agreements with respect to Affected Loans for all purposes under the Existing Agreements and under any other agreement, instrument, certificate or document (other than any derivative, swap agreement, hedge agreement or ISDA confirm or other analogous or similar document executed in connection with any interest rate hedging or swap transactions) executed and delivered in connection with the Existing Agreements (together with the Existing Agreements, each as amended, supplemented, modified or restated prior to the date hereof, collectively, the "Existing Documents"), subject to the terms and conditions set forth in this Amendment; and

WHEREAS, the parties agree that an original, executed copy of this Amendment will be attached to the Original Bond and shall constitute an allonge thereto; and

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

Section 1. Incorporation of Recitals. The foregoing recitals are incorporated herein by reference as if fully set forth herein.

Section 2. Certain Definitions. (a) Capitalized terms used in this Amendment but not otherwise defined herein or in Exhibit A shall have the meanings assigned to such terms in the Existing

Section 4. Representations and Warranties. The Borrower hereby represents and warrants that: (a) no default or Event of Default (or similar defined term) exists or will exist immediately after giving effect to the transactions contemplated hereby, (b) all representations and warranties of Borrower contained in the Existing Agreements, in this Amendment and in the other Existing Documents are true and correct in all material respects (without duplication of any materiality qualifiers), (c) the execution, delivery and performance of this Amendment and any other document related hereto by the Borrower have been duly authorized by all necessary corporate or other organizational action, and (d) this Amendment and any other document related hereto have been duly executed and delivered by the Borrower.

Section 5. Limitation; Effect of Amendment; No Novation. No provision of the Existing Agreements or any other Existing Document is amended or waived in any way other than as provided herein. Except as expressly set forth herein, all of the terms of the Existing Agreements and the other Existing Documents shall be and remain in full force and effect and are hereby ratified and confirmed, and constitute the legal, valid, binding, and enforceable obligations of the parties thereto. As of the Effective Date, each reference in the Existing Agreements to "this Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference in the other Existing Documents to the Existing Agreements (including, without limitation, by means of words like "thereunder," "thereof," "therein" and words of like import), shall mean and be a reference to the Existing Agreement as amended by this Amendment. The Borrower hereby confirms that the Existing Agreements and each other Existing Document have at all times, since the date of the execution and delivery of such documents, remained in full force and effect and the obligations thereunder are continued as amended by this Amendment. The Borrower acknowledges and agrees that the amendment of the Existing Agreements and each other Existing Document by this Amendment is not intended to constitute, nor does it constitute, a novation, interruption, suspension of continuity, satisfaction, discharge or termination of the obligations, loans, liabilities, or indebtedness under the Existing Agreements and each other Existing Document, and this Amendment, the Existing Agreements and each other Existing Document are entitled to all rights and benefits originally pertaining to the Existing Agreements and each other Existing Document.

Agreements. Capitalized terms used in Exhibit A that are also used in the Existing Agreements shall supplement (but not replace) the defined terms in the Existing Agreements with respect to the Affected Loans, unless otherwise stated therein.

(b) The term "Business Day" as defined in Section 1.1 of the Original LFA is hereby deleted and replaced with the following definition:

"Business Day" /shall mean a day other than a Saturday, Sunday, legal holiday or any other day when the Holder is authorized or required by applicable law to be closed.

Section 3. Amendments to Existing Agreements. The Existing Agreements are hereby amended as set forth on Exhibit A attached hereto. Notwithstanding any provision of the Existing Agreements or any Existing Document to the contrary, the Issuer, the Holder and the Borrower (collectively, the "Parties") hereby agree that the terms set forth on Exhibit A apply to the Affected Loans on and after the Effective Date. For the avoidance of doubt, to the extent provisions in the Existing Agreements apply to the Affected Loans and such provisions are not specifically addressed by Exhibit A, such provisions in the Existing Agreements shall continue to apply to the Affected Loans from and after the Effective Date. In the event of a conflict between the terms of this Amendment and the terms of the Existing Agreements or any other Existing Document, the terms of this Amendment shall govern and control. For the further avoidance of doubt, the provisions of this Amendment supersede and govern any provisions of the Existing Agreements relating to benchmark replacements as they apply on and after the Effective Date.

Section 6. Reaffirmation of Security Interests. The Borrower hereby acknowledges its receipt of a copy of this Amendment and its review of the terms and conditions hereof and consents to the terms and conditions of this Amendment and the transactions contemplated thereby. The Borrower hereby (a) affirms and confirms, as applicable, its pledges, grants and other undertakings under the Existing Agreements and each other Existing Document, each as amended by this Amendment, to which it is a party and (b) agrees that (i) the Existing Agreements and each other Existing Document, each as amended by this Amendment, to which it is a party continue to be in full force and effect and (ii) all guarantees, pledges, grants and other undertakings thereunder continue to be in full force and effect (with the same priority, as applicable) and accrue to the benefit of the applicable secured party or parties thereunder.

Section 7. Further Assurances. The Borrower agrees to execute such other documents, instruments and agreements and take such further actions reasonably requested by the Holder to effectuate the provisions of this Amendment.

Section 8. Counterparts. (a) This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(b) The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act. The Parties agree that this Amendment may, at the Holder's option, be in the form of an electronic record and may be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Holder of a manually signed paper signature page which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention.

Section 9. Section Headings. Section headings used in this Amendment are for convenience of reference only and shall not govern the interpretation of any of the provisions of this Amendment.

Section 10. Severability. The provisions of this Amendment are intended to be severable. If any provision of this Amendment shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 11. Fees and Costs. The Borrower will pay on demand all out-of-pocket fees, costs, and expenses of the Holder, including but not limited to the fees and expenses of outside counsel, in connection with the preparation, execution, and delivery of this Amendment.

Section 12. Governing Law, Etc. The terms of the Existing Agreements relating to governing law, submission to jurisdiction, waiver of venue and waiver of jury trial are incorporated herein by reference, mutatis mutandis, and the Parties agree to such terms.

Section 13. Ratification of Terms. The Borrower expressly ratifies and confirms the confession of judgment (if applicable) and dispute resolution, waiver of jury trial or arbitration provisions, as applicable, contained in the Existing Documents, all of which are incorporated herein by reference.

Section 14. Construction. Reference to this Amendment means this Amendment, together with Exhibit A attached hereto. Exhibit A is hereby incorporated into, and deemed to be part of, this Amendment.

Section 15. Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and the Holder and their respective successors and assigns, subject, however, to the limitations contained in this Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Loan and Financing Agreement to be made, executed and delivered by their duly authorized officers as of the day and year first above written.

TOWN OF EMMITSBURG

By: _____
Name: _____
Title: _____

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

THE VIGILANT HOSE COMPANY OF EMMITSBURG

By: _____
Name: _____
Title: _____

EXHIBIT A

**EXHIBIT A TO
AMENDMENT TO LOAN AND FINANCING AGREEMENT**

This Exhibit A (this “Exhibit”) to the Amendment to Loan and Financing Agreement (the “Amendment”) provides a mechanism for determining an alternative rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. For purposes of this Exhibit A, PNC Bank, National Association as the Holder under the Amendment and the Existing Agreements is referred to herein as the “Bank.” The Bank does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBOR” (or any similar defined term) or with respect to any alternative or successor rate thereto, or replacement rate therefor. To the extent that any term or provision of this Exhibit is or may be inconsistent with any term or provision in the remainder of any Existing Document, the terms and provisions of this Exhibit shall control. Capitalized terms used in this Exhibit and not otherwise defined have the respective meanings given those terms in the Amendment to which this Exhibit is appended.

(a) **Announcements Related to LIBOR.** On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR (the “IBA”) and the U.K. Financial Conduct Authority, the regulatory supervisor for the IBA, announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month USD LIBOR tenor settings (collectively, the “Cessation Announcements”). The parties hereto acknowledge that, as a result of the Cessation Announcements, a Benchmark Transition Event occurred on March 5, 2021 with respect to USD LIBOR under clauses (1) and (2) of the definition of Benchmark Transition Event below; provided however, no related Benchmark Replacement Date occurred as of such date.

(b) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Existing Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then, (i) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Existing Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment or further action or consent of any other party hereto or to any other Existing Document; and (ii) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Existing Document in respect of any Benchmark setting at or after 5:00 p.m. (Eastern time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Borrower without any amendment hereto or to any other Existing Document, or further action or consent of the Borrower or any other party to any Existing Document.

(c) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Bank may make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Existing Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Borrower or any other party to any Existing Document.

(d) **Notices; Standards for Decisions and Determinations.** The Bank will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement, (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement, (iii) the removal or reinstatement of any tenor of a Benchmark pursuant to paragraph (e) below and (iv) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Bank pursuant to this Exhibit, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower or any other party to any Existing Document.

(e) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Existing Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Bank may modify the definition of "Interest Period," "Reference Period" or "Accrual Period" (or any similar terms that may appear in the Existing Documents) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Bank may modify the definition of "Interest Period," "Reference Period" or "Accrual Period" (or any similar terms that may appear in the Existing Documents) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) **Benchmark Unavailability Period.** Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a loan bearing interest based on USD LIBOR or advance of, conversion to or continuation of a loan bearing interest based on USD LIBOR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a loan or advance of or conversion to a loan or advance at the Fallback Rate. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component (if any) of the Fallback Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Fallback Rate.

(g) **Certain Defined Terms.** As used in this Exhibit:

"*Available Tenor*" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate or is based on a term rate, any tenor for such Benchmark that is or may be used for determining such Benchmark or the length of an "Interest Period," "Reference Period" or "Accrual Period" (or any period described by similar terms that may appear in the Existing Documents) under the terms of the Existing Documents as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period," "Reference Period" or "Accrual Period" (or any similar terms that may appear in the Existing Documents) pursuant to paragraph (e) of this Exhibit, or (y) if the then-current Benchmark is not a term rate nor based on a term rate, any payment period for interest calculated with reference to such Benchmark under the terms of the Existing Documents as of such date. For the avoidance

of doubt, the Available Tenor for the “Daily LIBOR Rate” (if such rate appears in the Existing Documents) is one month.

“*Benchmark*” means, initially, USD LIBOR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to paragraph (b) of this Exhibit.

“*Benchmark Replacement*” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Bank on the applicable Benchmark Replacement Date; provided, however, if (i) the Borrower has outstanding an interest rate swap with the Bank on the Benchmark Replacement Date to hedge, in whole or part, the floating rate risk under any credit facility evidenced by the Existing Documents (each such swapped credit facility, a “Swapped Facility”), and (ii) such swap incorporates LIBOR fallback provisions with a Daily Simple SOFR rate as the primary alternative fallback rate for USD LIBOR, then for such Swapped Facility only, the Benchmark Replacement alternative set forth in clause (1) below shall not apply to such Swapped Facility and the alternative set forth below in clause (2) shall be the first alternative:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment; and
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Bank as the replacement for the then-current Benchmark for the applicable Corresponding Tenor, giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time, and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion. If a Benchmark Replacement as determined above would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes hereof and of the other Existing Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any Available Tenor for any setting of such Unadjusted Benchmark Replacement, the first applicable alternative set forth in the order below that can be determined by the Bank:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the applicable amount(s) set forth below:

Available Tenor	Benchmark Replacement Adjustment*
One-Month	0.11448% (11.448 basis points)
Three-Months	0.26161% (26.161 basis points)

Six-Months	0.42826% (42.826 basis points)
* These values represent the ARRC/ISDA recommended spread adjustment values available here: https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf .	

- (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Bank for the applicable Corresponding Tenor, giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities;

provided that, if the then-current Benchmark is a term rate, more than one tenor of such Benchmark is available as of the applicable Benchmark Replacement Date and the applicable Unadjusted Benchmark Replacement will not be a term rate, the Available Tenor of such Benchmark for purposes of this definition of “Benchmark Replacement Adjustment” shall be deemed to be the Available Tenor that has approximately the same length (disregarding business day adjustments) as the payment period for interest calculated with reference to such Unadjusted Benchmark Replacement.

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” “Reference Period” or “Accrual Period” (or any similar terms that may appear in the Existing Documents), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that the Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Bank in a manner substantially consistent with market practice (or, if the Bank decides that adoption of any portion of such market practice is not administratively feasible or if the Bank determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Bank decides is reasonably necessary in connection with the administration of the Existing Documents).

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date determined by the Bank, which date shall promptly follow the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by a Governmental Authority having jurisdiction over the Bank, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or a Governmental Authority having jurisdiction over the Bank announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Existing Document in accordance with this Exhibit, and (y) ending at the time that a Benchmark

Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Existing Document in accordance with this Exhibit.

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Daily Simple SOFR*” means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Bank in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Bank decides that any such convention is not administratively feasible for the Bank, then the Bank may establish another convention in its reasonable discretion.

“*Fallback Rate*” means the alternative rate of interest that would have been applicable under the terms of the Existing Documents (absent this Exhibit) if the Bank had given notice that USD LIBOR had become unavailable (or had otherwise exercised its rights under the Existing Documents relating to LIBOR unavailability) or, if no such alternative rate can be determined, the “Base Rate” or any similar rate referenced in the Existing Documents or, in the absence thereof, an alternative value or rate (which may include a spread adjustment) determined by the Bank in its discretion.

“*Floor*” means the minimum rate of interest, if any, provided under the terms of the Existing Documents with respect to USD LIBOR or, if no minimum rate of interest is specified, zero.

“*Governmental Authority*” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Reference Time*” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR (other than the “Daily LIBOR Rate”), 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR or is the “Daily LIBOR Rate,” the time determined by the Bank in its reasonable discretion.

“*Relevant Governmental Body*” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*SOFR*” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*Term SOFR*” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*USD LIBOR*” means, for purposes of this Exhibit only, any interest rate that is based on the London interbank offered rate for U.S. dollars.

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AGENDA ITEM #4: For consideration, approval of engineering change order, amendment number 3, RK&K for the Creamery Road Pump Station replacement project.

Presentation at the meeting by Town Staff.



This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [April 11, 2019].

**AMENDMENT TO OWNER-ENGINEER
AGREEMENT Amendment No. 3**

The Effective Date of this Amendment is: February 6, 2023

Background Data

Effective Date of Owner-Engineer Agreement: April 11, 2019

Owner: Town of Emmitsburg

Engineer: Rummel, Klepper and Kahl, LLP (RK&K)

Project: Creamery Road Pump Station Replacement

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: Additional \$251,660.75 needed for full time construction inspection services by Resident Project Representative. Original contract only included part-time RPR services (one 8-hour work day, per week for 6 months). Please see RK&K cost proposal Exhibit A. Additional \$15,398 needed to cover engineering construction administration and post-construction support for the new 450 day period (initially for 365 days). Please see RK&K cost proposal Exhibit B.

Original agreement amount:	<u>\$ 189,100.00</u>
Net change for prior amendments:	<u>\$ 36,143.00</u>
This amendment amount:	<u>\$ 267,058.75</u>
Adjusted Agreement amount:	<u>\$ 456,158.75</u>

Change in time for services (days or date, as applicable): 450 days total construction

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:

Town of Emmitsburg

By:

Print

name: Donald N. Briggs

Title: Mayor

Date Signed:

ENGINEER:

Rummel, Klepper and Kahl, LLP (RK&K)

By:

Print

name: Robert A. Linthicum

Title: Director

Date Signed:

ATTEST:

By:

Cathy Willets, Town Manager

Reviewed for Technical Sufficiency:

By:

Cathy Willets, Town Manager

Reviewed for Legal Sufficiency:

By:

Leslie A. Powell, Town Counsel

Reviewed for Financial Sufficiency:

By:

Sabrina King, Town Clerk



Creamery Road SPS - RPR

Fee Amendment #3
Exhibit A

RK&K Cost Proposal

Fixed Billable Rates

Resident Project Representative	2,572.00	Hours	@	\$90.00/HR	=	\$231,480.00
RPR OT (Premium Only)	206.00	Hours	@	\$45.00/HR	=	\$9,270.00
Mileage	43,650.00	Miles	@	0.655	=	\$28,590.75
				Subtotal Cost =		\$269,340.75

Credit Original Agreement (RPR) (One 8-hour workday per week over 6 months) = \$17,680

TOTAL COST = \$251,660.75

Fee Amendment #3
Exhibit B

Town of Emmitsburg, Maryland
New Creamery Road Sewage Pump Station
Additional Fee Amendment for 450 Day Construction Period (Original was 360 Day) at REV Rates
January 6, 2023

Item	Task	Original Fee	Revised Fee	Total Fee Amendment
1	Construction and Post-Construction Support for 450 Day Construction Period	\$38,416.00	\$53,814.00	\$15,398.00

Fee Amendment #3
Exhibit B

PROFESSIONAL ENGINEERING SERVICES

Town of Emmitsburg, Maryland
New Creamery Road Sewage Pump Station
Original Fee for 360 Day Construction Period and Post-Construction
January 6, 2023

Construction Support				
Project Manager	8	hrs @	\$261.00	= \$2,088
QA/QC Reviewer	0	hrs @	\$203.00	= \$0
Pump Station Engineer	90	hrs @	\$156.00	= \$14,040
Civil/Site Engineer	8	hrs @	\$147.00	= \$1,176
Surveyor	0	hrs @	\$123.00	= \$0
Electrical/I&C Engineer	52	hrs @	\$184.00	= \$9,568
Structural Engineer	8	hrs @	\$173.00	= \$1,384
Geotech Engineer	0	hrs @	\$140.00	= \$0
Environmental Scientist	0	hrs @	\$130.00	= \$0
CADD Designer	10	hrs @	\$101.00	= \$1,010
Construction Manager	52	hrs @	\$135.00	= \$7,020
Task Subtotal (360 days)	228			\$36,286

Total Construction & Post-Construction Support \$38,416.00

Post-Construction Phase				
Project Manager	1	hrs @	\$261.00	= \$261
QA/QC Reviewer	0	hrs @	\$203.00	= \$0
Pump Station Engineer	4	hrs @	\$156.00	= \$624
Civil/Site Engineer	0	hrs @	\$147.00	= \$0
Surveyor	0	hrs @	\$123.00	= \$0
Electrical/I&C Engineer	1	hrs @	\$184.00	= \$184
Structural Engineer	0	hrs @	\$173.00	= \$0
Geotech Engineer	0	hrs @	\$140.00	= \$0
Environmental Scientist	0	hrs @	\$130.00	= \$0
CADD Designer	10.5	hrs @	\$101.00	= \$1,061
Construction Manager	0	hrs @	\$135.00	= \$0
Task Subtotal	16.5			\$2,130

Fee Amendment #3
Exhibit B

PROFESSIONAL ENGINEERING SERVICES

Town of Emmitsburg, Maryland
New Creamery Road Sewage Pump Station
Fee for 450 Day Construction Period and Post-Construction at Updated Rates
January 6, 2023

Construction Support	Increase Hours by 450/360 Ratio	Increase Rates		
Project Manager	10	hrs @	\$295.00	= \$2,950
QA/QC Reviewer	0	hrs @	\$230.00	= \$0
Pump Station Engineer	112.5	hrs @	\$177.00	= \$19,913
Civil/Site Engineer	10	hrs @	\$167.00	= \$1,670
Surveyor	0	hrs @	\$140.00	= \$0
Electrical/I&C Engineer	65	hrs @	\$208.00	= \$13,520
Structural Engineer	10	hrs @	\$196.00	= \$1,960
Geotech Engineer	0	hrs @	\$159.00	= \$0
Environmental Scientist	0	hrs @	\$147.00	= \$0
CADD Designer	12.5	hrs @	\$115.00	= \$1,438
Construction Manager	65	hrs @	\$153.00	= \$9,945
Task Subtotal (360 days)	285			\$51,395

Total Construction & Post-Construction Support \$53,814.00

Post-Construction Phase	No Change to Hours	Increase Rates		
Project Manager	1	hrs @	\$295.00	= \$295
QA/QC Reviewer	0	hrs @	\$230.00	= \$0
Pump Station Engineer	4	hrs @	\$177.00	= \$708
Civil/Site Engineer	0	hrs @	\$167.00	= \$0
Surveyor	0	hrs @	\$140.00	= \$0
Electrical/I&C Engineer	1	hrs @	\$208.00	= \$208
Structural Engineer	0	hrs @	\$196.00	= \$0
Geotech Engineer	0	hrs @	\$159.00	= \$0
Environmental Scientist	0	hrs @	\$147.00	= \$0
CADD Designer	10.5	hrs @	\$115.00	= \$1,208
Construction Manager	0	hrs @	\$153.00	= \$0
Task Subtotal	16.5			\$2,419

M. SET AGENDA FOR NEXT MEETING: MARCH 13, 2023

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

Administrative Business:

- A.
- B.
- C.

