



**SALISBURY CITY COUNCIL
WORK SESSION AGENDA**

MAY 17, 2021

ZOOM MEETING

4:30 p.m. FEMA COVID-19 Grant acceptance and appropriation- Fire Chief John Tull

4:40 p.m. Faith Baptist Church Annexation agreement amendment – Department of Infrastructure & Development Director Amanda Pollack

4:55 p.m. Administration and Council Remarks

5:10 p.m. Adjournment

*Times shown are approximate. Council reserves the right to adjust the agenda as circumstances warrant.
The Council reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland 3-305(b).*

Join Zoom Meeting

<https://us02web.zoom.us/j/5362772908>

Meeting ID: 536 277 2908

Phone: 1.301.715.8592

Posted 5/12/21



MEMORANDUM

To: Julia Glanz, City Administrator
From: John W. Tull, Fire Chief
Subject: Budget Amendment – COVID-19 Expenses
Date: May 11, 2021

As you are aware, on March 13, 2020, the President of the United States declared that the ongoing Coronavirus Disease 2019 (COVID-19) pandemic was of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Since then, the City has incurred substantial expenses preparing for and responding to the COVID-19 pandemic.

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under Category B of the Federal Emergency Management Agency's (FEMA) Public Assistance program at a 75 percent federal cost share. In November 2020 the City received a reimbursement payment from FEMA in the amount of \$109,028.70 for this 75 percent cost share. The remaining 25 percent of our request was funded through the Wicomico County Health Department (WiCHD) from a direct allocation of funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act for COVID-19 related expenditures.

FEMA has now agreed to fund our reimbursement request at 100 percent. The attached documents show that we will receive additional funding based on the following:

- Project #37 – \$24,905.18
- Project #39 – \$11,437.71
- Total Award – \$36,342.89

Once we receive this funding, we will be required to process a refund check back to the WiCHD to return the CARES Act funds that we have received as part of our COVID-19 projects.

Attached you will find an Ordinance requesting the approval of a budget amendment to the grant fund for the purpose of accepting funds from the Federal Emergency Management Agency (FEMA) in the amount of \$36,342.89.

If you should have any questions or comments, please do not hesitate to contact me.

April 13, 2021

Mr. John Tull
Fire Chief
Salisbury
325 Cypress St
Salisbury, MD 21801-4060

Re: Increase to 100% Federal Share – PW# 37
(Grants Portal# 150565– COVID-19 Project)
Salisbury (FIPS# 045-69925-00)
COVID-19 Disaster (FEMA-4491-DRMD) – Public Assistance CFDA# 97.036

Dear Mr. Tull:

The Federal Emergency Management Agency (FEMA) has increased the Federal Share to 100% for Project Worksheet (PW) 37 (enclosed) for reimbursement of the COVID-19 response and recovery costs. The total reimbursement for this grant is the Federal Share of the project's total Eligible Costs. Payment in the amount of **\$24,905.18** is being processed.

PW#	Version	Eligible Costs	Reimbursement
37	0	99,620.74	74,715.56
37	1	0.00	24,905.18
Totals:		\$99,620.74	\$99,620.74

Total Reimbursement	99,620.74
Previous Payment (10/28/20)	(74,715.56)
Current Payment	\$24,905.18

In accordance with 44 CFR § 206.206 (enclosed), which governs the Public Assistance appeal process, you have 60 days from the date of receipt of this letter to appeal any action related to this disaster. Any appeal of a FEMA decision should be submitted through the Maryland Emergency Management Agency (MEMA) with supporting justification.

Thank you for your hard work throughout the COVID-19 response and recovery. If you have any questions regarding this project or its payment, please contact me at 410-517-3625.

Sincerely,

John Harding, Jr.
Public Assistance Grants Administrator

njl
2 enclosures

cc: Dave Shipley, Director, Wicomico County Emergency Management Agency

DR-4491

COVID-19 Disaster

**Department of Homeland Security
Federal Emergency Management Agency**

General Info

Project #	150565	PW #	37	Project Type	Work Completed / Fully Documented
Project Category	B - Emergency Protective Measures			Applicant	Salisbury, City of (045-69925-00)
Project Title	Salisbury COVID-19 Project			Event	4491DR-MD (4491DR)
Project Size	Small			Declaration Date	3/26/2020
Activity Completion Date	9/26/2020			Incident Start Date	1/20/2020
Process Step	Obligated			Incident End Date	Ongoing

Damage Description and Dimensions

The Disaster # 4491DR, which occurred between *01/20/2020* and *Ongoing*, caused:

Damage # 401126; Emergency Protective Measures (Damage for Project [150565] Salisbury COVID-19 Project)

During the incident period of 1/20/2020 through Ongoing, COVID-19 created an immediate threat to the health and safety of the general public requiring emergency response and protective measures.

- Provided Personal Protective Equipment (PPE), supplies, and cleaning materials/disinfectant for COVID-19 at City of Salisbury MD from 3/5/2020 to 6/30/2020.

Final Scope

401126 Damage for Project [150565] Salisbury COVID-19 Project

Work Completed – Streamlined COVID – 19 Application

In response to the COVID – 19 Public Health Emergency, the applicant utilized force account materials and contracts in taking the Emergency Protective Measures for the City of Salisbury.

Cost share for this version is 75%. All work and costs in this project fall between 03/05/2020 and 06/30/2020.

COVID – 19 Streamlined Application Disclosures:

Contracts must include a Termination for Convenience clause.

FEMA will not approve PA funding that duplicates funding or assistance provided by another Federal agency, including the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, CARES Act, and the United States Department of Agriculture.

FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials, not to exceed the duration of the HHS Public Health Emergency Declaration for COVID – 19.

Disinfection work consisted of using CDC approved methods and disinfectants, such as hand cleaning with wipes. No run off was associated with this work.

A. Facility disinfection by contractors.

B. Purchase and distribution/use of medical supplies & equipment (personal protective equipment)
Respirators, N95 Respirators, Medical gloves, Surgical masks, Medical gowns, Coveralls, Face shields.

C. Other purchase and distribution/use of medical supplies include: Digital thermometers, sanitizer, disinfectant wipes, cleaning supplies, acrylic barriers.

1. Force Account Materials: \$94,300.08

2. Contracts: \$5,320.66

Work Completed Total: \$99,620.74

Project Notes:

1. Scope and cost were developed based on applicant cost summaries and certification included in the Schedule EZ- Small Project Estimate.

2. Disposition of Purchased Supplies: Applicant must calculate the current fair market value of any unused residual supplies (including materials) that FEMA funded for any of its projects and determine the aggregate total. Applicant must provide the current fair market value if the aggregate total of unused residual supplies is greater than \$5,000. FEMA reduces eligible funding by this amount. See PAPPG V3.1 2018 page 29.

3. RFI response with the approval to remove of ineligible costs (Zoom memberships, software and hardware updates) in the amount of \$290.84 see attachment *Approval to remove ineligible costs.pdf*

Cost

Code	Quantity	Unit	Total Cost	Section
9001 (Contract)	1.00	Lump Sum	\$5,320.66	Completed
9009 (Material)	1.00	Lump Sum	\$94,300.08	Completed

CRC Gross Cost	\$99,620.74
Total Insurance Reductions	\$0.00
CRC Net Cost	\$99,620.74
Federal Share (100.00%)	\$99,620.74
Non-Federal Share (0.00%)	\$0.00

Award Information

Version Information

Version #	Eligibility Status	Current Location	Bundle Number	Project Amount	Cost Share	Federal Share Obligated	Date Obligated
0	Eligible	Awarded	PA-03-MD-4491-PW-00037(34)	\$99,620.74	75 %	\$74,715.56	9/25/2020
1	Eligible	Awarded	PA-03-MD-4491-PW-00037(150)	\$0.00	25 %	\$24,905.18	3/28/2021

Drawdown History

EMMIE Drawdown Status As of Date	Obligation Number	Expenditure Number	Expended Date	Expended Amount
2/11/2021	4491DRMDP00000371	202025Z2-02102021	2/9/2021	\$74,715.56

Subgrant Conditions

- As described in 2 CFR, Part 200 § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions, Part 200.333, (a) – (f), (1), (2). All records relative to this Project Worksheet are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the applicant's completion of all of its small projects and compliance with all environmental and historic preservation requirements within 180 days of the applicant's completion of its last small project.
- The terms of the FEMA-State Agreement are incorporated by reference into this project award under the Public Assistance grant and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Policy and Program Guide; and other FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the date of the declaration of this major disaster are incorporated by reference into this project award under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at 2 C.F.R. pt. 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. pt. 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The applicant must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the applicant commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.

Insurance

Additional Information

9/22/20 - Project re-worked with no changes to prior insurance determination.

Per the Deduction Section of the Streamlined Application, the Applicant is confirming that they do not have insurance for the activities identified in Section II of the Streamline Application Project worksheet. Further, Section II of the Streamlined Application Project, the Applicant has confirmed that a reasonable effort to recover insurance proceeds that they are entitled to receive from their insurer(s) has been taken.

This declaration is specific for the cost associated with the actions taken to protect the public health and safety of the general population from the COVID-19 Pandemic. No insurance proceeds are anticipated for these costs.

If in the event any part or all costs are paid by an insurance policy, a duplication of benefits from insurance will occur. Applicant must notify grantee and FEMA of such recoveries and the Sub-Grant award amount must be reduced by actual insurance proceeds.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to

receive from its insurer(s). In the event that any insurance proceeds are received for these expenses those proceeds must be reduced from FEMA Public Assistance funding to ensure no duplication of benefits has occurred.

Wil Notto, PA Insurance Specialist, CRC East

O&M Requirements

There are no Obtain and Maintain Requirements on **Salisbury COVID-19 Project**.

Environmental Historical Preservation

Is this project compliant with EHP laws, regulations, and executive orders?

Yes

EHP Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

EHP Additional Info

There is no additional environmental historical preservation on **Salisbury COVID-19 Project**.

Final Reviews

Final Review

Reviewed By Conzone, Connor W.

Reviewed On 09/23/2020 3:05 PM EDT

Review Comments

No comments available for the Final Review step

Recipient Review

Reviewed By Bender, Sara

Reviewed On 09/23/2020 3:52 PM EDT

Review Comments

No comments available for the Recipient Review step

Project Signatures

Signed By Tull, John

Signed On 09/23/2020

44 CFR § 206.206 Appeals

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

- (a) **Format and Content.** The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.
- (b) **Levels of Appeal.**
 - (1) The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.
 - (2) The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.
- (c) **Time Limits.**
 - (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.
 - (2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.
 - (3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

- (d) **Technical Advice.** In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.
- (e) **Transition.**
 - (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.
 - (2) Appeals pending from a decision of an Associate Director/ Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).
 - (3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

April 13, 2021

Mr. John Tull
Fire Chief
Salisbury
325 Cypress St
Salisbury, MD 21801-4060

Re: Increase to 100% Federal Share – PW# 39
(Grants Portal# 151361– COVID-19 Project 2)
Salisbury (FIPS# 045-69925-00)
COVID-19 Disaster (FEMA-4491-DRMD) – Public Assistance CFDA# 97.036

Dear Mr. Tull:

The Federal Emergency Management Agency (FEMA) has increased the Federal Share to 100% for Project Worksheet (PW) 39 (enclosed) for reimbursement of the COVID-19 response and recovery costs. The total reimbursement for this grant is the Federal Share of the project's total Eligible Costs. Payment in the amount of **\$11,437.71** is being processed.

PW#	Version	Eligible Costs	Reimbursement
39	0	45,750.85	34,313.14
39	1	0.00	11,437.71
Totals:		\$45,750.85	\$45,750.85

Total Reimbursement	45,750.85
Previous Payment (10/28/20)	(34,313.14)
Current Payment	\$11,437.71

In accordance with 44 CFR § 206.206 (enclosed), which governs the Public Assistance appeal process, you have 60 days from the date of receipt of this letter to appeal any action related to this disaster. Any appeal of a FEMA decision should be submitted through the Maryland Emergency Management Agency (MEMA) with supporting justification.

Thank you for your hard work throughout the COVID-19 response and recovery. If you have any questions regarding this project or its payment, please contact me at 410-517-3625.

Sincerely,

John Harding, Jr.
Public Assistance Grants Administrator

njl
2 enclosures

cc: Dave Shipley, Director, Wicomico County Emergency Management Agency

DR-4491

COVID-19 Disaster

**Department of Homeland Security
Federal Emergency Management Agency**

General Info

Project #	151361	PW #	39	Project Type	Work Completed / Fully Documented
Project Category	B - Emergency Protective Measures			Applicant	Salisbury, City of (045-69925-00)
Project Title	Salisbury COVID-19 Project 2			Event	4491DR-MD (4491DR)
Project Size	Small			Declaration Date	3/26/2020
Activity Completion Date	9/26/2020			Incident Start Date	1/20/2020
Process Step	Obligated			Incident End Date	Ongoing

Damage Description and Dimensions

The Disaster # 4491DR, which occurred between **01/20/2020** and **Ongoing**, caused:

Damage # 402128; Emergency Protective Measures (Damage for Project [151361] Salisbury COVID-19 Project 2)

During the incident period of 1/20/2020 through Ongoing, COVID-19 created an immediate threat to the health and safety of the general public requiring emergency response and protective measures.

- Provided Medical Care and Transport for COVID-19 precautionary transportation measures at City of Salisbury from 3/5/2020 to 6/30/2020.
- Provided Security for Traffic control at COVID-19 Testing Site. at Perdue Stadium, 6400 Hobbs Road from 5/1/2020 to 5/2/2020.
- Provided Disinfection for COVID-19 precautionary disinfection measures. at Paleo Water Plant, 2322 Scenic Drive, Salisbury MD from 3/17/2020 to 6/30/2020.
- Provided Disinfection for COVID-19 precautionary disinfection measures. at 1142 Marine Road, Salisbury MD from 3/18/2020 to 6/30/2020.

Final Scope

402128 Damage for Project [151361] Salisbury COVID-19 Project 2

Work Completed – Streamlined COVID-19 Application

In response to the COVID-19 Public Health Emergency, the applicant utilized force account labor, and equipment in taking the Emergency Protective Measures of medical transportation, disinfection of work places, and providing security for testing sites.

Cost share for this version is 75%. All work and costs in this project fall between 3/5/2020 and 6/30/2020.

COVID-19 Streamlined Application Disclosures:

FEMA will not approve PA funding that duplicates funding or assistance provided by another Federal agency, including the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, CARES Act, and the United States Department of Agriculture.

Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.

City of Salisbury

- A. Police provided security and traffic control at COVID-19 testing site.
- B. Water personnel were brought in early to disinfect work areas.
- C. Fire department provided additional medical transportation in accordance with safety precautions developed for the treatment of suspected COVID-19 cases.
 - 1. Force Account Labor Overtime 1772.5 hours: \$36,190.63
 - 2. Force Account Equipment – 122 equipment hours: \$9,560.22

Work Completed Total: **\$45,750.85**

Project Notes:

- 1. Scope and cost were developed based on applicant cost summaries and certification included in the Schedule EZ – Small Project Estimate.

Cost

Code	Quantity	Unit	Total Cost	Section
9008 (Equipment)	1.00	Lump Sum	\$9,560.22	Completed
9007 (Labor)	1.00	Lump Sum	\$36,190.63	Completed

CRC Gross Cost	\$45,750.85
Total Insurance Reductions	\$0.00
CRC Net Cost	\$45,750.85
Federal Share (100.00%)	\$45,750.85
Non-Federal Share (0.00%)	\$0.00

Award Information

Version Information

Version #	Eligibility Status	Current Location	Bundle Number	Project Amount	Cost Share	Federal Share Obligated	Date Obligated
0	Eligible	Awarded	PA-03-MD-4491-PW-00039(35)	\$45,750.85	75 %	\$34,313.14	9/25/2020
1	Eligible	Awarded	PA-03-MD-4491-PW-00039(151)	\$0.00	25 %	\$11,437.71	3/28/2021

Drawdown History

EMMIE Drawdown Status As of Date	Obligation Number	Expenditure Number	Expended Date	Expended Amount
2/11/2021	4491DRMDP00000391	202025Z6-02102021	2/9/2021	\$34,313.14

Subgrant Conditions

- As described in 2 CFR, Part 200 § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions, Part 200.333, (a) – (f), (1), (2). All records relative to this Project Worksheet are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the applicant's completion of all of its small projects and compliance with all environmental and historic preservation requirements within 180 days of the applicant's completion of its last small project.
- The terms of the FEMA-State Agreement are incorporated by reference into this project award under the Public Assistance grant and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Policy and Program Guide; and other FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the date of the declaration of this major disaster are incorporated by reference into this project award under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at 2 C.F.R. pt. 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. pt. 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The applicant must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the applicant commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.

Insurance

Additional Information

9/17/20

Per the Deduction Section of the Streamlined Application, the Applicant is confirming that they do not have insurance for the activities identified in Section II of the Streamline Application Project worksheet. Further, Section II of the Streamlined Application Project, the Applicant has confirmed that a reasonable effort to recover insurance proceeds that they are entitled to receive from their insurer(s) has been taken.

This declaration is specific for the cost associated with the actions taken to protect the public health and safety of the general population from the COVID-19 Pandemic. No insurance proceeds are anticipated for these costs.

If in the event any part or all costs are paid by an insurance policy, a duplication of benefits from insurance will occur. Applicant must notify grantee and FEMA of such recoveries and the Sub-Grant award amount must be reduced by actual insurance proceeds.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). In the event that any insurance proceeds are received for these expenses those proceeds must be reduced from FEMA Public Assistance funding to ensure no duplication of benefits has occurred.

Wil Notto, PA Insurance Specialist, CRC East

O&M Requirements

There are no Obtain and Maintain Requirements on **Salisbury COVID-19 Project 2**.

Environmental Historical Preservation

Is this project compliant with EHP laws, regulations, and executive orders?

Unanswered

This project is not a major federal action affecting the environment per Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5159. Additionally, in accordance with 36 CFR § 800.12(d) and 44 CFR § Part 9.5(c) (1), this project is exempt from NHPA, EO 11988, and EO 11990 reviews and the project is not an action that affects listed species and/or designated critical habitat, if such were present. In accordance with 3.2.A.2.a of the FEMA Instruction 108-1-1, this is a STATEX action and no documentation is required.

Final Reviews

Final Review

Reviewed By Conzone, Connor W.

Reviewed On 09/23/2020 7:04 AM EDT

Review Comments

No comments available for the Final Review step

Recipient Review

Reviewed By Bender, Sara

Reviewed On 09/23/2020 9:07 AM EDT

Review Comments

No comments available for the Recipient Review step

Project Signatures

Signed By Tull, John

Signed On 09/23/2020

44 CFR § 206.206 Appeals

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

- (a) **Format and Content.** The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.
- (b) **Levels of Appeal.**
 - (1) The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.
 - (2) The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.
- (c) **Time Limits.**
 - (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.
 - (2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.
 - (3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

- (d) **Technical Advice.** In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.
- (e) **Transition.**
 - (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.
 - (2) Appeals pending from a decision of an Associate Director/ Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).
 - (3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SALISBURY TO AUTHORIZE THE MAYOR TO ENTER INTO A CONTRACT WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE PURPOSE OF ACCEPTING GRANT FUNDS IN THE AMOUNT OF \$36,342.89, AND TO APPROVE A BUDGET AMENDMENT TO THE GRANT FUND TO APPROPRIATE THESE FUNDS FOR OFFSETTING COVID-19 EXPENSES.

WHEREAS, on March 13, 2020, the President of the United States declared that the ongoing Coronavirus Disease 2019 (COVID-19) pandemic was of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

WHEREAS, in accordance with Section 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be reimbursed under Category B of the Federal Emergency Management Agency's (FEMA's) Public Assistance program; and

WHEREAS, the City of Salisbury (the City) incurred substantial expenses preparing for and responding to the COVID-19 pandemic; and

WHEREAS, the City submitted a project grant application to FEMA for funding to offset expenses related to the acquisition of personal protective equipment (PPE) purchased in response to the COVID-19 crisis; and

WHEREAS, FEMA funding assistance was initially provided to the City at a seventy-five percent (75%) federal cost share rate, resulting in the City receiving a reimbursement payment of \$109,028.70; and

WHEREAS, FEMA has now elected to provide additional funding assistance to the City to cover the remaining twenty-five percent (25%) of the costs that were incurred; and

WHEREAS, the remaining twenty-five (25%) of the costs that were incurred by the City were previously covered by a grant from the Wicomico County Health Department (WiCHD), which they awarded to the City from the Coronavirus Aid, Relief, and Economic Security (CARES) Act funds they received for COVID-19 related expenditures; and

WHEREAS, the City expects to receive reimbursement from FEMA in the amount of \$36,342.89 for the remaining twenty-five percent (25%) of COVID-19 related expenditures as reflected in the Exhibits attached hereto and incorporated herein as if fully set forth in this Ordinance; and

WHEREAS, the City will be required to forward the total amount of those funds to the WiCHD to reimburse them for the CARES Act grant funds previously awarded; and

WHEREAS, § 7-29 of the Salisbury City Charter prohibits the City from entering into a contract that requires an expenditure not appropriated or authorized by the Council of the City of Salisbury; and

WHEREAS, appropriations necessary to execute the purpose of this grant must be made upon the recommendation of the Mayor and the approval of four-fifths of the Council of the City of Salisbury.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. Mayor Jacob R. Day is hereby authorized to enter into a grant agreement with the Federal Emergency Management Agency to accept grant funds, on behalf of the City of Salisbury, in the amount of \$36,342.89.

48 **BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF**
49 **SALISBURY, MARYLAND**, as follows:

50
51 **Section 2.** The City of Salisbury Fiscal Year 2021 Grant Fund Budget be and hereby is amended
52 as follows:

53 (a) Increase DHS / FEMA Revenue Account No. 10500-425120-18006 by \$36,342.89.

54 (b) Increase SFD Medical Expense Account No. 10500-546016-18006 by \$36,342.89.
55

56 **BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF**
57 **SALISBURY, MARYLAND**, as follows:

58 **Section 3.** It is the intention of the Mayor and Council of the City of Salisbury that each provision
59 of this Ordinance shall be deemed independent of all other provisions herein.

60 **Section 4.** It is further the intention of the Mayor and Council of the City of Salisbury that if any
61 section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid,
62 unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication
63 shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other
64 provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

65 **Section 5.** The recitals set forth hereinabove are incorporated into this section of the Ordinance as
66 if such recitals were specifically set forth at length in this Section 4.

67 **Section 6.** This Ordinance shall take effect from and after the date of its final passage.
68

69 **THIS ORDINANCE** was introduced and read at a Meeting of the Mayor and Council of the City of
70 Salisbury held on the _____ day of _____, 2021 and thereafter, a statement of the substance of the
71 Ordinance having been published as required by law, in the meantime, was finally passed by the Council
72 of the City of Salisbury on the _____ day of _____, 2021.

73 **ATTEST:**

74
75
76
77 _____
78 **Kimberly R. Nichols, City Clerk**

77 _____
78 **John R. Heath, City Council President**

79
80
81 Approved by me, this _____ day of _____, 2021.
82
83
84
85

86 _____
87 **Julia Glanz, City Administrator**
for and at the direction of Jacob R. Day, Mayor

Memorandum

To: Amanda Pollack, Director, City of Salisbury Department of Infrastructure & Development

From: Michael P. Sullivan

Date: 5/10/2021

Re: *Faith Baptist Annexation – Development Assessments under Proposed Amended & Restated Annexation Agreement*

Review of Request for Amended & Restated Annexation Agreement:

In February 2007, the City of Salisbury (the “**City**”) approved the annexation of approximately 44.38 acres of property located on Dagsboro Road adjacent to the Faith Baptist Church, being all that same real property more particularly identified as Map 0021, Parcel 0184, Map 0021, Parcel 0040 and Map 0021, Parcel 0182 (collectively the “**Annexed Property**”). The Petition for Annexation was submitted by Faith Baptist Church of Salisbury, Maryland (“**Faith Baptist**”) and a third-party land developer Vernon Esham Land Development, Inc. (“**Esham**”). Currently: Parcel 182 is owned exclusively by Faith Baptist; and, Parcel 184 and Parcel 40 is owned by Faith Baptist and Jeffrey L. Clemens and Kelly B. Clemens (collectively the “**Clemens**”) as tenants in common with the right of survivorship (with respect to Parcel 184 and Parcel 40, Faith Baptist holds a 93% ownership interest in each property and the Clemens hold the remaining 7% ownership interest in each property).

The Annexed Property was originally planned for intensive residential development. To facilitate such development, municipal water and wastewater service was required; and, the demand for public utilities necessary to serve the proposed project led Faith Baptist to seek the City’s annexation of the Annexed Property.

As with any other annexation, the City’s annexation of the Annexed Property was conditioned upon the execution of an Annexation Agreement providing the terms and conditions governing the City’s annexation of the Annexed Property. An Annexation Agreement, dated February, 2007, was entered into by Faith Baptist, Esham and the City and was recorded with the Land Records of Wicomico County at Liber 2828, folio 457 (the “**Original Agreement**”) (A copy of the Original Agreement is attached for your review). About one year after the City had annexed the Annexed Property, the real estate market bottomed-out and development of the Annexed Property, as had been proposed, was infeasible. Consequently, the Annexed Property did not get developed as intended originally and the property has remained unimproved since its annexation 12+ years ago. Pursuant to the terms contained in Section 6 of the Original Agreement, no taxes on the Annexed Property have been paid to the City.¹

In the Summer of 2020, representatives for Faith Baptist approached the City’s Administration about the status of the Annexed Property and requested the City revisit the Original Agreement. Despite the improved real estate market, Faith Baptist expressed to the City that the terms of the Original Agreement made development of the Annexed Property infeasible. A review of the Original Agreement indicated there were several significant obligations imposed by the City thereunder that not only would make development of the Annexed Property infeasible but are also inconsistent with the type of obligations the City currently imposes upon property owners requesting annexation. Accordingly, the parties agreed to pursue an Amended and Restated Annexation Agreement that would serve and

¹ The terms contained in Section 6 of the Original Agreement have been amended and are now set forth in Section 4(b) of the Amended Agreement.

protect the City's interests with respect to annexing such a large tract of land and providing municipal service to it, while also creating a feasible pathway for developing the Annexed Property, whether by Faith Baptist or a third-party buyer of the land.

Moving Forward:

Faith Baptist has identified the terms governing the "Development Assessments" due the City under Sections 7(F) and 7(G) of the Original Agreement as particularly making development of the Annexed Property infeasible.² The \$399,920.00 Development Assessment proposed under the Amended Agreement represents a significant reduction in the development assessments and related fees required under the Original Agreement currently in effect. Likewise, overall, the terms proposed under the Amended Agreement reflect a recognition of the challenges the Original Agreement unintentionally created for future development of the Annexed Property thirteen years after the parties executed the document

City staff agrees with Faith Baptist that development of the Annexed Property is the ultimate goal for all parties involved, including the community at large. Accordingly, to facilitate development of the Annexed Property, while also recognizing the impact the Development Assessments provided in the Original Agreement and revised under the Amended Agreement have on the feasibility and marketability of any potential development of the land, below is a proposal for the City consideration's that focuses on incentivizing development of the Annexed Property in return for forgiveness of the Development Assessment:

Faith Baptist has indicated it has no intentions to sell the property identified as Parcel 182 for development. Therefore, the Section 8(c) of the Amended Agreement which governs payment of the Development Assessments only pertains to the "**Development Property**" (i.e. Parcel 184 and Parcel 40). Section 8(c)(i) of the Amended Agreement provides a sliding scale for payment of the Development Assessments based on development of the Annexed Property. For example: Using the amount \$399,920.00 as the amount of the Development Assessment due from the Owner (as defined in the Amended Agreement) of the Development Property, payment of such Development Assessment would be proportionately forgiven based on the Owner of the Development Property meeting certain development milestones as follows:

- Within 12 months from the execution of the Amended Agreement, the Owner of the Development Property (at such time) must make payment to the City in amount of \$99,980.000.
- Within 18 months from the execution of the Amended Agreement, the Owner of the Development Property will submit a comprehensive development plan to the City which depicts the development plans for all buildable space on the Development Property.
- Provided not less than one-third of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within thirty-six (36) months following the execution of the Amended Agreement, the City shall waive payment of one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 3rd anniversary of the execution of the Amended Agreement.

² Section 7 of the Original Agreement provides the fees to be paid to the City in connection with annexation and development of the Annexed Property, which are summarized as follows:

1. The terms contained in Section 7(F) of the Original Agreement provide in pertinent part: "The Developer agrees to pay a development assessment of \$3,000.00 per dwelling unit..."
2. The terms contained in Section 7(G) of the Original Agreement provide in pertinent part: "The Developer also agrees to pay a development assessment to the City of \$2,000.00 per residential dwelling unit for ninety-four (94) percent of the dwelling units in the proposed development."

May 10, 2021

- Provided not less than two-thirds of all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work within forty-eight (48) months following the execution of the Amended Agreement, the City shall waive payment of an additional one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$199,960.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property (or its successor-in-interest) on the 4th anniversary of the execution of the Amended Agreement.
- Provided all buildable space on the Annexed Property is developed for use, such that a building permit has been issued for such work, within seventy-two (72) months following the execution of the Amended Agreement, the City shall waive payment of the final one-quarter of the Development Assessment (i.e. \$99,980.00, such that the City will have waived payment in the total amount of \$299,940.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from the Owner of the Development Property, at such time, on the 6th anniversary of the execution of the Amended Agreement, and no building permit for development of the Development Property may be issued until any and all amount(s) of the Development Assessment have been paid to the City.

Development of the Annexed Property is in the long-term fiscal interests of the City, as improvements to the Annexed Property will result in higher assessments and, consequently, a significant increase in the amount of revenue the City collects from the (currently unimproved) Annexed Property. Connecting payment of the Development Assessment to the completion of development milestones is as close to a win-win for the City and the Petitioners (as defined in the Amended Agreement) as available. If the development milestones set forth in Section 8(c) of the Amended Agreement are met: the Owner of the Development Property can avoid paying some or all of the Development Assessment; and, likewise, the City's interests are served because the Development Property is fully (or at least partially) developed and the revenue generated from tax assessments imposed on the Annexed Property (including the Development Property) are increased, thereby off-setting any revenue lost from the City's conditional waiver of the Development Assessment.

Thank you for your time and consideration of this matter. It is greatly appreciated.

Michael P. Sullivan

ANNEXATION AGREEMENT

THIS AGREEMENT is made this 5th day of February, 2007, by and between the City of Salisbury, a municipal corporation of the State of Maryland (hereinafter, "the City"), and the following two parties: (1) Vernon Esham Land Development, Inc. a Maryland corporation with its principal place of business at P.O. Box 375 in Hebron, Maryland and (2) Faith Baptist Church of Salisbury, Maryland, Inc. whose address is 30505 Dagsboro Road in Salisbury, Maryland 21804 (the latter two parties collectively designated hereinafter, "the Developer").

RECITALS

WHEREAS, the Developer is the record owner of certain real property located in Wicomico County, Maryland, (hereinafter, "the Property"), and more particularly described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Developer desires to construct upon the Property an expansion of the existing church and school facilities and a new residential development together with certain amenities; and

WHEREAS, the Property is not presently within the corporate boundaries of the City and is therefore ineligible to receive certain municipal services, including municipal water and wastewater service, that the Developer desires to obtain for the Property; and

WHEREAS, the Developer desires that the City annex the Property and the City desires to annex the Property, provided that certain conditions are satisfied; and

WHEREAS, pursuant to the authority contained in Article 23A of the Annotated Code of Maryland, Sections 19(b) and (n), the Developer and the City have agreed that the following conditions and circumstances will apply to the annexation proceedings and to the Property.

WITNESSETH:**1. WARRANTIES AND REPRESENTATIONS OF CITY:**

A. The City supports the Developer's general plan of development for the Property as set forth in the Concept Development Plan attached hereto as Exhibit B.

B. The City represents that it favors the development of the Property as represented and depicted in the Development Concept Plan, and will support the development as represented and depicted on the foregoing Development Concept Plan.

Return to Clay Hall
D CITY OF SALISBURY
DEPARTMENT OF PUBLIC WORKS
125 N. DIVISION ST. ROOM 202
SALISBURY, MD 21801-4940

C. The City guarantees, covenants and warrants that it will not set any policy, position or course of action which is specifically and solely detrimental to the development of the property and construction of houses and church and school facilities upon the Property, or that is inconsistent with the Development Concept Plan and other applicable regulations and standards.

D. The parties understand and agree that the City's herein provided covenant of support is not intended, nor could it be construed, to legally prohibit the City from enacting such future ordinances or charter provisions or engineering standards or amendments deemed necessary to protect the public health, safety and welfare of the residents of the City, nor from applying such ordinances or charter provisions to the development of the Property, provided such application does not operate to divest prior approvals, nor interfere with the Developer's vested rights to any greater extent than the impact of such ordinances and charter resolutions upon other similarly-situated properties within the City's boundaries.

E. The City acknowledges that the Developer has been induced to enter into this Agreement in part upon the City's representations that the City has and will have adequate capacity in its water and wastewater treatment facilities to provide service to the development contemplated by this Agreement upon the Property.

2. WARRANTIES AND REPRESENTATIONS OF THE DEVELOPER:

A. This Agreement constitutes the formal written consent to annexation by Faith Baptist Church of Salisbury, Inc. as required by Article 23A, Section 19(b). The Developer acknowledges that it will receive a benefit from annexation and agrees, as a bargained-for condition and circumstances applicable to the annexation, that it waives and completely relinquishes any right to withdraw its consent to annexation from the date of execution of this Agreement by all parties. The Developer further agrees that it will not petition the Annexation Resolution to referendum and that, in the event of a referendum in which it is permitted to vote, that it shall vote in favor of the Annexation Resolution.

B. Faith Baptist Church of Salisbury, Inc. warrants and represents that it has full authority to sign this Agreement and that it is in fact the sole owner(s) of the real property encompassed in the Annexation Area and more particularly described in Exhibit "A," and that there is no action pending against it involving it that would in any way affect its right and authority to execute this Agreement.

C. Faith Baptist Church of Salisbury, Inc. warrants and represents that it has the full power and authority to sign this Agreement and Consent and is, in fact, collectively the sole owner of not less than Twenty-five Percent (25%) of the assessed valuation of the real property within the Annexation Area.

3. APPLICATION OF CITY CODE AND CHARTER

From and after the effective date of the Annexation Resolution implementing this Agreement, all provisions of the Charter and Code of the City shall have full force and effect within the Property except as otherwise specifically provided herein.

4. MUNICIPAL SERVICES

Upon the effective date of the Annexation Resolution implementing this Agreement, the City will provide all applicable municipal services to the Annexation Area to the extent that the necessary public facilities exist to provide such services. The City will reserve the public water and sewer capacity to provide the service needed by the development of the Property shown in the concept development plan in Exhibit B.

5. CITY BOUNDARY MARKERS

The Developer will fund and install City Boundary Markers at the boundary lines to the newly enlarged City boundaries and will provide receipt of such work completed to the City within 90 days of expiration of the 45-day referendum period.

6. MUNICIPAL PROPERTY TAX

The City will withhold its right to collect property tax on the Property until a subdivision plat for the Property is officially recorded.

7. DEVELOPMENT CONSIDERATIONS:

A. The Developer agrees that it will cover the costs to the City of effecting the annexation of the Annexation Area, including but not limited to the City's costs for legal fees, planning, and other consulting fees in connection with the preparation of this Agreement and/or the necessary annexation resolution and related documents, for publication of any required notices, and for any other cost or expense reasonably related, in the City's sole judgment, to the annexation.

B. The Developer and City agree that the Property will be developed consistent with the regulations of the zoning district classification referenced in the Annexation Resolution and in substantial conformance with the concept development plan shown as Exhibit B.

C. The Developer acknowledges the City's concern about the adequacy of a single point of ingress/egress to the proposed development upon the Property and the City's desire to see a road connection made between East North Pointe Drive and Dagsboro Road through the proposed development. The Developer agrees that residential development to be constructed upon the Property should be served by a City street connection to East North Pointe Drive in addition to a City street connection to Dagsboro Road and that it is the Developer's responsibility to effectuate the street connection through the adjoining Brown tract. The parties acknowledge that the Developer has entered into a Memorandum of Understanding (attached hereto as Exhibit C) with the owners of the adjoining Brown tract setting forth commitments and conditions for obtaining and dedicating to the City right-of-way for the purpose of extending East North Point Drive through the Brown tract to the proposed development along with the water, sanitary sewer, and other utilities needed by the proposed development of the Property. The preliminary alignment of the right-of-way is made part of this Agreement and is attached hereto as Exhibit D, Preliminary Road Dedication Plat. It is understood by both parties that the dedication of the right-of-way extension of East North Pointe Drive through the Brown tract to the Property shall be obtained in a form acceptable to the City prior to any submittal of a subdivision plat for the development of the residential portion of the Property. The parties agree that any change to the preliminary alignment or any alternative alignment of the extension of East North Pointe Drive through the Brown tract shall be made only upon written approval of the City and no such change or alternative shall relieve the Developer from its responsibilities described herein and more particularly in paragraph D below.

D. The Developer agrees that prior to the issuance by the City of the 50th residential use and occupancy permit on the Property; it shall be the Developer's responsibility, upon an approved public works agreement, to have construction commenced, within the right-of-way described in paragraph C above (or alternative alignment, if approved by the City), a street to City design standards.

E. The Developer agrees to reserve as open space and dedicate to the City as future right-of-way a portion of the property, 30-foot wide, and located at the logical extension of Oliphant Drive, as shown on Exhibit B hereto, which property shall be subjected to a right-of-way easement in favor of the City for possible future construction of a street and pedestrian and bicycle way connecting the existing Oliphant Drive right-of-way to the interior street network of the development.

F. The Developer agrees to pay a development assessment to the City of \$3,000.00 per dwelling unit, the payment of which shall be required as a condition of the issuance of a building permit for each such unit, and which development assessment is understood by the parties to be intended for use by the City in its sole discretion for beatification, restoration, and revitalization improvements to existing neighborhoods in the City and which development assessment is understood by the parties to be in addition to and independent of the City's water and sewer connection charges and any other development impact fees imposed by Wicomico County or the City.

G. The Developer also agrees to pay a development assessment to the City of \$2,000.00 per residential dwelling unit for ninety four (94) percent of the dwelling units in the proposed development. Six (6) percent of the total dwelling units in the proposed development shall be exempted from this assessment. The payment of the assessment shall be made as a condition of the issuance of a building permit and which development assessment is understood by the parties to be intended for use by the City in promoting the implementation of a workforce housing program. The parties acknowledge their shared responsibility in promoting a program through which this development assessment is used by the City to help close the gap between the market rate price of a dwelling unit in the proposed development on the Property and the actual price that a prospective workforce housing purchaser can afford, as determined by the City. The Developer agrees to make available for use as workforce housing units six (6) percent of the total units in the proposed development on the Property and further agrees that the units will be indistinguishable from and entirely equal to the units not made available by the Developer for workforce housing, unless the Developer agrees at his discretion in cooperation with the City to make minor modifications internal to the unit which in a demonstrable way lower construction costs and the fair market rate sales price. The Developer agrees to accept pre-qualified buyers meeting workforce housing eligibility criteria established by the City for up to six (6) percent of the units in the development. If the City does not implement a program by the time the developer obtains his 80th building permit, the per unit development assessment shall apply to all units in the development and the assessment shall be used by the City at its sole discretion to meet housing needs through other means and the developer is relieved of responsibility contained herein with the exception of paying the per unit assessment.

H. The Developer represents that it will establish and incorporate a Homeowners' Association that shall take ownership, control, and responsibility for the maintenance and upkeep of any common areas and public amenities to be provided within the proposed subdivision, other than streets and/or other facilities to be accepted by and maintained by the City.

I. The Developer agrees to reserve as open space a portion of the property, consisting of approximately three and one-third acres (3.3) acres and shown on Exhibit B attached hereto as the "Green". With respect to the "Green", both the City and Developer acknowledge the role of the Planning Commission in the review and approval of development plans for the Property and contemplate that the size and alignment of the green space may vary somewhat from that provided in the concept development plan in Exhibit B. The "Green" shall be designated as common area and be transferred to the ownership of the Homeowners' Association. The Developer agrees to construct upon the "Green" paved bicycle and pedestrian trails providing access and recreational amenities for residents of the development. With respect to all of the open spaces, the Developer agrees to commence installation at his expense trees, shrubs, and other landscaping of the species and caliper and in the locations and at a schedule provided for in the subdivision plats and improvement plans approved by the City. Guarantee of the maintenance of such plantings and landscaping shall be part of the Homeowners' Association covenants.

J. The parties acknowledge the City's preference that the open space reserved by the Developer on the residential portion of the Property be used for low-impact, passive recreation, and ecologically-sensitive stormwater management techniques, rather than for active or field-play recreation and the construction of stormwater management ponds, and the Developer agrees that it shall design the site to conform to this preference through cooperation with the City as needed. Where open space on the Property is set aside for stormwater management, the Developer shall cause easements or covenants, as necessary and appropriate for the permanent maintenance of such facilities, to be imposed upon the open space prior to transfer of ownership to the Homeowners' Association and/or Faith Baptist Church of Salisbury, Inc.

K. The parties acknowledge and agree that the obligations set forth herein on the part of both parties pertain to the Property, unless otherwise expressly stated herein.

8. **RECORD PLAT:**

The Developer will provide the City with a copy of the final record plat for the development of the Property.

9. **MISCELLANEOUS:**

A. The obligations of the parties hereto set forth herein are contingent upon the adoption of an Annexation Resolution effecting the annexation of the Property by the Mayor and City Council of the City of Salisbury and shall be void in the event the City fails to effect such annexation or such annexation is invalidated by referendum or otherwise.

B. The use of singular verb, noun and pronoun forms in this Agreement shall also include the plural forms where such usage is appropriate; the use of the pronoun "it" shall also include, where appropriate "he" or "she" and the possessive pronoun "its" shall also include, where appropriate, "his" "hers" and "theirs."

C. From time to time after the date of this Annexation Agreement, the parties, without charge to each other, will perform such other acts, and will execute, acknowledge and will furnish to the other such instruments, documents, materials and information which either party reasonably may request, in order to effect the consummation of the transactions provided for in this Agreement. Mutual agreement shall be obtained for any such act exceeding \$3,000.00 in cost.

D. This Agreement, which includes all exhibits, schedules and addenda hereto, each of which is incorporated in this Agreement by this reference, shall be recorded among the Land Records of Wicomico County and shall run with the land and be binding upon and inure to the benefit of the parties, their heirs, successors and assigns, and embodies and constitutes the entire understanding, representations, and statements, whether oral or written, are merged in this Annexation Agreement. The parties may renegotiate the terms hereof by mutual agreement, subsequent to the effective date of any Annexation Resolution adopted by the City pursuant hereto, provided that neither this Agreement nor any provisions hereof may be waived, modified or amended unless such modification is in writing and is signed by the party against whom the enforcement of such waiver, modification or amendment is sought, and then only to the extent set forth in such instrument.

E. The parties hereto acknowledge that, in entering into this Agreement, neither party has been induced by, nor has relied upon, nor included as part of the basis of the bargain herein, any representations or statement, whether express or implied, made by any agent, representative or employee, which representation or statement is not expressly set forth in this Agreement.

F. This Agreement shall be construed according to its plain meaning without giving regard to any inference or implication arising from the fact that it may have been drafted in whole or in part by or for any one of the parties hereto.

G. This Agreement, its benefit and burden, shall be assignable, in whole or in part, by the Developer without the consent of the City or of its elected officials, employees or agents, to any purchasers or contract purchasers of the property or any party thereof. However, the Developer will not transfer or pledge as security for any debt or obligation, any interest in all or part of the Annexation Area, without first obtaining the written consent and acknowledgement of the transferee or pledgee to the Annexation Agreement and to the complete observance hereof. The Developer shall provide the City with copies of all documents of transfer or assignment, including exhibits when the documents are fully executed, regardless of recordation.

H. The captions in any Agreement are inserted for convenience only, and in no way define, describe or limit the scope of intent of this Agreement or any of the provisions hereof.

I. The laws of the State of Maryland shall govern the interpretation, validity, and construction of the terms and provisions of this Agreement. If any term or provision of this Agreement is declared illegal or invalid for any reason by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall, nevertheless, remain in full force and effect. Any suit to enforce the terms hereof or for damages or other remedy for the breach or alleged breach hereof shall be brought exclusively in the Courts of the State of Maryland in Wicomico County and the parties expressly consent to the jurisdiction thereof and waive any right that they might otherwise have to bring such action in or transfer or remove such action to the courts of any other jurisdiction.

J. All notices and other communications under this Agreement shall be in writing and shall be sent either by first class mail, postage prepaid, or by personal delivery, addressed to the parties as provided below. Notice shall be deemed given on the date delivered or attempted to be delivered during normal working hours on business days.

IF TO THE CITY: City Administrator
WITH A COPY TO: City Clerk

IF TO THE DEVELOPER: Vernon L. Esham
WITH A COPY TO: Rev. Robert C. Reinert

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS:

[Signature]

THE CITY OF SALISBURY, MARYLAND

By:

[Signature: Carrie P. Tilghman]

WITNESS/ATTEST:

OWNER / DEVELOPER:

VERNON ESHAM LAND DEVELOPMENT, INC.

Susan A. Bruce

By:

[Signature]

WITNESS/ATTEST:

OWNER / DEVELOPER:

FAITH BAPTIST CHURCH OF SALISBURY, MD., INC.

Susan A. Bruce

By:

[Signature: Robert C. Reinert] For Faith Baptist Church

APPROVED AS TO FORM:

[Signature], City Attorney

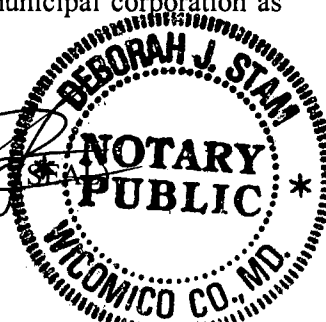
STATE OF MARYLAND

COUNTY OF Wicomico, to wit:

I HEREBY CERTIFY, that on this 5th day of February, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Barrie Tilghman, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be a duly elected official of the City of Salisbury, a municipal corporation of the State of Maryland, and that said official, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation as such official.

WITNESS my hand and notarial seal.

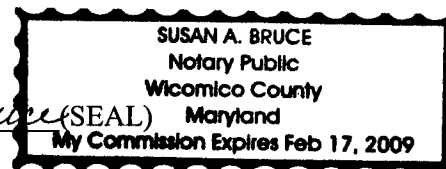
Deborah J. Stam
Notary Public

My Commission Expires: 1/1/2011

I HEREBY CERTIFY, that on this 17th day of January, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Vernon L. Esham, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be Member of Vernon Esham Land Development, Inc., a corporation of the State of Maryland, and that, being duly authorized so to do, he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as a Member.

WITNESS my hand and notarial seal.

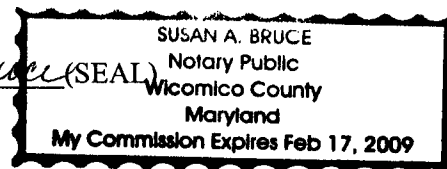
Susan A. Bruce (SEAL)
Notary Public

My Commission Expires: 2/17/09

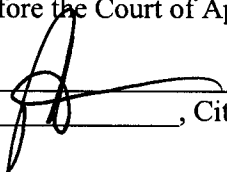
I HEREBY CERTIFY, that on this 17th day of January, 2007, before me, a Notary Public in and for the State aforesaid, personally appeared Robert C. Reinert, who has been satisfactorily proven to be the person whose name is subscribed to the within instrument, who acknowledged himself to be Senior Pastor of Faith Baptist Church of Salisbury, Maryland, Inc., a corporation of the State of Maryland, and that, being duly authorized so to do, he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as the Senior Pastor.

WITNESS my hand and notarial seal.

Susan A. Bruce (SEAL)
Notary Public

My Commission Expires: 2/17/09

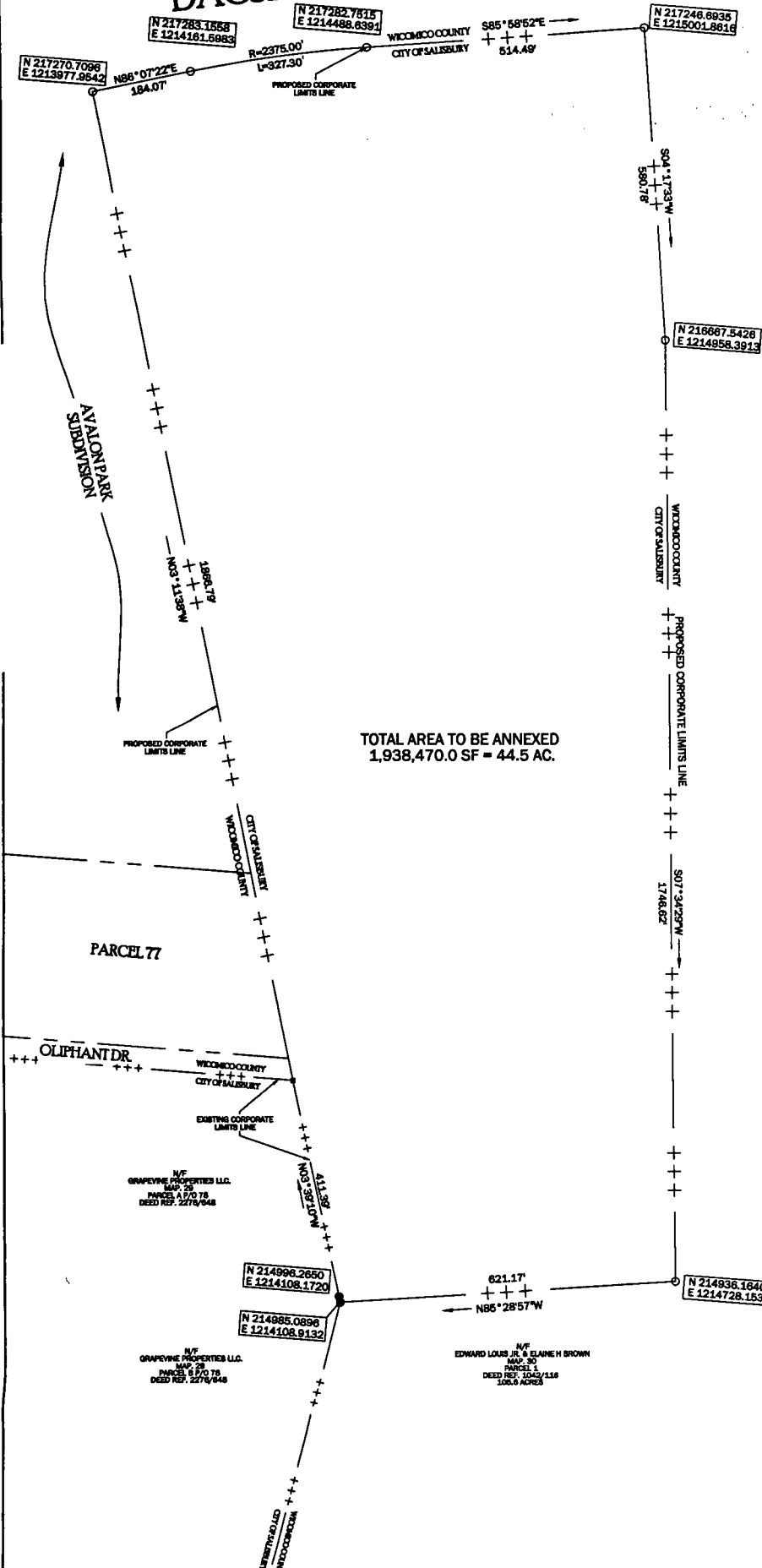
I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of an attorney duly admitted to practice before the Court of Appeals of Maryland.


_____, City Attorney

2828-467

LIBER 2828

DAGSBORO ROAD



TOTAL AREA TO BE ANNEXED
1,938,470.0 SF = 44.5 AC.

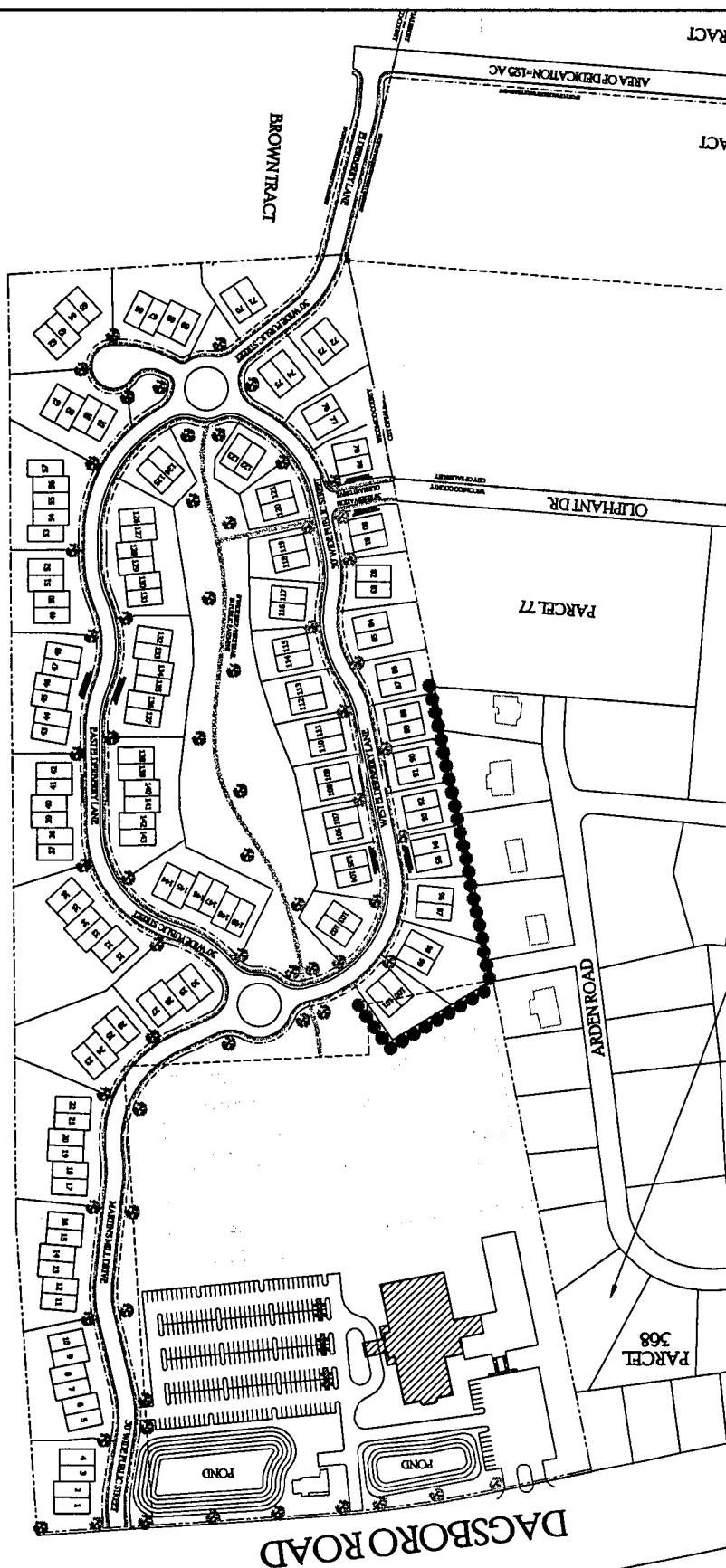
PARKER & ASSOCIATES
SURVEYING
CIVIL ENGINEERING INC.
SITE PLANNING
ESTABLISHED 1977

ATTACHMENT A - ANNEXATION SURVEY

DAGSBORO ROAD/FAITH BAPTIST CHURCH ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=200'

EXHIBIT "A"



ATTACHMENT B - CONCEPT DEVELOPMENT PLAN

FAITH BAPTIST CHURCH/MARTINS MILL ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=200'

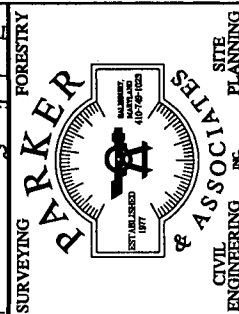


EXHIBIT "B"

Exh. 6, 7 "C" LIBER 2828 FOLIO 469

LONG & BADGER, P.A.

Attorneys at Law

JOHN B. LONG, II
JEFFREY E. BADGER

J. GARRETT SELLER
DOUGLAS W. MCCABE

Direct E-Mail
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124 EAST MAIN STREET
P. O. Box 259
SALISBURY, MARYLAND 21803-0259

Phone: (410) 749-2356
Fax: (410) 749-8731

HOBART B. HUGHES
FULTON P. JEFFERS

-OF COUNSEL-

JOHN WILLIAM LONG
1914-1986

December 14, 2006

Kenneth L. Hooper, Esq.
P.O. Box 138
Salisbury, MD 21803-0138

RE: Faith Baptist Church Easement

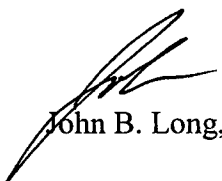
Dear Ken:

I am in receipt of your letter dated December 13, 2006 with respect to the acquisition of a right-of-way over the Brown property which is adjacent to the property being developed by the Church. We are satisfied with your proposal and you may begin to prepare the documents necessary to transfer the easement.

Also, as we discussed the Browns are seriously considering the possibility of making a gift of this right-of-way to the Church. After you have prepared the requisite documents we can discuss the gift aspects further.

Should you have any questions, please do not hesitate to call.

Sincerely,



John B. Long, II

JBLII:o
cc: Ms. Elaine H. Brown
F:\R-E\7-4677\Hooper.lt

MSB H102
AUG 08, 2007 12:24 PM

LIBER 2828 FOLIO 470

TARGET

NORTH
POINTEDR

END OF CURRENT ROW

NORTHPOINTEDR ROADWAY EXTENSION

GRAPEFRUIT, LLC TRACT

SALISBURY 77, LLC TRACT

AREA OF DEDICATION=125 AC

OLIPHANT DR

Received for Record AUG 08 2007 and
recorded in the Land Records of Wicomico
County, Maryland in Liber M.S.B.
No. 2828 Folios 457-470
Mark S. Bowe Clerk

BROWN TRACT

ELDERBERRY LANE

30 WIDE PUBLIC STREET

ATTACHMENT D - PRELIMINARY ROAD DEDICATION DETAIL

FAITH BAPTIST CHURCH/MARTINS MILL ANNEXATION
DAGSBORO ROAD, NORTH SALISBURY
CITY OF SALISBURY, MARYLAND

SCALE: 1"=300'

SURVEYING
PARKER
FORESTRY
CIVIL ENGINEERING INC.
ASSOCIATES
SITE PLANNING

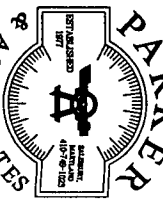


EXHIBIT "D"

Faith Baptist Church/Martins Mill Annexation – Dagsboro Road

AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT (“**Agreement**”) is made this ____ day of _____, 2021, by and between the *City of Salisbury*, a municipal corporation of the State of Maryland (the “**City**”) and *The Faith Baptist Church of Salisbury, Maryland*, a body corporate of the State of Maryland (“**Faith Baptist**”), with a principal office address of 108 W. Lehigh Ave., Salisbury, Maryland, and *Jeffrey L. Clemens and Kelly B. Clemens* (collectively the “**Clemens**”), with an address of 272 Hunsberger Lane, Harleysville, PA 19438 (Faith Baptist and the Clemens are hereinafter referred to collectively as “**Petitioners**”), (the City and Petitioners are hereinafter referred to collectively as the “**Parties**”).

RECITALS

WHEREAS, for purposes of this Agreement, the term “**Owner**” shall be deemed to include (i) each of Petitioners, (ii) each and every subsidiary, successor-in-interest and/or assign of each of Petitioners and (iii) each of and every successor-in-interest, transferee, assignee and/or grantee of any right, title and/or interest of either of Petitioners and/or each of their successors and/or assigns in and to the Property or any portion thereof, such that this Agreement, and all of the terms and conditions set forth herein, shall apply to, be binding in all respects upon and inure to the benefit of each and every successor-in-interest and/or assign of Petitioners, as the case may be;

WHEREAS, Owner owns all that certain real property identified as Map 0021, Grid 0019, Parcel 0184 (Maryland Account Identifier (“**SDAT Account No.**”) 05-091470), consisting of 25.1800 acres more or less, having a premises address of Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 184**”), pursuant to a Deed, dated September May 7 , 2008 and recorded among the Land Records of Wicomico County, Maryland in Liber 2929, folio 057, from Faith Baptist to the Clemens, providing (i) the Clemens and Faith Baptist, as tenants in common with the right of survivorship, own a seven percent (7%) interest in and to Parcel 184, and (ii) Faith Baptist owns, in fee simple, an undivided ninety-three percent (93%) interest in and to Parcel 184;

WHEREAS, Owner owns all that certain real property identified as Map 0021, Grid 0019, Parcel 0040 (SDAT Account No. 05-121027), consisting of 4.1300 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 40**”), pursuant to a Deed, dated September May 7 , 2008 and recorded among the Land Records of Wicomico County, Maryland in Liber 2929, folio 057, from Faith Baptist to the Clemens, providing (i) the Clemens and Faith Baptist, as tenants in common with the right of survivorship, own a seven percent (7%) interest in and to Parcel 40, and (ii) Faith Baptist owns, in fee simple, an undivided ninety-three percent (93%) interest in and to Parcel 40 (Parcel 184 and Parcel 40 are hereinafter referred to collectively as the “**Development Property**”);

WHEREAS, Faith Baptist owns, in fee simple, all that certain real property identified as Map 0021, Grid 0019, Parcel 0182 (SDAT Account No. 05-090431), consisting of 15.07 acres more or less, having a premises address of 30505 Dagsboro Road, Salisbury, Maryland 21804 (“**Parcel 182**”), pursuant to a Deed, dated June 26, 1980 by Walter I. Shockley and Hilda R. Shockley, his wife, and Richard E. Cullen and Charles W. Nelson, Jr., Trustees for Marva Production Credit Association to Faith Baptist, recorded among the Land Records of Wicomico County, Maryland in Liber 944, folio 209 (the Development Property and Parcel 182 are hereinafter referred to collectively as the “**Property**”);

WHEREAS, Faith Baptist and Vernon Esham Land Development, Inc. (“**Vernon**”), and the City entered into an Annexation Agreement, dated February 5, 2007 and recorded among the Land Records of Wicomico County, Maryland in Liber M.S.B. No. 2828, Folio 457 (the “**Original Agreement**”), setting forth the terms and conditions governing the City’s annexation of the Property;

WHEREAS, Petitioners desire to sell the Development Property to a third-party buyer for development of the Property, but, due to market changes from the date of the Original Agreement to the date hereof, the Parties have determined the terms and conditions set forth in the Original Agreement make the sale and development of the Property infeasible;

WHEREAS, in accordance with the foregoing, the Parties have agreed to amend the terms and conditions contained in the Original Agreement as set forth herein;

WHEREAS, pursuant to the authority contained in the Annotated Code of Maryland, Local Government Article, Section 4-101, *et seq.* Petitioners and the City have agreed to execute this Agreement, and the terms and conditions of this Agreement shall apply to the Development Property and Parcel 182, respectively, as set forth herein, and, by their execution of this Agreement, the Parties expressly acknowledge this Agreement, and all of the terms set forth herein, shall be deemed and otherwise construed, in all respects, to supersede and replace the Original Agreement effective the date hereof;

WHEREAS, by their execution of this Agreement, the Parties expressly acknowledge and agree that all terms and conditions set forth in this Agreement shall apply to and otherwise govern any purchaser of the Property and any portion thereof, as if such purchaser was named herein as “**Owner**”.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date upon which this Agreement is approved by majority vote of the City Council of the City of Salisbury (the “**City Council**”).

2. **Warranties & Representations of the City.**

(a) When reviewing any development plan(s) submitted for or relating to the Property or any portion thereof, including, but not limited to, any Subdivision Plat subdividing the Property, the City of Salisbury-Wicomico County Planning Commission (the “**Planning Commission**”) and its associated staff, and the City, and all of its officials, employees, representatives, agents and consultants, shall be guided by the provisions of this Agreement, to ensure all matters addressed by this Agreement are implemented in accordance with the terms and conditions set forth herein. All approvals relating to the development and/or use of the Property or any portion thereof granted by any commission, board, body or agent of the City or any other government agency having jurisdiction over the Property and/or any development of any portion thereof, shall, to the fullest extent possible, comply with all terms and conditions of this Agreement.

(b) The Parties expressly acknowledge the City’s execution of this Agreement is not intended, nor shall it be construed, in any way whatsoever, to prohibit the City from enacting or otherwise adopting any future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, the City may deem necessary or appropriate to protect the health, safety and welfare of City residents or the public at large, or from applying the provisions of any such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, to any matter relating to any development or use of the Property or any portion thereof; provided, however, any such application by the City shall not result in the divestment or termination of any prior approval(s) for any development and/or use of the Property or any portion thereof, or interfere with Owner’s vested rights in and to the Property or any portion thereof to an extent greater than the impact such future ordinance(s), charter provision(s) and/or engineering standard(s), including any amendment(s) thereto, have upon other similarly-situated properties located within the municipal limits of the City.

3. **Warranties & Representations of Owner.**

(a) The execution of this Agreement shall constitute Owner’s express written consent to the terms of this Agreement which shall be deemed to run with and otherwise govern the Property and any portion(s) thereof as more particularly set forth herein, including any development and/or use of the Property or any portion(s) thereof, arising from the City’s annexation of the Property by Resolution No.1466 (the “**Annexation Resolution**”), adopted by the City Council of the City of Salisbury on February 12, 2007.

(b) Petitioners each represent and warrant to the City as follows: (i) Each of Petitioners have the full power and authority to execute this Agreement; (ii) Petitioners are the sole owners of Parcel 184 and Parcel 40, and Faith Baptist is the sole owner of Parcel 182, and, accordingly, Petitioners are the sole owners of all that certain real property constituting one hundred percent (100%) of the assessed value of the Property, as of the date and year first above written; and, (iii) to the best of each of Petitioners’ knowledge and belief there is no action pending against or

otherwise involving either of Petitioners and/or the Property which could affect, in any way whatsoever, Petitioners' right and authority to execute this Agreement and the performance of the obligations of any Owner hereunder.

4. Application of City Code and Charter; City Taxes.

(a) The Parties expressly acknowledge and agree, as of the effective date of the Annexation Resolution, the Property has been annexed by the City and, therefore, all provisions of the City of Salisbury Charter and the City Code have had (and shall continue to have) full force and effect as to all matters applicable or otherwise relating to the Property including the development and/or use of any portion thereof, except as otherwise expressly set forth herein. Subject to the terms set forth in Section 4(b), the Parties further expressly acknowledge and agree that, as of the effective date of the Annexation Resolution, the Property has been and shall remain subject to any and all applicable taxes, fees and/or other charges levied, assessed or imposed by the City from time to time.

(b) Notwithstanding any term to the contrary set forth herein, the Parties expressly acknowledge and agree, as of the effective date of the Annexation Resolution and continuing through and until such time as the Petitioners convey the Development Property, or any portion thereof, to any third party or a subdivision plat for the Property is recorded with the Land Records of Wicomico County, Maryland, whichever event occurs first, the City shall withhold its right to collect property tax on the Property.

5. Municipal Zoning. The Parties acknowledge and agree that the Property is zoned by the City as R-10A Residential ("R-10A").

6. Municipal Services.

(a) Subject to the obligations of Owner under Sections 8(c)(i)-(iii), the City agrees to provide all necessary municipal services required for any Owner's development and/or use of the Property or portion thereof, including, but not limited to, adequate water and sewer services, fire and police protection, and other municipal services generally available to residents of the City.

(b) With respect to the allocation of public water and/or wastewater capacity and services for the Property or any portion thereof, any such allocation shall be determined by the City pursuant to the City's allocation plans in effect at the time a request for public water and/or wastewater capacity and services is submitted by the Owner of such portion of the Property for which such capacity and services is requested in accordance with the City's applicable policies and procedures. Notwithstanding any term to the contrary set forth herein, Owner expressly acknowledges and agrees that no public water or wastewater capacity for any existing use(s) or any future development of the Property or portion(s) thereof shall be allocated or otherwise reserved by the City unless and until payment has been made to the City for all applicable capacity fee(s) for any such allocation of water and/or wastewater capacity and services in accordance with the applicable policies of the City existing at the time of such request. The payment to pay any capacity fee(s) or the connection of any portion of the Property to the City's water and/or wastewater systems shall be due to the City upon the earlier occurrence of: (i) Owner's election, at its discretion, to connect the Property, or any portion thereof, to the City's water and/or wastewater systems; or (ii) the issuance, by the Wicomico County Health Department or the Maryland Department of the Environment (as the case may be), of a final non-appealable order requiring the connection of any portion of the Property to the City's water and/or wastewater systems.

7. Standards & Criteria. Should any environmental, engineering or other similar standard or criteria expressly provided in this Agreement be exceeded by any local, state or federal law, regulation, rule, standard or authorized criteria enacted, promulgated, ordered or adopted following the date and year of this Agreement, such newer stricter law, regulation, rule, standard and/or authorized criteria shall govern the rights and obligations of the Parties hereunder.

8. Development Considerations.

(a) **Fees & Costs.** Petitioners, jointly and severally, expressly acknowledge and agree to pay the City for any and all fees, costs and/or expenses, including, but not limited to, any legal fees, planning fees and/or consulting fees, incurred by the City in connection with the preparation of this Agreement and the preparation of any other document(s) pertaining to the annexation of the Property, the publication of any public notice(s) for or in connection with the City's execution of this Agreement and/or the City's annexation of the Property, and/or any other matter relating to or arising from the City's preparation of this Agreement and/or the annexation of the Property, as determined by the

City in its sole discretion. The City shall invoice Faith Baptist for any costs to be paid by Petitioners under this Section 8(a), and Petitioners shall make payment of all amounts due and owing the City under this Section 8(a) within thirty (30) days from Faith Baptist's receipt of such invoice from the City.

(b) Development of the Property. The Property, and all portion(s) thereof, shall be developed in a manner that complies with all laws and regulations governing the development of property located within the City's R-10A Zoning District.

(c) Contribution to the Re-Investment in Existing Neighborhoods.

- (i)** Subject to the terms and conditions contained in this Section 8(c)(i), Owner of the Development Property shall, jointly and severally (if applicable), pay a non-refundable development assessment to the City in the total amount of Three Hundred Ninety-Nine Thousand Nine Hundred Twenty Dollars and 00/100 (\$399,920.00) (the "**Development Assessment**"). The Development Assessment is intended for use by the City, in its sole discretion, for purposes of beautification, restoration and revitalization improvements to existing neighborhoods within the City, or for any other purpose deemed necessary and appropriate by the City. The Development Assessment is in addition to and independent of: **(A)** any water and/or wastewater comprehensive connection charge(s), capacity fee(s) or any other assessment(s) charged, levied or otherwise imposed by the City in connection with any use or development of the Property or any portion thereof; **(B)** any impact fee(s) levied or imposed by Wicomico County or the City relating to any use or development of the Property or any portion thereof; and/or, **(C)** any other charge(s) or fee(s) the City may assess against Owner and/or the Property in accordance with this Agreement and/or any applicable law(s) or regulation(s) governing the development or use of the Property or any portion thereof.
- (ii)** The Parties expressly acknowledge and agree Owner's payment of the Development Assessment as provided in this Section 8(c)(ii) represents a material part of the consideration to be received by the City hereunder, without which the City would not enter into this Agreement. The Development Assessment shall be paid by Owner to the City as follows:

 - (A)** Within twelve (12) months from the date of this Agreement, Owner of the Development Property shall make payment to the City in the amount of Ninety-Nine Thousand Nine Hundred Eighty Dollars and 00/100 (\$99,980.00).
 - (B)** Within eighteen (18) months from the date of this Agreement, Owner of the Development shall submit a comprehensive development plan to the City, which said comprehensive development plan shall depict the development plans for all buildable space on the Development Property.
 - (C)** Provided not less than one-third of all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work at any time prior to thirty-six (36) months from the date of this Agreement, the City shall waive payment of one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from Owner of the Development Property thirty-six (36) months from the date of this Agreement (i.e. on the 3rd anniversary of the execution of this Agreement).
 - (C)** Provided not less than two-thirds of all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work at any time prior to forty-eight (48) months from the date of this Agreement, the City shall waive payment of an additional one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from

Owner of Development Property forty-eight (48) months from the date of this Agreement (i.e. on the 4th anniversary of the execution of this Agreement).

- (D) Provided all buildable space on the Development Property is developed for use, such that a building permit has been issued for such work within seventy-two (72) months from the date of this Agreement, the City shall waive payment of the final one-quarter of the Development Assessment (i.e. \$99,980.00). If this condition is not met, payment to the City in the amount of \$99,980.00 shall be due and owing from Owner of the Development Property sixty (60) months from the date of this Agreement (i.e. on the 6th anniversary of the execution of this Agreement), and, thereafter, no building permit for development of the Annexed Property may be issued until any and all amount(s) of the Development Assessment have been paid to the City.
- (iii) In the event Owner fails to pay any portion of the Development Assessment in accordance with the terms and conditions set forth in Section 8(c)(ii)(A)-(D), the unpaid Development Assessment, or such unpaid portion, shall bear interest from the due date thereof to the date of payment at the rate of ten percent (10%) per annum. Notwithstanding any term to the contrary set forth herein, the Development Assessment (or such portion(s) thereof due and owing the City in accordance with Section 8(c)(i)-(ii)), including all late charges incurred thereon (if any), shall be paid to the City prior to the issuance of a certificate of occupancy for any building or structure constructed at or developed on the Development Property.
- (d) **Public Utility Improvements & Extensions; Wastewater Service.**

 - (i) The Parties expressly acknowledge and agree the extension of public water and wastewater utilities will be necessary to meet the requirements for utility service provided to the Development Property and Parcel 182, respectively. Accordingly, at its sole cost and expense, Owner of the Development Property shall design and construct, or cause to be designed and constructed, such public water and wastewater utility extension(s), including, but not limited to, water main(s), sewer main(s), trunk line(s), fire hydrant(s), pump station(s) and any appurtenant facilities, necessary to serve the Development Property and Parcel 182, respectively, in accordance with all applicable City standards and specifications and subject to the approval of the Director of the City of Salisbury Department of Infrastructure and Development (the City's "**I&D Department**"). Owner further acknowledges and agrees the water and wastewater sewer utility facilities designed and constructed in accordance with this Section 8(d)(i) shall be sized in the manner and to the extent determined by the Director of the City's I&D Department.
 - (ii) The design and construction of the facilities required for the extension of the City's public water and wastewater utilities to serve the Development Property and Parcel 182, respectively, shall be governed by the terms and conditions of a Public Works Agreement by and between Owner of the Development Property and the City (the "**PWA**"). The PWA shall be executed by Owner of the Development Property and the City as soon as reasonably practicable following the Planning Commission's approval of any development plan for or relating to the Development Property, or any portion(s) thereof, including, but not limited to, any subdivision plat providing for the subdivision of the Development Property or any portion(s) thereof, and any such approval from the Planning Commission shall be expressly conditioned upon the Parties' execution of the PWA in accordance with the terms of this Section 8(d)(ii). Notwithstanding any term to the contrary set forth herein, no permit may be issued to Owner of the Development Property, or any party acting for or on such Owner's behalf, for any work associated or in connection with the development of the Development Property, or any portion

thereof, until the PWA is executed by the Owner of the Development Property and the City.

9. Notices. All notices and other communication in connection with this Agreement shall be made in writing and shall be deemed delivered to the addressee thereof as follows: **(a)** when delivered in person on a business day at the address set forth below; **(b)** on the third (3rd) business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid certified or registered mail, return receipt requested, at the address set forth below; or, **(c)** when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

All notices and other communications to Petitioners shall be addressed to, and delivered at, the following addresses:

[Faith Baptist Church of Salisbury, Maryland and/or Jeffrey L. Clemens and Kelly B. Clemens]
c/o Robert Reinert
30505 Dagsboro Road
Salisbury, Maryland 21804

With a copy to:
Reena Patel, Esquire
Hearne & Bailey, P.A.
126 East Main Street
Salisbury, Maryland 21801

All notices and other communications to the City shall be addressed to, and delivered at, the following addresses:

City of Salisbury
c/o Amanda H. Pollack, P.E., Director
Department of Infrastructure and Development
125 N. Division Street, Room 202
Salisbury, Maryland 21801

With a copy to:
Michael P. Sullivan, Esquire
Cockey, Brennan & Maloney, P.C.
313 Lemmon Hill Lane
Salisbury, Maryland 21801

10. Future Uses of the Property. The Petitioners, on behalf of themselves and all Owners hereafter of the Property or any portion(s) thereof, expressly acknowledge and agree that, upon the effective date of this Agreement, any development or use of the Property or any portion thereof must comply with all applicable laws, rules and regulations of the City, as may be amended from time to time, including, but not limited to, all applicable zoning laws of the City and all applicable permitting and/or approval procedures established by the City governing the development and/or use of property located within the City's R-10A Zoning District. Any development, subdivision and/or use of the Property, or any portion(s) thereof, shall be subject to, and must comply with, all applicable capacity fees and/or impact fees as established by the City and/or Wicomico County existing on the effective date of this Agreement, subject to any amendments thereto as may be adopted or promulgated, from time to time. The Parties expressly acknowledge and agree that neither this Agreement nor any of the terms set forth herein shall, in any way whatsoever, constitute or otherwise be construed as an approval by the City of any specific development at, upon or within the Property, or any portion(s) thereof, including any subdivision of the Property subsequent to the date and year first above written. Except as set forth in Section 4(b), the Parties further expressly acknowledge and agree that neither this Agreement nor any of its terms shall constitute or otherwise be construed as a waiver by the City of: any tax(es) levied or assessed by the City upon the Property or any portion(s) thereof; or, any fee(s), assessment(s) or charge(s) that may be imposed by the City, from time to time, arising from or in connection with any development or any use of the Property, or any portion(s) thereof, and/or any subdivision of the Property.

11. **Miscellaneous Provisions.**

(a) **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties, acting for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising from or in connection with this Agreement.

(b) **Scope of Agreement.** This Agreement is not intended to limit the exercise of any police power(s) of the City, nor is this Agreement intended to limit the operations of the City government or guarantee the outcome of any administrative process. Unless otherwise expressly set forth herein, this Agreement shall be subject to all properly enacted laws and properly adopted governmental regulations, now or hereafter existing and applicable. This Agreement shall not be rendered invalid by reason of the enactment or amendment of any law or the adoption or amendment of any regulation, which is: (i) enacted or adopted by the City in the exercise of a governmental power for a valid governmental purpose; (ii) enacted or adopted by the City as a result of a state or federal mandate; or, (iii) applicable to the Property and to similarly situated property located outside of the City in Wicomico County.

(c) **Entire Agreement.** This Agreement and all exhibits attached hereto constitutes the entire agreement and understanding of the Parties with respect to the transactions contemplated herein, and all prior negotiations, writings and understandings of the Parties relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(d) **Waiver.** None of the terms or conditions of this Agreement may be waived, except if set forth in a writing signed by the party entitled to the benefit of the term(s) or condition(s) so waived; and, such waiver shall be effective only in the specific instance and for the specific purpose for which the waiver is given.

(e) **Development of the Property as a Private Undertaking.** The Parties expressly acknowledge and agree: (i) any development or use of the Property, or any portion thereof, is a private undertaking by such Owner of the Property or such portion(s) thereof; (ii) neither the City nor either of Petitioners is acting as the agent of any other party hereto in any respect hereunder; and, (iii) that each party hereto is an independent contracting entity with respect to the provisions of this Agreement. No partnership, joint venture or other association between the Parties, of any kind whatsoever, is formed by the terms of this Agreement.

(f) **Modification.** Neither this Agreement nor any term contained herein may be waived, modified, amended, discharged or terminated except in a writing signed by the Parties.

(g) **Binding Effect.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any successor municipal authority of the City and all successor Owner(s) of record of the Property or any portion thereof.

(h) **Assignment of Agreement.** The Parties expressly acknowledge and agree this Agreement shall be assignable, in whole or in part, by any Owner to any purchaser of the Property or any portion(s) thereof, without the consent of the City or any of its elected officials, employees or agents; provided, however, any sale, transfer, assignment, gift or conveyance of the Property, or portion(s) thereof, shall be subject to the terms of this Agreement. Notwithstanding any term to the contrary set forth in this Section 11(h), any Owner of the Property or portion(s) thereof shall not transfer, or pledge as security for any debt or obligation, any of its right(s), title and/or interest(s) in or to the Property or any portion(s) thereof without first obtaining the acknowledgment of the transferee or pledgee to be bound by all of the terms and conditions contained in this Agreement, as if such transferee or pledgee was a party to this Agreement, and each and every such Owner shall provide the City with a copy of all documents, including all exhibits attached thereto (if any), evidencing any transfer or assignment by such Owner.

(i) **No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and/or assigns.

(j) **Recording of Agreement.** This Agreement, including all exhibits attached hereto (each of which is incorporated in this Agreement by this reference), shall be recorded among the Land Records of Wicomico County, the costs of which shall be paid by Petitioners. This Agreement and all terms and conditions contained herein

shall run with the Property, and all portions thereof, and shall be binding upon and inure to the benefit of the Parties and each and every of their respective heirs, personal representatives, successors, transferees and/or assigns.

(k) No Reliance. Each of the Parties, for itself, expressly acknowledges and agrees that, in entering into this Agreement, such party has not been induced by or relied upon any representation(s) or statement(s), whether express or implied, written or unwritten, made by any agent, representative or employee of the other party to this Agreement, which is not expressly set forth herein.

(l) Further Assurances. The Parties covenant and agree to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to this Agreement.

(m) Severability. In the event any term, provision, covenant, agreement or portion of this Agreement, or his application to any person, entity or property, is adjudged invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application thereof to any person, entity or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

(n) Waiver of Jury Trial. The Parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counter-claim brought by a party hereto against the other party on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another, and/or any claim, injury or damage arising from or consequent upon this Agreement.

(o) Remedies. In addition to each and every remedy now or hereafter existing at law or in equity, the Parties expressly agree that, each party shall have the right to enforce this Agreement by an action for specific performance against the other.

(p) Construction. This Agreement and all of the terms and conditions set forth herein shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Section headings are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(q) Time. Time is of the essence with respect to this Agreement and each and every provision hereof.

(r) Recitals. The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE PAGE THAT FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Amended and Restated Annexation Agreement as of the day and year first above written.

ATTEST/WITNESS:

“PETITIONERS”:

“Faith Baptist”

Faith Baptist Church of Salisbury, Maryland, Inc.

By: _____ (Seal)
Robert Reinert, Authorized Officer

The “Clemens”

_____ (Seal)
Jeffrey L. Clemens

_____ (Seal)
Kelly B. Clemens

THE “CITY”:

City of Salisbury, Maryland

By: _____ (Seal)
Julia Glanz, City Administrator,
for and at the direction of Jacob R. Day, Mayor