

# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811  
Phone 410-641-2770 Fax 410-641-2316  
www.berlinmd.gov



## BERLIN, MARYLAND

**Mayor**  
Wm. Gee Williams, III

## MAYOR AND COUNCIL MEETING

**Vice President**  
Elroy Brittingham, Sr.

**MONDAY – JUNE 13, 2016**

**Council Members**  
Dean Burrell, Sr.  
Lisa Hall  
Troy Purnell  
Thomas L. Gulyas

**COUNCIL CHAMBERS – BERLIN TOWN HALL  
10 WILLIAM STREET  
BERLIN, MD 21811**

**Town Attorney**  
David Gaskill

**Town Administrator**  
Laura Allen

EXECUTIVE SESSION.....6:00 PM

REGULAR SESSION .....7:00 PM

*Anyone having questions about the meetings mentioned above or needing special accommodations should contact Laura Allen, Town Administrator at (410) 641-4144. Written materials in alternate formats for persons with disabilities are made available upon request.*

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TTY users outside Maryland dial 1-800-735-2258



**BERLIN MAYOR AND COUNCIL**  
**Meeting Agenda**  
**Berlin Town Hall**  
**10 William Street**

**Monday, June 13, 2016**

**6:00 PM EXECUTIVE SESSION – Conference Room**

- a. Pursuant to Section §3-305(b)(3) – To consider the acquisition of real property for a public purpose and matters directly related thereto.
- b. Pursuant to Section §3-305(b)(7) – To consult with counsel to obtain legal advice on a legal matter.
- c. Pursuant to Section §3-305(b)(14) – Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

**7:00 PM REGULAR SESSION – Council Chambers**

1. Approval of the Minutes for:
  - a. Executive Session of 5/23/16
  - b. Statement of Closure for Executive Session of 5/23/16
  - c. Regular Session of 5/23/16
2. Contract Renewals
  - a. Angel's Touch Cleaning Service – Mary Bohlen, Administrative Services Director
  - b. Card's Technology – Mary Bohlen, Administrative Services Director
  - c. D3 Corp – Mary Bohlen, Administrative Services Director
  - d. Worcester Youth and Family – Mary Bohlen, Administrative Services Director
3. Special Events
  - a. Music on Main – Ivy Wells, Economic and Community Development Director
  - b. Second Friday Art Strolls / Jefferson Street -Heather Layton
4. Public Hearing
  - a. Ordinance 2016-03 – Stormwater Code Clarification, Laura Allen, Town Administrator
  - b. Ordinance 2016-04 - FY17 Budget Adoption – Natalie Saleh, Finance Director
  - c. Annexation Resolution 2016-07 - Annexing the remaining portion of Berlin Falls Park, Tax Map Number 25, Parcel 52, parcel 410 and the northern portion of Parcel 57 – Laura Allen, Town Administrator

5. Motions of the Mayor and Council – 2016-26
  - a. Resident Inspector – Arnold Downing, Chief of Police
  - b. Construction Administration –Arnold Downing, Chief of Police
  
6. Introduction of Ordinances
  - a. 2016-05 – Amending Chapter 4, Article II ‘Dogs’ – Mary Bohlen, Administrative Services Director
  - b. 2016-06 – Amending Chapter 22, Article III, ‘Parks’ – Mary Bohlen, Administrative Services Director

Public Hearings to be held June 27, 2016
  
7. Departmental Reports:
  - a. Finance Director – Natalie Saleh
  - b. Administrative Services Director – Mary Bohlen
  - c. Water Resources/Public Works – Jane Kreiter
  - d. Electric – Tim Lawrence
  - e. Police – Arnold Downing
  - f. Planning – Dave Engelhart
  - g. Managing Director – Jeff Fleetwood
  - h. Economic and Community Development Director – Ivy Wells
  
8. Town Administrator’s Report
  
9. Comments from the Mayor
  
10. Comments from the Council
  
11. Comments from the Public
  
12. Comments from the Press
  
13. Adjournment



**BERLIN MAYOR AND COUNCIL**  
**Meeting MINUTES**  
**Berlin Town Hall**  
**10 William Street**

**Monday, May 23, 2016**

**6:00 PM EXECUTIVE SESSION – Conference Room**

- a. Pursuant to Section §3-305(b)(14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- b. Pursuant to Section §3-305(b)(7) To consult with the counsel to obtain legal advice on a legal matter.

**Mayor and Council Present:** Mayor Wm. Gee Williams, Thom Gulyas, Lisa Hall, Elroy Brittingham, Sr. Dean Burrell, Troy Purnell

**Staff Present:** Town Attorney David Gaskill, Managing Director Jeff Fleetwood, Administrative Services Director Mary Bohlen, Electric Utility Director Tim Lawrence, Planning Director Dave Engelhart, Police Chief Arnold Downing joined the meeting in progress.

**Staff Absent:** Town Administrator Laura Allen, Finance Director Natalie Saleh, Economic and Community Development Director Ivy Wells, Director of Public Works and Water Resources, Jane Kreiter

**7:00 PM REGULAR SESSION – Council Chambers**

1. Approval of the Minutes for:
  - a. Executive Session of May 9, 2016

On the motion of Councilmember Gulyas, the Executive Session minutes of May 9, 2016 were approved by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	5	0			

b. The Mayor read the statement of closure for May 9, 2016

c. Regular Session of 5/9/16

Councilmember Gulyas had two changes to the May 9, 2016 minutes. The vehicles described in the Police Department budget on page five, paragraph three, vehicles were listed as "Inceptors". The correct name is "Interceptors". With those changes being made, on the motion of Councilmember Gulyas, the Regular Session minutes of May 9, 2016 were approved by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	5	0			

2. Motion of Mayor and Council 2016-24

Approving the request for waiver of a \$65.00 application fee for a wheelchair ramp at 233 Branch Street -Planning Director, David Engelhart

Mr. Don Taylor Executive Director of Chesapeake Housing Mission along with Mr. Rick Nelson, Vice President of the organization came before Council to request a waiver of the \$65.00 application fee for a wheel-chair ramp for a residence at 233 Branch Street. A small presentation about the mission of the organization followed. Councilmember Burrell made the motion to waive the fee for the 233 Branch Street location. The motion was passed by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP			X		
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	4	0	1		

After the presentation, the Council had a discussion about if the waivers should be on a case-by-case basis or a yearly waiver based upon agency requesting waiver. Councilmember Brittingham made the motion for wheel chair ramps to be re-approved on a yearly basis. Councilmember Purnell added that all wheelchair ramps should have the fee exempted regardless of who is putting the ramp in. Based on feedback from Councilmember Gulyas, prior approval should be required from the Town Administrator and Planning Director. Mayor Williams noted that a log of exempt agencies should be kept and renewed every year. The ideal renewal time should be a budget time as a yearly reminder.

3. Motion of Mayor and Council 2016-25  
 Requesting authorization of expenditure for MDOT (Maryland Department of Transportation) Bikeways Program Grant. Planning Director, David Engelhart

The Bikeways Program Grant is slated for a pedestrian and bikeways path to connect Berlin Falls Park to downtown Berlin. A licensing agreement would need to be obtained to secure use of the Railways right of way through Town. Discussion followed pertaining to the application of the grant, deadlines and the fact that this would be another first of its kind for Maryland. It would be a Rails AND Trails Program and opposed to the Rails to Trails program. The grant deadline has been extended one week for all applicants. Maryland Bikeways has encouraged the Town of Berlin to complete the grant the application. The Town's portion would be an amount not to exceed \$20,000.

On the motion of Councilmember Hall, the motion was approved by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	5	0			

4. Final presentation from International Professionals
  - a. Zalikha Zaharuddin, Centre Officer – Malaysian Nature Society
  - b. Crisanta Rodriguez, Assistant Regional Director for Technical Services - Philippines

Mayor Williams invited the International Fellows to come up and make their ‘farewell’ presentation. Ms. Zharuddin of Malaysia and Ms. Rodriguez of the Philippines gave their presentations to the Mayor and Council. The presentation covered recommendations for Berlin Falls Park, both development and conservation efforts. They will return to Washington DC on Saturday May 28 for a four-day conference and then return to their respective countries.

Mayor Williams complimented the International Professionals on their hard work and commitment to learn about Berlin and surrounding areas during their stay here. He continued by saying that their suggestions for Berlin Falls would be given consideration along with the multitude of other property ideas.

5. Departmental Reports:

- a. Administrative Services Director – Mary Bohlen, no report
- b. Electric – Tim Lawrence
  - Requisition 201600004 – Anixter Power Solutions, corrected amount of \$21,561.75
  - Requisition 201600005 –ERMCO in the amount of \$13,604.00

On the motion of Councilmember Brittingham, the two requisitions were approved by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	5	0			

- c. Police – Arnold Downing
  - All staff has been trained in NARCAN. The department is gearing up for Memorial Day events.
- d. Planning – Dave Engelhart, no report
- e. Managing Director – Jeff Fleetwood
  - Open Enrollment will take place this week on Wednesday, Thursday and Friday.
  - Seasonal employee interviews will take place the first week in June

6. Town Administrator's Report  
Two requisitions were approved for the Electric Utility; 201600004 and 201600005. These requisitions were covered in the Electric Utility Directors report.
7. Comments from the Mayor - none
8. Comments from the Council

Gulyas: none

Hall: none

Brittingham: Is it possible to have Public Works look at potholes by Cannery Village. The lot across from Burbage Funeral Home the entrance and exits arrows need fresh paint, people are getting confused entering and exiting the premise.

Burrell: Councilmember Burrell asked Ms. Bohlen if we will re-apply for a restroom grant at Stephen Decatur Park? He further indicated that he would like the Town to budget this item for FY18.

Purnell: none

9. Comments from the Public
10. Comments from the Press
11. Adjournment

On the motion of Councilmember Burrell, the meeting was adjourned at 8:20pm, by the following vote:

Name	Counted toward Quorum			Present but recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Lisa Hall	X				
Troy Purnell	X				
Thom Gulyas	X				
<i>Voting Tally</i>	5	0			

Respectfully submitted,

  
Vicki Magin  
Administrative Assistant



**Proposal**

**"An Angel's Touch" Cleaning Services**  
 20 Seagrave Lane  
 Berlin, Maryland 21811  
 443-727-3004 410-703-7158  
 EIN #56-229-6670

PROPOSAL NO. \_\_\_\_\_  
 SHEET NO. \_\_\_\_\_  
 MAY 16, 2016

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

NAME	Mayor and Council of Berlin, Town Hall	ADDRESS	Town Hall
ADDRESS	10 William Street		Welcome Center
	Berlin, Maryland 21811	DATE OF PLANS	Wastewater
PHONE NO.	410-641-2770	ARCHITECT	Electric Substation
			Public Works
			Police Dept

We hereby propose to furnish the materials and perform the labor necessary for the completion of **An Angel's Touch" Cleaning Services to provide custodian/janitorial services for The Town of Berlin, Town Hall, Welcome Center, Wastewater Plant, Electric Substation and Public Works.** Common areas to include vacuuming entire buildings, empty waste baskets, sweep and mop floors, clean doors, including glass doors. All tables and counter tops to be cleaned thoroughly. Organize all chairs. Dusting of pictures, blinds, window sills, filing cabinets and areas where needed. Clean air vents, light fixtures and desks and chairs. Scrub and wax floors quarterly. Baseboards to be cleaned thoroughly, when needed. Kitchen areas to include counter tops, trash, appliances and sinks along with cleaning all flooring. Restrooms will include empty of trash, sweep and mop flooring. Sanitize sinks, clean and deodorize urinals and commodes and refill all paper products and dispensers. "An Angel's Touch" Cleaning Services to provide all paper products, soap products and trash can liners. Work to be performed in a professional and workmanlike manner between the hours of 7 a.m. – noon, Monday through Friday. *Restrooms (Public) to be cleaned 7 days/week*

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of **\$37,350.00/yearly** Dollars (\$ \_\_\_\_\_) with payments to be made as follows.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Ruth A. Donnelly  
 Respectfully submitted  
 Per *Ruth A. Donnelly*

Note — this proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days.

**ACCEPTANCE OF PROPOSAL**

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

*"An Angel's Touch" Cleaning Services*

106 Maple Avenue Goldsboro, Maryland  
Phone: 410-703-7158

20 Seagrave Lane Berlin, Maryland 21811  
443-727-3004

May 16, 2016

Mayor and Council of Berlin, Town Hall  
10 William Street  
Berlin, Maryland 21811

Please find enclosed a proposal submitted by "An Angel's Touch" Cleaning Services for the Town of Berlin, Maryland.

Should you have any questions, please feel free to contact my office at 443-727-3004.

Sincerely,



Ruth A. Donnelly  
President

**CARDS TECHNOLOGY MASTER CUSTOMER AGREEMENT**  
**GENERAL TERMS**

This **MASTER CUSTOMER AGREEMENT** (the "Agreement") is entered into as of May 27, 2016 ("Effective Date") between Card's Computers, Inc. a Maryland Corporation, trading as Cards Technology located at 11004 Manklin Meadows Lane Unit 1 Berlin, MD 21811 ("Cards Technology") and Town of Berlin a Maryland corporation located at 10 William Street Berlin, MD 21811 ("Customer").

**1. SCOPE OF AGREEMENT.** This Agreement serves as a Master Agreement and applies to Customer's and its Affiliates' purchases from Cards Technology or any of its Affiliates, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product"). For purposes of this Agreement, "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with Customer or Cards Technology, as the case may be. No Product or Services will be provided under this Agreement alone, but may require the execution of a written or electronic order form, or other mutually acceptable order documentation (including, without limitation, Statements of Work for Products and Services as further described below) and which may be identified as an "Order", which contains terms relating to this Agreement, each of which must be executed by both parties and, upon such execution, is deemed incorporated in this Agreement for all purposes. Any Statement of Work will contain the information listed in and will be substantially in the form of all exhibits attached hereto. The parties hereby further agree that the parties may execute multiple Orders and Statements of Work under this Agreement. In the event of any conflict between the terms of the Statement of Work and those of this Agreement, the terms of the Statement of Work will prevail.

**2. TERM AND TERMINATION.** This Agreement will begin on the Effective Date and will continue until each Order expires or is terminated. Cards Technology may: (a) terminate a specific Order if Customer fails to pay any applicable fees due for that Order within 30 days after receipt of written notice from Cards Technology of non-payment; and/or (b) terminate this Agreement or an Order if Customer commits any other material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from Cards Technology. Upon any termination of the right to use a Product, Customer shall immediately uninstall (if the Product is software) and cease to use the terminated Product and, upon Cards Technology's written request, immediately return such Product to Cards Technology together with all related documentation, and copies thereof. Upon written request of, Cards Technology, Customer will promptly certify in writing to Cards Technology that all copies of the Product have been returned, and that any copies not returned have been destroyed. Alternatively and at Cards Technology election, it shall be permitted access to the physical site of its Product or remote access, whichever it chooses to uninstall or otherwise remove its product without interference by the Customer on a reasonable date and time but not later than 15 days from the date of termination. If an Order for Services is terminated, Customer shall promptly pay Cards Technology for Services rendered, and expenses incurred through the termination date. Cards Technology may terminate any license granted for a Deliverable (as defined below) if (i) Customer does not pay Cards Technology for that Deliverable in accordance with this Agreement, or (ii) if Customer materially breaches any part of Section 4 of this Agreement. Cards Technology shall have no obligation to assist in any way a Customer's new service provider unless a Statement of Work or other agreement is executed at or after termination setting forth the terms and conditions of the

required assistance along with the payment and costs of said service.

**3. PAYMENT AND DELIVERY.** Customer shall pay Cards Technology all fees due upon receipt of an invoice specifying the amounts due ("Fees"). All Fees payable under this Agreement are exclusive of sales, use, VAT, customs duties, excise, and any other applicable transaction taxes, which Customer will pay (excluding taxes based upon the net income of Cards Technology). If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) per month from the date due until paid in full. Customer shall pay all expenses, including actual attorneys' fees, incurred by Cards Technology or its representatives in enforcing its rights under this Agreement, provided that Cards Technology is successful on the merits. Customer's obligation to pay undisputed amounts due for Services and Cards Technology's right to all such amounts are absolute and unconditional. Customer is not entitled to setoff of such amounts. All Product is FOB (free on board) shipping point. All Fees will be detailed in an Order. Unless otherwise stated in a Statement of Work, Customer agrees to pay or reimburse Cards Technology for all actual, necessary, and reasonable expenses incurred by Cards Technology in performance of such Statement of Work, which are capable of verification by receipt. Cards Technology will submit invoices to Customer for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Statement of Work.

**4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

**4.1. Proprietary Rights.** Cards Technology, or its Affiliates or licensors, retains all right, title and interest in any and all intellectual property, informational, industrial property and moral rights in the Product, and copies thereof. Cards Technology neither grants nor otherwise transfers any rights of ownership in the Product to Customer. The Product is further protected by applicable copyright and trade secrets laws, and other forms of intellectual property, informational and industrial property protection.

**4.2. Product.** Customer may only use and disclose Product in accordance with the terms of this Agreement and applicable Order. Cards Technology reserves all rights in and to the Product not expressly granted in this Agreement. Customer may not disassemble or reverse engineer any software Product, or decompile or otherwise attempt to derive any software Product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation, or provide a third party with the results of any functional evaluation, or benchmarking or performance tests on the Products without Cards Technology's prior written approval. Except as expressly authorized in this Agreement or an Order, Customer may not (a) distribute, share, or provide the Product to any third party (directly or indirectly, whether by rental, lease, sublicense or other transfer), or (b) operate the Product in an outsourcing or service provider business to process the data of third parties. Additional usage restrictions may apply to certain

third-party files or programs embedded in the Product - applicable installation instructions or release notes will contain the relevant details. In the event of termination of Cards Technology by Customer, the Customer shall not permit and shall take all steps to prevent, any individual, third party or otherwise, from accessing any Product owned, installed, maintained, otherwise in any way controlled by Card's Technology. The parties shall follow all termination provisions as set forth in Section 2 of this Agreement. Failure to maintain confidentiality shall constitute a breach of this Agreement and if one party is found to have breached this section of the Agreement, it shall be liable for all damages and expenses suffered by the other party and this Agreement shall immediately be terminated subject to the termination provisions set forth within this Agreement.

#### **4.3. Services Deliverables licensed under this Agreement.**

(a) **License.** Subject to the terms of this Agreement, Cards Technology grants Customer a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other deliverables provided as part of the Services ("**Deliverables**") solely for its own internal use and as provided within the Customer's Statement of Work.

(b) **Pre-Existing License Agreements.** Any software product provided to Customer by Cards Technology as a reseller for a third party, which is licensed to Customer under a separate software license agreement with such third party (such agreement, an "**SLA**"), will continue to be governed by the SLA. The fulfillment of the Services will not relieve or alter the obligations or responsibilities of either party or of any third party in regards to the software product licensed under the SLA.

(c) **Ownership.** Cards Technology owns all right, title and interest in the Deliverables, *including* all intellectual property rights embodied therein. Nothing in this Agreement is intended to or will have the effect of vesting in or transferring to Customer rights in Cards Technology or its affiliates' or its or their suppliers' software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice or tangible form in the course of performance of the Services, whether solely by Cards Technology or jointly with Customer.

(d) **Indemnification.** The Customer shall indemnify and hold Cards Technology harmless for any violation of any license by Customer, its employees or agents, provided, delivered, maintained, or installed Cards Technology.

**4.4 Mutual Confidentiality.** This Section sets out the terms for identification of information which is considered confidential and proprietary by a party (the "**Discloser**"), and restrictions against use and disclosure of such Confidential Information after disclosure to the other party (the "**Recipient**").

(a) **Definition.** The term "**Confidential Information**" means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its customer-related and financial information, source and executable code, flow charts, drawings, techniques, specifications, development and marketing plans, strategies,

forecasts, and sales and marketing materials; (ii) the Product or Products; and (iii) Information furnished orally, in writing, by electronic means, or by any other means of communication which was identified by the Cards Technology as confidential and/or proprietary at the time of disclosure, shall be treated by the Customers Confidential Information. "Confidential Information" shall include but may not be limited to Cards Technology's draft documents supplied to/shared with the Customer, any Statement of Work, this Agreement, Service Level Agreement, price schedules, Work Authorizations, proposals, drawings, and/or market strategies, etc. All "Confidential Information" shall be maintained in confidence by the Customer and not shared with any third-party. The Customer shall not use any "Confidential Information" received from Cards Technology in any way except for the evaluation purposes set forth above, and may not use any of the ideas, strategies, plans, written copy, designs, drawings, or other information without written permission from Cards Technology. This Agreement and the furnishing of "Confidential Information" as provided herein or within any other document of Cards Technology shall not be construed as establishing, either expressly or by implication, any grant of rights or licenses to the Customer or any relationship between the parties. All tangible and intangible information including drawings, specifications, marketing copy, strategies, plans, ideas, and other information submitted by the Cards Technology to the Customer shall remain the property of the Cards Technology. If either party elects not to pursue any further business undertaking, the Customer shall promptly return to Cards Technology all tangible information, and all copies thereof, related to "Confidential Information". Confidential Information does not include information that Recipient can show: (A) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (B) is or becomes a matter of public knowledge through no fault of Recipient; (C) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (D) is or was independently developed by or for Recipient.

(b) **Disclosure Restrictions.** Recipient may not disclose Confidential Information of Discloser to any third party without the prior written consent of Discloser.

(c) **Proprietary Legends.** Recipient may not remove, obscure, or alter any proprietary legend relating to the Discloser's rights on or from any form of Confidential Information of the Discloser, without the prior written consent of the Discloser, except as expressly authorized in an Order.

#### **5. ALLOCATION OF RISK.**

**5.1. Disclaimer of Damages.** EXCEPT FOR VIOLATIONS OF SECTION 4, NEITHER PARTY, NOR ITS AFFILIATES AND LICENSORS, ARE LIABLE TO THE OTHER PARTY, OR ITS AFFILIATES OR LICENSORS, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PRODUCT (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST COMPUTER USAGE, AND DAMAGE OR LOSS OF USE OF DATA), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF THE NEGLIGENCE OF EITHER PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

**5.2. Limitation of Liability.** EXCEPT FOR VIOLATIONS OF SECTION 4 CARDS TECHNOLOGY'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER IN DURING THE PREVIOUS 12 MONTHS FOR THE APPLICABLE PRODUCT OR SERVICES PROVIDED.

**5.3. Injunctive Relief.** Both parties acknowledge that their violation of this Agreement and/or a Statement of Work may cause the other party immediate and irreparable harm. In the event of such breach, the breaching party agrees that the other party may seek, in addition to any and all other remedies available at law, an injunction, specific performance or other appropriate relief.

## **6. SERVICES-SPECIFIC TERMS.**

**6.1. All Necessary Rights.** If, as part of Cards Technology's performance of Services, Cards Technology is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Customer, then prior to Cards Technology's performance of such Services, Customer will acquire all rights necessary for Cards Technology to perform such Services.

**6.2. Limited Warranty.** Cards Technology warrants that the Services performed will be of a quality conforming to generally accepted practices that are standard within the software service industry. Customer's exclusive remedy and Cards Technology's entire liability under this warranty will be for Cards Technology to re-perform any non-conforming portion of the Services within a reasonable period of time, or if Cards Technology cannot remedy the breach during such time period then refund the portion of the fee attributable to such non-conforming portion of the Services. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by Cards Technology in writing. THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **6.3. Intellectual Property Indemnity**

**(a) Infringement Claims.** If a third party asserts a claim against Customer asserting that the Deliverables and/or Cards Technology's performance of the Services in accordance with the terms of this Agreement violates a patent, trade secret or copyright (an "Intellectual Property Right") owned by that third party ("Infringement Claim"), then Cards Technology will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if Customer promptly notifies Cards Technology of any Infringement Claim, Cards Technology retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by Cards Technology will not be liable for any expenses or

settlements incurred by Customer without Cards Technology's prior written consent.

**(b) Remedies.** If an injunction or order is obtained against Cards Technology performing the Services for Customer and/or Customer using the Deliverables by reason of the allegations of infringement, or if in Cards Technology's opinion the Services and/or Deliverables may violate a third party's proprietary rights, then Cards Technology will, at its expense: (a) procure for Customer the right to continue to receive the Services and/or use the Deliverables; (b) modify or replace the Services and/or Deliverables with a compatible, functionally equivalent substitute; or (c) if neither (a) nor (b) are commercially practical, terminate this Agreement and release Customer from its obligation to make future payments for the Services and/or Deliverables. Sections 5.1 and 5.2 contain Customer's exclusive remedies and Cards Technology sole liability for claims of infringement. Cards Technology reserves the right to select, at its sole election, with remedy above is most appropriate and proceed with implementing that remedy.

**6.4. Insurance.** Cards Technology will provide and maintain during its rendition of the Services, but only for losses arising out of Cards Technology's work for Customer: (a) Worker's Compensation and related insurance as prescribed by the law of the state applicable to the employees performing such Services; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for the use of subcontractors, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; (d) comprehensive motor vehicle liability insurance, including coverage for owned, hired, leased, rented and non-owned vehicles of at least one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage; and (e) professional liability insurance covering the effects of errors and omissions in the performance of professional duties in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services.

**6.5. Independent Contractor.** Nothing in this Agreement will be construed to make either party an employer, employee, agent or partner of the other, and this Agreement will not be construed to create rights, express or implied, on behalf of or for the use of any party other than Cards Technology and Customer. All of the Services performed by Cards Technology shall be performed as an independent contractor. Cards Technology will perform such Services under the general direction of Customer, but Cards Technology shall have sole discretion to determine the manner, method and means of performing such Services subject to the provisions of this Agreement and applicable Statement of Work. Neither party will have any authority to make any contract in the name of or otherwise to bind the other party. Cards Technology will be responsible for and will pay all unemployment, social security and other payroll taxes, and all worker's compensation claims, worker's compensation insurance premiums and other insurance

premiums, with respect to Cards Technology and Cards Technology's employees.

**6.6. Mutual Non-Solicitation.** During the term of this Agreement, and for a period of six (6) months thereafter, neither party will solicit for employment any employees of the other party or its affiliates who, within six (6) months prior to such solicitation: (a) directly performed under this Agreement, (b) had substantial contact with the hiring party in relation to this Agreement, or (c) the hiring party became aware of due to, or derived from information learned through the performance of, this Agreement. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative. Notwithstanding the foregoing, either party may at any time, directly or indirectly, solicit and hire any employee of the other party if such employee did not resign but was terminated by the other party. The parties acknowledge and agree that a breach of this "Non-Solicitation" clause will not give rise to a right of termination of this Agreement; the party not in breach will only have the right to seek and recover direct damages from the breaching party.

**6.7. Mutual Indemnity.** Each party shall indemnify, defend and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the gross negligence or willful misconduct of the indemnifying party's employees or contractors arising out of this Agreement and while at the Customers premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action.

**6.8 Compliance Indemnity.** Unless specifically provided for in an Order or Statement of Work, Cards Technology shall not be liable nor shall it be within its scope of work to have any Product, system, service or other material provided to the Customer compliant with any State, Federal, local, legal or other obligation the Customer may have in its operation, storage, maintenance usage, etc. of material, data, files etc. and the customer shall indemnify and hold Cards Technology harmless for the same.

#### **7. HARDWARE/SOFTWARE ACKNOWLEDGEMENT.**

7.1. Customer is acquiring the Product from Cards Technology as a re-seller for a third party. All restrictions, and other terms pertaining to the Product are found only in the applicable agreement provided with the Product by the Original Equipment Manufacturer of the Product (the "**OEM Agreement**"), and such OEM Agreement is only between Customer and the third party owner of the Product. Each Order for Product by Customer shall only be effective upon written acknowledgment and acceptance of such Order by Cards Technology. Further, any additional or conflicting terms of Customer's purchase order or this Agreement are rejected by Cards Technology. NO WARRANTY EXCEPT FOR WARRANTIES PROVIDED BY THE PRODUCT OWNER IN THE OEM AGREEMENT, THE PRODUCT IS PROVIDED "AS IS", WITH ALL FAULTS. CARDS TECHNOLOGY SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-

INFRINGEMENT AND QUIET ENJOYMENT. CARDS TECHNOLOGY DOES NOT WARRANT THAT THE OPERATION OF PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL PRODUCT DEFECTS CAN BE CORRECTED.

**7.2 SUPPORT AND MAINTENANCE.** If the OEM Agreement provides for support and maintenance services, then support and maintenance will be provided by the third party owner of the Product and not by Cards Technology.

#### **8. MISCELLANEOUS/OTHER PROVISIONS.**

**8.1. Severability.** Should any provision of this Agreement be invalid, or unenforceable, the remainder of the provisions will remain in effect. In the event of a dispute, the prevailing party in any litigation or arbitration will be entitled to recover its attorneys' fees and cost incurred from the other party.

**8.2. Notices.** Unless otherwise provided, notices to either party will be in writing to the address indicated above, or as later amended, and deemed effective when received.

**8.3. Verification.** Upon Cards Technology's written request, Customer will provide Cards Technology with a certification signed by an officer of Customer verifying that Product is being used pursuant to the terms of this Agreement, including without limitation the licensed capacity of the Product. Cards Technology may, at its expense, audit Customer's use of Product to confirm Customer's compliance with this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid Fees to Cards Technology, Customer will pay such underpaid Fees. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Customer will also pay Cards Technology's reasonable costs of conducting the audit.

**8.4. Assignment.** Customer may not assign this Agreement or any rights granted in this Agreement or within any Statement of Work to any third party, except with the prior written consent of Cards Technology.

**8.5. No Waivers.** Failure of a party to require performance by the other party under this Agreement will not affect the right of such party to require performance in the future. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach.

**8.6. Force Majeure.** Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement. This provision does not apply to the payment of monies or any breach of Section 4.

**8.7. Independent Contractors.** The parties are independent contractors of each other, and no partnership or joint venture is intended or created by this Agreement.

**8.8. Entire Agreement.** This Agreement, together with each Statement of Work and Order, constitutes the entire agreement between Customer and Cards Technology and supersedes any prior or contemporaneous negotiations or

agreements, whether oral or written, concerning this subject matter. This Agreement, and each Statement of Work and Order, may be modified only in a mutually signed writing between Customer and Cards Technology. In the event of a conflict between this Agreements, any Statement of Work or an Order, the terms of the Order will control, followed by the terms of the applicable Statement of Work and then this Agreement.

8.9. **Export Controls.** Customer will cooperate with Cards Technology as reasonably necessary to permit Cards Technology to comply with the laws and regulations of the United States and all other relevant countries, relating to the control of exports ("Export Laws"). Customer may not import, nor export or re-export directly or indirectly, including via remote access, any part of the Product into or to any country for which a validated license is required for such import, export or re-export under applicable Export Laws, without first obtaining such a validated license.

8.10. **Referencing.** Customer agrees that Cards Technology and its Affiliates may refer to Customer as a customer of Cards Technology, both internally and in externally published media. Customer also agrees to instruct appropriate personnel within its organization that Customer has agreed to receive and participate in calls, from time to time, with potential customers of Cards Technology who wish to evaluate the technical specifications of Product.

8.11. **Dispute Resolution and Governing Law.** ANY CONTROVERSY OR CLAIM ARISING OUT OF OR

RELATING TO THE PRODUCT AND/OR THIS AGREEMENT WILL BE SUBJECT TO ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES. THE AWARD AND ANY FINDINGS OF THE ARBITRATOR MUST BE FILED WITHIN THIRTY (30) DAYS OF THE FINAL ARBITRATION HEARING. JUDGMENT ON ANY AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTY'S ABILITY TO SEEK INJUNCTIVE RELIEF IN ANY COURT. THE PARTIES WILL ARBITRATE DISPUTES IN CONFIDENCE. THIS AGREEMENT WILL BE GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF MARYLAND. THE CHOICE OF LAW RULES OF ANY JURISDICTION AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY.

8.12. **Survival.** Sections 2, 4, 5, 6, 7 and 8 will survive the termination or expiration of this Agreement. The prevailing party in any litigation or arbitration proceeding is entitled to recover, from the other party, its reasonable attorneys' fees and necessary costs incurred in such proceeding.

This Agreement is effective only upon execution by Cards Technology and Customer. Each party hereto warrants and represents that this Agreement constitutes the legal, valid and binding obligation of such party as of the Effective Date.

Card's Computers, Inc., t/a Cards Technology

Town of Berlin

Signature: 

Signature: \_\_\_\_\_

Name: Samuel W Card

Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date: May 27, 2016

Date: \_\_\_\_\_

## STATEMENT OF WORK (SOW)

### STATEMENT OF WORK FOR "CARDS COMPLETE" AGREEMENT

This Statement of Work ("**SOW**") dated July 1, 2016 ("**SOW Effective Date**") supplements the Master Customer Agreement effective as of May 27, 2016 (the "**Agreement**") by and between Card's Computers, Inc., t/a Cards Technology, ("**Cards Technology**") and Town of Berlin ("**Customer**"). This SOW consists of the terms below, the signature page, and any unique attachments to this SOW, which are all incorporated into the Agreement by this reference and are made a part of the Agreement by all intents and purposes.

#### **1. Services Description**

- a. The Service is designed to provide proactive support services that anticipate and prevent IT problems before they occur. The Service is built upon the successful installation and configuration of technologies that Cards Technology's Helpdesk Team, Professional Services Team, and Network Operations Center (NOC) Team all utilize to monitor and maintain critical technology systems.
- b. The service is also designed to provide ongoing consulting in an effort to help improve business processes over time for the Customer.

#### **2. Deliverables Description**

- a. Cards Technology will deliver the Service pursuant to the terms of this SOW. This SOW will serve to describe the on-going Services in detail.
- b. Help Desk Support and Network Monitoring  
Help Desk for Customer's IT Network will be provided through remote means by Cards Technology to Customer on a 24x7 basis 365 days per year. Access to the Cards Technology Help Desk by authorized personnel is made by sending an email, creating a service ticket online, or calling Cards Technology's help support line. Network Monitoring Services will be provided 24x7/365. All services qualifying under these conditions, as well as Services that fall outside this scope will fall under the provisions of Section 5.0 and Section 5.1 of this SOW. Hardware costs of any kind are not covered under the terms of this SOW.
- c. Service Tickets and Escalation  
Cards Technology will respond to Customer's Service Tickets during Cards Technology's normal business hours of Monday-Friday, 8:30am – 5:00pm, and with best efforts after hours or on holidays.
  - i. All Service Tickets should be submitted from the customer via Cards Technology's support email address ([support@cards-tech.com](mailto:support@cards-tech.com)) or by clicking the remote support agent icon that will be on the computers. All other questions that are not support matters should be directed to [accountmanager@cards-tech.com](mailto:accountmanager@cards-tech.com). All billing questions should be directed to [billing@cards-tech.com](mailto:billing@cards-tech.com).
  - ii. When email and online support are not available (i.e. Customer Internet connection or email server is down), customer should call Cards Technology's helpdesk support line at 1-410-208-3933.
  - iii. No matter the method of contact, in order to obtain service or speak to a technician, a ticket must be opened by the Cards Technology Helpdesk Team to begin troubleshooting. Each Customer Issue will be assigned a Service Ticket number for tracking. Only the Cards Technology Dispatcher creates or reviews all submitted tickets and assigns them to a technician to begin working on an issue.
  - iv. If the Remote Helpdesk team is unable to remediate the issue remotely, the ticket will be scheduled for on-site service on the next available date and time that the type of service needed can be scheduled. Customer's staff must make a reasonable effort to assist Cards Technology with resolving tickets remotely. The need for on-site support is solely determined by Cards Technology.
  - v. All Service Requests will be assigned a priority and resulting Service Level Agreement (SLA) based off of impact and urgency. See Exhibit A "Cards Technology SLA Guarantee Addendum". The SLA will dictate response times based off of the priority assigned to each service ticket, and customer shall allow Cards



Technology the amount of time defined in the response time matrix to respond to a service request. Tickets that are assigned higher priorities will receive on-site service when necessary on a first-come, first-serve basis.

- vi. Cards Technology is closed for the following holidays: New Years' Eve and Day (or just the Friday/Monday closest), Good Friday, Memorial Day, 4<sup>th</sup> of July (or just the Friday/Monday closest), Labor Day, Thanksgiving Day and the following day, and Christmas Eve and Day (or just the Friday/Monday closest). Response times and service will follow our After Hours SLA procedures on any day Cards Technology is closed for business.
- vii. Cards Technology Help Desk will respond to all service requests assigned by the Cards Technology Dispatcher. Tickets requiring escalation will be escalated to the assigned Cards Technology Account Technician and scheduled for work at their next available timeslot, depending on the assigned priority of the service ticket. Cards Technology Account Managers are the third and final level of escalation for service requests and will be scheduled for work at their next available timeslot, depending on the assigned priority of the service ticket.

d. Hardware and Software Licensing and Support

Cards Technology shall provide support of all hardware and systems specified in Section 5.0, provided that all Hardware is covered under a currently active Vendor Support Contract; or replaceable parts are readily available, and all Software is Genuine, Currently Licensed and Vendor-Supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this SOW. Should 3<sup>rd</sup> Party Vendor Support Charges be required in order to resolve any issues, these will be passed on to the Customer after first receiving the Customer's authorization to incur them.

e. Monitoring Services

Cards Technology will provide on-going monitoring and security services of all critical devices on all hardware listed in Section 5.0. Cards Technology will provide monthly reports as well as document critical alerts, scans and event resolutions to Customer. Should a problem be discovered during monitoring, Cards Technology shall make every attempt to rectify the condition in a timely manner through remote means.

f. Virus Recovery for Current, Licensed Antivirus Protected Systems

The removal of virus infections not detected and quarantined by the latest Antivirus definitions is covered under the terms of this SOW. This Service is limited to those systems protected with a Currently Licensed, Vendor-Supported Antivirus Solution and/or Guardian protected system. Computer systems that are too far outdated to efficiently run a modern Antivirus product will not be included in this deliverable.

### 3. SOW Terms & Delivery

#### 3.1 ~~Implementation Process Time Table~~

~~The following time table is initiated upon Customer's signature of any product quotes, the Agreement, and this SOW.~~

- a. ~~Phase 1 (begins within 15 business days of signed SOW and Agreement) Cards Technology shall perform the following tasks:~~
  - I. ~~Conduct on-site assessment of Customer network.~~
  - II. ~~Install remote management and monitoring software package.~~
  - III. ~~Conduct audit of existing environment.~~
  - IV. ~~All workstations and servers will be brought up to the latest available patches from Microsoft.~~
  - V. ~~All workstations and servers will have any existing anti-virus software packages removed and Cards Technology's anti-virus software package will be installed and configured.~~
  - VI. ~~If included on the attached onboarding proposal, the Cards Disaster Recovery Appliance will be installed and configured to backup all servers.~~

### 3.2 Minimum Compliance Standards

In order for Customer's existing environment to qualify for Cards Technology's services, the following requirements must be met by the Customer and shall be known as the "Minimum Standards":

- a. All Servers with Microsoft Windows Operating Systems must be running Windows 2008 Server or later, and have all of the latest Microsoft Service Packs and Critical Updates installed, and must be covered under a manufacturer's warranty that provides next business day parts and support.
- b. All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running Windows 7 Pro or later, and have all of the latest Microsoft Service Packs and Updates installed. Exceptions can be made for legacy operating systems required by line of business applications that are not up to modern standards. Service may be limited for these systems.
- c. All Server and Desktop Software must be Genuine, Licensed and Vendor-Supported.
- d. The environment must have a currently licensed, up-to-date and Vendor-Supported Server-based Antivirus Solution protecting all Servers, Desktops, Notebooks/Laptops, and Email.
- e. The environment must have a currently licensed, Vendor-Supported Server-based Backup Solution.
- f. The environment must have a currently licensed, Vendor-Supported Hardware Firewall between the Internal Network and the Internet with a Unified Threat Management software subscription.
- g. Any Internetworking Hardware or Servers may not exceed 6 years in age from the purchase date.
- h. Any Wireless data traffic in the environment must be secured with a minimum of WPA2 Data Encryption.

~~Costs required to bring Customer's environment to Minimum Standards are additional and are defined on the attached quote that must be signed in order to begin the Service.~~

### 3.3 Included Services

Service rendered under this SOW includes the following features:

- a. 24x7 Helpdesk Availability
- b. Email, Phone, Remote Technical Support, In-Shop Labor, and On-site Technical Support during Cards Technology Normal Business Hours – See Exhibit A for Service Level Agreement (SLA) Guarantee and Response Times
- c. 24x7 Service for P1 Emergency Service Tickets & Alerts\*
- d. 24x7 Remote Network Monitoring
  - a. Server Stability & Performance
  - b. Workstation Performance
  - c. Monthly Cleanup & Defragmentation of all Hard Disks in all Computers
  - d. Notification of Unusual Events
  - e. Backup Job Monitoring
  - f. ISP & Firewall Monitoring
  - g. Automatic Restart of Failed Services
- e. Executive Summaries and Various Business Intelligence Reports
- f. Antivirus Software w/ Continuous Definition Updates
- g. Off-site SPAM Filtering (Not Included for Office365 Email Customers)
- h. Microsoft Patch Management
- i. Unlimited Software Updates to Applications Detailed in Section 5.0
- j. Online Support Portal (Monitor Service Tickets)
- k. Templates for Acceptable Use Policy (AUP)
- l. Client Access to Cards Technology's Infrastructure for Remote Access to Business PCs
- m. Monthly On-Site Workstation Audit & Checkup
- n. Quarterly Business Review Meeting
- o. Semi-Annual On-Site Server & Network Device Audit/Checkup/Updates
- p. Malware Removal (Limited to PCs with Supported AV Software Installed)
- q. Recovery of Servers in Case of Complete Disaster (Acts of God Excluded)
- r. Installation of New Client Hardware (Laptops/Desktops/Tablets)
- s. Loaner Desktop PC (one per customer at a time)
- t. Loaner Server (one per customer at a time)
- u. Vendor Liaison (Labor Only, Software/Hardware Costs Will be Additional)
- v. Shopping & Ordering Warranty Parts
- w. Use and Management of 2 Cards Continuity Appliance w/ 200GB of storage
- x. Data Jack Re-Termination/Repair (No New/Additional Wiring)
- y. Replacement Optical & Hard Drives, Video Cards, RAM, and Desktop Power Supplies <\$75.00 Cost
- z. Any Additional Services Defined in Section 5.1.

\*A P1 Emergency Service Ticket (See Exhibit A) is defined as a computer system related issue that is stopping the Customer's ability to operate their business due to a system-wide computer network issue affecting all users at a Customer's primary site, or one of Customers' remote sites (for multi-location businesses). Service Tickets that are not "Network Critical Issues" submitted outside of Cards Technology's normal business hours will be responded to as soon as possible, but no later than the amount of time defined in the SLA starting at 8:30am the following Cards Technology business day.

Most Network Critical Issues will be detected by Cards Technology's 24x7 Monitoring System, and the Customer will be contacted to begin service for any P1 Emergency issues detected. Customer should call the helpdesk on the phone to contact an On-Call Technician to obtain After Hours Service. Electronically submitted tickets will be assigned a Priority by the On-Call Technician, and the Customer will be contacted electronically to approve After Hours Service pursuant to the 24x7 Service SLA Option they have selected.

### **3.4 Excluded Services**

Service rendered under this SOW does not include:

- a. Parts, equipment, or software not covered by vendor/manufacturer warranty or support.
- b. The cost of any parts, equipment, or shipping charges of any kind.
- c. The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- d. The cost of any 3<sup>rd</sup> Party Vendor or Manufacturer Support or Incident Fees of any kind.
- e. The cost to bring Customer's environment up to Minimum Standards required for Service Compliance.
- f. Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors.
- g. Service and repair made necessary by the alteration or modification of equipment other than that authorized by Cards Technology including alterations, software installations or modifications of equipment made by Customer's employees or anyone other than Cards Technology.
- h. Maintenance of Application software packages, whether acquired from Cards Technology or any other source unless as specified in Section 5.0.
- i. Programming (modification of software code) and program (software) maintenance unless as specified in Section 5.1.
- j. Travel Costs.
- k. Training Services of any kind.
- l. Fixed Fee or Time and Material (T&M) Projects will be quoted separately from this SOW, such as a server installation/migration, email migrations, internetworking hardware installations and replacements, business location change, any services performed by the Communications Division (cabling, security, and audio/video), server UPS installation, branch office setup, migration to or implementation of a new line of business application, or any other larger scale work not listed in Section 3.3. Generally, the term "new" or "additional" constitutes the generation of a quote and project SOW with a separate fee for performing those services, with the exception of new or additional client hardware installations as provided in Section 3.3, Item "R".

### **3.5 Travel Costs/Included Sites**

Services are approved for these Customer Locations. Travel costs to and from these locations for on-site is included within this SOW:

- a. Town Hall Administrative Office - 10 William Street Berlin, MD 21811
- b. Waste Water Treatment Plant - 9210 Bottle Branch Road Berlin, MD 21811
- c. Spray Site #1 - 9637 Lee Road Berlin, MD 21811
- d. Spray Site #2 - 7313 Five Mile Branch Road Newark, MD 21841
- e. Electric Distribution Plant - 113 Schoolfield Street Berlin, MD 21811
- f. Electric Generation Plant - 309 William Street Berlin, MD 21811
- g. Public Works - 309 William Street Berlin, MD 21811
- h. Planning & Zoning - 10 William Street Berlin, MD 21811
- i. Visitor's Center - 14 South Main Street Berlin, MD 21811

Travel costs to additional locations may be charged a flat trip fee, plus any other applicable travel expenses, or result in an adjustment to the monthly service fee.

### 3.6 Service Level Agreement Guarantee

The specifics of the Service Level to be received by the Customer is outlined in "Exhibit A - Cards Technology SLA Guarantee Addendum". Please select a 24x7 Service Plan Option and sign the Exhibit.

### 4.0 Service and Fee Schedule

- a. Membership Fees for the Service are on Due Upon Receipt Invoicing Terms, and will be \$2280.00 per month except as provided for in this paragraph and Section 4.1. The Service will begin on July 1<sup>st</sup>, 2016. Additional Services may also be added by Customer by signing a new SOW outlining additional services, or in Section 5.1 below. Cards Technology expressly reserves the right to increase the Membership Fee for the Service upon 60 days advance notice to the Customer for the balance of the term of the SOW if the scope of the Service as set forth in Section 5.0 or Section 5.1 changes in any way. The Service will be suspended if full payment is not received within 7 days following the date due of the invoice.
- b. Customer will be billed at a discounted rate of \$125/hour for any T&M services indicated in Section 3.4, Item "L". Customer will be billed at a discounted rate of \$85/hour plus the cost of materials for any services performed by Cards Technology's Communications Division in conjunction with this statement of work. The Communications Division is engaged when more than minor repairs are required on network/telephony cabling infrastructure, surveillance infrastructure, or audio/video infrastructure, or when physical installation of rack-mounted or wall-mounted equipment is required. Customer will be invoiced at the end of each month for any T&M products services and all T&M invoices will be on NET 30 terms.
- c. The Customer shall also select which level of service under Exhibit A of the SLA Guarantee Addendum. The Customer understands that it may change said election at any time by executing another Exhibit A but shall be charged for no less than a thirty day period at any time. Any invoices for the 24x7 SLA fee will be on Due Upon Receipt terms.
- d. All invoices shall be charged to the Customer's credit card on file or by ACH withdrawal on their due dates.

### 4.1 Terms of Service

Except as provided for in the Master Agreement, the term under this SOW shall be initially be for a period of one (1) year from the date of execution and shall renew as provided below. Should the Customer wish to terminate the SOW it may do so by providing Cards Technology sixty (60) days written notice of its intention to terminate and Customer shall pay all outstanding balances prior to the expiration of the 60 day period. Failure to pay shall relieve Cards Technology from all liability or obligations to provide service however all obligations of the Customer shall continue under this SOW until such the outstanding sum(s) due is/are paid or the term expires. If at the end of the 60 days' Notice period all amounts have been paid by the Customer that were outstanding at the time of termination or became due during the sixty (60) period, then the SOW shall terminate and the Customer shall not be liable for the balance of the SOW except as provided for in the Master Agreement, in the event of breach, etc. Customer shall pay Cards Technology at a rate of \$165/hour for any services plus the cost of materials necessary to transfer services to another provider.

This SOW shall automatically renew each year unless the Customer notifies Cards Technology 60 days prior to the last day of the term that it wishes to cancel. Said notification shall be placed in writing and emailed to [accountmanager@cards-tech.com](mailto:accountmanager@cards-tech.com) and/or mailed to Cards Technology.

In addition to the provisions set forth in Section 4.0 and Section 5.0, Cards Technology reserves the right to increase the Membership Fee and shall give the Customer 60 days from the date it receives notification of a Membership Fee increase to terminate this SOW in accordance with and subject to the provision stated herein.

Should this SOW terminate for any reason, Cards Technology shall be permitted access to the physical site of its Product or remote access, whichever it chooses to uninstall or otherwise remove its product without interference by the Customer on a reasonable date and time but not later than 15 days from the date of the Notice and thereafter.

Nothing in this section shall preclude or limited Cards Technology's right to terminate its services as provided for in the Master Agreement including but not limited to those provisions in Section 2 of the Master Agreement. The Customer shall at all times be bound by the Master Agreement.

*It is understood that any and all Services requested by Customer that fall outside of the terms of this SOW will be considered Projects, and will be quoted and outline in a separate SOW.*

**5.0 Supported Technology and Personnel**

<b>Supported Equipment (3 Client Devices Per User):</b>		<b>Minimum Supported Versions :</b>	
Apple iOS/Mac OS Devices		MS Office 2010 or Later	
Google Android Devices		MS Windows 7 Professional/Enterprise SP1 or Newer	
MS Windows Devices		MS Server 2008 or Newer	
Servers, Storage, Internetworking Hardware Installed at all customer locations at the signing of this SOW.**		MS Internet Explorer 9 or Newer, Java, Flash	
		Adobe Software Products 9 or Newer	
<b>Non-Supported Equipment:</b>		Apple iOS 8/Mac OS 10.8 or Newer	
BlackBerry Devices		Android 5.0 or Newer	
		<b>Supported Customer LOB Applications:</b>	
		1) Tyler Business Systems	
		2) ADP Payroll	
		3) Logics Software	
		4)	
		5)	
		6)	
Backup Solution: CARDS BACKUP APPLIANCE		7)	
		<b>Non-Supported Applications:</b>	
Anti-Virus Solution: CARDS EPP		MS Windows XP or Older	
		MS Office 2007 or Older	
		MS DOS or Older	
<b>Each Additional Client Hardware:</b>	\$15/month		
<b>Each Additional Client Hardware User:</b>	\$125/month	<b>Supported Client Hardware Users Included:</b>	45
<b>Each Additional Mobile Only User:</b>	\$25/month	<b>Supported Mobile Only Users Included:</b>	0

**\*\*Any hardware in service at the designated Business Locations in Section 3.5 as of the date of the execution of this SOW, or that will be installed in conjunction with the attached quote is covered by the terms of this SOW. The Membership Fee may be adjusted upon any changes to Section 5.0. All hardware or applications on the Customer's premises must be covered by this SOW in order to obtain service for the hardware or applications in question.**

**5.1 Additional Included Services**

In addition to the Services included in Section 3.3 above, Cards Technology will incorporate the services listed below into the scope of this SOW. Changes or additional services not listed at the signing of this SOW will be quoted and billed as a separate, individual service or project.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**5.2 3<sup>rd</sup> Party Support Providers**

Customer authorizes Cards Technology to contact 3rd party support providers on behalf of Customer. It is the Customer's responsibility to ensure that Cards Technology is authorized to contact all 3rd party vendors and that Cards Technology is able to make changes on behalf of Customer. Communications with vendors for applications and hardware listed in Section 5.0 will be incorporated into the scope of this SOW. The addition of 3rd Party Vendors or additional hardware not included at the signing of this SOW, if acceptable to Cards Technology, shall result in an adjustment to the Customer's monthly charges.

**6.0 Compliance**

As stated in the Master Agreement, no efforts are being taken by Cards Technology to bring the customers site, network, etc. into compliance with any State, Federal, local, ethical, professional, etc. rules or regulations. Should the Customer wish to have Services of this type provided and monitored by Cards Technology, such Services shall be stated clearly below and an additional fee of \$\_\_\_\_\_ shall be paid to Cards Technology by Customer for the initial establishment of said compliance and a monthly fee of \$\_\_\_\_\_ shall be paid by Customer to Cards Technology to maintain and update said compliance.

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This SOW is effective only upon execution by **Cards Technology** and Customer. Each party hereto warrants and represents that this SOW, and the Agreement, constitute the legal, valid and binding obligation of such party as of the SOW Effective Date.

**Card's Computers, Inc., t/a Cards Technology**

Signature: 

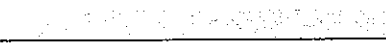
Name: Samuel W Card


Title: CEO


Date: May 27, 2016

**Town of Berlin**

Signature: 

Name: 

Title: 

Date: 

# Exhibit A – Cards Technology SLA Guarantee Addendum

Impact and Urgency are assigned to every service ticket.

**Impact:** The effect on business operations.

- Low: More of an irritation
- Medium: Business is degraded; other tasks are able to be completed or there is a workaround in place
- High: All business processes are stopped

**Urgency:** Number of users that are affected.

- Low: 1 user
- Medium: 2 or more
- High: All users

Priority: The priority of the service ticket is determined by the Urgency and Impact matrix.

	High Urgency	Medium Urgency	Low Urgency
High Impact	P1 - Emergency	P2 - Urgent	P3 - Quick
Medium Impact	P2 - Urgent	P3 - Quick	P4 - Normal
Low Impact	P3 - Quick	P4 - Normal	P5 - Below Normal

## Service Level Agreement (SLA) – Response Times by Priority

The maximum amount of time that is allowed to pass before we respond to a service ticket based off of the Impact and Urgency.

Priority	During Business Hours (M-F 8:30AM – 5:00PM)	After Business Hours	24x7 Service Option
P1 – Emergency	0.25 Hours	1 Hour	1 Hour
P2 – Urgent	0.5 Hours	Next Available	2 Hours
P3 – Quick	1 Hour	Next Available	4 Hours
P4 – Normal	2 Hours	Next Available	8 Hours
P4 – Below Normal	4 Hours	Next Available	Next Available
P6 – Scheduled Maintenance	Next Available	Next Available	Next Available

### P6 – Scheduled Maintenance

- Proactive Monthly Service
- Seasonal Preparation
- Quarterly IT Review
- Semi-Annual Server Checkup
- Account Manager Service Tickets
- Billing/Finance Service Tickets
- Routine maintenance/updates to existing software packages
- Hardware replacements not related to higher priority service tickets
- Hardware firmware/driver updates not related to higher priority service tickets
- Documentation or reports from CARDS TECHNOLOGY's support tools
- Requests for proposals, quotes, and ongoing consulting work



## Software Maintenance/Updates Schedule

- Routine software updates will be installed on Wednesday and Sunday every week.
- A ticket requesting the update needs to be submitted to the help desk ([support@cards-tech.com](mailto:support@cards-tech.com)) by noon on Wednesday to schedule a software update for Wednesday night.
- All other requests received after noon on Wednesday each week will be scheduled for the upcoming Sunday.
- From Dec 1<sup>st</sup> until May 1<sup>st</sup> customers running tax/accounting software can schedule any update installations for the same day if submitted by 2pm. All requests for updates after 2pm will be scheduled for the next evening.
- Any software updates associated with a P3 Normal Priority or higher priority ticket will be installed the same evening no matter what day of the week it is.
- The assigned technician will coordinate the software maintenance window with our primary contact at your company using the above guidelines and will have time scheduled the next morning to assist with any issues.
- Any Customer can elect to have any software updates scheduled to be installed during our normal business hours with the understanding that their network may be unavailable during the software maintenance.
- Technicians are available to install updates any day of the week from 5pm-10pm and Sunday from Noon until 10pm.

## SLA Guarantee

- Response is defined as a technician on CARDS TECHNOLOGY's staff that has reviewed a service ticket, started the first step to resolve the problem, and communicated to the Customer that he/she is working on the service ticket.
- CARDS TECHNOLOGY will determine the Impact and Urgency based off of the content of the Customer's service request.
- This is only a response time guarantee. CARDS TECHNOLOGY makes no guarantee of resolution time for any service ticket due to the many uncontrollable factors in which resolution to a service ticket can be impacted by.
- Live reports will be available indicating any times the SLA was violated in the last 30 days.
- CARDS TECHNOLOGY will credit customer 5% of their monthly invoice for every full hour during CARDS TECHNOLOGY's normal business hours in which the SLA was violated. Customer must request the credit prior to the next month's invoice being issued.
- The credit will be issued on the following month's invoice and applied to the invoice.
- The maximum credit is limited to the Customer's monthly invoice amount.
- The Customer's account with CARDS TECHNOLOGY must have a \$0.00 open balance in order to receive the credit.

# Customer Acknowledgement

The Customer hereby acknowledges that they have reviewed and agree with the CARDS TECHNOLOGY SLA guarantee. Customer will allow CARDS TECHNOLOGY up to the amount of time guaranteed in the Response Times Matrix to respond to an issue, based off of the priority assigned to the service ticket determined by Impact and Urgency.

Customer shall chose one of the two service levels below:

## OPTION 1

Yes, the Customer wants the 24x7 Service SLA.

Customer shall pay a monthly service fee of \$500.00 per month for the 24x7 Service SLA in addition to the amount quoted in CARDS TECHNOLOGY's SOW. This service and the related fee can be turned off and on each month by contacting us via email [billing@cards-tech.com](mailto:billing@cards-tech.com) 30 days prior to the next billing cycle.

## OPTION 2

No, the Customer does not want the 24x7 Service SLA at this time.

The Customer acknowledges that they have NOT selected the 24x7 Service SLA and shall only receive services for P1 "Emergency" service tickets outside of CARDS TECHNOLOGY's normal business hours.

FOR THOSE CUSTOMERS WHO HAVE CHOSEN NOT TO SELECT OPTION 1 ABOVE,

PLEASE BE ADVISED OF THE FOLLOWING:

In order to obtain service for P2, P3, and P4 tickets outside of CARDS TECHNOLOGY's normal business hours, Customer must agree to the monthly service fee of \$500.00 per month for the optional 24x7 Service SLA (see Option 1 above). If service is requested outside of Option 2's scope, the Customer may agree to change their current selection to Option 1 for the current month at the point that our help desk is contacted and service after hours is required. The fee will continue monthly until Customer notifies CARDS TECHNOLOGY, by contacting us via email [billing@cards-tech.com](mailto:billing@cards-tech.com) 30 days prior to the next billing cycle to turn the feature off.

Card's Computers, Inc., t/a Cards Technology

Town of Berlin

Signature: 

Signature: \_\_\_\_\_

Name: Samuel W Card

Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date: May 27, 2016

Date: \_\_\_\_\_

## STATEMENT OF WORK (SOW)

### STATEMENT OF WORK FOR "CARDS CONTINUITY" DISASTER RECOVERY

This Statement of Work ("**SOW**") dated July 1, 2016 ("**SOW Effective Date**") supplements the Master Customer Agreement effective as of May 27, 2016 (the "**Agreement**") by and between Card's Computers, Inc., t/a Cards Technology, ("**Cards Technology**") and Town of Berlin ("**Customer**"). This SOW consists of the terms below, the signature page, and any unique attachments to this SOW, which are all incorporated into the Agreement by this reference and are made a part of the Agreement by all intents and purposes.

#### 1. Services Description

- a. The service is designed to provide a complete Backup and Disaster Recovery ("**BDR**") solution for all Windows and Linux Servers running currently supported operating systems. The solution is fully managed and monitored to help ensure successful outcomes in the event of a disaster.
- b. The service is provided by the installation of an on-site Network Attached Storage ("**NAS**") computer that acts as a local storage device and stand-by server in the event of a server failure.
- c. Incremental backups of protected servers are sent to the NAS every hour Monday-Friday 8am-5pm and also several times throughout the nights and weekends.
- d. Files are compressed to save storage space and ensure that backup times remain short.
- e. The data is 256-bit encrypted and stored locally on the NAS to enable fast local restores. Only Cards Technology and the Customer have access to the encrypted data.
- f. The data is also 256-bit encrypted and transmitted off-site to bicoastal remote storage facilities for disaster recovery purposes.
- g. Full recovery of data as of the last successful off-site transfer will be available for recovery from the off-site remote storage facility in the event of a total site catastrophe, where both the NAS device and protected servers are lost or destroyed.
- h. The NAS unit has a full hardware warranty and is guaranteed to be free of defects and will be repaired or replaced at no cost to the Customer as long as this SOW remains in effect.
- i. Backup successes and failures are monitored by Cards Technology 24x7x365 and customer shall be notified if backups fail. Cards Technology will take corrective action at the next time available to perform backup troubleshooting and resolution services pursuant to the SOW being signed in conjunction with this service.
- j. Remote Storage Facility Features:
  - i. Highly redundant storage with backup images stored at the data centers on a SAN at the primary facility, and are then replicated to the secondary facility.
  - ii. Connectivity is provided by multiple providers with automatic failover capabilities.
  - iii. Facilities provide multiple fiber optic network drops for our backbone.
  - iv. Full physical security at each facility including security cameras, armed security, and key card/biometric access.
  - v. Network is secured with high-end redundant, automatic failover firewalls.
  - vi. Fire suppression and environmental control provided.
  - vii. Automatic backup power provided by on-site generators and UPS systems.
- k. On-Site Retention Periods:
  - i. Base Image
  - ii. Monthly Incremental Backups (at least 1, as many as quoted storage can hold)
  - iii. Weekly Incremental Backups (the last 2 weeks)
  - iv. Daily Incremental Backups (the last 7 days)
  - v. Hourly Incremental Backups (every hour during business hours and midnight)
  - vi. The Off-Site copy will be the last recovery point uploaded of the day.
- l. Routine Testing:
  - i. Images of protected servers are verified with CRC checking to help ensure integrity.
  - ii. All protected servers undergo a test restore process, where the server is configured for virtualization in a test environment, is started, and a screenshot is taken to ensure the server booted successfully.
  - iii. Any protected servers with failed screenshot verification will be investigated and troubleshot for backup problems and resolved. The cost of this service is identified in the SOW being signed in conjunction with this service.

- m. Recovery Time Objective (RTO):
  - i. Small amounts of individual files on protected servers can typically be restored within 5 minutes. Larger amounts of files or files that are larger in size can take longer.
  - ii. In the event of a server failure, the NAS typically can have a failed server running on the most recent backup image within 30 minutes. Sometimes complications can result in additional time to recovery, but every effort to recover the failed server shall be made as quickly as possible.
  - iii. Total server restores can be performed from the NAS back to a new virtual machine or bare metal server. The amount of time to perform a restore will depend on the transfer rate of the data and the environment it is being transferred within and can take up to a full business day to complete.
  - iv. In the event of a site disaster, the off-site remote storage facility allows the virtualization of protected servers for up to 30 days per year. Additional hours beyond the included amount are \$110/hour per server.
  - v. For an additional cost, a new NAS can be shipped from the off-site remote storage facility with the most recent image if the NAS is destroyed in a site disaster.
- n. Loaned Equipment
  - i. Customer agrees that the NAS unit utilized by Cards Technology in the execution of this service shall remain the property of Cards Technology, and must be returned if requested. Customer further agrees to cease the use of any technology that remains the property of Cards Technology upon termination of this service.
  - ii. If the NAS unit is stolen, damaged or destroyed, the Customer must pay Cards Technology \$6,220.00. Customer should ensure that their insurance will cover this and any other recovery costs.

## 2. Service and Fee Schedule

- a. A start-up fee is required to setup the NAS device, configure backups, and send base backup images off-site. The start-up fees have already been paid by Customer, and the monthly fees are included in the cost of the Cards Complete SOW.
- b. Fees for the Service are on Due Upon Receipt Invoicing Terms, and are described in the attached onboarding project quote except as provided for in this paragraph and Section 3. Cards Technology expressly reserves the right to increase the Fee for the Service upon 60 days advance notice to the Customer for the balance of the term of the SOW. Generally speaking, the fee can only increase if the Customer's data storage requirements increase beyond the quoted amount of storage, or if the Customer's server environment changes in a way that causes an increase in the amount of data and/or servers being backed up. Each Terabyte (from 1GB to 1TB) above the quoted amount of storage is an additional \$100/month. The Service will be suspended if full payment is not received within 7 days following the date due of the invoice.
- c. The monthly BDR Fee does not include any services for restoration of files or troubleshooting failed backups unless it is accompanied with a "Cards Complete" or "Cards a la Carte" SOW. The cost of this service is identified in the SOW being signed in conjunction with this service.
- d. All invoices shall be charged to the Customer's credit card on file or by ACH withdrawal on their due dates.

## 3. Terms of Service

Except as provided for in the Master Agreement, the term under this SOW shall be initially be for a period of one (1) year from the date of execution and shall renew as provided below. Should the Customer wish to terminate the SOW it may do so by providing Cards Technology sixty (60) days written notice of its intention to terminate and Customer shall pay all outstanding balances prior to the expiration of the 60 day period. Failure to pay shall relieve Cards Technology from all liability or obligations to provide service however all obligations of the Customer shall continue under this SOW until such the outstanding sum(s) due is/are paid or the term expires. If at the end of the 60 days' Notice period all amounts have been paid by the Customer that were outstanding at the time of termination or became due during the sixty (60) period, then the SOW shall terminate and the Customer shall not be liable for the balance of the SOW except as provided for in the Master Agreement, in the event of breach, etc. Customer shall pay Cards Technology at a rate of \$165/hour for any services plus the cost of materials necessary to transfer services to another provider.

This SOW shall automatically renew each year unless the Customer notifies Cards Technology 60 days prior to the last day of the term that it wishes to cancel. Said notification shall be placed in writing and emailed to [accountmanager@cards-tech.com](mailto:accountmanager@cards-tech.com) and/or mailed to Cards Technology.

In addition to the provisions set forth in Section 2, Cards Technology reserves the right to increase the Service Fee and shall give the Customer 60 days from the date it receives notification of a Service Fee increase to terminate this SOW in accordance with and subject to the provision stated herein.

Should this SOW terminate for any reason, Cards Technology shall be permitted access to the physical site of its Product or remote access, whichever it chooses to uninstall or otherwise remove its product without interference by the Customer on a reasonable date and time but not later than 15 days from the date of the Notice and thereafter.

Nothing in this section shall preclude or limit Cards Technology's right to terminate its services as provided for in the Master Agreement including but not limited to those provisions in Section 2 of the Master Agreement. The Customer shall at all times be bound by the Master Agreement.

This SOW is effective only upon execution by **Cards Technology** and Customer. Each party hereto warrants and represents that this SOW, and the Agreement, constitute the legal, valid and binding obligation of such party as of the SOW Effective Date.

**Card's Computers, Inc., t/a Cards Technology**

**Town of Berlin**

Signature: 

Signature: \_\_\_\_\_

Name: Samuel W Card

Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date: May 27, 2016

Date: \_\_\_\_\_

D3Corp  
17330 Cassin Gateway, Ste 2107  
Greenbelt, MD 20740

(301) 271-2400  
toll free (800) 271-2400

sales@d3corp.com  
info@d3corp.com  
support@d3corp.com  
marketing@d3corp.com  
reservations@d3corp.com

# D3

Creative. Mind.  
Proven Results.

## Town of Berlin

### Hosting & Maintenance Proposal May 26, 2016

Custom Website Design

Mobile Web & Apps

E-Commerce

Reservation Systems

Social Marketing

SEO | Google | Facebook

Print Services

Graphic Design | Branding



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## Objective

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Town of Berlin (Client) wishes to continue to host and maintain their website with D3Corp. D3Corp will continue to provide their existing website with features such as news, job opportunities, programs, events, photos, forms/publications and more. D3Corp will continue its service provide edit requests including phone and email support, technical assistance, text and photo edits, database management, search engine optimization, site marketing consultation and site statistics and tracking.

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## Service & Support

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1. **Monthly Web Service includes:**
  - a. Monthly Website Hosting and Maintenance on servers by D3Corp.
  - b. D3Corp Customer Service will provide email or phone support during business hours for technical support and/or website related requests.
  - c. Marketing Consultation
  - d. 24/7 Emergency support. For emergencies, such as website down, email support@d3corp.com.
  - e. A total of up to 2 hours per month of website development changes, additions or deletions.

*Note: Any substantial website changes including site structure, major redesign, additional custom programming or anything that does not fall within the scope of what D3Corp deems regular maintenance and edits or falls over the 2 hour allotment, may incur additional fees or be quoted to Client in an additional contract.*

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## Exclusions & Consideration

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D3Corp development does not include the following:

1. Content: The creation of primary content (text, photography, video, etc.) is not included but may be provided for an additional fee. All content is to be provided by Client to D3Corp in digital format. Content writing is available for an addition fee, see 'Add-Ons.'
  2. Images: D3Corp may use stock images, however does not provide a photographer and images of Client's business or products. Photography is available for a fee; see 'Add-Ons.'
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## Proposed Fees

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Monthly Web Service & Support*	Fees
Items outlined in Service & Support	\$125
<b>Total</b>	<b>\$125/mo.</b>

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## Optional Add-Ons: Other Services

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1. **Print:** D3Corp proudly offers print services. Business cards, rack cards, full color brochures, posters lawn signs, postcards and more are available to keep brand marketing consistent with your business. D3Corp is able to tie in all of your same look and feel throughout your website and any print items you may need to target customers.
2. **Social Media Package:** D3Corp will help client with its efforts to be involved with Social Media Marketing. Social Media is a crucial marketing tool in today's marketing efforts. D3Corp will help set up Social Media outlets such as Facebook, Twitter, Pinterest, LinkedIn and more. D3Corp can help Client to highlight various features, specials, contests, promotions and lead generation opportunities. Landing page for Social Media outlets will be designed based on Client requirements. D3Corp will educate Client on benefits of each social marketing platform and provide tips on how to best use them.
3. **Email Marketing:** D3Corp will setup, implement and manage a web-based email marketing, management and database system for Client. This system will allow Client to send personalized graphical and interactive email messages to all or segments of the email databases. D3Corp will setup the database so that information entered via the website will automatically populate the email-marketing database as well as provide Client with a user interface to easily add other leads and data into the database. Full tracking and data segmentation capabilities are included. For effective campaign management, Client will be able to track the number of emails sent, the number opened, the number that bounced, who opened the messages, which links they clicked on in the email, overlay analytics and more. Bounced emails are delivered to the database and can be automatically deleted. Send to a Friend, Date Reminders, Event Triggers and other automated marketing solutions may also be implemented. D3Corp will design two templates for use within the system and will create online forms that feed the database.
4. **Secure E-commerce Engine:** Ecommerce will be enabled to sell products online. Administrative functions of the cart include managing inventory levels, offering assorted products, product categories and attributes. Items can be easily marked for sale, new, featured or special offers and Best Sellers and Most Popular can also be flagged. Discount codes, coupons, gift card purchases and Related Items features are also available. Offer reviews, ratings and user generated content. Item display includes multiple photos, video and text content. Registries and wish lists are also available.  
  
Orders and credit card transactions may be processed online and shipping tools can be integrated with UPS and FedEx. Customer information will be placed in a database to allow Client to easily contact customers in the future. Integrated email marketing allows for customer follow-up, repeat sales, suggested items and more. Full reporting is provided. Setup includes integration with website, development of custom databases, administrative area, custom design, training, statistics, reports, support.
5. **Enhanced Site Marketing:** *Search Engine Marketing:* As Client needs to be listed at the top of search engines for certain keywords, D3Corp will setup keyword pay per click programs with Google, Bing and Yahoo. Full tracking and conversion ratio statistics are available in order to track advertising performance.  
*Display Advertising:* D3Corp can assist Client in procuring targeted display advertising on sites that match Client's demographics. Full reporting will be provided to measure return on investment.  
*Google Sitemaps:* D3Corp can create XML Google Sitemaps that will enhance site rankings in Google.
6. **Photography:** D3Corp has photographers on staff that can come to your business (locally) and take photos of your business or products. The images are Client's property and to be used on Client's website. Travel and editing of photos are billable.



7. **Content Writing:** D3Corp offers content writing for addition fee. Client is able to do an on-site or phone interview with staff in order to get information for their business. D3Corp will create content for pages on their site.

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## About D3Corp

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D3Corp is a full service website development and electronic marketing firm based in Ocean City, Maryland. We have been in business for 21 years serving over 2,600 businesses and organizations of all sizes all over the world in their Internet marketing ventures. Clients include manufacturing companies, retail businesses, service firms, town destination marketing organizations, the hospitality industry, non-profit organizations and more. Our client base ranges internationally, with a primary focus in the Mid-Atlantic and Northeast regions.

With a full-time staff of 45, we have a team of exceptionally qualified personnel and offer a complete suite of services, allowing clients to rely on one company to handle all design, development and electronic marketing needs. This is important as you will always have one point of contact to integrate all of your electronic marketing components as your business grows. In addition, we custom-build all work in-house and do not use freelancers or overseas labor. We are a strict proponent of building the US and local economies and workforce.

In addition, we are uniquely positioned as a debt free company that operates in a market that allows our fees to be competitive and service to be impeccable. Operating debt free not only allows us to charge fair rates, but also to invest our earnings into personnel, training and new technologies as opposed to paying off debt service. You can count on D3Corp to continually introduce new ideas and web services as Internet technology progresses and improves. Completion of your site will actually mark the beginning as we help your business adapt and grow using the web and electronic marketing technologies. We look forward to being partners with you for years to come.

View our portfolio at [www.D3Corp.com](http://www.D3Corp.com).

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## Terms & Conditions

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1. **Proprietary Information:** Certain proprietary data that each party will be disclosing to the other party or which a party will otherwise acquire during the course of this agreement (the "Agreement") is owned by the disclosing party including, without limitation, customer information, order history and data lists (the "Proprietary Information"). The Proprietary Information will remain the property of the disclosing party. Proprietary Information of Client shall include, without limitation, data obtained from the Client. All Proprietary Information will remain the property of the disclosing party. Upon termination or expiration of this Agreement, or any extension hereof, the receiving party will return all Proprietary Information and copies thereof to the disclosing party at the disclosing party's request within five business days. The receiving party will sign an affidavit that the receiving party has retained no copies of Proprietary Information.
2. **Proper Use:** Client shall not, directly or indirectly, do any of the following: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code for any software related to any services provided by D3Corp (the "Services"); (ii) modify, translate, or create derivative works based on the software related to the Services, content or end user documentation; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use any software related to the Services; or (iv) remove any copyright or other proprietary notices from the such software or any other D3Corp ("D3") materials furnished or made available hereunder. Client shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, and orders in its performance under this Agreement, and will obtain all permits or licenses required in connection with the license and use of any of D3 Services.
3. **Dates:** The date of the signing of this Agreement is the "Effective Date." The date the Services are completed, executed, active, and/or made available to Client, whichever occurs first, is the "Activation Date." Service Fees and the Service Term specified in this Agreement begin on the Activation Date. Cancellation and all other policies apply upon the Effective Date.
4. **Term & Termination:** (a) Unless terminated pursuant to Paragraph (b) of this Section, this Agreement shall remain in effect for a period of three (3) years commencing on the Activation Date (the "Service Term"), and shall renew automatically and remain in effect for further terms of one (1) year each, unless notice of termination in writing is sent via certified mail no more than one hundred eighty (180) days and no less than sixty (60) days prior to the last day of the Service Term or further term.

(b) If Client or D3 defaults in the observance or performance of any of the covenants, provisions or conditions in this Agreement and such default shall continue uncured for a period of sixty (60) days after written notice to the defaulting party is sent by both certified mail and regular first class mail, then the party giving such notice may cancel the Agreement.

(c) Termination or cancellation by Client at any time in the future, other than for cause specified above, will result in forfeiture of any and all waived fees and discounted rates provided. Upon termination, normal rates will apply from inception of the project and Client agrees to pay D3 any difference between full price and discounted prices paid. If Client elects to cancel the project after work has begun, D3 shall retain any down payments, deposits or other payments made by Client as payment for work completed. No refunds will be provided. In addition, additional payments may be due to D3 based on the amount of work completed prior to cancellation.

(d) Upon termination of this Agreement, Client will immediately (i) return to D3 all D3 Proprietary Information and all copies thereof, (ii) terminate use of the Services, and (iii) except as provided in the next succeeding sentence, pay to D3 the full amount of the fees for the entirety of the Service Term. Upon termination of this Agreement by Client for cause pursuant to Section 4b, D3 shall refund to Client the pro-rata portion of any pre-paid fee for the Services attributable to the portion of the Service Term during which D3 has been in breach of this Agreement, as well as any pre-paid fee for the Services attributable to the remainder of the Service Term within thirty (30) days of the date of termination of this Agreement.
5. **Payment:** Client agrees to pay D3 the production, development, service, marketing and other fees and amounts specified in this Agreement. D3 shall promptly enable Client's access to the services upon Client's payment of any applicable setup, production or development fees (the "Setup Fee"). Unless otherwise agreed upon, the Setup Fee will be due in full on the Effective Date. If an additional Setup Fees is incurred during the setup process (as agreed to by both parties), the entire balance of the Setup Fee is due on the Activation Date.

CONFIDENTIAL

Unless otherwise specified, all invoiced amounts for any monthly, quarterly or annual service fees (the "Service Fees") shall be due in advance of services being performed for that service period. Any fees billed based on service usage (the "Usage Fees") will be billed monthly after service has been performed. Service Fees and Usage Fees must be paid by ACH or credit card designated by Client. Each time Client uses any D3 Services, or allows or causes the Services to be used, Client agrees and reaffirms that D3 is authorized to charge Client's bank account or designated credit card. Client agrees that D3 may submit charges for Service Fees and Usage Fees for the Service Term and any further term until this Agreement is terminated according to Section 3. D3 may deduct and offset any amounts due from Client to D3 from any amounts due from D3 to Client.

If Client does not object in writing to an invoiced amount within thirty (30) calendar days of a given invoice or statement, Client shall be deemed to have acknowledged the correctness of that invoice or amount, shall be deemed to have acknowledged that the services rendered by D3 as set forth on the invoice or statement have been accepted by Client as having been performed in a workmanlike manner, and shall be deemed to have waived its right to dispute that invoice or amount. Client's dispute as to a portion of any invoice or amount shall not give Client the right to withhold or delay payment of the whole invoice or amount. Invoices not paid within thirty (30) day of receipt of invoice will be considered past due. Payments for past due invoices will bear interest at the rate of one and one half percent (1.5%) per month, compounded monthly, or the maximum amount permitted by law, whichever is less. Client expressly agrees to pay monthly compounded interest on any past due invoice as stated herein.

D3 will have no obligation to perform any of its obligations under this Agreement if Client fails to make any timely payment, following its receipt of notice of the nonpayment and a five (5) business day opportunity to cure, and D3 will have the right in its sole discretion, without liability to Client, to either (a) suspend performance of any of its obligations under this Agreement for so long as the payment remains outstanding, (b) disable any service D3 operates for Client, or (c) terminate this Agreement. Client shall be liable for all costs and expenses incurred by D3 in collection of past due fees, including but not limited to, collection agency fees, expert witness fees, court costs, and reasonable attorney's fees.

Service Fees will remain constant for the duration of the initial contract period and are subject to increase upon each contract renewal. During the term of this Agreement, D3 and Client may mutually agree in writing on any additional services to be provided by D3 not initially agreed to in the initial Scope of Work. These services may incur additional fees and will be quoted as such in writing to Client. All fees are non-refundable.

6. **Ownership:** Client shall have ownership of its website or other Services provided to Client by D3, unless specifically stated and agreed to by both parties. In addition, Client owns the content, data, and materials provided to D3 to create the Services and/or contained within the Services. However, any and all Systems developed or licensed by D3 shall at all times remain the exclusive property of D3. Systems include, but are not limited to, software, databases, programs, scripts, custom content, and any other tool used to execute the Services contained in this Agreement. Examples include, but are not limited to: reservation systems, email marketing systems, metrics and reporting systems, ecommerce applications, proprietary content management systems, and any other application owned or licensed by D3. Client is permitted to use the Systems specified in this Agreement during the term of this Agreement, but at no time have any ownership of the Systems. Upon termination of this Agreement for any reason, Client has no ownership rights to the Systems and loses all rights to use any of the Systems.
7. **Limitation of Liability:** It is the responsibility of Client to test, proof, and correct any errors or omissions to any of the Services developed or implemented for Client by D3, including, but not limited to: ecommerce payment systems, content management systems, electronic forms, email, and advertising/marketing programs. D3 agrees to promptly correct any mistakes of its own accord upon notification from Client of such mistakes. Client understands that if it has the ability to manage the content of its Services, then Client may cause errors to the Services. It is the responsibility of Client to test the Services after any modifications are made to the Services and notify D3 of any problems. Additional fees may be charged to Client by D3 in order to correct any problems caused by Client. In the event that the D3 does not honor the terms of this Agreement, the sole recourse of Client is termination of this Agreement. To the maximum extent permitted by applicable law, the aggregate liability of D3, its affiliates, or suppliers, whether in contract (including fundamental breach or failure of an essential purpose), tort (including negligence), misrepresentation or otherwise in respect of a single occurrence or a series of occurrences shall in no circumstances exceed the amounts paid by Client to D3 hereunder in the Service Term immediately preceding the first event giving rise to any claim of breach. In no event shall D3, its affiliates, or suppliers, or affiliates of any of them, be liable to Client or any third party for any punitive, indirect, incidental, special, consequential, attorney's fees, or other damages whatsoever or for any failure to realize expected savings, loss of business, loss of revenues or profits, loss of data, or any other commercial or economic loss (including, without limitation, losses due to business or service delays, server downtime or outages, performance or delay of the Internet or D3's Internet service providers, email service downtime, service interruptions, loss of

business information or data, failure to save data, errors in or omissions of Services, other pecuniary loss, or any other information therein (or any component of any of the foregoing)) arising out of or related to this Agreement or the D3 Services even if Client has been advised of the possibility of such damages. Except those expressly set forth in this Agreement, this paragraph sets out Client's exclusive remedies, and under no circumstances shall Client be entitled to equitable remedies.

8. **Warranty Disclaimer:** All Systems and Services provided by D3 are provided "as is" without warranty of any kind. To the maximum extent permitted by applicable law, D3 disclaims all express, implied, statutory and other warranties of any kind, including without limitation any implied warranties of merchantability, fitness for a particular purpose, title, custom, trade, quiet enjoyment, availability, accuracy of informational content or system integration, or any warranties arising under any other legal requirement, D3 does not warrant that the D3 Services, Systems, suppliers, servers, the Internet, D3's Internet service providers, or any other component thereof is error-free or will operate in an uninterrupted manner.
9. **Indemnification:** Client warrants that all content provided by Client and/or used by D3 to build Client's website or provide any other Services is legally owned or licensed to Client. Client agrees to indemnify, defend, and hold harmless D3 from any and all claims brought by any third party relating to any aspect of the website and/or other Services, including, but without limitation, any and all demands, liabilities, losses, costs, and claims, including attorney's fees, arising out of injury caused by Client's products, services, content, copyright infringement, trademark disputes, and defective products or services sold via the website and/or other Services. Further, Client agrees to indemnify D3 from responsibility for any problems and/or disruptions caused by any third-party services that Client might use on its website and/or other Services. D3 will give Client prompt written notice of any matter for which it claims indemnification, and if the matter involves a third-party claim, Client may, if it elects, defend or settle the claim or suit at its own expense, provided, however, that any settlement that does not provide for an unconditional release to D3, or that includes granting equitable relief, will be subject to the approval of D3, which D3 may withhold for any reason.
10. **Choice of Law:** The Terms & Conditions of this Agreement shall be governed by and construed and interpreted in accordance with the laws of Maryland. Client and D3 jointly waive any right to trial by jury in any action or proceeding arising in connection with this Agreement. Client and D3 agree that proper venue for any suit arising out of this Agreement shall be either the Circuit Court for Worcester County, Maryland, or the District Court of Maryland for Worcester County.
11. **Force Majeure:** Fires, floods, wars, acts of war, strikes, lockouts, labor disputes, accidents to equipment and/or machinery, delays or defaults of common carriers, orders, decrees of judgments of any court, delays or outages of the Internet or Internet service providers, or any other contingency beyond the control of D3, whether related or unrelated, or similar or dissimilar to any of the foregoing, will be sufficient excuse for any resulting delay or failure in the performance by D3 of its obligations under this Agreement, but such performance will be excused only as long as the force majeure continues, including a reasonable amount of time for D3 recovery.
12. **Relationship of the Parties:** The relationship between D3 and Client is that of independent contracting parties, and not that of partners, joint venturers, or principal and agent. Neither party has or will hold itself out as having the authority to bind or act in the name of, or on behalf of, the other. During the Service Term and for a period of one (1) year thereafter, Client shall not directly or indirectly employ or solicit the employment or services of any D3 employee without D3's prior written consent.
13. **Publicity:** Upon execution of this Agreement, D3 shall have the right to issue a press release describing the relationship of the parties. D3 shall also have the right to use the name and logo of Client (indicating Client as owner of the logo) to identify Client as a customer of D3 in promotional materials and/or articles, including D3's filings with public agencies. Neither party will issue any press releases or engage in any other promotional activities, other than the foregoing, that identify the other party without obtaining such other party's written approval; provided, however, that either party may at any time reiterate any information contained in any jointly issued or previously approved press release, article or promotional material. Client shall have the right to use D3's trade name and service marks (the "Marks") on a non-exclusive basis during the term of this Agreement solely for display or advertising purposes in accordance with this Agreement. Client shall use the Marks in compliance with all relevant laws and regulations.
14. **Entire Understanding:** With respect to its subject matter, this Agreement contains the parties' entire understanding, superseding any prior agreements and understandings. There are no representations, warranties, promises, inducements, restrictions, stipulations, or obligations other than those expressly set forth in this Agreement. Further, these Terms & Conditions apply to all past, present, and future Services provided to Client by D3, including, but not limited to, development work, production, advertising, marketing services, maintenance agreements, and Service renewals, whether or not such

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Services are contracted for in writing. Any modification or deletion of any Terms & Conditions for any past, present, or future Services provided to Client by D3 must be approved by both parties by written, signed agreement.

15. **Authorized Signature; Binding on Successors; Third Party Benefits:** The individual signing on behalf of Client warrants and represents that he or she has the express authority to bind Client to the Terms & Conditions of this Agreement. This Agreement will bind and inure to the benefit of the parties and their respective legal representatives, successors, and permitted assigns. Nothing in this Agreement will confer any benefits, rights, or remedies upon any person or entity not a party hereto.
16. **Construction & Severability:** The language use in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against either party. The section headings are for convenience and are not intended as aids in construction. Further, It is agreed that the covenants of this Agreement are severable, and that if any single clause or clauses shall be found unenforceable, the entire Agreement shall not fail but shall be construed and enforced without any severed clauses in accordance with the tenor of this Agreement.
17. **Waiver:** Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition. Any waiver by a party of an available remedy against a breach or default by the other party will not constitute an ongoing waiver of any right to exercise available remedies against any future breach or default.
18. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute on instrument. This Agreement may be executed by signature via portable document format (.pdf) transmission or other electronic or facsimile signature, which shall be deemed to be the same as an original signature.

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## Acceptance

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This proposal is valid through **June 30, 2016** and converts to a binding agreement upon signing.

Client hereby applies for the services described above and for all subsequent contract periods until this agreement is terminated in the manner described above. Client agrees to pay D3Corp / Internet Business Strategies, Inc. the amount stated herein; \$125.00 per month site management, web service and marketing, payable as follows:

I, \_\_\_\_\_, a duly appointed officer of **Town of Berlin**, do hereby give my authorization for the above-mentioned work to be completed by D3Corp / Internet Business Strategies, Inc.

IN WITNESS WHEREOF, the parties have executed this agreement as of the dates set forth below.

\_\_\_\_\_  
Town of Berlin  
Representative Signature

\_\_\_\_\_  
Printed Name / Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Email

\_\_\_\_\_  
D3Corp  
Representative Signature

\_\_\_\_\_  
Printed Name / Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Email

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## Payment Details

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Client: Town of Berlin

Date: \_\_\_\_\_

Billing Contact: \_\_\_\_\_

D3 Authorization: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Billing Phone: \_\_\_\_\_

Billing Email: \_\_\_\_\_

Monthly Billing:     \$125.00     This payment will be made by credit card below on file.

**PLEASE CHOOSE SECONDARY BILLING (MONTHLY BILLING WILL BE ON THIS CARD):**

ACH Authorization: \_\_\_\_\_

Credit Card Authorization: VISA MASTERCARD DISCOVER

Card #: \_\_\_\_\_

Name on Card: \_\_\_\_\_ Expiration: \_\_\_\_\_ / \_\_\_\_\_ CCV: \_\_\_\_\_

Billing Zip of Card: \_\_\_\_\_

Please set me up for automatic payments with the credit card provided. I authorize D3Corp to charge my monthly/annual fees directly to my credit card. I understand, if applicable, that my monthly/annual payments will continue to be charged to my credit card until I change or cancel my service.

Signature: \_\_\_\_\_

# End of Agreement #

CONFIDENTIAL



**WORCESTER YOUTH AND FAMILY COUNSELING SERVICES, INC.**

A Private Non-Profit Provider Since 1975

**BOARD OF DIRECTORS**

**President**

Karen Barrett Clayland

**Treasurer**

Ellen Waters

**Secretary**

Cindy Ostrowski

**Members**

Karen Bush

Greta Del Corro

Annemarie Dickerson

Arnold Downing

Cindi Krempel

Gwen Lehman

Brittany Lindsey

Karen Prengaman

Helen Trivits

Robin Walter

**Executive Director**

Steven Taylor

**Location**

124 N. Main Street,

Suite C

Berlin, MD 21811

**Phone**

410-641-4598

**FAX**

410-641-4696

**Website**

[www.gowoyo.org](http://www.gowoyo.org)

April 8, 2016

Mayor Gee Williams

Town of Berlin

10 William Street

Berlin, MD 21811

Re: Berlin Youth Club

Dear Mayor Williams,

The Berlin Youth Club (BYC) is excited about the coming year and in particular our summer activities. The children truly love participating in our program and the parents often tell us how excited their children are about upcoming activities. The children are already talking about the summer and looking forward to another exciting year participating in the program.

As you know, current funding for the program ends on June 30, 2016, and we must start our summer planning now to solidify our plans. Enclosed is our level funding budget request using the same contract conditions signed last year, and we look forward to presenting our summer plans to you and the council Monday evening.

Worcester Youth & Family Counseling Services, Inc. appreciates the partnership we've maintained with the town over the years, and we look forward to continuing that relationship for the benefit of the families in our community. Thank you for your ongoing support for our programs.

Sincerely,

Steven Taylor

Executive Director





## BERLIN YOUTH PROGRAM COORDINATION AGREEMENT

THIS YOUTH PROGRAM COORDINATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Mayor and Council of the Town of Berlin, a Maryland Municipal Corporation (hereinafter "Mayor and Council"), and Worcester Youth and Family Counseling Services, Inc. (hereinafter WYFCS).

WHEREAS the Mayor and Council desire to provide and make available to Town youth recreation, sports, cultural, mentoring and educational programs; and

WHEREAS Worcester Youth And Family Counseling, Inc. has agreed to provide a youth program for the residents of the Town of Berlin.

NOW THEREFORE, the parties hereto agree as follows:

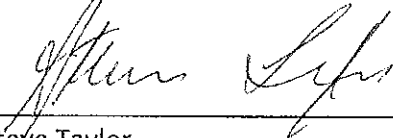
1. Contract Term: This Agreement shall commence on July 1, 2016 and continue for a period of twelve (12) consecutive months, thus expiring on June 30, 2017.
2. Payment Terms:
  - a. WYFCS shall invoice the Mayor and Council for the following monetary considerations
    - i. The total of \$24,000.00 for the service of conducting the Youth Program;
    - ii. the total of \$8,000.00 per year for expenses associated with the Youth Program; and
    - iii. a grant of \$2,500.00 per year for an intern to work with the Youth Program.
  - b. WYFCS shall invoice the Mayor and Council for the items listed in 2.a. above as follows:
    - i. For the service of conducting the Youth Program invoicing shall occur monthly in the amount of \$2,000.00; total for the year shall not exceed \$24,000.00.
    - ii. For the expenses associated with the Youth Program invoicing shall occur as follows:
      1. WYFCS shall provide four invoices annually, one per quarter, on or about July 1, October 1, January 1 and April 1.
      2. Each invoice will have attached a detailed listing of those expenses to be reimbursed and a receipt for each expense as detailed. It shall be at the discretion of the Town of Berlin as to whether or not an individual expense is eligible for reimbursement.
      3. The total to be reimbursed for expenses within the contract year as indicated in item 1 above shall not exceed \$8,000.00.
    - iii. For the grant for an intern, WYFCS shall invoicing shall occur once annually.

3. Services To Be Provided By WYFCS: In exchange for the remuneration listed in Paragraph No. 2 above, WYFCS agrees that It shall provide and perform the following services to the Mayor and Council:
  - a. Assess youth program needs and requirements in the Town of Berlin;
  - b. Identify areas where new youth programs are needed;
  - c. Communicate with youth and youth organizations to determine the needs and interests of Town youth;
  - d. Research funding sources, prepare funding proposals and access funding for youth programs;
  - e. Ensure that a variety of sports, recreation, cultural, mentoring and educational programs for youth are planned and implemented In the Town of Berlin and ensure that information concerning those programs is distributed and advertised;
  - f. Develop and promote youth activities for after school, weekends and during the summer;
  - g. Provide support and coordination with existing youth organizations, encourage organizations to include youth programs and evaluate the effectiveness of existing youth programs;
  - h. Schedule and coordinate youth activities, facilities and needed volunteers and monitor the use of Town equipment and facilities;
  - i. Supervise activities for youth, encourage youth participation and recruit, train and direct volunteers for activities;
  - j. Coordinate community relations campaigns to promote awareness of available youth programs;
  - k. Maintain contact with local, regional and national youth organizations;
  - l. Provide statistical data regarding youth programs including records of expenditures and provide recommendations for budget preparation and program expenditures;
  - m. Maintain records and prepare reports regarding youth programs, costs, numbers of participants and other relevant information regarding youth programs;
  - n. Provide reports, on a quarterly basis, to the Mayor and Council concerning available youth programs, which shall include the number of participants from Berlin, the age of the participants and the percentage of participants from low or moderate income families, and attend meetings of the Mayor and Council and Berlin Parks Commission as requested;
  - o. Report to the Town Administrator and/or designee as required;
  - p. Ensure that all youth programs and activities are implemented according to relevant policies and procedures.
  
4. Termination: This Agreement may be terminated by either party upon sixty (60) days written notice.

Entered into the date above written.

MAYOR AND COUNCIL OF THE TOWN OF BERLIN,  
MARYLAND

WORCESTER YOUTH & FAMILY SERVICES



---

Wm. Gee Williams, III  
Mayor

---

Steve Taylor  
Executive Director

JUN 3 '16 PM 3:29



SPECIAL EVENT  
TOWN STREET CLOSURE/REQUEST FOR SERVICES



This form must be completed in order to hold an event in the Town of Berlin on public streets or property. Additional documents from the Town of Berlin, or another entity, may be required. Please provide as much information as possible. Form must be signed and appropriate contact information provided to be considered. "Same as last year" will not be accepted for any category.

FORM MUST BE COMPLETED AND SUBMITTED:

NO LESS THAN 60 DAYS IN ADVANCE OF THE EVENT IF STATE ROADS ARE TO BE CLOSED (SEE PAGE 2)  
NO LESS THAN 30 DAYS IN ADVANCE OF ANY OTHER EVENT

Today's Date: 6-3-16  
Requested Date(s) of the event: FRIDAYS 6-10 thru August 26th

Event Start time: 6pm Road Closure Start: /

End time: 9pm End: /

Name of Event: Music on Main

Location of Event: COMMERCE STREET \*

\*If activity is in either Stephen Decatur or Henry Park, Parks Reservation form must be complete.

Estimated number of attendees: \_\_\_\_\_

Applicant Name: Ivy Main

Applicant Cell Phone: 410-707-4441

Sponsoring Organization or Business Name: BERLIN MAIN STREET

Email: iwells@berlinmd.gov

Person(s) to Contact Day of Event: Name: Ivy Wells, Cell # 410-707-4441  
Name: Steve Frene, Cell # 410-641-2998

Description of event: MUSIC

The event sponsor hereby agrees to the following conditions:

1. The Town of Berlin, its representative(s) and/or agent(s) will be held harmless for any loss, damage, or liability incurred in connection with the event.
2. The event sponsor is appropriately insured. Proof of insurance may be required; if the event sponsor does not possess the appropriate insurance, the Town of Berlin may require the purchase of one-time event insurance through the Town of Berlin's insurance carrier.
3. The event sponsor will be responsible for any costs incurred by the Town as a result of damage done during the course of the event to Town-owned, rented, or leased properties.
4. The event sponsor and/or its participating vendors are responsible for obtaining any licenses, permits, rights-of-way, etc. for the event, including any permits required by the Worcester County Health Department, the State Highway Administration or any other agencies as appropriate. Any fees or other conditions associated with such will be the sole responsibility of the event sponsor and/or its participating vendors.
5. Activities must occur within the time frame(s) specified. It is the sponsoring organization's responsibility to ensure that vendors, performers, etc. do not set-up earlier than agreed, and will begin break-down of booths, equipment, etc. promptly. Vendors, etc. must be clear of the street/area within one hour of event ending. Private property remaining beyond one hour will be removed from the street.

By my signature below I identify myself as the representative of the above-named organization and/or the individual responsible for adherence to the conditions as set forth.

Signature: [Handwritten Signature]

Date: 6-3-16

Printed Name: Ivy Wells

Approved by the Mayor and Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. For \_\_\_\_\_ Opposed \_\_\_\_\_ Abstain.

**DETAILS OF EVENT:**

Shaded areas for office use only

<b>Street Closure</b>		Note: Location map is required detailing streets to be blocked. Additionally, a State Highway Administration Request for Road Closure may be required.	
Will event require the closure of street(s)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Barricade locations must be marked on map. <i>Commerce Street Only</i>	
Blockage/Closure Time:	Start: <i>6pm</i> End: <i>9pm</i>	If streets to be closed are <i>Main Street, Bay Street, Broad Street, Old Ocean City Blvd., or William Street</i> , for more than one hour, State Highway Administration Road Closure Form must be completed.  State Highway Form submitted if applicable? <input type="checkbox"/>	
Will on-street parking need to be cleared?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Notes: # of barricades <i>0</i>	No-Parking signs to be placed:
Will parking areas need to be cleared/closed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Barricades to be dropped off: <i>0</i> Time/Date	<i>0</i> Time/date Must be placed 24 hours prior to event.

<b>Electric</b>		Note: The Electric Department will assist with completion of Service Form.	
Will there be vendors or activities requiring access to electricity?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Request for Electric Service form required including information from each vendor/activity requiring electric.  Request for Electric Form submitted? <input type="checkbox"/>	
Will there be banners to be hung?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, Request to Hang Banner form needed. Banner Form submitted? <input type="checkbox"/>	

<b>Other Items/Services:</b>		If applicable, items listed are in addition to those normally in place.	
Trash cans	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	# Required _____	Trash cans to be placed: _____ Time/date
Picnic Tables and/or Chairs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	# Required _____ # Required _____	To be placed: _____ Time/date
Stage	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Location to be placed must be marked on map.	Stage to be placed: _____ Time/date
Porta-potties	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	# Standard <u>2</u> # Accessible <u>1</u>	Porta-potties will be placed in the alley on Pitts Street: _____ Time/date
Signs: Other than banners or parking	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Informational signs during the event not applicable.	If signs are for the promotion of the event (yard signs, temporary billboards, banners other than those hung by the Town Electric Department, etc.) a Sign Permit may be required. Planning Office review _____ Date  Sign Permit needed/submitted? <input type="checkbox"/>
Will there be vendors/individuals selling goods or services as part of the event?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Vendor's Application and Certification for Peddling and Soliciting will be required for EACH vendor participating in the event. If event/activity is in a municipal park a Business Use of Park Application will be required IN ADDITION to Vendor's Application and Certification for Peddling and Soliciting.  Vendor's Permit(s) needed/submitted? <input type="checkbox"/>	

Additional Forms Required:	Yes	No	Date Rec'd	Initials
State Highway Administration Request for Road Closure		<input checked="" type="checkbox"/>	<i>6-3-16</i>	<i>ST</i>
Park Reservation Application and Permit		<input checked="" type="checkbox"/>		
Request for Electric Service		<input checked="" type="checkbox"/>		
Request for Banner Placement		<input checked="" type="checkbox"/>		
Sign Permit		<input checked="" type="checkbox"/>		
Vendor's Application and Certification for Peddling and Soliciting		<input checked="" type="checkbox"/>		
Business Use of Park Application		<input checked="" type="checkbox"/>		
Proof of Insurance		<input checked="" type="checkbox"/>		
Other:		<input checked="" type="checkbox"/>		



JUN 3 '16 AM 11:36

June 2, 2016

Vicki Magin  
Town of Berlin  
Re: Friday Night Acoustic Jams Street Closing Request

Dear Vicki,

We would like to request the closing of Commerce Street at the intersection of Main Street down to the east side of the Parking Lot entrance on Friday evenings from 6pm (after Taylor Bank closes) until 9pm. The reason for this request is to provide a safe area for live acoustic music performances and spectators during the warmer months hosted by Steve Frene of Victorian Charm.

We will invite other businesses to stay open on Friday evenings and create a festive attraction for families and visitors to Berlin. We will also put together a group marketing effort to promote this ongoing event. We have been doing these performances on the sidewalk for the past few years and local as well as visitors to Berlin really enjoy hearing the music. We encourage other musicians, of all ages, skill levels, and musical talents to join in.

We will provide the traffic cones needed to block off Commerce Street and there is no need for No-Parking signs as any vehicles parked on the street will not be in the way and will have an easy exit going west on this One-Way street.

This concept was presented to Ivy Wells during the May Merchant meeting and was unanimously approved by all merchants in attendance. (Including Shelly Bruder, owner of Bruder Hill also on Commerce St., Donna Compher, owner of Sisters Boutique on Main St and President of the Berlin Chamber of Commerce, and Larnet St. Amant, Executive Director of the Berlin Chamber of Commerce.)

Thank you so much for your consideration!

Respectfully,



Steve and Debbie Frene  
Victorian Charm  
100 N. Main St.  
Berlin, MD 21811  
410-641-2998

rec'd 6/9/16



**SPECIAL EVENT  
TOWN STREET CLOSURE/REQUEST FOR SERVICES**



This form must be completed in order to hold an event in the Town of Berlin on public streets or property. Additional documents from the Town of Berlin, or another entity, may be required. Please provide as much information as possible. Form must be signed and appropriate contact information provided to be considered. "Same as last year" will not be accepted for any category.

**FORM MUST BE COMPLETED AND SUBMITTED:**

**NO LESS THAN 60 DAYS IN ADVANCE OF THE EVENT IF STATE ROADS ARE TO BE CLOSED (SEE PAGE 2)  
NO LESS THAN 30 DAYS IN ADVANCE OF ANY OTHER EVENT**

Today's Date: June 9, 2016

Event Start time: 5p Road Closure Start: 4p

Requested Date(s) of the event: July 8, Aug 12 + sep 9

End time: 9p End: 9:30p

Name of Event: 2nd Friday Art Stroll

Location of Event: Jefferson St\*

Estimated number of attendees: 18 vendors

\*If activity is in either Stephen Decatur or Henry Park, Parks Reservation form must be complete.

Applicant Name: Heather Layton

Applicant Cell Phone: 410 629 9301

Sponsoring Organization or Business Name: Berlin Arts + Entertainment

Email: 2ndfridayartstrolle@gmail.com

Person(s) to Contact Day of Event: Name: Heather Layton Cell # 410 629 9301  
Name: Robin Tameselli Cell # 301 785 6161

Description of event: We would like to add a "Artisan Fair" to our 2nd Friday Art Stroll. We currently scatter vendors along the sidewalk & think it will benefit everyone by localizing the vendors to one location.

The event sponsor hereby agrees to the following conditions:

1. The Town of Berlin, its representative(s) and/or agent(s) will be held harmless for any loss, damage, or liability incurred in connection with the event.
2. The event sponsor is appropriately insured. Proof of insurance may be required; if the event sponsor does not possess the appropriate insurance, the Town of Berlin may require the purchase of one-time event insurance through the Town of Berlin's insurance carrier.
3. The event sponsor will be responsible for any costs incurred by the Town as a result of damage done during the course of the event to Town-owned, rented, or leased properties.
4. The event sponsor and/or its participating vendors are responsible for obtaining any licenses, permits, rights-of-way, etc. for the event, including any permits required by the Worcester County Health Department, the State Highway Administration or any other agencies as appropriate. Any fees or other conditions associated with such will be the sole responsibility of the event sponsor and/or its participating vendors.
5. Activities must occur within the time frame(s) specified. It is the sponsoring organization's responsibility to ensure that vendors, performers, etc. do not set-up earlier than agreed, and will begin break-down of booths, equipment, etc. promptly. Vendors, etc. must be clear of the street/area within one hour of event ending. Private property remaining beyond one hour will be removed from the street.

By my signature below I identify myself as the representative of the above-named organization and/or the individual responsible for adherence to the conditions as set forth.

Signature: Heather Layton

Date: 6-9-16

Printed Name: Heather Layton

Approved by the Mayor and Council on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. For \_\_\_\_\_ Opposed \_\_\_\_\_ Abstain.

cc: MB 6/9/16 - um





**Electric Locations:**

REVIEW WITH ELECTRIC DEPARTMENT.  
Request for Electric Service must be completed. Circle # where electric is needed

- 1. West/Main Parking
- 2. Town Parking (Artisan's Way)
- 3. Taylor Bank (Commerce)
- 4. Pitt St. (1st Pole)
- 5. Broad St. (1st Pole)
- 6. Jefferson St. (1st Pole)
- 7. Sign post-Town Center (Main/Bay)
- 8. Secondary Pedestal feed for hotel tree (only after dark)
- 9. Baker St. (1st Pole)

Office Use only:

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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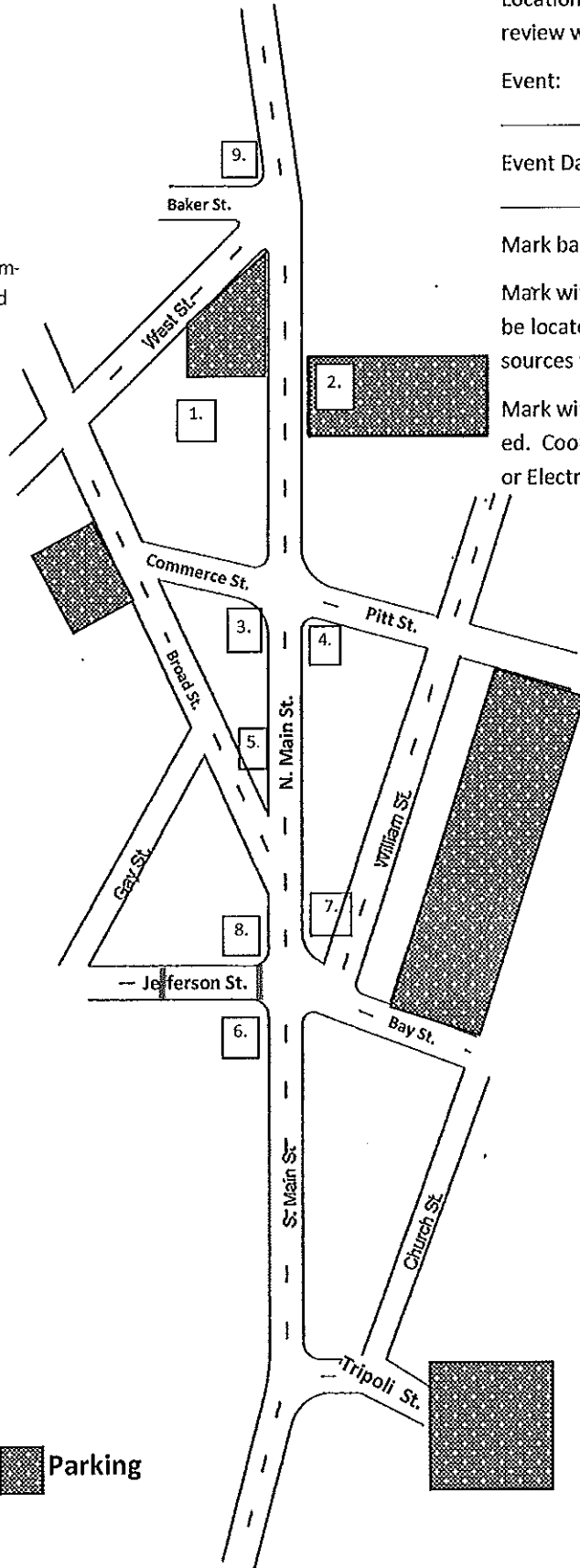
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 Parking



**MAP FOR STREET CLOSURE AND SERVICES**

Location of all services dependent on review with appropriate department.

Event: \_\_\_\_\_

Event Date: \_\_\_\_\_

Mark barricade locations with red line.

Mark with "P" where porta-potties are to be located. Coordination with Water Resources will be required.

Mark with "S" where stage is to be located. Coordination with Public Works and/or Electric Department may be required.

**ORDINANCE 2016-03**

An Ordinance of The Mayor and Council of the Town of Berlin, Maryland Amending Chapter 26, Article III, Division 4, Section 26-158(b), for the purpose of clarifying said section.

BE IT ENACTED that Section 26-158(b) be amended as follows:

Sec. 26-158. - Inspection schedule and reports

- (a) The developer shall notify the town at least 48 hours before commencing any work in conjunction with the site development plan and Stormwater management plan and upon completion of the project. Upon completion of the project, a final inspection will be conducted.
- (b) Inspections shall be made and documented for each environmental site design (ESD) planning technique and practice at the stages of construction specified in the design manual by the town, ~~or its authorized representative; or certified by a professional engineer licensed in the state.~~ At a minimum, all environmental site design (ESD) and other nonstructural practices shall be inspected upon completion of final grading, the establishment of permanent stabilization, and before issuance of use and occupancy approval.
- (c) Written inspection reports shall include:
  - (1) The date and location of inspection;
  - (2) Whether construction was in compliance with the approved Stormwater management plan;
  - (3) Any variations from the approved construction specifications; and
  - (4) Any violations that exist
- (d) The owner/developer and on-site personnel shall be notified in writing when violations are observed. Written notification shall describe the nature of the violation and the required corrective action
- (e) No work shall proceed on the next phase of development until the town inspects and approves the work previously completed and furnishes the developer with the results of the inspection reports as soon as possible after completion of each required inspection.

(Code 1977, §93-21; Ord. No 1986-3, 10-6-1986; Ord. No. 2001-6, 8-13-2001; Ord. No2002-1, 1-28-2002; Ord. No. 2010-03, § 93-21, 4-23-2010)

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Council of the Town of Berlin, Maryland by affirmative vote of \_\_\_\_\_ to \_\_\_\_\_opposed.

\_\_\_\_\_  
Elroy Brittingham, Sr., Vice President

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016

\_\_\_\_\_  
Wm. Gee Williams, III Mayor

\_\_\_\_\_  
Laura Allen, Town Administrator

**ORDINANCE 2016-04**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN TO APPROVE THE FY17 BUDGET AS SUBMITTED.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016 BY THE COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF \_\_\_\_\_ TO \_\_\_\_\_ OPPOSED.

\_\_\_\_\_

Elroy Brittingham, Sr., Vice President

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016

\_\_\_\_\_

Wm. Gee Williams, III Mayor

\_\_\_\_\_

Laura Allen, Town Administrator



ANNEXATION RESOLUTION NO. 2016-07

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, A MUNICIPAL CORPORATION OF THE STATE OF MARYLAND, PROPOSING THE ANNEXATION TO THE TOWN OF A CERTAIN AREA OF LAND SITUATED AND CONTIGUOUS TO AND ADJOINING UPON THE CORPORATE LIMITS OF THE TOWN OF BERLIN AND PROVIDING FOR THE CONDITIONS AND CIRCUMSTANCES APPLICABLE TO THE PROPOSED CHANGES IN THE BOUNDARY OF THE TOWN OF BERLIN OF THE TOWN OF BERLIN

WHEREAS, The Town, as owner, has petitioned the Worcester County Commissioners to annex certain property parcels known as Worcester County Tax Map Number 25, Parcel 52, Parcel 57, and Parcel 410.

WHEREAS, Upon annexation the properties are to be zoned R-1 Residential District.

WHEREAS, The Town will serve the properties with municipal water, sewer, trash collection, police protection and all other related services afforded to properties within the corporate limits of the Town.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Berlin as follows:

The above described property shall be added to the Town, subject to the provisions of the Berlin Municipal Charter and the conditions referred to herein.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the Mayor and the Town of Berlin, Maryland, by affirmative vote of \_\_\_\_\_ to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

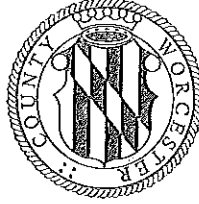
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Elroy Brittingham Sr, Vice President

ATTEST:

\_\_\_\_\_  
Wm. Gee Williams, III, Mayor

\_\_\_\_\_  
Laura Allen, Town Administrator

TEL: 410-632-1194  
FAX: 410-632-3131  
E-MAIL: admin@co.worcester.md.us  
WEB: www.co.worcester.md.us



OFFICE OF THE  
COUNTY COMMISSIONERS

HAROLD L. HIGGINS, CPA  
CHIEF ADMINISTRATIVE OFFICER  
MAUREEN F.L. HOWARTH  
COUNTY ATTORNEY

COMMISSIONERS  
MADISON J. BUNTING, JR., PRESIDENT  
MERRILL W. LOCKFAW, JR., VICE PRESIDENT  
ANTHONY W. BERTINO, JR.  
JAMES C. CHURCH  
THEODORE J. ELDER  
JOSEPH M. MITRECIC  
DIANA PURNELL

## Worcester County

GOVERNMENT CENTER  
ONE WEST MARKET STREET • ROOM 1103

SNOW HILL, MARYLAND

21863-1195

March 17, 2016

MAR 21 '16 PM 12:31

Laura Allen, Town Administrator  
Mayor and Council of Berlin  
10 William Street  
Berlin, Maryland 21811

RE: Annexation of Former Tyson Property

Dear Ms. Allen:

Please be advised that at our meeting of March 15, 2016, the Worcester County Commissioners reviewed the proposed annexation of properties located on the northerly side of Maryland Route 346 (Old Ocean City Boulevard) which properties are designated as Parcels 52, 57 and 410 on Worcester County Tax Map 25, more commonly known as the old Tyson chicken plant properties. While these parcels are currently designated on the Worcester County land use map in the Growth Area land use category and are currently zoned I-2 Heavy Industrial District under the Worcester County Zoning Ordinance, the Commissioners understand that these parcels are proposed to be rezoned to R-1 Residential Zoning District under the Berlin Zoning Ordinance. While the proposed zoning is significantly different from the existing zoning and land use category in which this parcel is designated under the County Plan and Regulations, the Commissioners concur with the proposed rezoning of these properties upon annexation.

Thank you for providing us with the opportunity to review and comment on this application. If you should have any additional questions or concerns, please feel free to contact either me or Harold L. Higgins, Chief Administrative Officer, at this office.

Sincerely,

Madison J. Bunting, Jr.  
President

MJBjr/KS:dd

cf: Edward A. Tudor, Director of Development Review & Permitting  
CC500/Laura Allen

*Citizens and Government Working Together*



**MOTION OF THE MAYOR AND COUNCIL No. 2016-26**

A motion of the Mayor and Council of the Town of Berlin approving proposals from Crosby and Associates.

- A) Resident Inspector Services in the amount of \$63,900.00.
- B) Construction Phase Services in the amount of \$39,358.00.

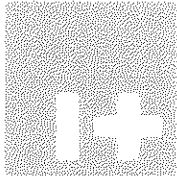
Payable in advance, pertaining to the construction of the new Berlin Police Department.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Mayor and Council of the Town of Berlin, Maryland by affirmative vote of \_\_\_\_\_ to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Sr. Vice President

\_\_\_\_\_  
Wm. Gee Williams, III, Mayor

ATTEST: \_\_\_\_\_  
Laura Allen, Town Administrator



**CROSBY  
ASSOCIATES**

Architecture : Planning : Interiors : Community Engagement

May 1, 2016

Mr. Arnold Downing, Chief  
Berlin Police Department  
10 Williams Street  
Berlin, MD 21811

Re: Construction Administration Contract  
New Police Headquarters Building  
Berlin, MD

Dear Chief Downing:

The following is our proposal to provide limited Resident Inspector Services for your new Police Headquarters Building. Our services will be provided during the entire construction period. For purposes of this proposal, the construction period will be **Fourteen Calendar Months (14)** after the date of the issuance of the Notice to Proceed to the General Contractor awarded the construction contract by the Town of Berlin, Maryland.

### **SCOPE OF SERVICES**

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#### **RESIDENT INSPECTOR DEFINITION**

The Resident Inspector is a representative of the Architect and the Owner who oversees construction, handles administrative matters, and ensures that construction is in accordance with the contract documents. The Resident Inspector works under the direct supervision of the Architect and shall reside at the construction job site for the duration of the construction period as defined in this agreement.

#### **ROLES AND RESPONSIBILITIES**

The Resident Inspector shall be the on-site agent of the Architect. As the on-site representative he shall render the following services:

##### **Construction Progress Monitoring**

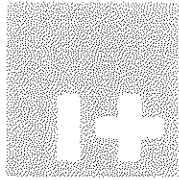
Monitor the progress of the work on a daily basis and maintain a detailed daily Job Log book that will detail the work of the General Contractor. Job progress documentation will include detailing what forces are present on the job site, subcontractors present and working on the job site and what work has been started and completed in each workday. The Resident Inspector will advise the Architect on the progress of the work on a weekly basis at their regularly scheduled Job Progress Update meeting on the job site.

##### **Evaluations of the Work**

The Resident Inspector shall become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of his on-site observations, the Resident Inspector shall keep the Architect and the Owner reasonably informed about the progress and quality of the

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portion of the Work completed, and report to the Architect known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and defects and deficiencies observed in the Work.

#### **Contractor Point of Contact Services**

The Resident Inspector shall be the initial point of contact for all questions that the General Contractor may have regarding the project. The Resident Inspector will answer questions regarding the design intent of the drawings and specifications when possible. Answers will be in writing via job site directives and forwarded to the Architect for his final approval or correction. The Resident Inspector shall forward to the Architect all questions related to the work that cannot or should not be answered by the Resident Inspector. The Resident Inspector shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Resident Inspector be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

#### **Shop Drawings and Submittals Review**

The Resident Inspector shall review all Shop Drawings and Submittals from the General Contractor and advise the Architect on actions to be taken and whether these Shop Drawings and Submittals are in accordance with the Contract Documents. The Resident Inspector shall maintain a Shop Drawings and Submittals log document the actions taken by the Architect and the General Contractor.

#### **Requests for Information Management**

The Resident Inspector shall be the initial point of contact for the General Contractor for all Requests for Information from the contractor regarding the design intent of the contract documents. The Resident Inspector will review the RFI's from the contractor and make recommendations to the Architect on the proper response to be made to the contractor's request. The Resident Inspector shall maintain an RFI log and document the responses from the Architect to the General Contractor and from the General Contractor to the Architect.

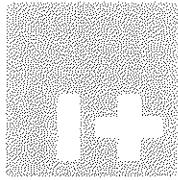
#### **Certificates for Payment Review Services**

The Resident Inspector shall review and recommend to the Architect the amounts due the General Contractor. The Resident Inspector's recommendations to the Architect for certification for payment shall constitute a representation to the Architect and the Owner, based on the Resident Inspectors evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the Resident Inspector's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

#### **Change Directives and Change Order Review Services**

The Resident Inspector shall assist the Architect and Owner in managing the change order process for the project. The General Contractor shall forward to the Resident Inspector all Change Directive and Change Order requests. The Resident Inspector will review these requests and forward to the Architect his recommendations for action to be taken. The Resident Inspector

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shall maintain an RFI log and document the responses from the Architect to the General Contractor and from the General Contractor to the Architect.

**Construction Progress Photographic Documentation**

The Resident Inspector shall document on a regular basis the progress of the work by means of digital photography. He will maintain a digital record of the work and submit to the Architect and the Owner copies of the record for their files and use.

**On-site Regulatory Inspection Reviews**

The Resident Inspector shall attend all inspections of the progress of the work by regulatory bodies having jurisdiction of the work. Inspection reviews shall be at dates and times determined by the General Contractor. Resident Inspector will document these inspections and maintain copies of any inspection reports provided by the regulatory inspection agencies.

**Job Progress Meeting Attendance**

The Resident Inspector shall attend all monthly job progress meetings and weekly job progress meetings with the Architect and the Owner.

**Owner's Representative on the Site**

The Resident Inspector shall be the Owner's on-site representative. The Inspector shall be available to meet with and advise the Owner on a daily basis when the Inspector is on the construction site. The Resident Inspector shall act as the conduit for all questions from the Contractor to the Owner during the course of the construction of the project.

**Project Completion Services**

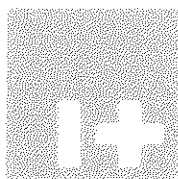
The Resident Inspector will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; review Certificates of Substantial Completion to be issued by the Architect; receive from the Contractor and forward to the Architect, for the Architect's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and assist the Architect in the issuance of a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

The Resident Inspector shall assist the Architect's inspections to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**Resident Inspector's Offices**

The Resident Inspector shall maintain offices in the Construction Job Trailer provided by the General Contractor for the duration of the project as spelled out in the Construction Documents for the project.

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**RESIDENT INSPECTOR'S TIME & REVIEW RESPONSIBILITIES**

The Resident Inspector shall provide Construction Phase Services as described below:

- One ( 1 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- Thirty (30) hours per week on-site in a minimum of Six (6) hours per day cycles for the construction period defined below.
- Two (2) inspections for any portion of the Work to determine whether such portion of the work is substantially complete in accordance with the requirements of the Contract Documents.
- Two (2) inspections for any portion of the Work to determine final completion

If the services covered by this Agreement have not been completed within Fourteen (14) Months of the date of the start of construction, through no fault of the Resident Inspector, extension of the Resident Inspector's services beyond that time shall be compensated as Additional Services.

**MODIFICATION TO THE ARCHITECT'S CONSTRUCTION ADMINISTRATION CONTRACT**

If the Owner agrees to retain the services of the Resident Inspector as defined in this proposal the Architect's Contract for Construction Administration Services shall be modified as follows:

- The Architect shall make Fifty-six (56) visits to the site over the duration of the Project during construction.

**COMPENSATION FOR SERVICES**

The services outlined above will be provided on a FIXED PRICE basis. The total cost of these services is SEVENTY-ONE THOUSAND DOLLARS AND ZERO CENTS (\$71,000.00).

**REIMBURSABLE EXPENSES**

In addition to the fees listed above, you will be responsible to reimburse the Architect for expenses directly related to this project. Expenses to be reimbursed are listed on our Hourly Rates and Expense schedule attached to the proposal.

**PAYMENT FOR SERVICES**

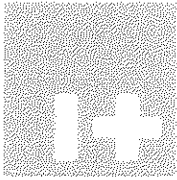
You will be invoiced for our work as it is being completed. All invoices are due upon receipt. Upon signing of this agreement and prior to the start of the work, the Owner will pay a **RETAINER PAYMENT** of **NINETEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$19,500.00)**. Retainer payment will be credited on future invoices submitted for payment.

**CREDIT FOR PAYMENT IN ADVANCE OF SERVICE**

If the Owner, for their convenience, elects to pay the entire cost of service in advance as defined above the cost of service shall be reduced as follows:

<b>Service Cost for Resident Inspection</b>	<b>\$71,000.00 x 90% =</b>	<b>\$63,900.00</b>
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If you find this proposal acceptable, please sign below and return one signed copy with your retainer payment.

**APPROVED BY: OWNER**

**FEE AMOUNT:** \_\_\_\_\_

\_\_\_\_\_  
The Town of Berlin

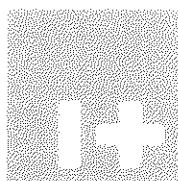
**DATE:** \_\_\_\_\_

**APPROVED BY: ARCHITECTS**

\_\_\_\_\_  
Crosby & Associates, AIA, LLC

**DATE:** \_\_\_\_\_

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# CROSBY ASSOCIATES

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May 1, 2016

Mr. Arnold Downing, Chief  
Berlin Police Department  
10 Williams Street  
Berlin, MD 21811

Re: Construction Administration Contract  
New Police Headquarters Building  
Berlin, MD

Dear Chief Downing:

The following is our proposal to provide limited Construction Administration Services for your new Police Headquarters Building. Our services will be provided during the entire construction period. For purposes of this proposal, the construction period will be **Fourteen Calendar Months (14)** after the date of the issuance of the Notice to Proceed to the General Contractor awarded the construction contract by the Town of Berlin, Maryland.

## **SCOPE OF SERVICES**

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### **CONSTRUCTION PHASE SERVICES**

#### **GENERAL**

The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

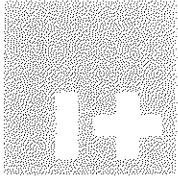
The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

The Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### **EVALUATIONS OF THE WORK**

The Architect shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be

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in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

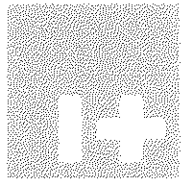
Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

#### **CERTIFICATES FOR PAYMENT TO CONTRACTOR**

The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions

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received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

The Architect shall maintain a record of the Applications and Certificates for Payment.

### **SUBMITTALS**

The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

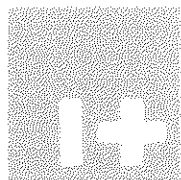
In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

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#### **CHANGES IN THE WORK**

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

The Architect shall maintain records relative to changes in the Work.

#### **PROJECT COMPLETION**

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### **ADDITIONAL SERVICES**

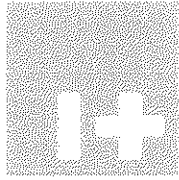
Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided shall entitle the Architect to compensation and an appropriate adjustment in the Architect's schedule.

Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not

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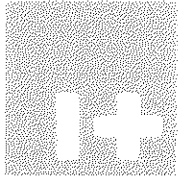
limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

- Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- Preparation for, and attendance at, a public presentation, meeting or hearing;
- Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- Evaluation of the qualifications of bidders or persons providing proposals;
- Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- Assistance to the Initial Decision Maker, if other than the Architect.

To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- Evaluating an extensive number of Claims as the Initial Decision Maker;
- Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- One ( 1 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- Eighteen ( 18 ) visits to the site by the Architect over the duration of the Project during construction
- Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- Two ( 2 ) inspections for any portion of the Work to determine final completion

If the services covered by this Agreement have not been completed within Fourteen (14) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### **OWNER'S RESPONSIBILITIES**

Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

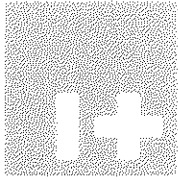
The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

#### **ADDITIONAL PROVISIONS FOR ADMINISTRATION OF THE CONTRACT**

The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

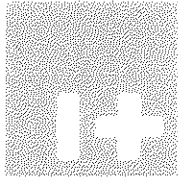
The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and

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material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

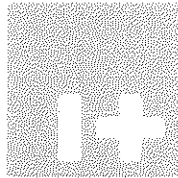
The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the contract between the Owner and Contractor. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions.

The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor.

If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of

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authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

#### **CONSTRUCTION ADMINISTRATION SERVICES PROVIDED BY ARCHITECT'S CONSULTANTS**

The services described above shall include the time and efforts by the Architect's Consultants currently under contract for the design of this project. The consultants included herein include the following consultants:

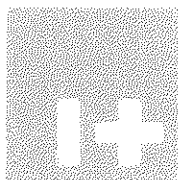
- Civil Engineers – John Salm Engineering, Inc.
- Structural Engineers – Abba Engineering, LLC
- MEP Engineers – Claggett & Associates, LLC

The time required for these consultants to provide the review services listed above as provided by the Architects shall be included in the compensation defined in this agreement with the exception of time for any visitations to the site during the construction period. Any inspections of the progress of the work during the construction period by the consultants listed above shall be on an as needed basis as an additional service. All such visitations shall be approved in advance by the Owner. The Architect's Consultants will be compensated for each visit on an hourly charge basis.

#### **COMPENSATION FOR SERVICES**

The services outlined above will be provided on a **FIXED PRICE** basis. The total cost of these services is **FIFTY FOUR THOUSAND SIX HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$54,650.00)**.

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### REIMBURSABLE EXPENSES

In addition to the fees listed above, you will be responsible to reimburse the Architect for expenses directly related to this project. Expenses to be reimbursed are listed on our Hourly Rates and Expense schedule attached to the proposal.

### PAYMENT FOR SERVICES

You will be invoiced for our work as it is being completed. All invoices are due upon receipt. Upon signing of this agreement and prior to the start of the work, the Owner will pay a **RETAINER PAYMENT** of **SIXTEEN THOUSAND FOUR HUNDRED DOLLARS AND ZERO CENTS (\$16,400.00)**. Retainer payment will be credited on future invoices submitted for payment.

### COST OF THE WORK IF RESIDENT INSPECTOR RETAINED FOR THIS PROJECT

If Crosby & Associates is retained to provide Resident Inspector services for this project, the fees stipulated above will be reduced by **TWENTY PERCENT (20%)**. The resultant fixed fee for the Architect's Construction Administration Services will be **FORTY THREE THOUSAND SEVEN HUNDRED TWENTY DOLLARS AND ZERO CENTS (\$43,720.00)**. Fee reduction and services to be provided by the Architect are explained in the proposal to provide Resident Inspector services.

### CREDIT FOR PAYMENT IN ADVANCE OF SERVICE

If the Owner, for their convenience, elects to pay the entire cost of service in advance as defined above the cost of service shall be reduced as follows:

Service Cost without Resident Inspection	\$54,650.00 x 90% =	\$49,185.00
Service Cost with Resident Inspection	\$43,720.00 x 90% =	\$39,358.00

If you find this proposal acceptable, please sign below and return one signed copy with your retainer payment.

**APPROVED BY: OWNER**

**FEE AMOUNT:** \_\_\_\_\_

\_\_\_\_\_  
The Town of Berlin

**DATE:** \_\_\_\_\_

**APPROVED BY: ARCHITECTS**

\_\_\_\_\_  
Crosby & Associates, AIA, LLC

**DATE:** \_\_\_\_\_

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ORDINANCE NO. 2016-05

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, Amending Chapter 4, Article II, "Dogs".

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN THAT Chapter 4, "Animals", Article II, "Dogs", Sections 4-19 and 20 be amended as follows:

1. That the term "Leash" and its definition be added to Sec. 4-19. "Definitions" in its appropriate alphabetical position, as follows:

*Leash* means a chain, rope, or strap attached to the collar or harness of an animal, especially a dog, and used to lead it or hold it in check.

2. That section 4-20 be repealed and replaced in its entirety as follows:

~~Sec. 4-20. Running at large restricted.~~

~~(a) No owner of a dog, whether such dog is licensed or unlicensed, shall permit such dog to run at large off the premises of the owner in the town, nor shall such owner allow a dog to engage in the actions which constitute a public nuisance as herein defined.~~

~~(b) A dog shall be deemed to be running at large if, off the premises of the owner, the dog is not restrained by a leash, no longer than eight feet, which is held by the owner or master.~~

Sec. 4-20. Running at large restricted; Leash required.

(a) No owner of a dog shall permit such dog to run at large off the premises of the owner in the town.

(b) All dogs must be restrained by a leash which is held by the owner or the owner's agent, unless on the premises of the owner.

THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and thereafter a statement of the substance of the Ordinance was published as required by law.

A PUBLIC HEARING was held and this Ordinance was adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of \_\_\_\_\_ in favor to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice President

This Ordinance was approved this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Wm. G. Williams, III, Mayor

ATTEST:

\_\_\_\_\_  
Laura Allen, Town Administrator





ORDINANCE NO. 2016-06

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, Amending Chapter 22, Article III, "Parks".

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN THAT Chapter 22, Article III, "Parks", Section 22-49, "Rules and Regulations" §(3) be amended as follows:

(3) ~~No animal of any type shall be allowed to occupy the parks of the town except if said animal is on a leash and under the control of the owner or owner's agent.~~ **All applicable provisions of Chapter 4, "Animals" shall apply.**

THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and thereafter a statement of the substance of the Ordinance was published as required by law.

A PUBLIC HEARING was held and this Ordinance was adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by the Mayor and Council of the Town of Berlin, Maryland, by affirmative vote of \_\_\_\_\_ in favor to \_\_\_\_\_ opposed, with \_\_\_\_\_ abstaining.

\_\_\_\_\_  
Elroy Brittingham, Vice President

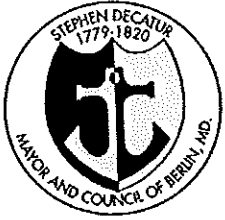
This Ordinance was approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Wm. G. Williams, III, Mayor

ATTEST:

\_\_\_\_\_  
Laura Allen, Town Administrator

# Staff Report



# Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov



**Mayor**  
Wm. Gee Williams, III

**Vice President**  
Elroy Brittingham, Sr.

**Council Members**  
Dean Burrell, Sr.  
Thom Gulyas  
Lisa Hall  
Troy Purnell

**Town Attorney**  
David Gaskill

**Town Administrator**  
Laura Allen

## MEMORANDUM

DATE: June 6, 2016

TO: Mayor and Council  
Laura Allen, Town Administrator

FROM: Mary Bohlen, *MJB* Administrative Services Director/Liaison to the Board of Elections Supervisors

RE: 2016 Election Dates

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Following please find a list of deadlines and other dates relevant to the 2016 Regular Berlin Election.

7/12/16: Board Meeting, time TBD

9/2/16: Deadline for Candidates' Filing  
Deadline for Voter Registration

9/6/16: Begin Accepting Absentee Voting Applications  
Board Meeting, time TBD

9/27/16: Deadline for Absentee Applications rec'd by mail  
Deadline for Write-in Filing (will not appear on ballot)  
Deadline for written withdrawal

9/27/16: Board Meeting, time TBD

9/29/16: Deadline for mailing absentee ballot to voter

9/30/16: Deadline for Absentee Application in person

10/4/16: Election Day

10/11/16: Swearing-In at Regular Council Meeting

This information will be posted to the website in early July. A press release with relevant dates will go out at the beginning of August and legal advertising will be done on various dates beginning the week of August 15, 2016.

# Council Correspondence



# SONRISECHURCH

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May 1, 2016

Mayor William Gee Williams III  
Town of Berlin  
10 William Street  
Berlin, MD 21811

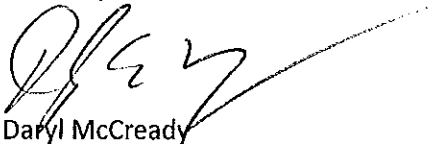
Dear Mayor Williams,

SonRise Church has been an active, contributing member of the Berlin community for over 14 years. During that span of years we have been "givers", not "takers". What we mean is that, until recently, we have not had a reason to call upon our local government for help. We just haven't had the need. So, it has been our privilege to give ourselves to our community; to pour our leadership, financial and people resources into the Berlin community with the hope of making it a better community.

That arrangement changed recently following our becoming the contract purchasers of the Merial Select site on Route 50. For the first time, we found ourselves on the other side. We needed help from our local Town government. We needed help with a rezoning request; we needed help in obtaining a site plan approval, building permit, etc. So we called upon our local government; we asked many questions of the Town staff. We needed help and when we asked for it we were overwhelmed by the positive response we received.

I write this letter to you, Mayor, and to the Council to let you know of the dedication, professionalism and helpfulness of the Town's staff. What a fine staff you have assembled! In particular, we want to call out for special recognition Laura Allen, Town Administrator, Dave Engelhart, Planning Director, and Tim Lawrence, Electric Utility Director. These staff members went out of their way to get us the answers we needed and to guide us through the process. We are grateful to be a contributing member of this great community. Thank you for all of the assistance you, the Council and staff have provided.

Sincerely,



Daryl McCready  
Lead Pastor

CC: Laura Allen  
Dave Engelhart  
Tim Lawrence



LARRY HOGAN  
*Governor*

BOYD K. RUTHERFORD  
*Lt. Governor*

KENNETH C. HOLT  
*Secretary*

ELLINGTON CHURCHILL, JR.  
*Deputy Secretary*

May 27, 2016

The Honorable William Gee Williams 11150  
Mayor  
Town of Berlin  
10 William Street,  
Berlin, MD 21811

MAY 31 '16 PM 12:00

Dear Colleague:

Under the guidelines established by the U.S. Department of Housing and Urban Development (HUD), notice is hereby given that the Maryland Department of Housing and Community Development (DHCD) will hold a series of public hearings on the development and administration of the Housing Trust Fund program, a portion of the Consolidated Plan.

The Consolidated Plan is a five-year planning document required by HUD that sets out overall Statewide goals and priorities for housing, community development, and economic development activities. Special emphasis is given under the Plan to provide assistance for extremely low-, low, and moderate-income persons. In addition to being a planning document, the Consolidated Plan also serves as the State's application to HUD for Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants (ESG), Housing Opportunity With AIDS (HOPWA) and the Housing Trust Fund (HTF).

The National Housing Trust Fund (HTF) is a new affordable housing production program that will complement existing Federal, State and local efforts to increase and preserve the supply of decent, safe and sanitary affordable housing for extremely low-income (ELI) and very low-income households (VLI). The HTF was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public law 110-289). Section 1131 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*)(Act) to add a new section 1337, entitled "Affordable Housing Allocation" and a new section 1338, entitled "Housing Trust Fund.

HTF is a formula grant program, which is to be administered by States. On January 30, 2015, HUD published an Interim Program Rule (FR-5246-I-03). The interim rule provided the guidelines for States to implement HTF. The Department of Housing and Community Development (DHCD) is the entity that will administer the HTF for Maryland. Each year, HUD will allocate the amount made available for the HTF based on the formula established in the interim rule. On May 6, 2016 HUD announced that Maryland's allocation for 2016 is \$3,000,000 based on HUD's formula allocation procedures. Grantees are required to use at least eighty (80) percent of each annual grant for rental housing; up to ten (10) percent for homeownership housing; and up to ten (10) percent for administrative and planning costs. HTF funds may be used for the production of affordable permanent housing through the acquisition, new construction, reconstruction and/or rehabilitation of housing. All HTF-assisted rental housing must meet a minimum affordability period of 30 years.

MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
7800 HARKINS ROAD, LANHAM, MD 20706  
301-429-7461, TOLL-FREE 800-756-0119, FAX 240-334-4732



All HTF-assisted homeownership housing must meet the minimum affordability period of 10, 20, or 30 years based on the amount of HTF investment in the unit.

It is to this purpose that we are holding public hearings - to gain input regarding how to develop and administer HTF. At this point, nothing has been written for the draft HTF program. These hearings are to gather initial input about what should be in the draft HTF program. It should be noted DHCD has written the Annual Plan, using the new online system using the data that HUD has provided and will submit the HTF as an amendment to the Annual Plan. Once the Housing Trust Fund portion of the Annual Plan is written it will be released for 30 days of public comment (including written comment) in mid-June, 2016. After the public has had several weeks to review the draft HTF Plan, a second set of hearings will be held in late June and early July. Additional comments, recommendations, and suggestions will be taken during these hearings (and during the full public comment period), with the final version of the HTF Plan submitted to HUD during the week of August 8, 2016.

The first set of hearings on the development of the draft Housing Trust Fund Plan will be held at the following dates, times, and places:

**Thursday, June 2, 2016 from  
10:30am to 11:30am**  
Town of Denton  
4 North 2<sup>nd</sup> Street  
2<sup>nd</sup> Floor  
Denton, Maryland 21629

**Wednesday, June 1, 2016 from 11:30am  
to 12:30pm**  
Sollers Point Multipurpose Building  
323 Sollers Point Road  
Classroom  
Dundalk, MD 21222

**Tuesday, May 31, 2016 from  
7:00pm to 8:00 pm**  
Maryland Department of Housing  
and Community Development  
Room 201  
7800 Harkins Road  
Lanham, Maryland 20706

**Friday, June 3, 2016, 2016 from  
2:00pm to 3:00 pm**  
Elgin Station Community Center  
40 Elgin Boulevard  
Hagerstown, MD 21740

All of the hearing rooms are accessible to persons with disabilities. Persons requiring a translator should request one at least three days prior to the hearing they plan to attend.

Any questions or comments should be directed to Elaine Cornick at the address, phone numbers, or e-mail listed below:

Mrs. Elaine Cornick, Director  
Multifamily Housing  
Maryland Department of Housing and Community Development  
7800 Harkins Road  
Lanham, Maryland 20706  
(301) 429-7777 or Maryland Relay for the Deaf at 1 (800) 735-2258.  
[nht.dhcd@maryland.gov](mailto:nht.dhcd@maryland.gov)

Thank you for your interest in the newest portion of the Consolidated Plan process.

Sincerely,

*Ja'Nai C. Keith*

Ja'Nai C. Keith  
Housing Policy Analyst  
Maryland Department of Housing and Community Development