

CITY OF HAGERSTOWN, MARYLAND

AN EMERGENCY ORDINANCE AUTHORIZING THE EXECUTION OF A DEED OF EASEMENT BY AND AMONG THE CITY OF HAGERSTOWN, HAGER5, LLC AND THE STATE OF MARYLAND TO THE USE OF THE DEPARTMENT OF GENERAL SERVICES FOR USE OF A PORTION AN UNIMPROVED ELEVEN FOOT PRIVATE ALLEY IN CONNECTION WITH THE CONSTRUCTION AND MAINTENANCE OF THE CITY'S CULTURAL TRAIL

RECITALS

WHEREAS, the City of Hagerstown, Maryland is a Municipal Corporation existing under and by virtue of the laws of the State of Maryland (hereinafter the "City"); and

WHEREAS, Hager5, LLC is a Maryland limited liability company and the owner in fee simple of the +/- 40,668.1 square feet of real property located along the north side of West Antietam Street identified and commonly known as 50-58 West Antietam Street, currently improved by a surface parking lot and accessory structures and BEING more particularly described in the Confirmatory Deed dated April 24, 2017 and recorded among the Land Records of Washington County in Liber 5489, folio 154 (the "Hager5 Property");

WHEREAS, the State of Maryland to the use of the Department of General Services ("the State") is the owner in fee simple of the +/- 29,029 square feet of real property located along the north side of West Antietam Street identified and commonly known as 36 West Antietam Street, currently improved by the District Court for Washington County and accessory structures and BEING more particularly described in the Deed dated April 9, 1998 from Vincent R. Groh, Grantor, which is recorded among the Land Records of Washington County in Liber 1404, folio 340 (the "State Property");

WHEREAS, the Hager5 Property and the State Property benefit from and include the rights to an unimproved eleven foot (11') private alley, as described in a Deed dated March 28, 1868 and recorded among the Land Records of Washington County in Liber 2, folio 564, as confirmed and modified by Agreement dated July 16, 1890 and recorded among the Land Records of Washington County in Liber 95, folio 235 (the "Private Alley");

WHEREAS, the City intends to construct an extension of its Cultural Trail from its present terminus at West Antietam Street northward to West Washington Street, as well as a Public Plaza behind 33- 35 West Washington Street (collectively, the "Urban Improvement Project"); and

WHEREAS, to facilitate the Urban Improvement Project, the City desires to acquire from Hager5 and the State an assignment and grant of easement over, across, under and through the western most five and one-half feet (5 ½') of the Private Alley located directly adjacent to the Hager5 Property, all for the purpose of constructing and maintaining the Urban Improvement Project; and

WHEREAS, Hager 5 and the State have generously offered to grant the City a perpetual easement over a portion of the Private Alley; and

WHEREAS, the parties anticipate that the Board of Public Works shall approve the State's execution of the Deed of Easement imminently and therefore an Emergency Ordinance is warranted under the City's Charter at Article II, Section 207, in that the failure to gain State approval immediately may endanger the completion of this portion of the Urban Improvement Project; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City to enter into the Deed of Easement.

**NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the Mayor and City Staff be and are hereby authorized to execute and deliver the Deed of Easement between the City and Hager 5, LLC and the State of Maryland to the Use of the Department of General Services, a copy of which is attached hereto and incorporated herein by reference and to act as signatory on behalf of the City on any other documentation necessary to effectuate the purpose of this Emergency Ordinance.

2. This Emergency Ordinance shall be null and void, should the Board of Public Works not approve the State's execution of the Deed of Easement.

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT** this Emergency Ordinance shall become effective immediately upon its approval.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

  
\_\_\_\_\_  
Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN, MARYLAND

By:   
\_\_\_\_\_  
Emily N. Keller, Mayor

Date of Introduction: March 23, 2021  
Date of Passage: March 23, 2021  
Effective Date: March 23, 2021

PREPARED BY:  
SALVATORE & MORTON, LLC  
CITY ATTORNEY

**DEED OF EASEMENT**

**THIS DEED OF EASEMENT** (this “**Agreement**”) is made this 2<sup>nd</sup> day of June, 2021, by **HAGER5, LLC**, a Maryland limited liability company (“**Hager5**”) and the **STATE OF MARYLAND**, to the use of the DEPARTMENT OF GENERAL SERVICES (“**State**”), collectively “the **Grantors**”; and the **CITY OF HAGERSTOWN**, a Maryland municipal corporation (the “**City**” or the “**Grantee**”).

**WHEREAS**, Hager5 is the owner in fee simple of the +/- 40,668.1 square feet of real property located along the north side of West Antietam Street identified and commonly known as 50-58 West Antietam Street, currently improved by a surface parking lot and accessory structures and **BEING** more particularly described in the Confirmatory Deed dated April 24, 2017 and recorded among the Land Records of Washington County in Liber 5489, folio 154 (the “**Hager5 Property**”);

**WHEREAS**, the State is the owner in fee simple of the +/- 29,029 square feet of real property located along the north side of West Antietam Street identified and commonly known as 36 West Antietam Street, currently improved by the District Court for Washington County and accessory structures and **BEING** more particularly described in the Deed dated April 9, 1998 from Vincent R. Groh, Grantor, which is recorded among the Land Records of Washington County in Liber 1404, folio 340 (the “**State Property**”);

**WHEREAS**, the Hager5 Property and the State Property benefit from and include the rights to an unimproved eleven foot wide (11’) private alley, as described in a Deed dated March 28, 1868 and recorded among the Land Records of Washington County in Liber 2, folio 564, as confirmed and modified by Agreement dated July 16, 1890 and recorded among the Land Records of Washington County in Liber 95, folio 235 (the “**Private Alley**”);

**WHEREAS**, the City intends to construct an extension of its Cultural Trail from its present terminus at West Antietam Street northward to West Washington Street, as well as a Public Plaza behind 33- 35 West Washington Street (collectively, the “**Urban Improvement Project**”) as more particularly shown and described on the Concept Plan attached hereto and incorporated herein as **Exhibit A** (collectively, the “**Improvement Plans**”); and

**WHEREAS**, to facilitate the Urban Improvement Project, the City desires to acquire from the Grantors a grant of easement over, across, under and through the western most five and one half (5 ½) foot area of the Private Alley directly adjacent to the Hager5 Property, as cross-hatched labeled and identified as the “5 ½ foot Easement Area” as shown on the drawing dated December 7, 2020 and attached hereto and incorporated herein as **Exhibit B**, and described by metes and bounds legal description attached hereto and incorporated herein as **Exhibit C** (the

“Easement Area”), all for the purpose of constructing and maintaining the Urban Improvement Project.

**WITNESSETH:** That for and in consideration of the sum of **ZERO (\$0.00) DOLLARS**, but for other good and valuable consideration, the Grantors hereby assign, grant and convey unto the Grantee, its successors and/or assigns, a perpetual and permanent easement across, under, over and through the Easement Area (the “Easement”).

The Easement is granted in perpetuity, for the purpose of constructing, operating, maintaining, repairing, altering, extending, replacing and removing a public walking trail along with related storm water management and landscaping improvements including a new chain link fence at the mid-point of the Easement Area, (collectively, the “City Improvements”).

If the City Improvements are not completed within ten (10) years from the date of this Agreement, then the Easement shall automatically terminate and no longer be an encumbrance upon the Property.

All decisions concerning use of the Easement for the purposes enumerated herein shall be made at the sole discretion of the City, its successors and/or assigns.

All infrastructure, equipment, facilities, accessories or fixtures installed by, at the behest of or for benefit of the City within the Easement Area shall remain the sole property of the City.

Prior to the commencement of construction activity by the City, Hager5 and the State shall continue to be responsible for and perform routine maintenance of the Easement Area, including mowing and snow removal as appropriate to the surface conditions, unless the City determines otherwise. From and after the commencement of construction activity by the City and continuing for the duration of the Easement conveyed herein, the City shall be responsible for and perform routine maintenance of the Easement Area, the City Improvements and all infrastructure, equipment, facilities, accessories or fixtures constructed or installed therein, including mowing and snow removal as necessary to protect persons using the Easement Area and as appropriate to the surface conditions.

The City shall have full and free use of the Easement for the purposes enumerated herein; but shall be under no duty to exercise any of those rights. The City shall have the right, at all times and without prior notice, to cross those portions of the Hager5 Property and the State Property most proximate to the Easement Area as may be reasonably necessary in order to have access thereto. The City shall have the right to trim, cut, and remove trees, shrubbery, fences, structures, or other obstructions within the Easement Area deemed by the City to interfere with the proper and efficient use of the Easement, provided that any structures or other such fixed improvements shall be re-located outside the Easement Area in a manner and location mutually

agreeable to Hager5 and the State. Specifically, Hager5 and the State acknowledge and agree that as part of the City Improvements, the City shall be permitted to remove the existing parking bollards and chain link fence located on the western boundary of the Private Alley (also the eastern boundary of the Hager5 Property) and install a new chain link fence at the mid-point of the Easement Area, 5 ½ feet from the eastern boundary of the State Property and 5 ½ feet from the western boundary of the Hager5 Property, all as more particularly shown and depicted on **Exhibit D** attached hereto and incorporated herein.

Neither Hager5 nor the State shall directly or through others erect any building or other structures within the Easement Area (including, but not limited to fences, sheds of any size or other improvements, including paving or blacktopping); nor shall Hager5 or the State make a fill or excavation of earth on their respective properties so as to cause a change in contour within the Easement Area.

All rights, title and privileges herein granted including all benefits and burdens shall be binding upon and inure to the benefit of the parties hereto their respective grantees, successors, assigns and legal representatives. The Easement shall also be for the benefit of any contractor, agent, employee, public utility company and representative of the City in any of said work related to constructing, operating, maintaining, repairing, altering, extending, replacing or removing the City Improvements or any portion thereof.

Hager5 and the State herein reserve the right to the fee simple title in the lands described herein as the Hager5 Property and the State Property, respectively, and reserve the right to use and enjoy their respective properties, including the Easement Area, for such purposes as will not interfere with the full enjoyment of the rights and privileges herein granted unto the City.

Hager5 and the State hereby covenant that all conditions and covenants contained in this Deed of Easement shall run with the land.

The City does hereby covenant that it will replace, grade and re-seed all top soil removed from either the Hager5 Property or the State Property, remove all debris, surplus material and construction equipment and generally restore the Hager5 Property or the State Property to their original condition after any work thereon at any time or times is completed, and that it will at all times save and hold harmless Hager5 and the State, their successors and assigns, from any and all actual damages, costs and injuries caused by it in the enjoyment of the privileges and rights hereby granted and conveyed.

[SIGNATURES ON FOLLOWING PAGE]

WITNESS the hands of Hager5, DGS and the City:

WITNESS:

HAGER5, LLC

Donna Mitchell

By: Gregory I Snook (SEAL)  
Name: Gregory I Snook  
Title: Partner

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

I HEREBY CERTIFY, That on this 22<sup>nd</sup> day of March 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Gregory I Snook, Partner of Hager5, LLC known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and also acknowledged that the consideration mentioned therein is true and correct.

WITNESS my hand and Official Notarial Seal.

Donna Mitchell

Notary Public

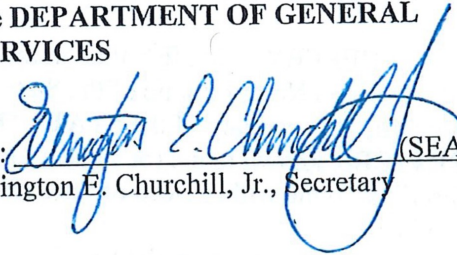


My Commission Expires: \_\_\_\_\_

WITNESS:


\_\_\_\_\_

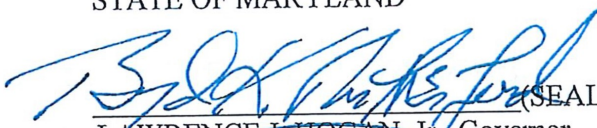
STATE OF MARYLAND, to the use of  
the DEPARTMENT OF GENERAL  
SERVICES

By:  (SEAL)  
Ellington E. Churchill, Jr., Secretary

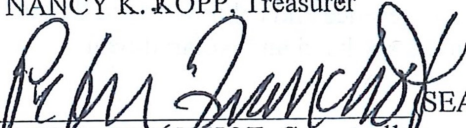
APPROVED:

BOARD OF PUBLIC WORKS OF THE  
STATE OF MARYLAND

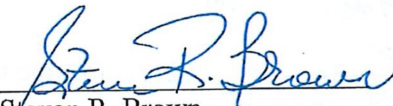
  
John T. Gontrum, Esq.  
Executive Secretary

 (SEAL)  
LAWRENCE J. HOGAN, Jr., Governor  
BOYD K. RUTHERFORD, Lt. Governor

 (SEAL)  
NANCY K. KOPP, Treasurer

 (SEAL)  
PETER FRANCHOT, Comptroller

Approved for form and legal sufficiency this 9<sup>th</sup> day of April, 2021.

  
Steven R. Brown  
Assistant Attorney General

Approved by the Board of Public Works of  
the State of Maryland at a meeting held on  
the 19<sup>th</sup> day of ~~April~~ MAY, 2021 as  
Item 51 -RP



STATE OF MARYLAND, COUNTY OF CITY BALTIMORE, to wit:

I HEREBY CERTIFY that on this 14<sup>th</sup> day of APRIL, 2021, before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Ellington E. Churchill, Jr., Secretary of the **STATE OF MARYLAND DEPARTMENT OF GENERAL SERVICES**, known to me (or satisfactorily proven) to be the person whose signature is subscribed to the within Deed of Easement and who signed the same for the purposes therein contained.

Witness my hand and Notarial Seal.

[Signature]  
Notary Public  
My Commission expires: 2/14/22

STATE OF MARYLAND, COUNTY OF Anne Arundel, to wit:

*Boris K. Rutherford*

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June, 2021, before me, the undersigned, a Notary Public of the State and County <sup>*Rutherford*</sup> aforesaid, personally appeared ~~Lawrence J. Hogan, Jr.~~ <sup>*Boris K. Rutherford*</sup> Governor of the State of Maryland, known to me (or satisfactorily proven) to be the person whose signature is subscribed to the within Deed of Easement and who signed the same in my presence and acknowledged that he executed the same for the purposes therein contained.

Witness my hand and Notarial Seal.

[Signature]  
Notary Public  
My Commission expires: 2/14/2022

STATE OF MARYLAND, COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June, 2021, before me the undersigned, a Notary Public of the State and County <sup>*Rutherford*</sup> aforesaid, personally appeared Nancy K. Kopp, Treasurer of the State of Maryland, known to me (or satisfactorily proven) to be the person whose signature is subscribed to the within Deed of Easement and who signed the same in my presence and acknowledged that she executed the same for the purposes therein contained.


Witness my hand and Notarial Seal.

[Signature]  
Notary Public  
My Commission expires: 2/14/2021

0-21-05

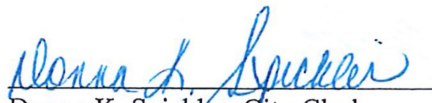
STATE OF MARYLAND, COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of June, 2021, before me, the undersigned, a Notary Public of the State and County ~~aforesaid~~ <sup>of Anne Arundel</sup>, personally appeared Peter Franchot, Comptroller of the State of Maryland, known to me (or satisfactorily proven) to be the person whose signature is subscribed to the within Deed of Easement and who signed the same in my presence and acknowledged that he executed the same for the purposes therein contained Witness my hand and Notarial Seal.

  
\_\_\_\_\_  
Notary Public  
My Commission expires: 2/21/2022

ATTEST TO CORPORATE SEAL.

**CITY OF HAGERSTOWN**, a Maryland  
municipal corporation, a body politic and a  
political subdivision of the State of  
Maryland

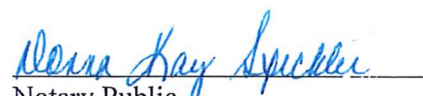
  
\_\_\_\_\_  
Donna K. Spickler, City Clerk

By:   
\_\_\_\_\_  
Emily N. Keller, Mayor

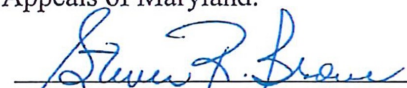
**STATE OF MARYLAND, WASHINGTON COUNTY**, to-wit:

**I HEREBY CERTIFY**, that on this 23<sup>rd</sup> day of March 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Emily N. Keller, Mayor of the City of Hagerstown, a Maryland Municipal Corporation, and that she, as such Mayor, being so authorized to do, executed and acknowledged the within instrument to be corporate act and deed of the City of Hagerstown for the purposes therein contained and further made oath that the City of Hagerstown is *locus rei sitae* in Maryland.

WITNESS my hand and Official Notarial Seal.

  
\_\_\_\_\_  
Notary Public  
My Commission expires: December 8, 2022

**I HEREBY CERTIFY** that this Deed of Easement was prepared by or under the supervision of an attorney licensed to practice before the Court of Appeals of Maryland.

  
\_\_\_\_\_  
Steven R. Brown, Esq.

MAIL TO: City of Hagerstown  
1 East Franklin Street  
Hagerstown, Maryland 21740  
Attn: Donna K. Spickler, City Clerk

**CONCEPT PLAN A**



- SITE AMENITIES LEGEND**
- A Connection to Hagerstown Cultural Trail
  - B New Hagerstown Cultural Trail extension with brick/concrete pavers, sealing and planting areas
  - C Connection to University Plaza
  - D Potential building facade focal point
  - E Proposed sealing and potential back-drop. Potential paver or concrete surface.
  - F Flexible seating area with movable tree planters
  - G Flexible plaza/event space with room for truck staging and service. Concrete surface with various colors and scoring to create texture
  - H Utilities/Generators
  - I Lamps/markers in pavement - mottled or reflective element



CONCEPT PLANS DRAFT

**Exhibit "A"**

0-21-05

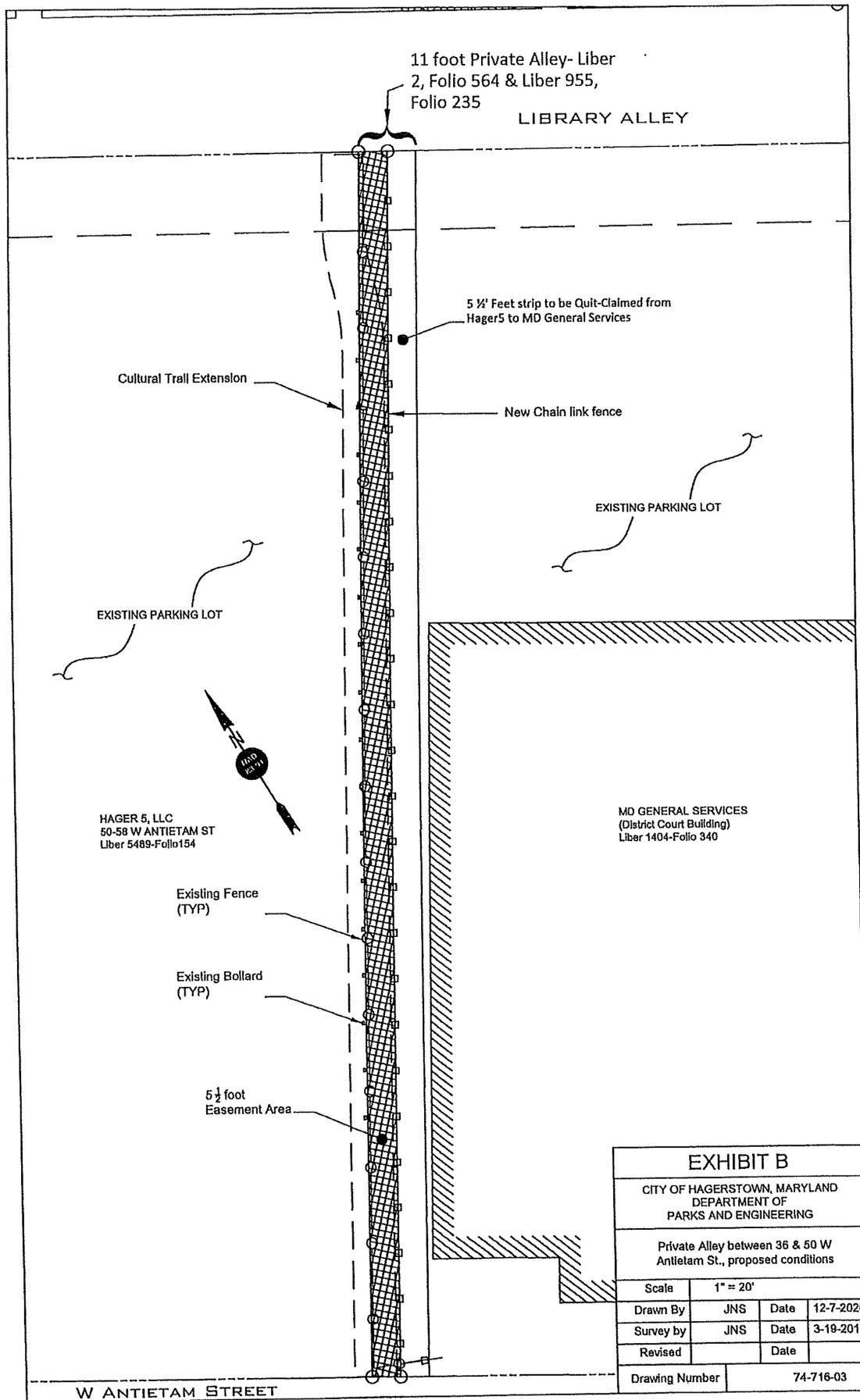


EXHIBIT B			
CITY OF HAGERSTOWN, MARYLAND DEPARTMENT OF PARKS AND ENGINEERING			
Private Alley between 36 & 50 W Antietam St., proposed conditions			
Scale	1" = 20'		
Drawn By	JNS	Date	12-7-2020
Survey by	JNS	Date	3-19-2019
Revised		Date	
Drawing Number	74-716-03		

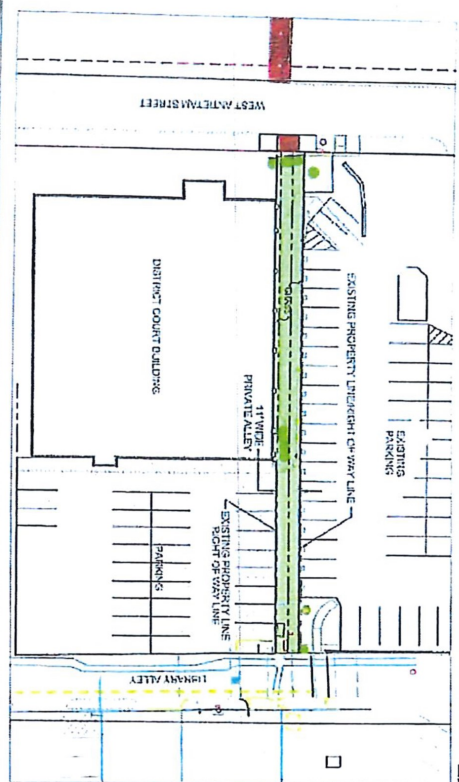
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Exhibit C

Beginning at the intersection of the northern right of way of W Antietam Street and the western right of way of the private alley described in GBO Liber 95 Folio 285 said point having coordinates of Northing 720032.74 and Easting 1108815.25' MD State Plane NAD 83, thence with the said western alley right of way with corrected bearings, N 32° 12' 19" E a distance of 233.23 feet to the intersection of the southern right of way of Alley 2-98 (Library Alley) as depicted in Engineering drawing 74-319-01 on file at the office of the City Engineer, thence with the right of way of Library alley S 58° 38' 58" E a distance of 5.5 feet to the centerline of said private alley, thence with said centerline S 32° 12' 19" W a distance of 233.31 feet to its intersection with the northern right of way of W Antietam street and thence with said right of way N 57° 49' 16" W a distance of 5.5 to the point of beginning.

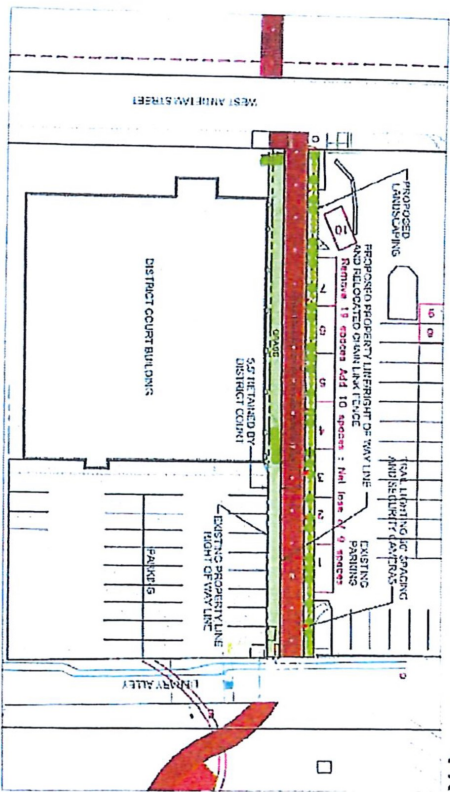
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**EXISTING**



EXISTING CONDITION LOOKING SOUTH WEST ALONG THE WEST SIDE OF THE DISTRICT COURT BUILDING

**PROPOSED**



PROPOSED CONDITION LOOKING SOUTH WEST ALONG THE WEST SIDE OF THE DISTRICT COURT BUILDING

**Exhibit "D"**