

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO APPROVE THE
DONATION OF IMPROVED
REAL PROPERTY
TO ANTIETAM FIRE COMPANY, INC.,
AND CURRENTLY SERVING
AS A VOLUNTEER FIRE STATION
IN HAGERSTOWN, MARYLAND**

RECITALS

WHEREAS, the City of Hagerstown, a Maryland Municipal Corporation, (“the City”) is the owner of certain improved real property located at 790-800 Potomac Avenue in Hagerstown, Washington County, Maryland which presently serves as the location of a volunteer fire station operated by Antietam Fire Company, Inc. (“Antietam”), and which the City desires to donate to the Antietam; and

WHEREAS, the Property is subject to an Agreement dated June 1, 2011, by which Antietam leases the Property from the City for the sum of \$2592.62 per month for a term of thirty (30) years; and

WHEREAS, by separate Ordinance, the Parties shall terminate the Agreement, and the City shall forgive the balance of the rental payments due and owing under the Agreement; and

WHEREAS, the Donee wishes to accept land for improvement and continued use as a volunteer fire station;

WHEREAS, the Agreement of Donation, attached hereto and incorporated herein, will be subject to a right of first refusal to the City, should Antietam ever elect to sell the parking lot located on the Property on Manilla Avenue;

WHEREAS, the introduction of this Ordinance shall constitute the twenty (20)-day notice of the proposed transfer as required by law; and

WHEREAS, the Mayor and Council believe that the donation of the Property would benefit the citizens; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to donate the Property to Antietam for no monetary consideration;

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:

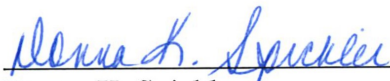
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1. That the foregoing Recitals be and are hereby incorporated herein as if set forth *verbatim*.
2. That the donation of the Property to Antietam Fire Company be and is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the Agreement of Donation with Antietam Fire Company, Inc., a copy of which is attached hereto and incorporated herein by reference.
4. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid conveyance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT this ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND



Donna K. Spickler,
City Clerk



Emily N. Keller, Mayor

Date of Introduction: November 2, 2021
Date of Passage: November 23, 2021
Effective Date: December 24, 2021

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

AGREEMENT OF DONATION

THIS AGREEMENT OF DONATION ("Agreement") is made this 24th day of December, 2021, by and between The City of Hagerstown, a Maryland Municipal Corporation (hereinafter "Donor" or "City"), and Antietam Fire Company, Inc. (hereinafter "Donee" or "Antietam").

WHEREAS, the Donor is the owner of certain real property located at 790-800 Potomac Avenue in Hagerstown, Washington County, Maryland which presently serves as the location of a volunteer fire station operated by Antietam ("the Property"), and which the City desires to donate to the Antietam; and

WHEREAS, the Property is subject to an Agreement dated June 1, 2011, by which Antietam leases the Property from the City for the sum of \$2592.62 per month for a term of thirty (30) years; and

WHEREAS, by separate Ordinance, the Parties shall terminate the Agreement, and the City shall forgive the balance of the rental payments due and owing under the Agreement; and

WHEREAS, the Donee wishes to accept land for improvement and continued use as a volunteer fire station;

WHEREAS, the Agreement will be subject to a right of first refusal to the City, should Antietam ever elect to sell the parking lot located on the Property on Manilla Avenue;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That the Donor, in consideration of the covenants hereinafter entered into by the Donee, agrees to donate and does donate to the Donee, and the Donee agrees to accept and does accept, subject to the terms and conditions hereinafter set forth, all the following described property, situate in the City of Hagerstown, Washington County, Maryland, Election District No. 21, and being more particularly described as follows:

PARCEL NO. 1: Situated near East Hagerstown Station on the Western Maryland Railway in Hagerstown, in Washington County, in the State of Maryland, and being designated as Lots No. 16 and 17 on the Plat of Lots of East Park Addition to Hagerstown, which is recorded in the Plat Records in the Office of the Clerk of the Circuit Court of Washington County at folios 7 and 45, said lots being contiguous to each other and fronting in the aggregate 100 feet, more or less, on the East side of Potomac Avenue, and running back with that uniform width a distance of 200 feet to an alley, Lot No. 17 being bounded on the south by Manilla s laid out on said plat, and Lot No. 16 being bounded on the south by Lot No. 17. SUBJECT, HOWEVER, TO THE BUILDING LINE ESTABLISHED AND LAID DOWN ON SAID PLAT ALONG THE EAST SIDE OF POTOMAC AVENUE.

PARCEL NO. 2: Beginning for the same at a point, said point being the intersection of the

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southeasterly marginal line of Potomac Avenue and the southwesterly marginal line of Manilla Avenue, and running thence with the said southwesterly marginal line of Manilla Avenue South 33 degrees 27 minutes east 400.0 feet; thence leaving said Manilla Avenue North 58 degrees 39 minutes West 227.94 feet; thence North 33 degrees 27 minutes West 194.00 feet to the said southeasterly marginal line of Potomac Avenue, the aforementioned line being 3.0 feet measured perpendicular from the concrete structure owned by the Standard Oil Company of New Jersey and now or formerly leased to R. S. Boyer of Hagerstown, Maryland; thence with said southeasterly marginal line of Potomac Avenue North 56 degrees 41 minutes East 97.09 feet to the point of beginning; containing 0.662 of an acre of land, more or less.

Said conveyance is made together with all improvements situated thereon and all fixtures located on, attached to, or used in connection with the improvements situated thereon and together with all and singular the rights and appurtenances pertaining to such land, including any right, title and interest of the Donor in and to adjacent streets, roads, alleys and rights of way and in, to and under any and all leases affecting such land, at and for a total purchase price of Zero and 00/100 Dollars (\$0.00) but for other good and valuable consideration, including Donor's agreement to maintain and improve said Property at its own expense, for use as a volunteer fire station to serve the surrounding community.

The parties further agree as follows:

1. Transfer shall occur within thirty (30) days of the satisfaction of all contingencies but in no event later than January 31, 2022.
2. Possession shall be given at the time of transfer, except that Donee may enter upon the Property at any time and for any purpose reasonably necessary for the acquisition, inspection, and demolition of the property by the Donee. Donee may make such changes and alterations to the Property as it deems desirable prior to settlement.
3. All costs of transfer shall be borne by the Donee.
4. All rent, water rent, real estate and any and all public charges which may exist as liens upon the property shall be paid by the Donee as of the date of settlement.
5. The Property is to be held at the risk of the Donor until legal title has passed.
6. Except as otherwise provided herein Donor is making no warranties as to the condition of the property and the Property is being sold "AS IS."
7. Donor affirms that it is the fee simple record and beneficial owner of the Property. No person or entity has an option, right of first refusal or other similar right to acquire all or any portion of the Property. Donor has performed all obligations under and is not in default in complying with the terms and provisions of any covenants, conditions, restrictions, rights-of-way, or easements applicable to the Property. Donor shall not enter into any Contracts of any kind with

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respect to the Property or any portion thereof, except as mutually agreed.

8. Donor affirms that no proceeding, suit, or litigation relating to Donor or the Property or any part thereof is pending or, to Donor's knowledge, threatened in any court or other tribunal or before any Governmental Authority. Donor is not the subject of, nor has Donor received any written notice of or threat that it has or will become the subject of, any actions or proceedings under the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. ("Bankruptcy Code"), or under any other federal, state or local laws affecting the rights of debtors and/or creditors generally, whether voluntary or involuntary and including, without limitation, proceedings to set aside or avoid any transfer of any interest in property or obligations, whether denominated as a fraudulent conveyance, preferential transfer or otherwise, or to recover the value thereof or to charge, encumber or impose a lien thereon.

9. Donor, agrees to execute and deliver to Donee a good and sufficient deed of the above described Property, with covenants of special warranty and further assurances free of all liens and encumbrances, except those, if any, herein mentioned and such easements, conditions, and restrictions, if any, to which the Property may now be subject. The deed shall have a provision providing a right of first refusal to the City for the parking lot located on the Property on Manilla Avenue. If the title should be found defective and cannot be perfected, then this Agreement shall be null and void. Prior to settlement, Donee shall be entitled to receive a title report at Donee's cost with respect to the property, and, in the event that such title report indicates matters of exception to title objectionable to Donee, Donee may terminate this Agreement, provided that Donee notifies Donor of its intention to so terminate this Agreement within Fifteen (15) days of its receipt of such title report. Such title report shall be brought to date at the time of settlement and Donee may terminate this Agreement if such title report contains any additional exceptions from the previous title report furnished to Donee.

10. If Donee defaults in performing any of Donee's obligations under this Agreement for any reason other than Donor's default or a permitted termination hereof by Donee, then Donor shall be entitled to avail itself of any other right or remedy granted to it hereunder or at law or in equity. If Donor defaults in performing any of Donor's obligations under this Agreement for any reason other than Donee's default or a permitted termination hereof, then Donee may, at its option, (a) terminate this Agreement, (b) compel specific performance of this Agreement by Donor, or (c) avail itself of any other right or remedy granted to it hereunder or at law or in equity.

11. Each party certifies to the other that it has no knowledge of or has assumed any obligation with respect to recognizing or paying any commission to a real estate broker or agent for services rendered in connection with this sale.

12. It is the express understanding of the parties that time is of the essence of this Agreement, that the terms and provisions hereof shall survive the delivery of the deed of conveyance, and that this Agreement shall be binding upon the parties, their heirs, successors, and assigns. However, Donee shall not assign this Agreement to any party without the prior written consent of the Donor.

13. This Agreement and all documents referred to herein are governed by and construed and interpreted in accordance with the laws of the State of Maryland, without regard to its conflicts of laws provisions.

14. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

15. Regardless of whether settlement occurs hereunder, each party hereto shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including without limitation fees of attorneys, engineers, and accountants.

16. All notices, requests, demands and other communications hereunder shall be in writing and shall be given to such party at its address or telecopy number set forth below or such other address or telecopy number as such party may hereafter specify for that purpose by notice to the other party. Each such notice, request, or communication shall, for all purposes, be deemed given and received (a) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below during normal business hours and confirmation or complete receipt is received during normal business hours, provided that on the day on which the telecopy is sent, the sender also sends a copy by a recognized overnight delivery service, (b) if hand delivered against receipted copy, when the copy thereof is receipted, (c) if given by a recognized overnight delivery service, the day after being sent prepaid by such recognized overnight delivery service, or (d) if given by registered or certified mail, return receipt requested postage prepaid, three (3) days after it is posted with the United States Postal Service at the address specified below:

For the Donor: Antietam Fire Company
790 Potomac Avenue
Hagerstown, Maryland 21742

With a copy to:

For the Donor: City of Hagerstown
Attn: City Administrator
1 East Franklin Street
Hagerstown, MD 21740

With a copy to:

Jason Morton
SALVATORE & MORTON, LLC
82 West Washington Street, Suite 100
Hagerstown, Maryland 21740

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section.


17. Further Assurances. Donor agrees that it will, at any time and from time to time after the settlement, upon reasonable request of Donee, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the better assigning, transferring, granting, assuring and confirming to Donee, or to its successors and assigns of, or for aiding and assisting in collecting and reducing to possession, any or all of the assets or property being transferred to Donee pursuant to this Agreement; provided, however, that any instruments to be executed by Donor shall be in form and substance reasonably acceptable to Donor and in no event shall Donor be required to incur any liability or obligation in addition to that which it is obligated to incur under this Agreement. The provisions of this Section shall survive the closing of the transactions contemplated by this Agreement.

18. This Agreement contains the final and entire agreement between the parties hereto and neither they nor their agents shall be bound by any terms, conditions or representations not herein written.

WITNESS the names and seals of the parties hereto, signed the date first above written:

ATTEST:

DONOR
City of Hagerstown



Donna K. Spickler, City Clerk

BY:  (SEAL)

Emily N. Keller

ATTEST:

DONEE
Antietam Fire Company, Inc.

James Spickler

BY: *Robert E. Daveler* (SEAL)
ROBERT E. DAVELER
TREASURER
[Print Name and title]

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

I HEREBY CERTIFY that on this 24th day of December, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Emily N. Keller, known to me to be the Mayor of The City of Hagerstown, whose name is subscribed to the foregoing Agreement of Donation, and who acknowledged that she executed the same for the purposes therein contained as the act of The City of Hagerstown, with full authority to do so.

WITNESS my hand and Official Notarial Seal.

Nanna Kay Spickler
Notary Public

My Commission Expires: December 8, 2022

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

I HEREBY CERTIFY that on this 21st day of March, 2021, before me, the subscriber, a Notary Public in and for the State and County aforesaid, _____, personally appeared before me, Robert E. Daveler, whose name is subscribed to the foregoing Agreement of Donation, and who acknowledged that he, in his capacity as Treasurer of Antietam Fire Company, Inc., executed the same for the purposes therein contained as true act and deed of said corporation, with full authority to do so.

WITNESS my hand and Official Notarial Seal.

Nanna Kay Spickler
Notary Public

My Commission Expires: December 8, 2022