

Mayor Tracey Furman

**Council Member Darin Bartram
Council Member Nate Engle**



**Council Member Conor Crimmins
Council Member Bridget Hill-Zayat**

Released: October 16, 2020

**Monday, October 19, 2020
Town Council Meeting, 7:00 pm**

The Town Council Meeting will be held through the Zoom Video Conferencing application. We recommend downloading the Zoom app prior to the meeting at the following link: www.zoom.us

The Council Meeting will begin at 7:00 pm and access to the meeting will be through the following Zoom Video Conferencing link:

<https://us02web.zoom.us/j/82167425599?pwd=NENxQVMxNFJta0xhYVVVdWprMDB2QT09>

Meeting ID: 821 6742 5599

Password: 693683

Or you may join the meeting by calling: +1 301 715 8592 US (Germantown) and entering the Meeting ID and Password above.

CALL TO ORDER

MOMENT OF SILENCE

APPROVAL OF MINUTES

Town Council Meeting Minutes of September 14, 2020

FROM THE MAYOR AND TOWN COUNCIL

1. **Town Elections Sub-Committee** – Update and discussion of the proposed options and revisions to the Town Charter and Code for future Elections.
2. **Pedestrian and Bicycle Access and Safety Working Group** – Update from the Working Group from the October 15, 2020 meeting.
3. **Historic Preservation Administrative Regulation Changes** – Discuss the proposed Administrative Regulation changes by the Historic Preservation Commission, which would allow Historic Preservation staff to review and approve certain Historic Area Work Permits (HAWP).

**Town of Kensington 3710 Mitchell Street Kensington, MD 20895
Phone 301.949.2424 Fax 301.949.4925
www.tok.md.gov**

- a. Historic Preservation staff has asked the Town to review the proposed regulation changes and provide a letter of support.

FROM THE TOWN MANAGER AND STAFF

PUBLIC APPEARANCES

(The public is invited to speak on any subject that is not a topic on tonight's agenda)

ORDINANCES, RESOLUTIONS, AND REGULATIONS

(Ordinances, resolutions, and regulations to be introduced or adopted following appropriate procedures required by the Town Code; or resolutions that may require discussion by the Mayor and Council prior to approval)

1. **Resolution No. R-07-2020** – A Resolution of the Mayor and Council of the Town of Kensington to accept a contribution from Knowles Manor Senior Housing, LLC, to supplement Traffic and Parking Enforcement.
2. **Resolution No. R-11-2020** – A Resolution of the Mayor and Council of the Town of Kensington authorizing the Town Manager to enter into a contract with EMCOR Services Combustioneer for the replacement of a 7.5-ton Carrier HVAC system at Town Hall.
3. **Resolution No. R-12-2020** – A Resolution of the Mayor and Council of the Town of Kensington authorizing the Town Manager to enter into a contract with the State Highway Administration (SHA) for the purchase of salt during certain snow emergency events.

ADJOURNMENT

(The Mayor and Council may move to close the meeting and may move to reopen the meeting)

THE NEXT SCHEDULED MEETING(S) OF THE MAYOR AND TOWN COUNCIL WILL BE HELD:

Monday, November 9, 2020, 7:00 pm

CHARTER SECTIONS RELATED TO ELECTIONS

ARTICLE VII REGISTRATION, NOMINATIONS AND ELECTIONS

Section 701. Qualifications of Voters

Every person who (a) is a citizen of the United States, (b) is at least eighteen (18) years of age, (c) has resided within the corporate limits of the Town for thirty (30) days, and (d) is registered in accordance with the provisions of this Charter, shall be a qualified voter of the Town. Every qualified voter of the Town shall be entitled to vote at any or all Town elections.

Section 702. Board of Supervisors of Elections

There shall be a Board of Supervisors of Elections, consisting of three (3) members who shall be appointed by the Mayor with the approval of the Council on or before the first Monday in April. The terms of members of the Board of Supervisors of Election shall begin on the first Monday in April in the year in which they are appointed and shall run for one (1) year. Members of the Board of Supervisors of Elections shall be qualified voters of the Town and shall not hold or be candidates for any elective office during their terms of office. The Board shall appoint one of its members as Chairman. Vacancies on the board shall be filled by the Mayor with the approval of the Council for the remainder of the unexpired term. The compensation of the members of the Board shall be determined by the Council.

Section 703. Removal

Any member of the Board of Supervisors of Elections may be removed for good cause by the Council. Before removal, the member of the Board of Supervisors of Elections to be removed shall be given a written copy of the charges for removal. There shall be a public hearing on the charges before the Council if the member of the Board requests within ten (10) days after receiving the written copy of the charges.

Section 704. Duties

The Board of Supervisors of Elections shall be in charge of nominations and all Town elections. The Board may appoint election clerks or other employees to assist it in any of its duties, but no salary, expenses, or other compensation shall be paid to such appointees except as provided by the Council. The Board shall be the judge of the election and qualifications of its members.

Section 705. Notice of Elections

Commented [1]: This section address who should vote. It sounds like we want to put age and citizenship on the next ballot. Do we feel this adequately requires voters to reside here?

The Board of Supervisors of Elections shall give at least two (2) weeks notice of every election by an advertisement published in at least one newspaper of general circulation in the Town and by posting a notice thereof in some public place or places in the Town.

Commented [2]: We need to determine if this is required and/or desirable. We have been using the Town Journal to publicize.

The Board of Supervisors of Elections shall cause to be mailed to each qualified voter, not less than ___ weeks prior to any election, a postcard providing notice of the time and place of the election, as well as the process for requesting an absentee ballot. [Alternatively, the Board of Supervisors of Elections may place such notice at the top of the front page of the Town Journal, in at least as large a notice as a postcard.]

Commented [3]: This is the section where we should address mailing of live ballots versus ballot request information

Commented [4]: This is just something I'm adding for discussion.

Section 706. Appeal of the Actions of the Board of Supervisors of Elections

If any person shall feel aggrieved by the action of the Board of Supervisors of elections by any action, such person may appeal to the Council. Any decision or action of the Council upon such appeals may, in turn, be appealed to the Circuit Court for Montgomery County within thirty (30) days of the decision or action of the Council.

Section 707. Registration

Registration by a resident with the Montgomery County Board of Supervisors of Elections shall be deemed registration for Town elections, provided that the application for such registration is received by the Montgomery County Board of Supervisors of Elections no later than 9:00 p.m. on the fifth Monday prior to an election. The Kensington Board of Supervisors of Elections shall accept the list of registered voters provided by the Montgomery County Board of Supervisors of Election as a valid registration list for the Town. Registration of voters shall be permitted in the Town offices during regular office hours every day such offices are open, to develop a supplemental list of registered voters, and at such other times and places as the Council may establish from time to time. Town registration books shall be closed on the last Tuesday in May prior to the Town election. The Board of Supervisors of Elections shall keep the Town supplemental registration lists up to date by striking from the lists any persons who have died, who have moved out of the Town, or who has not voted in a Town election within the five preceding calendar years. The Council, by ordinance, shall adopt and enforce any provisions necessary to establish and maintain a system of permanent registration and provide for re-registration when necessary.

Section 708. Nominations

Persons may be nominated for elective office in the Town by filing a certificate of nomination at the office of the Board of Supervisors of Elections on or before the second Monday in May preceding the Town election. No person shall file for nomination to more than one elective Town public office or to hold more than one elective Town public

office at any one time. The Board of Supervisors of Elections may place names in nomination for public office if it deems such additional names to be desirable.

Commented [5]: I added this, for discussion. We haven't had elections where no one ran, or only one person ran and there were two spots. But, we may want to think about ways to address if that were to occur.

Section 709. Election of the Mayor and the Council Members

On the first Monday in June in every even numbered year, the voters of the Town shall elect the Mayor and two (2) persons as Council Members. On the first Monday in June in every odd numbered year, the registered voters of the Town shall elect two (2) persons as Council Members. The Mayor and the Council Members shall serve for terms of two (2) years. In the case of a public emergency which would render voting unsafe, the Council by a unanimous resolution may postpone the election by up to four weeks.

Commented [6]: I couldn't tell how much interest there was in being able to postpone the election.

Section 710. Conduct of Elections

It is the duty of the Board of Supervisors of Elections to provide for each special and general election a suitable place or places for voting and suitable ballot boxes and ballots and/or voting machines. The ballots and/or voting machines shall show the name of each candidate nominated for elective office in accordance with the provisions of this Charter, arranged in alphabetical order by office with no party designation of any kind. The Board of Supervisors of Elections shall keep the polls open from 6:00 p.m. to 9:00 p.m. on election days or for ~~such longer~~ hours ~~that if~~ the Council by resolution requires ~~it~~. The Board of Supervisors of Elections shall provide for absentee ballots and for a drop-box at Town Hall.

As of the deadline for nomination set forth in Section 708, if the number of qualified candidates is not more than the number of seats to be filled, then no election will be held, and the qualified candidates shall be declared elected by the Board of Supervisors of Elections

Section 711. Special Elections

A special election may be called by a vote of the majority of the Town Council. All special Town elections shall be conducted by the Board of Supervisors of Elections in the same manner and with the same personnel, as far as practicable, as regular Town elections.

Section 712. Vote Count

Within twenty-four (24) hours after the closing of the polls, or as soon as practicable thereafter, the Board of Supervisors of Elections shall determine the vote cast for each candidate or question and shall certify the results of the election to the Mayor of the Town who shall order the results recorded in the minutes of the Council. The candidate for Mayor with the highest number of votes in the general election shall be declared elected as Mayor. The two (2) candidates for Council Members with the highest number of votes in the municipal election shall be declared elected as Council Members.

Section 713. Preservation of Ballots

All ballots used in any Town election shall be preserved for at least six (6) months from the date of the election.

Section 714. Vacancies

In the case of a vacancy for any reason in the position of Council Member which occurs ninety (90) days or more prior to the expiration of the term, a special election shall be called within sixty (60) days to fill such vacancy for the unexpired term. In the case of any such vacancy, which occurs less than ninety (90) days prior to the expiration of the term, the vacancy for the unexpired term shall be filled at the next general election, provided that such term shall not expire on the second Monday after such election. In the event that the next general election is in an odd numbered year, the term of the Mayor elected at such time shall be one year.

In the case of a vacancy in the office of Mayor for any reason, which occurs ninety (90) days or more prior to the expiration of the term, a special election shall be called within sixty (60) days to fill such vacancy for the unexpired term. In the case of any such vacancy which occurs less than ninety (90) days prior to the expiration of the term, the vacancy for the unexpired term shall be filled at the next general election, provided that such term shall not expire on the second Monday after such election.

Section 715. Regulation and Control by Council

The Council shall have the power to provide by ordinance in every respect not covered by the provisions of this Charter for the conduct of registration, nomination, and Town elections and for the prevention of fraud in connection therewith, and for a recount of ballots in case of doubt or fraud.

Section 716. Penalties

Any person who (a) fails to perform any duty required of them under the provisions of this subtitle or any ordinances passed thereunder, (b) in any manner willfully or corruptly violates any of the provisions of this subtitle or any ordinances passed thereunder, or (c) willfully or corruptly does anything which will tend to affect fraudulently any nomination, or Town election, shall be deemed guilty of a misdemeanor. Any Council Member, officer, or employee of the Town government who is convicted of a misdemeanor under the provisions of this section shall immediately upon conviction thereof cease to hold such office or employment.

Section 717. Recall of Elected Officials

The Mayor or a Council Member may be recalled or removed from office for failure to uphold the oath of office, malfeasance, misfeasance or nonfeasance in office, in accordance with the following procedure:

(a) A petition stating specifically the justification for removal, signed by at least 30 percent (30%) of the registered voters of the Town, must be presented to the Council at a regular Town meeting stating a desire to have the named Town official subjected to reaffirmation by a vote of the electorate. A petition shall name only one Town official subject to recall. The registered Town voters shall sign said petition and under each signature shall be typed or printed each petitioner's name and address. At the bottom of each page of the petition, the individual circulating the petition shall sign the same and make an affidavit before a notary public that he or she circulated the petition and saw each individual whose name appears thereon sign the same in his or her presence.

(b) Upon receipt of said petition, the Council shall forthwith refer the petition to the Board of Supervisors of Elections for verification of the appropriate number of registered voters' signatures and addresses. The Board of Supervisors of Elections shall return said petition with their written findings as to registered voters and addresses to the Council at its next regular meeting; and at this meeting, if the petition is authenticated, the Council shall announce that within forty-five (45) days a special election will be held in order to allow all registered voters of the Town of vote on the petition.

(c) The voting ballot will contain the official's name and the choice of "reaffirm" or "remove". In order for the official to be removed, two thirds of those voting must vote "remove".

(d) The voting will be conducted in the same manner as prescribed herein for regular Town elections, and, if removal results, the vacancy will be filled as herein prescribed.

CODE SECTIONS RELATED TO ELECTION

Article 2. Elections

Section 2-201. General Voter Registration

(a) All persons residing within the corporate limits of the Town of Kensington who are now registered voters of the Town shall remain registered as long as they shall meet the qualifications for voters described in Section 701 of the Town Charter, unless such registration shall be withdrawn as hereinafter provided.

(b) Pursuant to Section 701 of the Town Charter, qualified citizens who are at least

17 years old and will be 18 years old or older on or before the next Town election may register at the Town office on any day in which the office is open for official business, and at regular meetings of the Mayor and Council, or at such other times and places as may be announced from time to time prior to 9:00 p.m. on the fifth Monday preceding any election.

(c) Pursuant to Section 707 of the Town Charter, any Town resident registered with the Montgomery County Board of Supervisors of Elections shall be deemed registered for Town elections, provided that the application for such registration is received by the Montgomery County Board of Supervisors of Elections no later than 9:00 p.m. on the fifth Monday prior to an election.

(d) The Board of Supervisors of Elections shall appoint as registrar the ClerkTreasurer. Said registrar shall have all the power and duties, including that of administering oaths, to properly register any qualified citizen.

(e) Qualified citizens may also be registered to vote by the Board of Supervisors of Elections at such other times as may be announced from time to time by the Mayor.

(f) The Board of Supervisors of Elections shall review the books of registration prior to the second Monday in May preceding the next Town election for removal of any person who has died, who has moved out of Town, who has not voted in at least one Town election within the five preceding calendar years, or who is otherwise legally disqualified. The Board of Supervisors of Elections shall report, in writing to the Town Council the names of all persons whose registrations are withdrawn and the reasons therefor. All questions arising in connection with the registration or withdrawal of registration of any person shall be determined and decided as provided in Section 707 of the Town Charter.

(g) The Board of Supervisors of Elections, appointed pursuant to Section 702 of the Town Charter shall remain in office until their successors are appointed and shall meet from time to time to carry out their duties.

(h) Even though a person may be on the registration rolls of the Town such person may not vote unless he or she is a qualified voter. The Board of Supervisors of Elections may require any person who comes to the polls to vote at any election to furnish proof that such a person is a resident of the Town under the provisions of Section 701 of the Town Charter.

Section 2-202 Distribution of Absentee Ballots

(a) Any qualified and registered voter may apply in writing or in person to the ClerkTreasurer or Board of Supervisors of Elections for an absentee ballot ~~if he or she can not be present at any upcoming Town election.~~

(b) If an applicant appears to be eligible to vote as an absentee voter, the ClerkTreasurer shall, as soon as practicable, deliver to him or her at the place so designated by the

applicant, an absentee ballot and envelopes therefor, as hereinafter described in Subsection (f) below. If it appears that the applicant is not eligible to vote as an absentee voter, the ClerkTreasurer shall, as soon as practicable, so notify the applicant.

(c) The Clerk-Treasurer shall deliver with each ballot and envelope instructions clearly explaining the manner in which the recipient may vote as an absentee voter under the provisions of this Article.

(d) The Clerk-Treasurer shall keep a record of applications for absentee ballots as they are received, showing the date received, the names and residences of the applicants, and places where such ballots were delivered, and, if any such applicants were rejected, the reasons for such rejections. Such applications and records shall be available for public examination for a period of six months after the election. The individual record of each voter to whom an absentee ballot was delivered shall be marked to indicate the fact that an absentee ballot was delivered to the applicant and the date of such delivery. Only those voters to whom absentee ballots have been delivered shall be permitted to use such ballots. No voter to whom an absentee ballot has been delivered shall be allowed to vote in person at the polls at the election, except as provided in Section 2-203 (c) of this Article.

(e) No more than one absentee ballot shall be delivered to any one applicant unless the Clerk-Treasurer has reasonable grounds to believe that the absentee ballot previously delivered has been lost, destroyed or spoiled.

(f) The form of ballots and envelopes for absentee voters shall be as follows:

(1) The ballots shall contain the words "absentee ballot" in large letters in a clear space at the top of each ballot and the signature of the ClerkTreasurer.

(2) The following shall be delivered to the absentee voter:

(i) An envelope marked "Ballot Envelope" of sufficient size to contain the absentee ballot

(ii) Another envelope, hereinafter referred to as the "Outer Envelope", of sufficient size to contain the Ballot Envelope;
and

(iii) Oath of absentee voter as follows:

"I, _____, do hereby swear (or affirm) under penalty of perjury that I am legally qualified to vote in the Town of Kensington's election to be held on _____; ~~that I will be unable to vote in person on the day of such election because _____ as stated in my application for the enclosed ballot;~~ that the enclosed ballot was marked secretly, folded and enclosed and sealed in the enclosed Ballot Envelope and in this envelope; and that I am now disqualified from voting in person in the Town election."

(Signature of absentee voter)

Section 2-203. Procedures of Absentee Voting

(a) The procedure for absentee voting is as follows: The absentee voter shall mark the absentee ballot, insert it in the Ballot Envelope and then seal this envelope. The voter shall then insert this envelope, together with a completed and signed oath into the outer envelope, and then seal this envelope. The voter shall then deliver the foregoing to the Clerk/Treasurer or the Board of Supervisors of Elections on or before the close of the polls on Election Day.

(b) No absentee ballots actually received by the Clerk-Treasurer or the Board of Supervisors of Elections after the close of the polls shall be valid.

(c) Any person to whom an absentee ballot has been delivered who has not returned said ballot as provided in Subsection (a) above and who finds that he or she is able to vote in person at the polls on Election Day, may vote in such election if he or she delivers their unmarked absentee ballot, together with both the Ballot Envelope and the Outer Envelope, to the Board of Supervisors of Elections prior to the close of the polls. The Board of Supervisors of Elections shall clearly mark each of such materials "void" and shall enter in the appropriate register the fact that such materials have been returned but not used.

Section 2-204 Canvassing of Absentee Ballots

The procedure for the canvassing of ballots shall be as follows:

(a) The Clerk-Treasurer shall deliver all sealed Outer Envelopes received to the Board of Supervisors of Elections. ~~No sealed Outer Envelopes shall be opened at any time prior to the canvassing of the absentee ballots.~~

Commented [7]: Delete, to allow pre-processing.

(b) When an Outer Envelope is opened, the Board of Supervisors of Elections shall conclusively determine whether or not the person who has submitted the absentee ballot is a qualified, registered voter in the Town to whom an absentee ballot was delivered under this Article, has properly completed the oath specified in Section 2-202 (f) (2) (iii) above, and has not voted in person at the election. The Board of Supervisors of Elections shall then enter in the appropriate register the fact that the voter whose name appears on the oath has voted by absentee ballot. They shall thereafter separately open the Ballot Envelopes in such a manner that they are unable to match the name of the absentee voters with the particular absentee ballots that have been submitted. The Board of Supervisors of Elections shall then proceed to count and certify the absentee ballots.

(c) The Ballot Envelopes found to be invalid by the Board of Supervisors of Elections shall not be opened. The Board of Supervisors of Elections shall keep a record of all absentee ballots which have been rejected and the reason for each such rejection. Such record, and envelopes and oaths described in Section 2-202 of this Article shall be available for public inspection at the Town office for a period of six months after the election.

(d) Whenever the Board of Supervisors of Elections shall determine from proof or

investigation that any person who has marked and delivered to the Clerk-Treasurer or Board of Supervisors of Elections an absentee ballot has died before Election Day, said Board of Supervisors of Elections shall not count the ballot of the deceased voter. If at or prior to the time of such counting and canvassing the Board of Supervisors of Elections shall not have determined that the absentee resident who marked a ballot had died before Election Day, said ballot shall be counted. The fact that said absentee resident may later be shown to have been actually dead on Election Day shall not invalidate said ballot or said election.

(e) For the purpose hereof the term "deliver" shall mean delivery by mail or by any other means.

Section 2-205. Nominations

Pursuant to Section 708 of the Town Charter, persons may be nominated for elective office in the Town by filing a certificate of nomination with the office of the Board of Supervisors of Elections on or before the second Monday in May preceding any Town election. No person shall file for nomination to more than one elective Town office nor may any person hold more than one elective Town office at any one time.

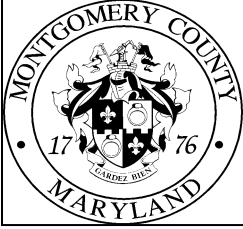
Remaining issues:

Conor's questions about making sure that deadlines line up. [Susan can provide more information about requesting voter rolls from the county. Apparently, they don't need as much advance notice as before.]

Bridget's request that we get rid of one envelope

If we declare an election uncontested, do we want to have an "event" specifically on election day? In the past, we have changed the candidate's forum to a meet-and-greet.

The ability in Section 707 of the Board of Supervisors to "strike" people from the rolls relates to the town's supplemental list, not the main list provided by the county. I'm not sure if we have ever culled the supplemental list, but I don't think the issue of striking the under-18s was implicated in the last election.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Historic Area Work Permits	Number 11-20
Originating Department Historic Preservation Commission	Effective Date

Montgomery County Regulation on:

HISTORIC AREA WORK PERMITS

HISTORIC PRESERVATION COMMISSION

Issued by: County Executive
Regulation No. 11-20
COMCOR No. 24A.04.01

Authority: Code Section 24A-7
Council Review: Method (2) under Code Section 2A-15
Register Vol. 37 No. 10

Comment Deadline: 10/31/2020
Effective Date: _____
Sunset Date: None

Summary: This regulation, which amends Executive Regulation 27-97, provides for the Historic Preservation Commission's delegation of its authority to review and approve certain Historic Area Work Permit applications to Commission staff in accordance with Code Section 24A-7(g)(2).

Staff Contact: For further information or to obtain a copy of this regulation, contact Rebeccah Ballo at Rebeccah.Ballo@montgomeryplanning.org.

Address: Written comments on this regulation should be sent to:

Rebeccah Ballo
Historic Preservation Section
Maryland National Capital Park and Planning Commission
2425 Reedie Drive
Wheaton, Maryland 20902



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Historic Area Work Permits	Number 11-20
Originating Department Historic Preservation Commission	Effective Date

24A.04.01.01 Historic Area Work Permits

1.0 Purpose

This regulation is established for the proper transaction of the business of the Montgomery County Historic Preservation Commission (“Commission”), pursuant to Section 24A-4(h) of the Montgomery County Code (2014), as amended. As required by Section 24A-7(c), upon receipt of a completed application for the issuance of an Historic Area Work Permit, the Commission must schedule a public appearance at a Commission meeting, at which time it will consider the application. This regulation shall govern the receipt, processing, hearing, and final disposition of all applications for the issuance of an Historic Area Work Permit.

1.1 Definitions

For the purposes of this regulation, the following words and phrases have the meaning assigned to them below, except where otherwise indicated in this regulation.

- (a) Local Advisory Panel (LAP) - A group of individuals appointed by the Commission to assist and advise the Commission in the performance of its functions.
- (b) Applicant - Any person that files an application for the issuance of an historic area work permit. The applicant must be the owner, contract purchaser, or authorized agent of the subject historic site or historic resource within an historic district.
- (c) Application - A request for the issuance of an historic area work permit for work as described in Sections 24A-6(a)(1)-(3). The application shall be in such form and contain such information as may be required to provide information as shall be necessary for the Commission to evaluate and act upon such application in accordance with the provisions of Chapter 24A.
- (d) Party - Any person identifying himself to the Commission in the official record as having an interest in the outcome of an application being considered.
- (e) Person - Any individual, business entity, whether incorporated or not, association, or any other group of individuals, however organized.
- (f) Ordinary Maintenance - Work on an historic site or an historic resource within a historic district which does not alter in any way the exterior features of the subject property, including the architectural style, design, and general arrangement of the exterior, as well as the nature, texture, details, and dimensions of building materials, windows, doors, siding, etc. This definition applies, whenever appropriate, to the appurtenances and environmental setting of an historic site or resource, as well as to the building, structure, or object itself.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Historic Area Work Permits	Number 11-20
Originating Department Historic Preservation Commission	Effective Date

1.2 Submission of Application

- (a) Filing - Applications must be filed with the director as required by Section 24A-7(a), with the exceptions noted in 24A-6(b) and with the definition of Ordinary Maintenance found in Section 1.1 (f) above.
- (b) Scheduling - In order to be considered at a regularly scheduled public appearance, applications shall be filed with the director three (3) weeks prior to the meeting date for which it is to be scheduled.
- (c) Completeness - Upon receipt by the director, each application will be evaluated for completeness. Those judged to be complete, based upon the submission requirements specified by the Commission and listed on the application, will be promptly forwarded to the Commission. Any application deemed incomplete by the director or by the Commission's staff will not be accepted for filing. Incomplete applications shall be promptly returned to the applicant, either by return mail or by hand if the applicant is present at the time of the determination.
- (d) Application Date - Complete applications shall be deemed filed upon acceptance by the director.

1.3 Notice of Public Appearance

- (a) Publication - Before an application may be considered at a public appearance, the Commission must publish notice of the public appearance approximately fourteen (14) calendar days prior to the date of the public appearance in a newspaper of general circulation within the county. The notice must specify the name and address of the applicant, the address of the property, and the fact that an application is pending for work upon the property. The notice must also specify the date, time and place of the public appearance.
- (b) Notification by Mail - Approximately fourteen (14) calendar days before the public appearance on an application, the Commission shall mail notice of the date, time, and place of the public appearance to the applicant, any existing LAP (if the property is located within a master plan historic district with an LAP), and, as specified by the applicant at the time of filing, adjoining and confronting property owners, and other interested parties.
- (c) Emergency Applications Added to Agenda - At the Chairman's discretion, emergency applications may be added to the agenda of a public appearance. It shall be the responsibility of the applicant to hand deliver notices of the emergency application to all adjacent and confronting property owners, LAPs, and other interested parties. The applicant shall obtain written verification that such notices were received and shall present these verifications to the Commission's staff prior to the public appearance.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Historic Area Work Permits	Number 11-20
Originating Department Historic Preservation Commission	Effective Date

1.4 Public Appearance

- (a) Time and Place - A public appearance before the Commission shall be held at the date, time, and place designated in the notice, except for public appearances which are continued. However, where circumstances require a change in the date, time, or place of the public appearance after notice has already been given, the Commission shall make reasonable efforts to notify the public of the change.
- (b) Official Record
 - (1) In General - The Commission shall prepare, maintain, and supervise the custody of an official record for each application. The official record shall include the application, exhibits, and minutes or transcript of the public appearance. The official record shall be opened upon the filing of a completed application with the director. Documentary evidence may be received in the form of copies, excerpts, photographic reproductions, models, or by incorporation by reference.
 - (2) Inspection of Official Record - Subject to the provisions of the Maryland Public Information Act, and upon reasonable notice, any person shall have the right to review the official record at reasonable hours at the Commission's office. Any person may, at his own expense, request a copy of the written transcript of any public appearance.
- (c) Ex Parte Communication
 - (1) This rule applies to any ex parte or private communication, written or oral, received by a Commissioners if:
 - a. The communication related to an application before the Commission;
 - b. All appellate rights regarding the application have not been exhausted; and
 - c. The Commission is required by law to make an administrative decision on the matter based on the record.
 - (2) This rule does not apply to:
 - a. Legal or technical advice rendered at the request of the Commission; or
 - b. Any communication about the status or procedure of a pending application.
 - (3) If a Commissioner receives an oral ex parte or private communication, that Commissioner shall reduce the substance of the communication to writing within reasonable time after receipt of the communication and include it in the official record.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Historic Area Work Permits	Number 11-20
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- (4) The Commission shall include the ex parte or private communication in the official record and may:
- a. Consider the communication as a basis for its decision after giving all parties an opportunity to respond to the communication; or
 - b. Decide the matter if the Commission expressly finds that it has not considered the communication as a basis for its decision.
- (d) Evidence - The Commission may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be reliable in nature. It shall give effect to the rules of privilege recognized by law. Evidence must be competent, material, and relevant to all matters at issue. The Commission may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or produce evidence at its own request. The Commission may take official notice of commonly cognizable facts, facts within each Commissioner's particular realm of professional expertise, and documents or matters of public record.
- (e) Cross-Examination - Every party has the right of reasonable cross-examination of witnesses who testify, and may submit rebuttal evidence. Repetitious questions and examination on irrelevant matters is not permitted. Cross examination is subject to reasonable regulation by the Commission including the designation of specific persons to conduct cross-examination on behalf of other parties.
- (f) Right to Counsel - In any case governed by these procedures, all parties have the right to be represented by themselves or by an attorney of their choice.
- (g) Powers of the Commission in Conducting a Public Appearance - In addition to any of the powers granted to the Commission by Chapter 24A, the Commission may, at their discretion, undertake the following so as to achieve the orderly and efficient conduct of business:
- (1) Regulate the course of a public appearance and allow the official record in a public appearance to remain open;
 - (2) Dispose of procedural requests or similar matters, including requests for a continuance;
 - (3) Call, examine, and cross-examine witnesses and obtain and introduce into the official record documentary or other evidence;
 - (4) Request the parties at any time during the public appearance to state their respective positions or theory concerning any issues in the application;
 - (5) Take any action authorized by law or necessary to a fair disposition of an application;



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- (6) Accept evidence by stipulation of facts;
- (7) Schedule, suspend, or continue a public appearance to a date and time certain with notification as provided for in this regulation;
- (8) Require the designation a spokesperson for any group of parties either supporting or opposing an application who shall conduct any opening, direct examination, cross-examination, closing or testimony in general, so as to achieve the orderly presentation of a case.

(h) **Public Appearance Conduct and Procedure**

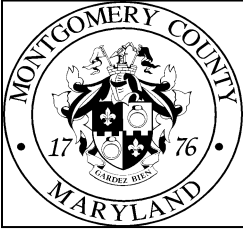
- (1) Unless otherwise provided by law:
 - a. A quorum of the Commission must be present to conduct a public appearance or hearing.
 - b. All public appearances and hearings shall be de novo before the Commission.
 - c. The members of the Commission shall be subject to disqualification for conflict of interest as defined by Section 410 of the Montgomery County Charter, and Chapter 19A of the Montgomery County Code. Suggestions for disqualification of any Commissioner may be made on petition of any party. A motion for disqualification shall be resolved by the Commissioner whose disqualification is sought.

- (2) The Commission may establish reasonable time limitations and registration requirements for witnesses and speakers, so that all may have an opportunity to be heard. In general, these time limits will be:

HAWP applicant's presentation:	7 minutes
Comment by adjacent owners/interested parties:	3 minutes
Comment by citizen associations/interested groups:	5 minutes
Comment by elected officials/government representatives:	7 minutes

The Commission may waive these time limits and may decide whether speakers will be required to register in advance or at the meeting, depending on the complexity of the case. Direction as to when and how to register to speak on an issue will be made clear in the notice for the meeting.

- (3) All exhibits accepted shall be held or referenced in the official record. Those exhibits



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whose admission is rejected shall either be returned to the offering party or retained in the official record with appropriate notations reflecting that the material was rejected as an exhibit.

- (4) Rulings on motions, petitions, and objections made during the course of a public appearance shall be ruled on as received or as soon thereafter as practicable.
- (5) The ordinary, but not mandatory, order or procedure for the conduct of a public appearance and the presentation of evidence is as follows, subject to waiver or such reasonable changes as may be ordered by the Commission or by law:
 - a. Disposition of all outstanding preliminary motions and preliminary matters.
 - b. Presentation by Commission staff.
 - c. Opening statement and presentation of factual case of the applicant.
 - d. Presentation of factual case and statements of other parties.
 - e. Presentation of rebuttal evidence of the applicant.
 - f. Closing arguments of the applicant.
 - g. Closing arguments of other parties opposing the application.
 - h. At the end of each presentation, any party, upon recognition by the chair, may briefly cross-examine any speaker.
- (6) During regularly scheduled public appearances, the Commission may review applications on an expedited basis - that is without presentations by staff, applicant, or other parties - if there are not parties opposing the application.
- (7) Unless otherwise determined by the Commission, the record shall remain open until the final decision is made. Once the record is closed, no additional information will be received except for good cause shown and a showing that it is material.
- (i) Failure to Appear - Upon the failure of an applicant to appear at a public appearance, and upon finding that such party had timely legal or actual notice of the appearance, the Commission may receive evidence and decide the case as if all parties were present.

1.5 Criteria for Approval

- (a) The Commission shall be guided in their review of Historic Area Work Permit applications by:
 - (1) The criteria in Section 24A-8.



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- (2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.
 - (3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.
 - (4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.
- (b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence.

1.6 Decisions

- (a) Content - All decisions of the Commission, except rulings on preliminary matters or on motions or objections, must be based on the evidence contained in the official record. Written decisions - containing findings of fact, conclusions of law, and an appropriate decision and order - will be issued on all denials. In all cases, each decision will conclude with instructions to the director to:
 - (1) Issue the permit as described in the application, including amendments to the application that may have occurred subsequent to its initial filing;
 - (2) Issue the permit subject to the conditions stipulated in the decision; or
 - (3) Deny the permit.
- (b) Voting Requirements - Every decision must have the concurrence of a majority of the voting members of the Commission. Members of the Commission absent during a public appearance may vote upon a matter upon written certification that they have reviewed the verbatim transcript of the appearance, and reviewed the evidence contained in the official record.
- (c) Notification of Decision - All decisions of the Commission must be made public and mailed to the applicant.
- (d) Delegation to Staff
 - (1) The Commission's authority to review and approve Historic Area Work Permit applications for simple alterations that will have no more than an insignificant impact on the historic character of the resource is delegated by the Commission to the staff, subject to the following conditions:
 - a. The staff member assigned to review the application meets the Secretary of the



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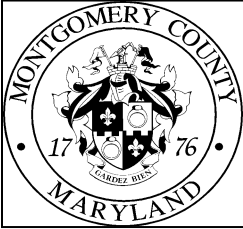
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Interior’s Historic Preservation Professional Qualification Standards (see 36 CFR Part 61) for history, architectural history, architecture, or historic architecture; and

b. The alteration, as proposed, satisfies the criteria for approval under County Code Section 24A-8, the Secretary of the Interior’s Standards for Rehabilitation, and any applicable district or resource-specific design guidelines.

- (2) If the work identified in the application requires additional conditions to satisfy the criteria for approval or the staff member recommends denial, the application must be placed on the next available Commission meeting agenda and will be subject to the publishing and notice requirements of County Code Section 24A-7.
- (3) Additional documents such as Adopted Master Plan amendments or historic preservation easements accepted under County Code Section 24A-13 may define additional work items specific to the subject property that may also qualify for staff level approval of Historic Area Work Permit applications.
- (4) Staff review and action must take place within 5 business days from the date that the Director forwards a complete application to the Commission for review.
- (5) Any application not acted upon after 5 business days must be placed on the next available Commission meeting agenda and will be subject to the publishing and notice requirements of County Code Section 24A-7.
- (6) If the proposed alteration satisfies the criteria for staff-level approval, the publication, notification, and public meeting requirements of Section 24A-7 are waived.
- (7) The proposed alteration must not significantly alter the historical or visual character of the property and must fall into one of the following categories:
 - a. Repair or replacement of a masonry foundation with new masonry materials that closely match the original in appearance;
 - b. Installation of vents or venting pipes in locations not visible from the public right-of-way;
 - c. New gutters and downspouts;
 - d. Removal of vinyl, aluminum, asbestos, or other artificial siding when the original siding is to be repaired and/or replaced in kind;
 - e. Removal of accessory buildings that are not original to the site or non-historic construction;



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- f. Repair or replacement of missing or deteriorated architectural details such as trim or other millwork, stairs or stoops, porch decking or ceilings, columns, railings, balusters, brackets shutters, etc., with new materials that match the old in design, texture, visual characteristics, and, where possible materials, so long as the applicant is able to provide one extant example, photographic evidence, or physical evidence that serves as the basis for the work proposed;
- g. Construction of wooden decks that are at the rear of a structure and are not visible from a public right-of-way;
- h. Roof replacement with -compatible roofing materials, or with architectural shingles replacing 3-Tab asphalt shingles;
- i. Installation of storm windows or doors that are compatible with the historic resource or district;
- j. Repair, replacement or installation of foundation-level doors, windows, window wells, and areaways, or foundation vents, venting pipes, or exterior grills that do not alter the character-defining features and/or the historic character of the resource;
- k. Construction of fences that are compatible with the historic site or district in material, height, location, and design;
- l. Construction of walkways, parking pads, patios, driveways, or other paved areas that are not visible from a public right-of-way and measure no more than 150 square feet in size;
- m. Replacement of existing walkways, parking pads, patios, driveways, or other paved areas with materials that are compatible with the visual character of the historic site and district and that are no greater than the dimensions of the existing hardscape;
- n. Construction of small accessory buildings no larger than 250 square feet in size that are not visible from the public right-of-way;
- o. Installations of skylights on the rear of a structure that will not be visible from the public right-of-way, and would not remove or alter character-defining roof materials;
- p. Installation of solar panels and arrays in locations that are not readily visible from the public right-of-way or that are designed so as to have a minimal impact on the



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historic resource or the historic district (e.g., systems that are ground-mounted in areas other than the front or side yard of a corner lot, located on accessory or outbuildings, on non-historic additions, or on rear facing roof planes);

- q. Installation of car charging stations in any location on a property or in the right-of-way;
- r. Installation of satellite dishes;
- s. Removal of trees greater than 6” in diameter (d.b.h.) that are dead, dying, or present an immediate hazard.
- t. Removal of trees greater than 6” in diameter (d.b.h.) in the rear of the property that will not impact the overall tree canopy of the surrounding district or historic site; and,
- u. Other minor alterations that may be required by the Department of Permitting Services post-Commission approval that would have no material effect on the historic character of the property.

- (8) For the construction of fences under Section 1.6(d)(7)k. the Commission may create and distribute design guidelines to further clarify compatible fence designs. Fences approved administratively must not be higher than 48” forward of the rear wall plane.
- (9) Staff may condition approval to remove trees under Section 1.6(d)(7)s. on the replanting of trees on the property with a replacement ratio of one-to-one.
- (10) Staff must notify the applicant of the approval and report monthly to the Commission, appropriate LAP, and, if applicable, the municipality about applications reviewed and approved by Commission staff in the previous month.

APPROVED AS TO FORM AND LEGALITY

By:
Walter E. Wilson
Associate County Attorney

Marc Elrich
County Executive

Date: 7/30/20

**Resolution No. R-07-2020
Adopted:**

SUBJECT: A Resolution of the Mayor and Town Council of Kensington to Accept a Contribution from Knowles Manor Senior Housing, LLC, to Supplement Traffic and Parking Enforcement

Whereas, Knowles Manor Senior Housing, LLC ("Knowles Manor") is the owner of 3906 and 3910 Knowles Avenue ("Property") and applied for preliminary plan no. 120190140 and site plan no. 820190080 to allow the construction of a senior housing project within the Town ("Project"); and

Whereas, a group of residents, known collectively as "Neighbors for an Improved Kensington" raised various issues with Knowles Manor about the Project; and

Whereas, the Neighbors for an Improved Kensington and Knowles Manor reached a Settlement Agreement to resolve the issues, a copy of which is attached as Exhibit A; and

Whereas, the Settlement Agreement contains a provision whereby the Town may receive a donation of \$100,000.00 ("Contribution") from Knowles Manor upon approval of a resolution stating the Town's willingness to accept the Contribution and use it to supplement traffic and parking enforcement; and

Whereas, the Mayor and Council have determined that is in the public interest to accept the Contribution to supplement traffic and parking enforcement.

Now Therefore Be It Resolved by the Mayor and Town Council of Kensington that the acceptance of a Contribution in the amount of \$100,000 from Knowles Manor, subject to the Contribution being used to supplement traffic and parking enforcement, be and it is hereby approved; and it is further

Resolved, that the Town will maintain a separate accounting for the Contribution, to and until the time that it is entirely spent for the approved purposes.

Adopted by the Town Council this 19th day of October, 2020.

Effective this 19th day of October, 2020.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: _____
Susan C. Engels, Clerk – Treasurer

Tracey C. Furman, Mayor



4420 Lottsford Vista Rd., Suite #1
Lanham, MD 20706
Phone: (301) 340-2290

September 29, 2020

Town of Kensington
3710 Mitchell Street
Kensington, MD 20895

Attn.: Shirley Wattson

Reference: 7.5 ton Unit Replacement

Emcor Services Combustioneer is pleased to provide you with our proposal to provide labor, materials and equipment for the HVAC system(s) at the aforementioned building.

HVAC SCOPE OF WORK:

- Remove and properly dispose of existing units including refrigerant recovery per EPA guidelines.
- Provide and install one new 7.5 ton gas/electric package unit manufactured by Carrier or equal.
- Provide and install new economizer for free cooling should ambient temperatures permit.
- Provide necessary mounting hardware required for the equipment being installed.
- Fabricate and install necessary sheet metal transitions required for proper connection of new unit.
- Provide necessary rigging and trucking of removed and new equipment to and from the project site.
- Reconnect existing electrical, gas and condensate drain lines to new units.
- Daily removal of debris generated by Combustioneer personnel.
- Equipment check, test and start up by Combustioneer technicians.
- One-year warranty on all Combustioneer supplied materials and labor.

Total Price to perform the above **HVAC** Scope of Work will be **\$16,785.00**.

Option #1-Replace Heat Exchanger in Leu of Unit Replacement

- Furnish and install one new gas fired heat exchanger to include draft inducer motor and burner assembly.

Price-----\$5,347.00

ASSUMPTIONS and CLARIFICATIONS:

- This proposal is to be incorporated into the contract. Any terms and conditions stated herein supersede any other contract statements or wording which may conflict.
- This proposal is based on the assumption that unfettered access to the work areas will be provided to Combustioneer and its subcontractors.
- As requested, Combustioneer will be replacing the existing outdated HVAC units with new in-kind equipment of equal capacity. These direct like-for-like replacements are based on the

assumption that the original units have been sized properly for the local weather conditions, current occupancy levels, and current building use. Unless specifically requested, it is not Combustioneer intent to re-design or to modify these systems.

- Combustioneer assumes that the existing system(s) and its components to be re-used (HVAC, piping, electrical, roofing, ductwork, etc.) are in proper operating condition. Combustioneer cannot warrant the performance of existing equipment and systems.
- The existing air distribution systems, electrical connections, condensate and gas piping and other existing HVAC systems' components will remain as-is.
- Net terms: Progress payments. Final invoice due 30 days after completion and owner acceptance. This proposal is subject to a mutually agreeable work schedule and is valid for 30 days.

Payment Schedule	
Percentage of Payment Due	Project Milestone
10%	Agreement Commencement
40%	Material Ordering
50%	Progress Payments

EXCLUSIONS:

- Controls Upgrade to existing VVT System.
- Design Engineering, Acoustical Engineering and noise reduction provisions; project bonding.
- Fire sprinklers, Fire override control, Smoke Detector monitoring or fire life safety controls.
- Repairs or replacement of any building, electrical or HVAC systems that are not functioning properly as a result of pre-existing condition; duct leakage testing or repairs.
- Overtime labor.
- Any and all items not specified in this scope and not shown on the mentioned above plans.

Sincerely,

Josh Kohler

Josh Kohler

Account Manager

EMCORServicesCombustioneer

MSCAGreenStarQualifiedContractor

Office:301.340.2290

Cell:301.337.9018

ACCEPTANCE

Title: _____

P.O. _____

Approved By: _____

Date: _____

TERMS AND CONDITIONS

1. Contractor will perform the services ("Services") set forth in the attached proposal ("Proposal").
2. Contractor will perform the Services during normal working hours, Monday through Friday, from 8 AM to 5PM, unless specified otherwise in writing by Contractor. If Customer requests that Contractor provide Services on an expedited basis and/or outside normal working hours, Customer shall pay all additional charges for freight, labor, or materials according to Contractor's established rates and fees.
3. If Contractor determines that other work beyond the Services is required, such work shall not constitute a part of the Services, and Contractor will provide Customer with a quotation for such work.
4. Customer agrees to (i) provide safe and reasonable access, and any other assistance as is reasonably necessary, so that Contractor can perform the Services and (ii) remove and replace/refinish any part of the work site that must be disturbed so Contractor can perform the Services.
5. **Contractor shall not perform any service that concerns hazardous materials, and shall have no responsibility for remediation, accumulation, storage, transportation, or disposal of any hazardous materials generated by Customer or present at the work site. 6. Contractor shall not be required to perform any Services where hazardous materials are present or where Contractor suspects the presence of hazardous materials, and Contractor immediately may stop providing Services in either instance and notify Customer of the circumstance giving rise to the stoppage.**
7. Customer agrees to pay Contractor the lump sum or time and materials rates set forth in the Proposal, and all excise, sales, use, occupation or other similar taxes connected with Contractor's performance of the Services.
8. Customer's payment is due net 30 days from date of invoice, and late payment to Contractor shall be subject to interest at the rate of one and one-half percent (1½ %) per month, not to exceed the maximum amount allowed by applicable law. Contractor may cease providing Services, including warranty services, if Customer fails to make any payment that is due and owing.
9. Materials provided will be free from defects for one (1) year from the date of the Services or to the extent of the manufacturer's warranty, whichever the lesser. Workmanship provided will be good and of a workman-like standard for sixty (60) days from the date of the Services. During the applicable warranty period, Contractor promptly shall repair or replace, at its sole option and at its own expense, any defective materials or workmanship during normal working hours (for defective materials, Contractor only will provide (i) warranty coverage to the extent that Contractor is able to enforce liability against the manufacturer and (ii) necessary labor at its own expense for sixty (60) days from the date of the Service and during normal working hours). Customer's sole and exclusive warranty is the repair or replacement set forth herein. If Customer requests that Contractor provide warranty services on an expedited basis and/or outside normal working hours, Customer shall pay all additional charges for freight, labor, or materials according to Contractor's established rates and fees.
10. Contractor's warranty applies only to materials and workmanship furnished by Contractor. Contractor's warranty shall be null and void if (i) Customer fails properly to operate and maintain equipment and/or the system for which Services were provided, (ii) acts of vandalism or other alterations or modifications occur that affect the equipment and/or the system for which Services were provided, or (ii) Customer subsequently has another contractor provide goods or services that affect to the Services.
11. Contractor shall not be liable for any delay, or loss or damage arising therefrom, and shall be entitled to additional time for the Services, if the delay is caused by an occurrence beyond the reasonable control of Contractor.
12. Contractor is not responsible for equipment and/or system design deficiencies, obsolete equipment or systems, equipment or systems beyond serviceable life, or electrical failures, and Customer shall remain obligated to pay for Services if the Proposal properly was performed but the Services do not remedy the condition giving rise to the Proposal because of the foregoing.
13. Contractor shall not be liable for operation of any equipment or system, nor for injury to person or damage to property, except to the extent such injury or damage is caused by the negligent acts or omissions of Contractor, and only to the proportionate extent of Contractor's negligence.
14. Under no circumstances, whether arising out of contract, tort (including negligence), strict liability, warranty or otherwise, shall either party be liable to the other for special, indirect, incidental, consequential, exemplary or punitive damages of any nature.
15. In no event shall Contractor's aggregate liability to Customer exceed an amount that is the lesser of (i) the amount of the Proposal or (ii) the cost to Contractor to repair or replace the item giving rise to the claim.
16. This Proposal shall be governed by the laws of the State where the Services are performed, without giving effect to its conflict of laws provisions. Any action concerning the subject matter of this Proposal shall be commenced in the State court of such State, which shall have exclusive jurisdiction over such action. Any such action shall be submitted TO THE

COURT ONLY for resolution, WITHOUT TRIAL TO A JURY. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL REGARDING ANY SUCH ACTION.

17. Contractor shall be entitled to all fees and costs, including reasonable attorney's fees, incurred by it in any action to collect amounts due to it from Customer.

18. By signing the Proposal, Customer authorizes Contractor to perform the Services and agrees to these Terms And Conditions and those set forth in the Proposal. Customer further agrees that the Proposal and these Terms And Conditions constitute the parties' entire agreement, and any other documents generated or provided by Customer are intended only to create payment authority for Customer's internal purposes. No such Customer documents shall form a part of this agreement, or constitute a counteroffer, amendment, modification, or revision, and hereby are rejected by Contractor.

THREE YEAR SALT UTILIZATION AGREEMENT

by and between

Maryland Department of Transportation
State Highway Administration

and

Town of Kensington, Maryland

This AGREEMENT (“**Agreement**”) made as of the 1st day of September 2020, executed in duplicate, by and between the Maryland Department of Transportation State Highway Administration (“**MDOT SHA**”) and Town of Kensington, Maryland, a political subdivision of the State of Maryland and a body politic and corporate (“**TOWN**”).

WHEREAS, during certain winter snow emergency operations (“**Snow Event**”) the TOWN may have a need to obtain additional salt (“**Salt**”) to effectively complete their winter snow operations; and

WHEREAS, the TOWN has requested, and MDOT SHA has agreed, to allow the TOWN to obtain Salt from MDOT SHA stockpiles during a Snow Event in accordance with the terms and conditions contained herein; and

WHEREAS, the TOWN shall reimburse MDOT SHA for the cost of Salt plus other related expenses; and

WHEREAS, MDOT SHA and the TOWN agree that this Agreement will benefit both parties of this Agreement and will promote the safety, health and general welfare of the citizens of the State.

NOW, THEREFORE, in consideration of the premises and of the mutual promises between the MDOT SHA and the TOWN, as set forth herein, the adequacy of which is hereby acknowledged, the parties hereby agree to the following:

I. TERM & BUDGET

The Term of this Agreement is for a period of three (3) years beginning the first (1st) day of September 2020 and ending on the thirty first (31st) day of August 2023, both dates inclusive, unless sooner terminated as set forth herein. For budgeting and planning purposes only, during the Term of this Agreement the total cost for Salt shall not exceed Eight Thousand Dollars (\$8,000). This is an estimate only and the TOWN shall be responsible for actual costs incurred at the time of acquisition.

II. SALT COSTS

- A. The cost of Salt, at the time of execution of this Agreement is Fifty Two Dollars and Fifty Five Cents (\$ 52.55) per ton, which includes the price of the Salt, a Delivery Charge and an Overhead Charge.
- B. The Salt price listed herein are subject to awarded contracts by MDOT SHA and shall be adjusted accordingly.
- C. The Delivery Charge includes the cost of fuel and mileage to transport the Salt to an MDOT SHA Salt dome. The Overhead Charge is determined by the federally approved Overhead Rate that may be adjusted on October 1st of each year. The current Overhead Rate is seven and eighty seven hundredths percent (7.87%).
- D. The cost of the Salt may be adjusted weekly to account for Delivery Charge variances.

III. ESTABLISHMENT of the SALT COST

MDOT SHA has established a charge number for the TOWN which will be used to document Salt withdrawals from MDOT SHA's inventory system. The current charge number for the TOWN is **BY241M84**.

IV. PROCEDURES

- A. Salt Scheduling
 - 1. MDOT SHA Shop Locations: For purposes of this Agreement, the MDOT SHA shops to be used for Salt for the TOWN, as determined by MDOT SHA, are:
 - Kensington Salt Dome
 - Fairland Salt Dome
 - 2. Prior to a Snow Event: The TOWN will contact Darrin Johnson, MDOT SHA's Resident Maintenance Engineer (RME), or designee, of the Gaithersburg Shop at 301 948-2477 to arrange for the TOWN's trucks to be loaded with the Salt at the designated location the day before a local forecasted snow if time permits; otherwise MDOT SHA and the TOWN will determine which MDOT SHA salt storage site is appropriate to use to load the Salt onto the trucks and MDOT SHA will provide an operator to facilitate the loading of the Salt.
 - 3. During the Snow Event: The TOWN will contact the appropriate MDOT SHA Shop nearest to that truck and request to be loaded at an approximate preferred time of arrival. MDOT SHA will then arrange for an operator to meet the TOWN truck at that location as close to the preferred time as

possible without negatively affecting MDOT SHA operations. In addition, if a TOWN truck is in the vicinity of a specific dome during a Snow Event and an MDOT SHA operator is present, the TOWN truck may then be topped off, if desired. In situations where the MDOT SHA Snow Event operations are already active when the TOWN operations begin, the TOWN can notify MDOT SHA as far in advance as possible and MDOT SHA will make every effort to provide an operator at all the locations requested in order to begin loading TOWN trucks with Salt.

4. Post Snow Event: The TOWN can contact the appropriate MDOT SHA shop to request re-loading after a Snow Event, and MDOT SHA will schedule the re-loading at both parties' convenience.
5. The TOWN shall not return any unused Salt to any MDOT SHA shop.

B. Load Records

1. The TOWN shall ensure all vehicles picking up Salt on their behalf are identified by a sticker or placard indicating the TOWN's name.
2. Only an MDOT SHA authorized loader operator shall load the TOWN trucks.
3. MDOT SHA shall create a written loading record that must be signed by the TOWN driver. A copy shall be given to the TOWN driver to account for every load of Salt that the TOWN receives from MDOT SHA. Each load record shall contain the following information:
 - a. truck number or license tag number,
 - b. the number of scoops/ buckets loaded,
 - c. the number of tons loaded based on the scoops / bucket size value multiplied by the number of scoops /buckets.

V. PAYMENT

- A. MDOT SHA shall provide a detailed invoice to the TOWN by May 31st of each year for all actual costs incurred by MDOT SHA to provide Salt to the TOWN. The invoice shall be accompanied by normal documentation from MDOT SHA to evidence actual costs incurred.
- B. Upon request by the TOWN, MDOT SHA may provide information to include the number of buckets and estimated tonnage provided to the TOWN for each date of withdrawal.
- C. The estimated cost of the Salt is based on the average amount of Salt used during the previous three (3) years at the prevailing rate at the time of execution of this Agreement and will be subject to future adjustments during the Term according to costs for Salt, delivery and overhead in effect at that time.

D. REIMBURSEMENT

1. Reimbursement to MDOT SHA for the SALT during the Term, including MDOT SHA overhead, is estimated to be Eight Thousand Dollars (\$8,000) and is based on estimated quantities from the previous term, however, actual costs and tonnage may vary and the TOWN shall reimburse MDOT SHA for all actual tonnage (which includes the delivery charge) and overhead costs.
- E. In the event of extremely heavy Salt usage, MDOT SHA reserves the right to submit progress billings to the TOWN in lieu one annual invoice.
- F. The TOWN shall reimburse MDOT SHA for all costs incurred by MDOT SHA for all supplied Salt provided during the Term pursuant to this Agreement within thirty (30) days of receipt of each invoice.
- G. In the event MDOT SHA does not receive payment of invoices within thirty (30) days of the TOWN's receipt of each invoice, MDOT SHA will notify the TOWN of the overdue payment and provide the TOWN the opportunity to pay such overdue amounts. If payment of the overdue amount is not received within thirty (30) days following notification, MDOT SHA will then notify the TOWN in writing, and the parties hereby agree that MDOT SHA may make a deduction from the TOWN's share of Highway User Revenue equal to the overdue invoice amount(s) or MDOT SHA may refer the overdue amount to the Central Collection Unit, at 300 West Preston Street, Room 500, Baltimore MD 21201-2365 for collection of overdue amount.

VI. GENERAL

- A. MDOT SHA does not supply Brine, a pretreatment salt-based mixture.
- B. Title VI Assurances. All parties to this Agreement shall comply with the requirements of **APPENDIX A** (2 pages) and **APPENDIX E** (1 page) of MDOT SHA's Standard Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A which generally set forth non-discrimination regulations and other civil rights related regulations. **APPENDIX A** and **APPENDIX E** are attached hereto and incorporated herein as substantive parts of this Agreement. The term "Acts" in Appendix A refers to 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3. The term "Recipient" in Appendix refers to MDOT SHA.
- C. MDOT SHA and the TOWN agree to cooperate with each other to accomplish the terms and conditions of this Agreement.
- D. The provisions contained in this Agreement shall be binding upon the parties until the earlier to occur of; (i) three (3) years from the date first written above, (ii) thirty (30) days after written notice has been given by either party to the other that they elect to no longer be bound by the terms and conditions of this Agreement, or (iii) August 31, 2023. However, termination of this Agreement and any

Amendments is contingent on all outstanding invoices being paid by the TOWN to MDOT SHA.

- E. The TOWN shall indemnify, hold harmless and defend, at MDOT SHA's option, the State of Maryland, MDOT SHA and the Maryland Department of Transportation, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, incurred in connection with the loss of life, personal injury and/or property damage arising from or in connection with the activities performed pursuant to this Agreement by the TOWN or its contractors, agents or assigns.
- F. MDOT SHA shall reserve the right to limit or deny Salt to the TOWN in order to avoid jeopardizing MDOT SHA's snow remediation operations.
- G. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and assigns.
- H. This Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in Maryland courts.
- I. The recitals (WHEREAS clauses) at the beginning of this Agreement are incorporated as substantive provisions of this Agreement.
- J. All notices and/or invoices, if to the TOWN, shall be addressed to:

Matthew J. Hoffman
Town Manager
Town of Kensington
3710 Mitchell Street
Kensington, MD 20895
Phone: 301 949-9274
Fax:
E-mail: mjhoffman@tok.md.gov

And if to MDOT SHA:

Darrin Johnson
Resident Maintenance Engineer
Maryland State Highway Administration
502 Quince Orchard Road
Gaithersburg, MD 20878
Phone: 301 948-2477
Fax: 301 948-8714
E-mail: djohnson27@mdot.maryland.gov

With copies to:

Erica Rigby
District Engineer, D-3
State Highway Administration
9300 Kenilworth Avenue
Greenbelt, MD 20770
Phone: 301 513-7300
Fax: 301-513-7415
Email: erigby@mdot.maryland.gov

And,

MDOT SHA Agreements Team
Office of Procurement and Contract Management
State Highway Administration
707 N. Calvert Street
Mailstop C-405
Baltimore, MD 21202
Phone: (410) 545-5547
E-mail: shaagreementsteam@mdot.maryland.gov

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the day and year first above written.

**MARYLAND DEPARTMENT OF
TRANSPORTATION
STATE HIGHWAY ADMINISTRATION**

WITNESS

By: _____ (SEAL)

Andre Futrell
Deputy Administrator for
District Operations

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

RECOMMENDED FOR APPROVAL:

Assistant Attorney General

Darrin Johnson
Resident Maintenance Engineer

William J. Bertrand
Director
Office of Finance

TOWN OF CHEVY CHASE VIEW, MARYLAND
a body corporate and politic

WITNESS

BY: _____ (Seal)
Tracey Furman
Mayor

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

TOWN Attorney

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such. provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction; the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42

U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Federal Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP 'persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 741 00);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).