



BERLIN MAYOR AND COUNCIL

Meeting Agenda

Berlin Town Hall

10 William Street

Monday, October 22, 2018

6:00 PM EXECUTIVE SESSION – Conference Room

- a. Pursuant to Section §3-305(b)(7) – To consult with counsel to obtain legal advice on a legal matter.
- b. Pursuant to Section §3-305(b)(10) To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans.
- c. Pursuant to Section §3-305(b)(14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

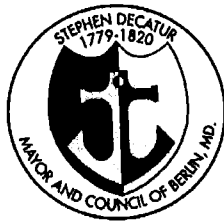
7:00 PM REGULAR SESSION – Council Chambers

1. Approval of the Minutes for:
 - a. Executive Session of 10/09/18
 - b. Statement of Closure for Executive Session of 10/09/18
 - c. Executive Session of 10/15/18
 - d. Statement of Closure for Executive Session of 10/15/18
 - e. Regular Session of 10/09/18
2. Berlin Fire Company presentation of quarterly financial report – David Fitzgerald, BFC President
 - a. Motion 2018-28: Motion approving an agreement for services between the Town of Berlin and the Berlin Fire Company ***supporting documentation will be made available for the meeting**
3. Public Hearing: Ordinance 2018-07: Ordinance granting Sandpiper Energy, Inc., a Delaware Corporation, a Franchise for the right to lay pipes, conduit, conductors and other appurtenances, extend, maintain, repair, and operate facilities in the public ways to distribute and sell natural gas to the public in The Town of Berlin, and limiting the time within which, and specifying certain conditions under which, said franchise may be exercised – Town Administrator Laura Allen
4. First Reading: Ordinance 2018-01: Ordinance repealing in its entirety Chapter 2, Article II entitled Ethics Provisions, and enacting Chapter 2, Administrative Article II, Ethics Provisions in its place – Town Administrator Laura Allen

5. Motion 2018-28: Motion approving the Mayor and Council Meetings and Town Holidays for calendar year 2019
6. Motion 2018-30: Motion approving an agreement with Republic Services for single stream recycling services – Water Resources/Public Works Director Jane Kreiter
7. Departmental Reports:
 - a. Finance Director – Natalie Saleh
 - b. Water Resources/Public Works – Jane Kreiter
 - c. Electric – Tim Lawrence
 - d. Chief – Arnold Downing
 - e. Planning – Dave Engelhart
 - f. Economic and Community Development – Ivy Wells
 - g. Managing Director – Jeff Fleetwood
8. Town Administrator’s Report
9. Comments from the Mayor
10. Comments from the Council
11. Comments from the Public
12. Comments from the Press
13. Adjournment

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

*TTY users dial 7-1-1 in the State of Maryland.
TTY users outside Maryland dial 1-800-735-2258*



BERLIN MAYOR AND COUNCIL
Meeting Minutes
Tuesday, October 9, 2018

7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers

Present: Mayor Gee Williams, Vice-President Elroy Brittingham, Councilmembers Thom Gulyas, Zackery Tyndall, Dean Burrell, and Troy Purnell.

Staff Present: Town Administrator Laura Allen, Managing Director Jeff Fleetwood, Finance Director Natalie Saleh, Water Resources/Public Works Director Jane Kreiter, Police Chief Arnold Downing, Electric Utility Director Tim Lawrence, Planning Director Dave Engelhart, Economic and Community Development Director Ivy Wells, Town Attorney David Gaskill, and Town Clerk Kelsey Jensen.

Following the Lord’s Prayer and Pledge of Allegiance, Mayor Williams called the meeting to order at approximately 7:20 PM.

1. Approval of the Minutes for:
 - a. Regular Session of 09/24/18:
 On the motion of Councilmember Gulyas, the Regular Session Minutes of September 24, 2018 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

2. Swearing in of Councilmembers
 Mayor Williams swore in newly re-appointed Councilmembers Burrell, Purnell, and Gulyas.
3. Tattoo Ordinance Committee’s Recommendations
 Matthew Amey and Patricia Dufendach were present on behalf of the Tattoo Ordinance Committee and requested that the staff recommendation be accepted. They would like to meet bi-monthly or as needed and the moratorium be extended to November 18, 2020.

On the motion of Councilmember Tyndall, the moratorium extension to November 18, 2020 and a meeting schedule of bi-monthly or as needed was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

4. Public Hearing: Motion 2018-25: Motion accepting the recommendation of the Berlin Planning Commission to amend the Berlin Comprehensive Plan by adding two parcels identified as Worcester County Tax Map number 20, Parcels 47 and 318, to Growth Area number three contained in the Comprehensive Plan

Mr. Gerardi and Joseph Moore, Esq., presented information on their request and explained that the Planning Commission voted and approved their request. They also discussed that they felt the property use would be in line with the Town’s Comprehensive Plan. Councilmember Tyndall expressed concerns regarding the potential effect on the total number of EDUs the Town has. Mr. Moore stated that Ms. Kreiter indicated to him that they currently have 1179 unreserved EDUs. Ms. Kreiter corrected Mr. Moore and indicated that there are only 954 unreserved/available EDUs; Mr. Moore and Ms. Kreiter believe the property would have a maximum potential of using 43 EDUs with their current plan. Mr. Moore did not feel it would put a strain on the Town. Councilmember Tyndall asked Mr. Gerardi what his permanent residence was; he replied 9 Bay Street. Councilmember Tyndall asked when the comprehensive plan would be updated again; Ms. Allen said in 2020. Councilmember Tyndall said he would prefer for Mr. Gerardi to wait until the next comprehensive plan is completed so we can get more input from residents.

The public hearing for Motion 2018-25 began at 8:10 PM. John Whisenart and Jeff Smith stated that they were concerned about the farmland between the proposed growth area and the town being developed and annexed. Carol Rose and Cam Bunting both stated that they were in favor of the proposed growth area. Ms. Bunting stated that the residents do not want to see residential properties being built in the growth area, but they are in favor of commercial. Councilmember Tyndall stated that he felt that the comprehensive plan was thought out and hard work for staff and residents; he does not want to see changes occur that were not a part of that plan. Mr. Moore stated that if the property were to be annexed into the Town then there would need to be an agreement in place which allows the Town to have say in the annexation. With no other public comments, the public hearing for Motion 2018-25 ended at 8:21 PM.

Mayor Williams stated that residents have expressed concerns for residential growth, but they have expressed a desire for more commercial properties and more jobs. He stated that growth works two ways, the town out, or the county in; he would rather see the Town have substantial say in the development. Vice-President Brittingham stated that he feels the property is too close to the Town to let the County have control. Councilmember Burrell stated that this meeting gives the public the opportunity to discuss their opinions and he has heard a lot of positive feedback from residents on this motion. Councilmember Tyndall stated that this is a great example of why they have a panel with all different opinions.

On the motion of Councilmember Burrell, Motion 2018-25 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall		X			
<i>Voting Tally</i>	4	1			

5. Motions to Approve:

a.i. Motion 2018-24: Motion approving Ocean’s East to purchase twenty-four (24) new equivalent dwelling units

Blair Rinnier and Mark Cropper, Esq., present on behalf of Ocean’s East and requested to purchase twenty-four (24) EDUs. Councilmember Burrell asked when the final pavement will occur; Mr. Rinnier stated that it has. Councilmember Burrell also expressed concerns with the striping issues. Ms. Allen stated that the final pavement has not been completed to Town standards. Mr. Rinnier felt everything was built to plans, but that this can be discussed further. Mayor Williams also suggested flexible reflective poles to assist with the traffic flow since many find it confusing.

On the motion of Councilmember Tyndall, Motion 2018-24 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

a.ii. Motion 2018-20: Motion approving special Sunday permits applications for Boggs-Disharoon American Legion Post 123 on November 11th, November 25th, and December 9th

Mayor Williams explained their request.

On the motion of Councilmember Tyndall, Motion 2018-20 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

b. Motion 2018-21: Motion approving park events and accepting the 2019 event schedule and Motion 2018-22: Motion approving an exception to Ordinance 2011-11, Chapter 30-1 to allow the consumption of alcohol in non-glass containers within the designated areas during six specified 2019 special events

Ms. Wells read off the event dates and stated that she is working with Ms. Allen on a policy for the non-profits to benefit from the sale of alcohol at the events; Mayor Williams said we do not need a complicated policy. She reminded the Council that Afternoon on the Lawn will come forward to request their own alcohol permit for their event. Councilmember Burrell asked if Ms. Wells received a call about a Thanksgiving Day parade; she said she did, but did not hear anything further about the event. Councilmember Gulyas stated that he feels strongly that there are plenty of places to purchase alcohol and believes the tax paying businesses in downtown should be the only ones able to sell.

On the motion of Councilmember Purnell, Motion 2018-21 and 2018-22 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas		X			
Zackery Tyndall	X				
<i>Voting Tally</i>	4	1			

- c. Motion 2018-23: Motion approving Teepee Development, LLC to transfer twenty-nine (29) equivalent dwelling units (EDU's) from the assisted living site to the hospice and windy way farm land

Councilmember Purnell recused himself from the dais for this motion. Mark Cropper, Esq. and Austin Purnell present on behalf of Teepee Development, LLC and they explained their request.

On the motion of Councilmember Tyndall, Motion 2018-23 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell				X	
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	4			1	

- d. Motion 2018-26: Motion authorizing staff to enter into a contract with Axon Enterprise, Inc. for the Bodycam Taser Assurance Plan in the amount of \$36,751.50 over a period of five years
Police Chief Arnold Downing explained that the bodycams will be for their ten road officers. Councilmember Tyndall asked how long the footage would be kept; Chief Downing said they will go with 120 days; they will never delete evidentiary footage without talking to the States Attorneys. They can always purchase more storage for the cloud if needed. They will work on a policy for the storage of footage. Chief Downing stated that they will hold off on signing a contract until the Town Attorney has an opportunity to review the contract and policy. Councilmember Gulyas asked how they will be operated; Chief Downing said it will be turned on manually. Chief Downing stated that LGIT gave them a \$5,000 grant towards the purchase.

On the motion of Vice-President Brittingham, Motion 2018-26 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

- e. Motion 2018-27: Motion awarding the mobility and parking study contract to Sabra and Associates in the amount of \$24,480.00

Ms. Allen explained the request for qualifications. She stated that they received six proposals, they then compiled a panel to interview the top two groups. Sabra and Associates came highly recommended, they would use Sabra for the first phase of the study. Councilmember Burrell stated that he thinks the police chief should have been on the panel; Ms. Allen said they discussed the details.

On the motion of Councilmember Purnell, Motion 2018-27 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

- 6. First Reading Ordinance 2018-07: Ordinance granting Sandpiper Energy, Inc., a Delaware Corporation, a Franchise for the right to lay pipes, conduit, conductors and other appurtenances, extend, maintain, repair, and operate facilities in the public ways to distribute and sell natural gas to the public in The Town of Berlin, and limiting the time within which, and specifying certain conditions under which, said franchise may be exercised

Mayor Williams explained the agreement and Ms. Allen said a representative from Sandpiper was present to answer any questions. Councilmember Gulyas stated that on page two, section 2.2, there is an error "Fifteen Ten Thousand" should read "Fifteen Thousand". Mr. Gaskill stated that the next meeting will be the public hearing.

- 7. Departmental Reports:

- a. Water Resources/Public Works Director – Jane Kreiter

Ms. Kreiter reported that the Berlin Falls Park signs have been installed; Ms. Allen said there will be a ribbon cutting for the signs on October 23rd at 5:30 PM. Ms. Kreiter reported that the Wayfinding signs were also installed. Lastly, she felt that Touch-A-Truck was a success.

- b. Electric Utility Director – Tim Lawrence

Mr. Lawrence said that Touch-A-Truck was a great success and thanked everyone for their help.

- c. Police Chief – Arnold Downing

Chief Downing thanked Mr. Lawrence for his work with Touch-A-Truck. He said it was a very busy weekend with Seagull Century, Cruisers, and Touch-A-Truck.

- d. Economic and Community Development Director – Ivy Wells

Ms. Wells reminded everyone that Saturday is Oktoberfest and the 150th Celebration.

- e. Managing Director – Jeffrey Fleetwood

Mr. Fleetwood reminded everyone that on Thursday at 11:30 AM in the Council Chamber there will be a gathering for Sharon retiring. On Friday, Councilmember Tyndall and staff will be in attendance at the MML Fall conference to accept the Sustainable Maryland Award. Lastly, he stated that LGIT will be here on November 13th to present the bodycams grant.

8. Town Administrator’s Report – Laura Allen
 Ms. Allen showed photos of the Berlin Falls Park interpretive signs.

9. Comments from the Mayor – none.

10. Comments from the Council:
 Councilmember Tyndall congratulated his colleagues on their successful elections.

Councilmember Burrell asked if a citizen can contact the Town Administrator with issues; Ms. Allen said absolutely.

11. Comments from the Audience – none.

12. Comments from the Press – none.

13. Adjournment:
 On the motion of Councilmember Burrell, the Mayor and Council meeting was adjourned at approximately 9:25PM.

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

Respectfully Submitted,



Kelsey Jensen
 Town Clerk



MOTION OF THE MAYOR AND COUNCIL 2018-28

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN APPROVING THE AGREEMENT FOR SERVICES BETWEEN THE TOWN OF BERLIN AND THE BERLIN FIRE COMPANY.

APPROVED THIS _____ DAY OF _____, 2018 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF _____ TO _____ OPPOSED, WITH _____ ABSTAINING, AND _____ ABSENT.

Elroy Brittingham, Sr. Vice President

Approved this _____ day of _____, 2018 by the Mayor of the Town of Berlin.

Wm. Gee Williams, III, Mayor

ATTEST: _____

Laura Allen
Town Administrator



ORDINANCE NO. 2018-07

AN ORDINANCE PURSUANT TO SECTION C5-1(25) OF THE CHARTER OF THE TOWN OF BERLIN, MARYLAND TO GRANT SANDPIPER ENERGY, INC., A DELAWARE CORPORATION, A FRANCHISE FOR THE RIGHT TO LAY PIPES, CONDUIT, CONDUCTORS AND OTHER APPURTENANCES, EXTEND, MAINTAIN, REPAIR, AND OPERATE FACILITIES IN THE PUBLIC WAYS TO DISTRIBUTE AND SELL NATURAL GAS TO THE PUBLIC IN THE TOWN OF BERLIN, AND LIMITING THE TIME WITHIN WHICH, AND SPECIFYING CERTAIN CONDITIONS UNDER WHICH, SAID FRANCHISE MAY BE EXERCISED.

1. Definitions

- 1.1. "Agreement" or "Franchise Agreement" means this Agreement, together with Exhibits attached to this Agreement, if any, and any amendments or modifications.
- 1.2. "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations, including, but not limited to, orders, rules, and regulations of the Maryland Public Service Commission, Town Charter and Town ordinances, including the Town of Berlin, Maryland Design and Construction Standards for Water, Sewer, and Roadway Systems ("Design and Construction Standards"), and relevant judicial decisions.
- 1.3. "Effective Date" means the date when the Mayor and Town Council adopts, and the Mayor approves this Agreement twenty days (20) after the date of passage.
- 1.4. "Facilities" means natural gas distribution equipment, including pipes, main and service lines, valves, conductor, conduit, and appurtenances located in the Town.
- 1.5. "Franchise" means the right granted to Franchisee by ordinance and subject to this Agreement to construct, install, operate, repair, and maintain the Facilities in the Public Ways.
- 1.6. "Franchise Area" means all the area within the boundaries of the Town as established from time to time.
- 1.7. "Franchisee" means Sandpiper Energy, Inc.
- 1.8. "Party" or "Parties" refers to Franchisee or Town. The plural form refers to both Franchisee and Town.
- 1.9. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not-for-profit.
- 1.10. "Public Way(s)" means the surface of and the space below, any public streets, avenues, roads, highways, public thoroughfares, lanes, and alleys. Charter C9-1.
- 1.11. "Services" means the provision of natural gas as authorized by the Franchisee's tariffs approved by the Maryland Public Service Commission.
- 1.12. "Term" means the duration of the Franchise as defined in Section 3.
- 1.13. "Town" means the Mayor and Town Council of Berlin, Maryland, or as appropriate in the case of specific provision so this Agreement, any board, or department acting on behalf of the Town, or any officer, official, employee, or agent of the Town, any designee of the foregoing, or any successor thereto.

2. Grant of Franchise

2.1. The Town grants to Franchisee the exclusive right to lay pipes, conduit, conductor and other appurtenances below and above ground, extend throughout the Town, maintain, repair, operate, replace, relocate, and remove Facilities within the Public Ways to provide Services, which shall be exercised at the Franchisee's sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Ways. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Franchisee a real property interest in land, including any fee, leasehold interest, or easement.

2.2. Administrative Fee. To compensate the Town for its cost associated with administering this Agreement, Franchisee shall pay the Town a fee of Fifteen Thousand Dollars (\$15,000) no later than the Effective Date. If after the Effective Date hereof, Franchisee pays another municipality for a similar franchise, Franchisee hereby covenants and agrees to commence paying a like fee to the Town for the remaining term hereof.

2.3. No Waiver of Other Permits and Authorizations. Nothing in this Agreement shall be construed as a waiver of any laws, regulations, or rules of the Town or of the Town's right to require the Franchisee to secure the appropriate permits or authorizations, provided that the fees and charges imposed upon the Franchisee for any such permits or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations.

2.4. No Interference. Franchisee, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any public and private rights of way, sanitary sewers, water mains, storm drains, underground electrical and telephone wire, cable television or other telecommunications utility, or municipal property except as permitted by Applicable Laws and this Agreement.

2.5. Closing of Public Ways. Nothing in this Agreement shall waive or release the rights of the Town in and to the Public Ways.

2.6. Conditions Precedent. The Franchise shall commence upon the Effective Date, provided the Franchisee shall have met each of the conditions precedent set forth below and otherwise in the Agreement unless the Town agrees to waive any of the conditions precedent, at which time it shall become effective:

2.6.1. Council Action. All necessary approvals of the Agreement by the Mayor and Town Council shall have been obtained.

2.6.2. Payment of the Administrative Fee.

2.6.3. Insurance. The Franchisee shall have secured its insurance policies as set forth in Section 12 of the Agreement and delivered the certificate of insurance to the Town Administrator, together with evidence that the premiums for each of such policies have been paid, confirming that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.6.4. Clean Hands Certification. The Franchisee shall have paid all amounts due and owing to the Town, including, but not limited to, taxes, fees, fines, penalties, and interest.

3. Term. This Franchise shall be for a period of ten (10) years from the date this Franchise is approved and adopted by ordinance of the Mayor and Town Council.

4. Installation Specifications. All construction shall be consistent with Applicable Law and Facilities shall be installed in accordance with plans and specifications approved by the Town.

4.1. Approval by Town. Franchisee shall not install or operate any Facilities in the Public Ways until it has submitted plans to the Town. Franchisee shall submit to the Planning Office an Excavation Application and a description and drawing showing the location(s) of the proposed work, including plans to restore the Public Ways affected by the proposed work. Approval of plans and specifications and the issuance of any permits by the Town shall not release Franchisee from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications, or permits. Franchisee shall be responsible for notifying the Town immediately upon discovery of such omissions and/or errors and with obtaining any amendment to correct Town-approved permits, as may be necessary.

4.2. Performance Bond. At its sole and absolute discretion, the Town may at any time during the Term require Franchisee to provide a bond in an amount determined by the Town to represent the estimated cost of Franchisee's obligations under this Section, which the Town may require Franchisee to increase from time to time to reflect the reasonable estimated costs of performing such obligations and to secure performance of Franchisee's obligations under this Agreement.

5. Construction

5.1. Disruption, Interference and Damage. Franchisee shall use commercially reasonable efforts to coordinate construction, installation, and maintenance of the Facilities to minimize unnecessary disruption, including, as appropriate, coordination with applicable Town agencies. Franchisee shall at its own cost and expense, promptly repair any damage to property resulting from its activity to the original condition.

5.2. Coordination with Town Roadway Reconstruction. Franchisee shall install and maintain gas mains and service lines concurrent with the Town's Public Ways reconstruction plan. Franchisee shall use best efforts to install gas mains whenever customers express a commitment to utilize the services of Franchisee and it is economic for the Franchisee to do so.

5.3. Compliance with Town of Berlin, Maryland Design and Construction Standards for Water, Sewer, and Roadway Systems. All construction, installation, operation, repair, and maintenance of the Facilities shall be performed in a safe, thorough, and workmanlike manner using materials of good and durable quality and consistent with Applicable Law and industry standards.

5.4. Separation of Franchisee Facilities and Town Infrastructure. Franchisee shall maintain a minimum of three (3) feet of separation between future gas mains and existing infrastructure owned by the Town, unless otherwise approved in writing by the Town.

5.5. Public Ways Restoration.

5.5.1. Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, and sidewalks, to the extent caused by Franchisee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of Facilities in the Public Ways. Franchisee shall promptly repair such damage and return the Public

Ways and any affected adjacent property to a safe and satisfactory condition in accordance with the Town's applicable street restoration standards.

5.5.2. Promptly after completing any excavation or construction, Franchisee shall make temporary repairs to the disturbed Public Way to restore it to its prior condition. Within thirty (30) days after the temporary repair, the Franchisee shall restore the Public Ways with hot mix repaving repairs in conformance with the Design and Construction Standards for installation of water and sewer utilities and roadway construction projects, and provided that if the disturbed Public Way was resurfaced within thirty-six (36) months of the construction activity, the Franchisee shall repave the street from the centerline to the curb if the work was done in one travel lane, and from curb to curb if the work was done in the center of the Public Way; provided further that if the Public Way was resurfaced more than thirty-six (36) months prior to the construction, Franchisee shall repair the Public Way in accordance with Berlin's standard specifications for utility street repairs.

5.5.3. Franchisee's obligation under Section 5.5.2 shall survive for one (1) year after the completion of such repair and restoration work. When such work in the Public Ways is done during the last year of a Term, Franchisee shall warrant the quality of the work for one (1) year after such work has been performed.

5.6. As-Built Drawing. Franchisee shall provide as-built drawings of its Facilities per Section 5.3 within forty-five (45) days of completing construction showing size, depth, and location of all pipes, valves, gauges, and appurtenances.

5.7. Safety Precautions.

5.7.1. Standard of Care. The Franchisee shall employ ordinary care always and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public, and to take affirmative measures to prevent accidents at its worksites.

5.7.2. Protection of Construction Areas. The Franchisee shall comply with the safety requirements of all permits, licenses, and other approvals or authorizations. In addition, Franchisee shall maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective devices required for the safety of the public in compliance with Applicable Law. Devices placed in the Public Ways shall be placed and maintained in a way that do not interfere unnecessarily with the usual travel or other existing uses of the Public Way.

5.7.3. Emergency Notification. The Franchisee shall provide the Town with a twenty-four (24) hour emergency telephone number to contact a representative of the Franchisee in an emergency. It shall not be a voicemail or a recording. Franchisee shall make best efforts to respond within thirty (30) minutes to address the reported emergency. In the event of a Grade 1 gas leak when there is not adequate time to submit an Excavation Application, Franchisee shall notify the Berlin Police Department before starting repairs, commence repairs, and then comply with the Town permit application requirements.

5.7.4. One Call Notification System. For the Term of the Agreement, Franchisee and Town shall be members of the One Call Notification System ("Miss Utility") and shall comply with all the marking and location verification requirement of the One Call Notification System.

5.7.5. Inspection by the Town. The Town shall have access to inspect any work

conducted by Franchisee during the construction of Facilities.

6. Maintenance and Repair

6.1. Generally. Franchisee shall, at its sole cost and expense, perform all maintenance and repairs reasonably needed to maintain Facilities in good condition and in compliance with Applicable Laws.

6.2. Access to Facilities. Franchisee will be given reasonable access to the Facilities in the Public Ways to perform routine maintenance, repair, or removal of Facilities. When such maintenance activities have the potential to interrupt any Town services, Franchisee shall provide the Town with a minimum of three (3) days prior written notice of such maintenance activities, except emergency repairs shall comply with the procedure in Section 5.7.3.

7. Removal and Modification of Facilities During Term

7.1. Removal Due to Public Project. Upon receipt of a written notice from the Town pursuant to this Section, Franchisee, at its sole cost and expense, shall remove and relocate any of the Facilities constructed, installed, used and/or maintained by Franchisee whenever the Town reasonably determines that the removal is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Town or other governmental agency project including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, and construction, maintenance or operation of any underground facilities such as sewers, water mains, drains, storm drains, pipes, and underground power, cable, and telephone lines; (b) when the Facilities are reasonably considered to be interfering with or adversely affecting proper operation of Town; or (c) to protect or preserve the public health or safety. The Town shall collaborate with Franchisee in relocating any Facilities removed pursuant to this Section to minimize costs and disruption of Services to its customers.

7.2. Removal Due to Termination or Abandonment. Following termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Facilities, Franchisee shall remove all above-grade Facilities, within one-hundred twenty (120) days, at its sole cost and expense, decommission all below grade Facilities at its sole cost and expense in accordance with Applicable Law and best industry practices, and provide a certificate stating that all below grade Facilities have been safely decommissioned. Within ninety (90) days of a written request from the Town, Franchisee shall post a payment bond in an amount adequate to address the Town's cost of removing any Facilities and as compensation for any damage to the Public Ways relating to the Facilities, reasonable wear and tear excepted. The Town, in its sole and absolute discretion, may allow Franchisee to abandon some or all the Facilities in place and convey it to the Town.

8. Compliance With Laws

8.1. General. This Agreement is subject to all Applicable Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement.

8.2. Permits and Other Authorizations. Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and Town permits and/or authorizations required to construct, operate, or otherwise place Facilities in the Public Ways and provide Services.

9. Default and Remedies

9.1. Each of the following events shall constitute a default of this Franchise:

- A. Either Party fails to perform or comply with any of the conditions or covenants of this Agreement and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed in the thirty (30) day period, and the Party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other Party;
- B. Franchisee is adjudicated as bankrupt or becomes insolvent.

9.2. **Default by Franchisee.** In the event of default by Franchisee, the Town shall have the right, while any default continues beyond any applicable cure period, to terminate this Franchise after giving thirty (30) days written notice to Franchisee.

9.3. **Notice of Default.** If either Party finds that the other Party has failed to perform or defaulted on any or all material duties in this Agreement, the non-defaulting Party shall provide the defaulting Party a written "Notice of Default" which shall describe with sufficient detail the defaulting Party's failure to perform and default. The defaulting Party shall have forty-five (45) days (or an agreed upon timeframe by both parties) from delivery of the Notice of Default to correct the failure to perform or default. If the defaulting Party fails to correct the failure to perform and/or default within the forty-five (45) day period, the non-defaulting Party may terminate this Agreement. If the Town decides to terminate this Agreement, it may revoke the Franchise in accordance with Section 9.5.

9.4. **Enforcement.** Subject to applicable federal and state law, in the event either Party is in default of any provision of the Franchise, the other Party may:

- A. Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to money damages;
- B. Commence an action at law for monetary damages or seek other equitable relief; and/or
- C. In the event of a default of a material provision of the Agreement, the Town may seek to terminate this Agreement and revoke the Franchise per Section 9.5 of this Agreement.

9.5. Revocation

9.5.1 After complying with Section 9.3 and pursuant to the Town's public hearing procedures, the Town shall give written notice to the Franchisee of its intent to terminate the Agreement and revoke this Franchise ("Notice of Intent to Revoke") based on its default of a material provision of this Franchise Agreement. The Notice of Default shall include the following:

- A. A specific description of the default;
- B. A statement of intent to revoke the Franchise;
- C. A statement that a public hearing shall be held to consider grounds for the termination and revocation of this Franchise;
- D. The date, time, and place of the hearing, which shall be scheduled sixty (60) days from the date of the Franchisee's receipt of such Notice of Intent to Revoke; and

- E. An opportunity for Franchisee to object and state its reasons therefor in writing within thirty (30) days of receipt of the Town's Notice of Intent to Revoke.

9.5.2 At the designated hearing, the Town shall give the Franchisee a full and fair opportunity to state its position on the matter, including the right to introduce evidence, require the production of evidence, question witnesses, and to obtain a transcription of the proceeding, after which the Mayor and Town Council shall determine whether this Franchise shall be revoked. The Franchisee shall have a right to judicial review of the decision in the appropriate Worcester County Court.

10. Taxes

Franchisee agrees that is solely responsible for the payment of all applicable taxes, fees and assessments levied on its ownership, use, maintenance, and operation of the Facilities.

11. Liability and Indemnification

11.1. Franchisee agrees to indemnify, defend, and hold the Town, its elected and appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits, causes of action, losses, liabilities, damages, costs and expenses, including attorneys' fees and court costs, sustained by the Town and caused directly or indirectly by any act or omission on the part of Franchisee, its agents, employees, assigns or anyone subcontracting with Franchisee in connection with the installation, operation, or maintenance of its Facilities. The Town shall notify Franchisee within ten (10) business days after presentation of any claim or demand, whether by suit or otherwise, made against the Town that was caused by any acts or omissions on the part of the Franchisee. The Franchisee shall appear and defend any such demand, claim, suit, or action on behalf of the Town without cost or expense to the Town.

11.2. The Town agrees to indemnify, defend, and hold the Franchisee harmless from any and all claims, demands, suits, causes of action, losses, liabilities, damages, costs and expenses, including attorneys' fees and court costs, sustained by the Franchisee and caused, directly or indirectly by any act or omission on the part of the Town, its agents, employees, assigns or anyone subcontracting with the Town in connection with the installation, operation, or maintenance of the Public Ways except when a claim or suit is brought in connection with an area of the Public Ways that was excavated or temporarily repaired following work performed by Franchisee. The Franchisee shall notify the Town within ten (10) business days after presentation of any claim or demand, whether by suit or otherwise, made against the Franchisee caused by any acts or omissions on the part of the Town. The Town shall appear and defend any such demand, claim, suit, or action on behalf of the Franchisee without cost or expense to the Franchisee.

12. Insurance

The Franchisee shall procure and maintain the following required insurance coverages during the Term:

12.1. Commercial General Liability Insurance with a company qualified and licensed to do business in the State of Maryland of not less than \$5,000,000 Each Occurrence and \$5,000,000 aggregate. Franchisee further agrees coverage will include bodily injury, death, property damage, products-completed operations, contractual liability, and cross liability.

12.2. Additional Insured. Franchisee shall name the Mayor and Town Council of the Town of Berlin as additional insureds.

12.3 Franchisee shall furnish the Town a "Certificate of Insurance" with a copy of the insured endorsement and the policy as verification that coverage is in force. This certification shall be provided annually to the Town. Failure to maintain insurance coverage as required or failure to furnish a Certificate of Insurance within thirty (30) days of the anniversary of the Effective Date is a material provision of the Franchise Agreement.

13. Assignment

13.1. Franchisee may not assign or otherwise transfer all or any part of its privilege in this Franchise without the prior written consent of the Town, provided that it may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent company, or to any successor in interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to the assignee assuming all of Franchisee's obligations hereunder, and subject to any financing entity's interest, if any, in this Franchise. Notwithstanding anything to the contrary contained in this Franchise, Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in Facilities or in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Franchisee has obligations for borrowed money or in respect of guaranties thereof, bonds, debentures, notes or similar instruments, or obligations under letters of credit.

14. Notices

All notices, requests, demands, and other communications shall be in writing and shall be deemed delivered if personally delivered or by certified mail, return receipt requested, to the following addresses:

Town: Town Administrator
 10 William Street
 Berlin, MD 21811
 and
 Town Attorney
 10 William Street
 Berlin, MD 21811

Franchisee: Sandpiper Energy, Inc.
 32145 Beaver Run Road
 Salisbury, MD 21804
 ATTN: _____

15. Miscellaneous

15.1. Entire Agreement. This Franchise Agreement contains the entire agreement of the Parties with respect to any matters covered in this Franchise and supersedes all prior agreements of the same subject matter, specifically the 2008 franchise between Berlin and Franchisee.

15.2. Amendment. This Franchise Agreement may not be amended except by written

agreement duly enacted and authorized by the Franchisee, Mayor and Town Council of Berlin.

15.3. Non-Waiver. Failure of the Town to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Franchise or to exercise any of its rights hereunder shall not waive such rights, and the Town shall have the right to enforce such rights at any time and take such action as is lawful or authorized hereunder, either in law or equity.

15.4. Force Majeure. If either the Town or Franchisee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment or vendor, or any other such cause not attributable to the negligence or fault of the Party delayed in performing the acts required by the Agreement, the performance of such act shall be excused for the period of the unavoidable delay, and the affected Party shall endeavor to remove or overcome such inability as soon as reasonably possible.

15.5. Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this Franchise. The parties intend that the remaining provisions shall be administered as if the Franchise did not include the invalid provision.

15.6. Governing Law. This Franchise shall be construed in accordance with the laws of the State of Maryland, without reference to conflict of laws principles.

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

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

Elroy Brittingham, Vice President

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

Wm. G. Williams, III, Mayor

ATTEST:

Laura Allen, Town Administrator

ORDINANCE 2018-01

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE II ENTITLED ETHICS PROVISIONS, AND ENACTING CHAPTER 2, ADMINISTRATIVE ARTICLE II, ETHICS PROVISIONS IN ITS PLACE.

BE IT RESOLVED, BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, that Chapter 2, Administrative Article II of the Town code is hereby REPEALED in its entirety; and

BE IT FURTHER RESOLVED BY THE MAYOR AND COUNCIL that Chapter 2, Administrative Article II, entitled Ethics Provisions, is hereby ENACTED as follows:

CHAPTER 2, ARTICLE II — ETHICS PROVISIONS

Section 1. Short title.

This chapter may be cited as the Town of Berlin Public Ethics Ordinance.

Section 2. Statement of purpose and policy.

(a) The Town of Berlin, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of the Town of Berlin's business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the Mayor and Council enacts this Public Ethics Ordinance to require Town elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

(d) It is the intention of the Mayor and Council that this chapter, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

Section 3. Definitions.

In this chapter, the following terms have the meanings indicated.

(a) (1) "Business entity" means a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

(2) Business entity does not include a governmental entity.

(b) "Commission" means the Town of Berlin Ethics Commission established under §4(a) of this chapter.

(c) (1) "Compensation" means any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter from an employer for service rendered.

(2) For the purposes of §8 of this chapter, if lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

(c-1) "Designated second home" means:

(1) If an individual owns one second home, the individual's second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the Commission as the individual's designated second home.

(d) "Doing business with" means:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of \$5,000 or more of Town controlled funds;

(2) Being regulated by or otherwise subject to the authority of the Town of Berlin; or

(3) Being registered as a lobbyist under §8 of this chapter.

(e) (1) "Elected official" means any individual who holds an elective office of the Town of Berlin.

(2) "Elected official" does not include the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court.

(f) (1) "Employee" means an individual who is employed by the Town of Berlin.

(2) "Employee" does not include an elected local official.

(3) "Employee" does not include an employee of:

(i) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court;

(ii) The County Health Department; or

(iii) The County Department of Social Services.

(g) "Financial interest" means:

(1) Ownership of any interest as the result of which the owner has received, within the past 3 years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3 percent of a business entity by a Town official or employee, or the spouse of an official or employee.

(h) (1) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.

(2) "Gift" does not include a contribution as defined in Election Law Article, Annotated Code of Maryland.

(h-1) "Home address" means the address of an individual's:

(1) Principal home; and

(2) Designated second home, if any.

(i) "Immediate family" means a spouse and dependent children.

(j) (1) "Interest" means a legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of §6 of this chapter, "interest" includes any interest held at any time during the reporting period.

(3) "Interest" does not include:

(i) An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

(ii) An interest in a time or demand deposit in a financial institution;

(iii) An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

(iv) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code;

(v) A college savings plan under the Internal Revenue Code; or

(vi) A mutual fund or exchange-traded fund that is publicly traded on a national scale unless the mutual fund or exchange-traded fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit.

(k) "Lobbyist" means a person required to register and report expenses related to lobbying under §8 of this chapter.

(l) "Lobbying" means:

(1) Communicating in the presence of a Town official or employee with the intent to influence any official action of that official or employee; or

(2) Engaging in activities with the express purpose of soliciting others to communicate with a Town official or employee with the intent to influence that official or employee.

(m) "Official" means an elected official, an employee of the Town, or a person appointed to or employed by the Town or any Town agency, board, commission, or similar entity:

(1) Whether or not paid in whole or in part with Town funds; and

(2) Whether or not compensated.

(n) "Person" includes an individual or business entity.

(n-1) "Principal home" means the sole residential property that an individual occupies as the individual's primary residence, whether owned or rented by the individual.

(o) "Qualified relative" means a spouse, parent, child, brother, or sister.

(p) "Second home" means a residential property that:

(1) An individual occupies for some portion of the filing year; and

(2) Is not a rental property or a time share.

Section 4. Administration.

(a) (1) There is a Town Ethics Commission that consists of 3 members, appointed by the Mayor with the concurrence of the Council.

(2) The Commission members shall serve 3 year overlapping terms.

(3) A Commission member may serve until a successor is appointed and qualifies.

(b) (1) The Commission shall elect a chairman from among its members.

(2) The term of the chairman is one year.

(3) The chairman may be reelected.

(c) (1) The Town Attorney shall assist the Commission in carrying out the Commission's duties.

(2) If a conflict of interest under §5 of this chapter or other conflict prohibits the Town Attorney from assisting the Commission in a matter, the Town shall provide sufficient funds for the Commission to hire independent counsel for the duration of the conflict.

(d) The Commission is the advisory body responsible for interpreting this chapter and advising persons subject to this chapter regarding its application.

(e) The Commission shall hear and decide, with the advice of the Town Attorney or other legal counsel if appropriate, all complaints filed regarding alleged violations of this chapter by any person.

(f) The Commission or an office designated by the Commission shall retain as a public record all forms submitted by any person under this chapter for at least four years after receipt by the Commission.

(g) The Commission shall conduct a public information and education program regarding the purpose and implementation of this chapter.

(h) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the Town is in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(i) The Commission shall:

(1) Determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland; and

(2) Shall forward any recommended changes and amendments to the Town Council for enactment.

(j) (1) Any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter.

(2) The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days of the request.

(3) In accordance with all applicable State and Town laws regarding public records, the Commission shall publish or otherwise make available to the public copies of the advisory opinions, with the identities of the subjects deleted.

(4) The Commission may adopt additional policies and procedures related to the advisory opinion request process.

(k) (1) Any person may file a complaint with the Commission alleging a violation of any of the provisions

of this chapter.

(2) A complaint shall be in writing and under oath.

(3) The Commission may refer a complaint to the Town Attorney, or other legal counsel if appropriate, for investigation and review.

(4) The Commission may dismiss a complaint if, after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation.

(5) If there is a reasonable basis for believing a violation has occurred, the subject of the complaint shall be given an opportunity for a hearing conducted in accordance with the applicable Town rules of procedure.

(6) A final determination of a violation resulting from the hearing shall include findings of fact and conclusions of law.

(7) Upon finding of a violation, the Commission may take any enforcement action provided for in §9 of this chapter.

(8)(i) After a complaint is filed and until a final finding of a violation by the Commission, all actions regarding a complaint are confidential.

(ii) A finding of a violation is public information.

(9) The Commission may adopt additional policies and procedures related to complaints, complaint hearings, the use of independent investigators and staff, the use of witness and document subpoenas, and cure and settlement agreements.

(l) The Commission may grant exemptions to or modifications of the conflict of interest and financial disclosure provisions of this chapter to officials or employees serving as members of Town boards and commissions, when the Commission finds that the exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(1) Constitute an unreasonable invasion of privacy; and

(2) Significantly reduce the availability of qualified persons for public service.

(m) The Commission may:

(1) Assess a late fee of \$5 per day up to a maximum of \$500 for a failure to timely file a financial disclosure statement required under §6 or 7 of this chapter; and

(2) Assess a late fee of \$10 per day up to a maximum of \$1,000 for a failure to file a timely lobbyist registration or lobbyist report required under §8 of this chapter.

Section 5. Prohibited conduct and interests.

(a) Participation prohibitions.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(E) An entity, doing business with the Town, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(4) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(b) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the Town agency, board, or commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the Town for compensation in a case, contract, or other specific matter involving the Town if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(d) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the Town.

(e) Use of prestige of office.

(1) (i) An official or employee may not intentionally use the prestige of office or public position:

(a) For the private gain of that official or employee or the private gain of another; or

(b) To influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(ii) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(3) (i) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(ii) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(f) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

(i) Is doing business with or seeking to do business with the Town office, agency, board, or commission

with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(C) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(F) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Town and that the gift is purely personal and private in nature;

(G) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(H) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the official's or employee's official position.

(g) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

Section 6. Financial disclosure — elected officials, officials, and employees.

(a) This section applies to all elected officials, and all candidates to be elected officials.

(b) Except as provided in subsection (d) of this section, an elected official, or candidate to be an elected official shall file the financial disclosure statement required under this subsection:

- (1) On a form provided by the Commission;
- (2) Under oath or affirmation; and

(3) With the Commission.

(c) Deadlines for filing statements.

(1) An incumbent official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(3) (i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the Town Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Commission.

(4) If a statement required by a candidate is overdue and not filed within 8 days after written notice of the failure to file is provided by the Town Clerk or Board of Election Supervisors, the candidate is deemed to have withdrawn the candidacy.

(5) The Town Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the Town, clerk or Board of Election Supervisors shall forward the statement to the Commission, or an office designated by the Commission.

(e) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) The Commission or office designated by the Commission shall make financial disclosure statements available during normal office hours for examination and copying by the public, subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the

Commission or the office designated by the Commission shall provide the official or employee with a copy of the name and home address of the person who reviewed the official's or employee's financial disclosure statement.

(5) For statements filed after January 1, 2019, the Commission or the office designated by the Commission may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(f) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(g) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the Town.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with the Town.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the Town, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the Town.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with the Town.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the Town.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each Town agency with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in §3(d) of this chapter.

(6) Indebtedness to entities doing business with or regulated by the individual's Town unit or department.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with or regulated by the individual's Town unit or department owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with the Town. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the Town in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(iii) For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the Town, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(h) For the purposes of §6(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(i) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The Town Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

Section 7. Financial disclosure — appointed members of boards and commissions.

(a) (1) The Town appointed officials listed in paragraph (b) of this section shall file the statement required by §6 of this chapter.

(2) The appointed officials shall be required to disclose the information specified in §6(g) of this chapter only with respect to those interests, gifts, compensated positions, and liabilities that may create a conflict, as provided in §5 of this chapter, between the member's personal interests and the member's official local duties.

(3) An official shall file a statement required under this section annually, not later than April 30 of each calendar year during which the official holds office.

(b) Appointed officials required to file:

All members of Boards created by Town of Berlin Ordinances.

(c) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §6(e) of this chapter.

Section 8. Lobbying.

(a) Except as provided in subsections (b) and (c) of this section, a person or entity who engages in lobbying as defined in §3(l) shall file a lobbying registration with the Commission if the person or entity, during the calendar year:

(1) Expends, exclusive of personal travel and subsistence expenses, in excess of \$1,000.00 in furtherance of this activity; or

(2) Is compensated in excess of \$5,000.00 in connection with this activity.

(b) The following activities are exempt from regulation under this section:

(1) Professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending Council actions when these services do not otherwise constitute lobbying activities;

(2) Appearances before the Council upon its specific invitation or request if the person or entity engages in no further or other activities in connection with the passage or defeat of Council actions;

(3) Appearances before a Town agency upon the specific invitation or request of the agency if the person or entity engages in no further or other activities in connection with the passage or defeat of any agency executive action;

(4) Appearance as part of the official duties of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity;

(5) Actions of a publisher or working member of the press, radio, or television in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not engage in further or other lobbying that would directly and specifically benefit the economic, business, or professional interests of the person or entity or the employer of the person or entity;

(6) Appearances by an individual before the Council at the specific invitation or request of a registered lobbyist if the person performs no other lobbying act and notifies the Council that the person or entity is testifying at the request of the lobbyist;

(7) Appearances by an individual before a government agency at the specific invitation or request of a registered lobbyist if the person or entity performs no other lobbying act and notifies agency that the person or entity is testifying at the request of the lobbyist;

(8) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization; and

(9) Appearance as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity.

(c) Limited exemption — employer of a lobbyist.

(1) A person or entity who compensates one or more lobbyists and who would otherwise be required to register as a lobbyist is not required to file a registration and submit lobbying reports if the person or entity reasonably believes that all expenses incurred in connection with the lobbying activities will be reported by a properly registered person or entity acting on behalf of the person or entity.

(2) A person or entity exempted under this subsection becomes subject to this section immediately upon failure of the lobbyist to report any information required under this section.

(d) (1) The registration filed under this section shall be filed on or before the later of the beginning of the calendar year in which the person or entity expects to lobby and within five days of first engaging in lobbying activities in the calendar year.

(2) The registration filed under this section:

(i) Shall be dated and on a form developed by the Commission;

(ii) Shall include:

(A) The lobbyist's full and legal name and permanent address;

(B) The name, address, and nature of business of any person or entity on whose behalf the lobbyist acts; and

(C) The written authorization of any person or entity on whose behalf the lobbyist acts or an authorized officer or agent, who is not the lobbyist, of the person or entity on whose behalf the lobbyist acts;

(iii) A statement of whether the person or entity on whose behalf the lobbyist acts is exempt from registration under subsection (c) of this section;

(iv) The identification, by formal designation, if known, of matters on which the lobbyist expects to act;

(v) Identification of the period of time within a single calendar year during which the lobbyist is authorized to engage in these activities, unless terminated sooner; and

(vi) The full legal signature of the lobbyist and, when appropriate, the person or entity on whose behalf the lobbyist acts or an agent or authorized officer of the person or entity on whose behalf the lobbyist acts.

(e) A lobbyist shall file a separate registration for each person or entity that has engaged or employed the lobbyist for lobbying purposes.

(f) A lobbyist may terminate the lobbyist's registration by providing written notice to the Commission and submitting all outstanding reports and registrations.

(g) A person or entity may not engage in lobbying activities on behalf of another person or entity for compensation that is contingent upon the passage or defeat of any action by the Council or the outcome of any executive action.

(h) Activity report.

(1) A lobbyist shall file with the Commission or the office designated by the Commission:

(i) By July 31, one report concerning the lobbyist's lobbying activities covering the period beginning January 1 through June 30; and

(ii) By January 31, one report covering the period beginning July 1 through December 31.

(2) A lobbyist shall file a separate activity report for each person or entity on whose behalf the lobbyist acts.

(3) If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form.

(4) The report shall include:

(i) A complete and current statement of the information required to be supplied with the lobbyist's registration form.

(ii) Total expenditures on lobbying activities in each of the following categories:

(A) Total compensation paid to the lobbyist not including expenses reported under items (B)—(I) of this subparagraph;

(B) Office expenses of the lobbyist;

(C) Professional and technical research and assistance not reported in item (i) of this subparagraph;

(D) Publications which expressly encourage persons to communicate with Town officials or employees;

(E) Names of witnesses, and the fees and expenses paid to each witness;

(F) Meals and beverages for Town officials and employees;

(G) Reasonable expenses for food, lodging, and scheduled entertainment of Town officials or employees for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(H) Other gifts to or for officials or employees or their spouses or dependent children; and

(I) Other expenses.

(i) Special gift report.

(1) (i) With the six-month activity report required under subsection (h) of this section, a lobbyist shall report, except for gifts reported in item (h)(4)(ii)(G) of this section, gifts from the lobbyist with a cumulative value of \$75 or more during the reporting period to an official, employee, or member of the immediate family of an official or employee.

(ii) The lobbyist shall report gifts under this paragraph regardless of whether the gift was given in connection with lobbying activities.

(2) The report shall include the date, beneficiary, amount or value, and nature of the gift.

(j) Notification to official and confidentiality.

(1) If any report filed under this section contains the name of an official or employee or a member of the immediate family of an official or employee, the Commission shall notify the official or employee within 30 days.

(2) The Commission shall keep the report confidential for 60 days following receipt by the Commission.

(3) Within 30 days of the notice required under paragraph (1) of this subsection, the official or employee may file a written exception to the inclusion in the report of the name of the official, employee, or member of the immediate family of the official or employee.

(k) The Commission may require a lobbyist to submit other reports the Commission determines to be necessary.

(l) The Commission or office designated by the Commission shall maintain all registrations and reports filed under this section.

(m) (1) The Commission shall review the registrations and reports filed under this section for compliance with this section and shall notify persons engaging in lobbying activities of any omissions or deficiencies.

(2) The Commission may take appropriate enforcement action to ensure compliance with this section.

(n) Annual report.

(1) The Commission shall compute and make available a subtotal under each of the ten required categories in subparagraph (h)(4)(ii) of this section.

(2) The Commission shall compute and make available the total amount reported by all lobbyists for their lobbying activities during the reporting period.

(o) The Commission shall make lobbying registrations and reports available during normal business hours for examination and copying subject to reasonable fees and procedures established by the Commission.

Section 9. Enforcement.

(a) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §8 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §8 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §8 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(b) (1) Upon request of the Commission, the Town Attorney may file a petition for injunctive or other relief in the circuit court of Worcester County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2) (i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(c) (1) Any person who knowingly and willfully violates the provisions of §8 of this chapter is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

(2) If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and, upon conviction, is subject to the same penalties as the business entity.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) (1) A person who is subject to the provisions of this chapter shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate a report, statement, or record required under this chapter for three years from the date of filing the report, statement, or record.

(2) These papers and documents shall be available for inspection upon request by the Commission or the Council after reasonable notice.

Section 10. Severability.

If any section, sentence, clause, or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, the ruling shall not affect the validity of the remaining portions of this chapter.

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

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

Elroy Brittingham, Vice-President

Approved on this _____ day of _____, 20____ by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the ____ day of _____, 2018.

Wm. Gee Williams, Mayor

ATTEST: Laura Allen, Town Administrator



MOTION OF THE MAYOR AND COUNCIL 2018-29

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN APPROVING THE ATTACHED SCHEDULE OF MAYOR AND COUNCIL MEETINGS AND TOWN HOLIDAYS FOR CALENDAR YEAR 2019.

APPROVED THIS ____ DAY OF _____, 2018 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF ____ TO _____ OPPOSED, WITH ____ ABSTAINING, AND ____ ABSENT.

Elroy Brittingham, Sr. Vice President

Approved this ____ day of _____, 2018 by the Mayor of the Town of Berlin.

Wm. Gee Williams, III, Mayor

ATTEST: _____
Laura Allen
Town Administrator



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

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

www.berlinmd.gov



2019 HOLIDAY SCHEDULE

<u>Holiday</u>	<u>Day</u>	<u>Date</u>
New Year Holiday (from '17 schedule)	Monday	December 29- ½ day
	Tuesday	January 1, 2018
Martin Luther King, Jr. Day	Monday	January 21
Presidents' Day	Monday	February 18
Good Friday	Friday	April 19
Memorial Day	Monday	May 27
Independence Day	Thursday	July 4
Labor Day	Monday	September 2
Columbus Day	Monday	October 14
Veterans' Day	Monday	November 11
Thanksgiving	Thurs. & Fri.	November 28 & 29
Christmas Holiday	Tuesday	December 24- ½ day
	Wednesday	December 25
New Year Holiday	Tuesday	December 31- ½ day
	Wednesday	January 1, 2020

2019 MAYOR AND COUNCIL SCHEDULE

2nd & 4th Monday unless otherwise noted

Subject to change

January 14	January 28
February 11	February 25
March 11	March 25
April 8	April 22
May 13	*Tuesday, May 28
June 10	June 24
July 8	July 22
August 12	August 26
September 9	September 23
*Tuesday, October 15	October 26
*Tuesday, November 12	November 25
December 9	Monday, December 23

*The normal Monday date falls on a holiday.



MOTION OF THE MAYOR AND COUNCIL 2018-30

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN APPROVING THE AGREEMENT WITH REPUBLIC SERVICES FOR SINGLE STREAM RECYCLING SERVICES.

APPROVED THIS _____ DAY OF _____, 2018 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF _____ TO _____ OPPOSED, WITH _____ ABSTAINING, AND _____ ABSENT.

Elroy Brittingham, Sr. Vice President

Approved this _____ day of _____, 2018 by the Mayor of the Town of Berlin.

Wm. Gee Williams, III, Mayor

ATTEST: _____

Laura Allen
Town Administrator



PROPOSAL

10/12/2018

Dave Wheaton
 Town of Berlin
 10019 OLD OCEAN CITY BLVD
 BERLIN, MD 21811
 Quote: A183397989

Town of Berlin:

Below is our proposal of recommended services, customized for your business needs identified during our discussions. If you ever need additional services, or just need an extra pickup, please give us a call at 800-762-8888. It's that easy.

Service Details

LARGE CONTAINERS			
Equipment Qty/Type/Size:	1 - Open Top 30.00Yd(s)	Haul Rate:	\$300.00 per haul
Frequency:	1/Week	Processing Rate:	\$85.00 per ton
Material Type:	All in One - Single stream		
Hauls/ month:	4.33		

Estimated Monthly Amount *

Large Container Haul Charge	\$1,300.00
Large Container Disposal Charge (17 tons)	\$1,473.33
Total Estimated Amount	\$2,773.33

One Time Charges

Delivery Charge Subtotal	\$149.33
Valued Customer Discount - Delivery	-\$37.33
Total One-Time Amount	\$112.00

Mark Thompson
 Republic Services

mthompson8@republicservices.com
www.republicservices.com

* The Total Estimated Amount is merely an estimate of your typical monthly invoice amount without one-time start-up charges (e.g., delivery). It does not include any applicable taxes or local fees, which would be additional charges on your invoice.

** FRF, ERF & ADMIN: The Fuel Recovery Fee (FRF) is a variable charge that changes monthly. For more information on the FRF, Environmental Recovery Fee (ERF) and Administrative Fee, please visit the links available on the Bill Pay page of our website, www.republicservices.com. The proposed rates above are valid for 60 days. This proposal is not a contract or agreement or an offer to enter into a contract or agreement. The purpose of this proposal is to set forth the proposed framework of service offerings and rates and fees for those offerings. Any transaction based upon this proposal is subject to and conditioned upon the execution by both parties of Republic Services' Customer Service Agreement.



Customer Service Agreement

INVOICE TO		SITE LOCATION	
CUSTOMER NAME	Town of Berlin	SITE NAME	Town of Berlin
ATTN:	Dave Wheaton	ADDRESS	10019 OLD OCEAN CITY BLVD
ADDRESS	10 Williams St	CITY	BERLIN, MD
CITY	Berlin, MD	STATE	
STATE		ZIP CODE	21811
ZIP CODE	21811	TEL NO.	(443) 235-7477
TEL NO.	(443) 235-7477	FAX NO.	
		AUTHORIZED BY:	Dave Wheaton
		CONTACT	Dave Wheaton
		TITLE	TITLE

AGREEMENT NUMBER A183397989

ACCOUNT NUMBER 425 -

EMAIL dwheaton@berlinmd.gov

N/O	CONT. GRP	TYPE	SIZE	C	QTY	ACCT. TYPE	C/O	SERV. FREQUENCY	EST. LIFTS	S	P.O. REQ	RECP. REQ	L/F CODE	OPEN/ CLOSE DATE	LIFT CHARGE	MONTHLY SERVICE	EXTRA LIFT	DISP RATE	ADDITIONAL CHARGES	ONE TIME CHARGES	T/C/R CMP
N		IR	30.00yd(s)	N	1	P	N	1/1W		N		N	DD02	10/15/2018	\$300.00			\$85.00 per ton	Delivery \$149.33 Dry Run \$193.60 Relocate \$150.70 Removal \$150.70 Washout \$368.50		

BFI Waste Services LLC DBA Allied Waste Services of the Eastern Shore, Republic Services of Eastern Shore
HEREINAFTER REFERRED TO AS THE "COMPANY"

The undersigned individual signing this Agreement on behalf of the Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign the Agreement on behalf of the Customer.

BY: _____ TITLE: _____
 (AUTHORIZED SIGNATURE)

BY: _____ TITLE: _____
 (AUTHORIZED SIGNATURE)

CUSTOMER NAME (PLEASE PRINT) _____ DATE OF AGREEMENT _____

TERMS AND CONDITIONS

Valued Customer Discount - Delivery for 1 container IR 30.00 yard - \$37.33
 Delivery Notes:
 Safety: No Safety Concerns
 Exempt From: Fuel Recovery Fee, Environmental Recovery Fee, Administrative Fee

SERVICES. Customer grants to Company the exclusive right to collect, transport, and dispose of or recycle all of Customer's non-hazardous solid waste materials (including Recyclable Materials) (collectively, "Waste Materials"), and Company agrees to furnish such services as permitted by Applicable Laws.

TERM. THE INITIAL TERM OF THIS AGREEMENT SHALL START ON THE DATE ON WHICH SERVICE UNDER THIS AGREEMENT COMMENCES AND CONTINUE FOR 36 MONTHS. THEREAFTER, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE 36 MONTH TERMS UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION TO THE OTHER AT LEAST 60 DAYS BEFORE THE END OF THE THEN CURRENT TERM. ANY NOTICE OF TERMINATION UNDER THIS AGREEMENT BY CUSTOMER SHALL BE VOID UNLESS SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND ACTUALLY RECEIVED BY COMPANY.

WASTE MATERIALS. The Waste Materials shall not contain any hazardous materials, wastes or substances; toxic substances, wastes or pollutants; contaminants; pollutants; infectious wastes; medical wastes; or radioactive wastes (collectively, "Excluded Waste"), each as defined by applicable federal, state or local laws or regulations (collectively, "Applicable Laws"). **CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, SUITS, PENALTIES, FINES, REMEDIATION COSTS, AND LIABILITIES (INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES") RESULTING FROM THE INCLUSION OF EXCLUDED WASTE IN THE WASTE MATERIALS.**

TITLE. Company shall acquire title to Waste Materials when they are loaded into Company's truck. Title to and liability for any Excluded Waste shall remain with Customer and shall at no time pass to Company.

CONTINUED ON NEXT PAGE

TERMS AND CONDITIONS (Continued from previous page)

PAYMENT. Customer shall pay Company for the services and equipment furnished by Company at the rates provided in this Agreement. Customer shall pay all taxes, fees and other governmental charges assessed against or passed through to Company (other than income or real property taxes). Customer shall pay such fees as the Company may impose from time to time by notice to Customer (including, by way of example only, late payment fees, administrative fees and environmental fees), with Company to determine the amounts of such fees in its discretion up to the maximum amount allowed by Applicable Law. Without limiting the foregoing, Customer shall pay Company: (a) a fee of \$50 (which Company may increase from time to time by notice to Customer) for each check submitted by Customer that is an insufficient funds check or is returned or dishonored; and (b) fuel/environmental recovery fees in the amount shown on each of Company's invoices, which amount Company may increase or decrease from time to time by showing the amount on the invoice. Customer shall pay Company within 20 days after the date of Company's invoice. If payment is not received within 30 days of the date of invoice and the amount owed is \$5 or more, then Customer shall be assessed a late payment fee, which will appear on Customer's next invoice, equal to the greater of \$5 or 1.5% of the amount that is past due. At any time after Company becomes concerned about Customer's creditworthiness or after Customer has made any late payment, Company may request, and if requested Customer shall pay, a deposit in an amount equal to one month's charges under this Agreement.

RATE ADJUSTMENTS. Company may, from time to time by notice to Customer, increase the rates provided in this Agreement to adjust for any increase in: (a) disposal costs; (b) transportation costs due to a change in location of Customer or the disposal or recycling facility used by Company; (c) the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services), U.S. City Average; (d) the average weight per cubic yard of Customer's Waste Materials above the number of pounds per cubic yard upon which the rates provided in this Agreement are based as indicated on the cover page of this Agreement; (e) recycling sorting, processing and related costs; (f) costs related to Customer's failure to separate Recyclable Materials from other Waste Materials, the contamination of the Recyclable Materials, or other decreases in the value of the Recyclable Materials; or (g) Company's costs due to changes in Applicable Laws. Company may increase rates for reasons other than those set forth above with Customer's consent, which may be evidenced verbally, in writing or by the parties' actions and practices.

SERVICE CHANGES. The parties may change the type, size or amount of equipment, the type or frequency of service, and correspondingly the rates by agreement of the parties, which may be evidenced verbally, in writing or by the parties' actions and practices. This Agreement shall apply to any change of location of Customer within the area in which Company provides collection and disposal services.

RECYCLABLE MATERIALS. This section applies in the event Company has expressly agreed to remove and transport Recyclable Materials (material that Company determines can be recycled typically including, without limitation, aluminum cans (UBC—Used Beverage Containers), cardboard (free of wax), ferrous metal cans, mixed office paper, newspaper and plastics containers) to a material recovery facility, recycling center or similar facility. Customer agrees that Company in its sole discretion may determine any single load is contaminated and may refuse to collect it or may charge Customer for any additional costs, including (but not limited to) sorting, processing, transportation and disposal costs. Customer shall comply with all Applicable Laws regarding the separation of solid waste from Recyclable Materials and use of its best efforts to not place items in the container that may result in the decrease in the value of Recyclable Materials or make the Recyclable Materials unsuitable for recycling.

RESPONSIBILITY FOR EQUIPMENT; ACCESS. Any equipment Company furnishes shall remain Company's property. Customer shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Company's handling of the equipment). Customer shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. **CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY FROM AND AGAINST ALL LOSSES ARISING FROM ANY INJURY OR DEATH TO PERSONS OR LOSS OR DAMAGE TO PROPERTY (INCLUDING THE EQUIPMENT) ARISING OUT OF CUSTOMER'S USE, OPERATION OR POSSESSION OF THE EQUIPMENT.** Customer shall provide safe, unobstructed access to the equipment on the scheduled collection day. Company may charge an additional fee for any additional collection service required by Customer's failure to provide access.

DAMAGE TO PAVEMENT. Company shall not be responsible for any damages to Customer's pavement, curbing or other driving surfaces resulting from Company's providing service at Customer's location.

SUSPENSION. If any amount due from Customer is not paid within 60 days after the date of Company's invoice, Company may, without notice and without terminating this Agreement, suspend collecting and disposing of Waste Materials until Customer has paid such amount to Company. If Company suspends service, Customer shall pay Company a service interruption fee in an amount determined by Company in its discretion up to the maximum amount allowed by Applicable Law.

TERMINATION. In addition to its above suspension rights, Company may terminate this Agreement immediately by written notice to Customer if (a) any of the information contained in any credit application submitted to Company in connection with this Agreement is untrue or (b) Customer breaches this Agreement and fails to cure such breach within 10 days after Company gives Customer written notice of the breach. Company's failure to suspend service or terminate this Agreement when Customer fails to timely pay or otherwise breaches this Agreement shall not constitute a waiver of Company's right to suspend service or terminate this Agreement for any future failure to pay or other breach.

PAYMENT UPON TERMINATION. If Customer terminates this Agreement before its expiration other than as a result of a breach by Company, or if Company terminates this Agreement as a result of a breach by Customer (including nonpayment), Customer shall pay Company an amount equal to the most recent month's monthly charges multiplied by the lesser of (a) six months or (b) the number of months remaining in the term. Customer acknowledges that in the event of such a termination, actual damages to Company would be uncertain and difficult to ascertain, such amount is the best, reasonable and objective estimate of the actual damages to Company, such amount does not constitute a penalty, and such amount is reasonable under the circumstances. Any amount payable under this paragraph shall be in addition to amounts already owing under this Agreement.

ASSIGNMENT. Customer shall not assign this Agreement without Company's prior written consent, which Company shall not unreasonably withhold. Company may assign this Agreement without Customer's consent.

EXCUSED PERFORMANCE. Except for Customer's obligation to pay amounts due to Company, any failure or delay in performance due to contingencies beyond a party's reasonable control, including strikes, riots, terrorist acts, compliance with Applicable Laws or governmental orders, fires and acts of God, shall not constitute a breach of this Agreement.

ATTORNEYS' FEES. If any litigation is commenced under this Agreement, the successful party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation or proceeding.

MISCELLANEOUS. If service to Customer includes Container Refresh, Customer is limited to requesting one exchange of each participating container every twelve months of paid enrollment; any additional exchange is subject to Company's standard container exchange fee. Customer agrees that during any enrollment year in which Customer receives an exchange under the program, any service change request by Customer to cancel Container Refresh will not be effective until Customer completes payment for twelve (12) consecutive months of enrollment in the program. Company reserves the right, in its sole discretion, to suspend or cancel the Container Refresh program. This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exist between the parties regarding the subject matter of this Agreement. Company shall have no confidentiality obligation with respect to any Waste Materials. This Agreement shall be binding upon and inure solely to the benefit of the parties and their permitted assigns. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall be modified so as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. Customer and Company agree that electronic signatures are valid and effective, and that an electronically stored copy of this Agreement constitutes proof of the signature and contents of this Agreement, as though it were an original.

CUSTOMER'S INITIAL: _____

DATE: _____

**AGREEMENT FOR FIRE AND RESCUE SERVICES
BETWEEN THE TOWN OF BERLIN, MARYLAND
AND THE BERLIN FIRE COMPANY, INC. FOR
FISCAL YEAR 2019**

THIS AGREEMENT is made this 22nd day of October, 2018, by and between the Mayor and Council for the Town of Berlin, Maryland, a Md. Municipal Corporation, and the Berlin Fire Company, Incorporated (BFC), a Maryland non-stock corporation with non-profit IRS 501-c-3 status.

WHEREAS the BFC has provided fire suppression and rescue services to citizens and property located within the Town limits of the Town of Berlin for many years; and

WHEREAS the Town of Berlin has provided taxpayer funded grants on a yearly basis to the BFC to compensate the BFC for those services; and

WHEREAS the Mayor and Council of the Town of Berlin and Berlin Fire Company desire to formalize their contractual relationship with the BFC to provide Berlin taxpayer funding to assist the BFC for fire and rescue services within the corporate limits of the Town of Berlin.

NOW THEREFORE, the parties hereto agree as follows:

BFC shall continue to provide fire and rescue to all properties and citizens located within the Town limits of the Town of Berlin for the period of July 1, 2018 to June 30, 2019 for a sum of \$250,000.

SECTION I ORGANIZATIONAL TERMS AND COMMITMENTS

1. BFC will continue to meet regularly with the Town of Berlin to review the recommendations of the Matrix report and to develop a sustainable funding formula for fire and rescue services in the Town of Berlin.
2. BFC will adhere to a fiscal year from July 1 to June 30 and shall submit to an annual audit which shall be paid for by the Mayor and Council and shall be scheduled no later than November 12, 2018.
3. BFC will attend and provide a quarterly financial and operational report at the fourth Monday, Mayor and Council meetings in October 2018, January 2019, April 2019, and July 2019.

4. BFC shall prepare a five (5) year financial plan to include capital expenditures and provide said plan to the Mayor and Council by December 31, 2018.
5. BFC officers and members shall ensure that it does not discriminate against any person on the basis of race, sex, religion, sexual orientation, national origin, age or color.

SECTION II OPERATION OF SIRENS AND VEHICLES

1. The BFC and the Town of Berlin will continue to work towards a permanent solution to the current use of sirens in a common effort to implement a reduction in the use of the sirens for fire notifications by December 31, 2018 and a future mutual effort to eliminate routine use of the sirens for fire notifications.
2. BFC agrees that its emergency vehicles will operate in a safe manner and when prudent, observe posted speed limits within the Town of Berlin.

SECTION III PHYSICAL RESOURCES

1. BFC is including the upgrading of all physical resources in the 5 year capital plan.
2. BFC acknowledges that Headquarters located on Main Street needs to be renovated to house BFC offices and appropriate living quarters for Fire/EMS career personnel, and BFC continues to plan for that renovation.
3. BFC agrees that Station 3 (located on U.S. Route 50) said initial capital building expenditures shall be taken from a separate and distinct construction account for Station 3, which shall be kept separate from any funds contributed by the Town of Berlin; nor shall any funds from the Town of Berlin be utilized in any way for such purposes and this account is included in the audit referenced in Section II.

SECTION IV DISBURSEMENT OF GRANT

1. The Mayor and Council agrees to disburse its taxpayer funded \$250,000.00 grant to the BFC as follows:
 - a. \$62,500.00 upon the execution of this Agreement and approval of same by the Mayor and Council at a regular session open meeting, as soon as practicable;
 - b. \$62,500 on or before January 31, 2019
 - c. \$62,500 on or before April 30, 2019

- d. \$62,500 on or before July 31, 2019
- 2. The parties shall negotiate an Agreement for Fire and Rescue Services covering fiscal year 2020 (July 1, 2019 to June 30, 2020) prior to December 31, 2018. In the event that such Agreement is not completed by December 31, 2018, by virtue of any action on the part of BFC, The Mayor and Council, may withhold funding, and the parties shall promptly and without delay, meet to resolve the Agreement.
- 3. In the event of a breach of the terms of this Agreement, the Mayor and Council reserves the right to suspend and cease payments of the Grant specified herein and the fire company reserves the right to suspend fire and rescue services.

SECTION V GENERAL TERMS

- 1. The parties hereto acknowledge that the terms and conditions of this Agreement are necessary for transparency and accountability to the citizens and tax payers of the Town of Berlin, and that the goal of this Agreement is to provide adequate funding for fire and rescues services in FY 19. The parties therefore agree that all financial information, including the BFC audit, may be disclosed to the public.
- 2. The parties hereto agree that each shall make best efforts to communicate with the other to have a productive relationship.

WHEREFORE, WITNESS THE HAND AND SEAL OF THE PARTIES HERETO.

WITNESS

_____(SEAL)
Wm. Gee Williams, Mayor
Town of Berlin

WITNESS-H. David Bloxom,
Board of Directors Chairperson

_____(SEAL)
David Fitzgerald, President
Berlin Fire Company, Incorporated

W

**AGREEMENT FOR EMERGENCY MEDICAL
SERVICES BETWEEN THE TOWN OF BERLIN,
MARYLAND AND THE BERLIN FIRE COMPANY,
INC. FOR FISCAL YEAR 2019**

THIS AGREEMENT is made this 22nd day of October, 2018, by and between the Mayor and Council for the Town of Berlin, Maryland, a Maryland Municipal Corporation, and the Berlin Fire Company, Incorporated (BFC), a Maryland non-stock with non-profit IRS 501 (c)(3) status.

WHEREAS the BFC has provided emergency medical services to citizens and property located within the Town limits of the Town of Berlin for many years; and

WHEREAS the Town of Berlin has provided taxpayer funded grants on a yearly basis to the BFC to compensate the BFC for those services; and

WHEREAS the Mayor and Council of the Town of Berlin and Berlin Fire Company desires to formalize their contractual relationship with the BFC to provide Berlin taxpayer funding to assist the BFC for their EMS services within the corporate limits of the Town of Berlin;

NOW THEREFORE, the parties hereto agree as follows:

BFC shall continue to provide emergency medical services to all properties and citizens located within the Town limits of the Town of Berlin for the period July 1, 2018 to June 30, 2019 for a sum of \$355,000.

SECTION I ORGANIZATIONAL TERMS AND COMMITMENTS

1. The BFC shall form a separate, non-stock Maryland corporation as a 501 (c)(3) non-profit which shall be known as the Berlin Fire Company Emergency Medical Services, Inc. (BFC-EMS) and this agreement shall transfer to the new corporation when established.
2. The new corporation will be utilized for all aspects of providing emergency medical services and support as necessary to the Berlin Fire Company. All EMS financial accounting, employees, and ambulances will be within the new corporation structure. Until the new corporation is formed the BFC will continue its existing financial separation of fire and EMS funds.

3. BFC and BFC-EMS will continue to meet regularly with the Town of Berlin to review the recommendations of the Matrix report and develop sustainable funding approach for EMS services for FY20 in the Town of Berlin by December 31, 2018.
4. BFC-EMS shall adhere to a fiscal year from July 1 to June 30 and shall submit to an annual audit which shall be paid for by the Mayor and Council which shall be scheduled no later than November 12, 2018.
5. BFC and BFC-EMS will attend and provide a quarterly financial and operational reports at the fourth Monday, Mayor and Council meetings in October 2018, January 2019, April 2019, and July 2019.
6. BFC and BFC-EMS shall schedule and station ample advanced life support career EMS personnel, together with a minimum of one ambulance, at BFC Headquarters located on Main Street in Berlin, Maryland to ensure that adequate prompt response personnel and equipment is available for any in-town emergency medical services call.

SECTION II DISBURSEMENT OF GRANT

1. The Mayor and Council agrees to disburse the annual grant to the BFC and subsequently then BFC-EMS when established, as follows:
 - a. \$88,750 upon the execution of this agreement and approval of same by the Council at a regular session open meeting, as soon as practicable.
 - b. \$88,750 on or before January 31, 2019, based on the establishment and filing with Maryland State Department of Assessments and Taxation the 501(c)(3) Corporation noted herein.
 - c. \$88,750 on or before April 30, 2019
 - d. \$88,750 on or before July 31, 2019
2. BFC-EMS shall evaluate its EMS fee structure on an annual basis, adjust the fees as necessary, and incorporate its fee analysis in its annual budget.
3. BFC-EMS shall prepare a five (5) year financial plan to include capital expenditures and provide said plan to the Mayor and Council by December 31, 2018.
4. BFC-EMS officers and members shall ensure that it does not discriminate against any person on the basis of race, sex, religion, sexual orientation, national origin, age or color.
5. The parties shall negotiate an Agreement for Emergency Medical Services covering fiscal year 2020 (July 1, 2019 to June 30, 2020) prior to December 31, 2018. In the event that such Agreement is not completed by December 31, 2018, by virtue of any action on the part of

BFC, The Mayor and Council may withhold funding, and the parties shall meet promptly and without delay complete the Agreement.

6. In the event of a breach of the terms of this Agreement, the Mayor and Council reserve the right to suspend and cease payment of the Grant specified herein and BFCEMS reserves the right to suspend EMS services within the town limits.

SECTION III SPECIAL EVENT OPERATIONS

1. BFC-EMS and Town of Berlin shall establish procedures and identify events that will activate a stand-by emergency medical services crew for special events.
2. BFC-EMS agrees that its emergency vehicles will operate in a safe manner and when prudent, observe the posted speed limits within the Town of Berlin.

SECTION IV GENERAL TERMS

1. The parties hereto acknowledge that the terms and conditions of this Agreement are necessary for transparency and accountability to the citizens and tax payers of the Town of Berlin, and that the goal of this Agreement is to provide adequate funding for emergency services in FY 19. The parties therefore agree that all financial information, including the BFC audit, may be disclosed to the public.
2. The parties hereto agree that each shall make best efforts to communicate with the other in order to have a productive relationship.

WHEREFORE, WITNESS THE HAND AND SEAL OF THE PARTIES HERETO.

WITNESS

_____(SEAL)
Wm. Gee Williams, Mayor
Town of Berlin

WITNESS-H. David Bloxom,
Board of Directors Chairperson

_____(SEAL)
David Fitzgerald, President
Berlin Fire Company, Incorporated