

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND

2016 Legislative Session

Legislative Day No. 11

Resolution No. 61-2016

Introduced by: The President of the Council at the request of the County Executive

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SALISBURY, MARYLAND, AND WICOMICO COUNTY, MARYLAND FOR SHARPS POINT DREDGE MATERIAL PLACEMENT SITE USAGE.

WHEREAS, pursuant to Section 22-1 of Chapter 22, entitled "County-owned property" paragraph E, the County Executive is authorized and empowered to lease County property in furtherance of public purposes; and

WHEREAS, Wicomico County owns a certain parcel of land located west of Sharps Point, County Road 506, identified as Parcel 654 on Tax Map 47; and

WHEREAS, the City of Salisbury wishes to dredge spoil from the Wicomico River and would like to deposit the dredged spoil on the said county-owned property; and

WHEREAS, the County Executive proposes that Wicomico County, Maryland enter into a Memorandum of Understanding for Sharps Point Dredge Material Placement Site Usage with the City of Salisbury and be given the authority to execute such MOU on behalf of Wicomico County, Maryland; and

WHEREAS, the City of Salisbury shall pay fifteen dollars (\$15.00) per cubic yard, for up to 850 cubic yards.

NOW, THEREFORE, BE IT RESOLVED, by the County Council of Wicomico County, Maryland that the Memorandum of Understanding for Sharps Point Dredge Material Placement Site Usage is hereby approved as to form and content, in substantially the form attached hereto as Exhibit A, and the County Executive is hereby authorized to execute the Memorandum of Understanding for Sharps Point Dredge Material Placement Site Usage in the name and on behalf of Wicomico County.

Done at Salisbury, Maryland, this 7th day of June, 2016.

ATTEST:

COUNTY COUNCIL OF
WICOMICO COUNTY, MARYLAND



Matthew E. Creamer,
Council Administrator



John T. Cannon,
Council President

Certification

This Resolution was Adopted , Adopted with Amendments , Failed, , Withdrawn, by the County Council on June 7, 2016.

Certified by 
Matthew E. Creamer, Council Administrator

**MEMORANDUM OF UNDERSTANDING
SHARPS POINT DREDGE MATERIAL PLACEMENT SITE USAGE**

THIS AGREEMENT made this _____, by and between the City of Salisbury, Maryland, a body politic and corporate, hereinafter called "Licensee", and Wicomico County, Maryland, a body politic and corporate, hereinafter called "County".

WITNESSETH:

WHEREAS, County owns a certain tract or parcel of land in the 16th Election District of Wicomico County, Maryland, owned in fee simple, and more particularly described in a deed recorded among the Land Records of Wicomico County, Maryland in Liber No. 945 Folio 450 and also shown as Parcel No. 654 on Wicomico County Tax Map No. 47, hereinafter referred to as the "Property", and which contains a certain area hereinafter referred to as the "Sharps Point Dredge Material Placement Site", which is suitable for the receipt of mechanically dredged material from the South Prong of the Wicomico River; and

WHEREAS, Licensee wishes and intends to dredge material from the South Prong of the Wicomico River in the proximity of the Beaverdam Creek Dam and City Park of the Licensee, and in that connection requires the use of space for the deposit of the material resulting from such dredging; and

WHEREAS, the parties hereto have discussed and negotiated the terms and conditions under which Licensee would be able to use the Sharps Point Dredge Material Placement Site for the purposes described herein, and now wish to formalize their mutual agreements and understandings regarding the same.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties as set forth herein, and of the future payment of the sums herein specified, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto agree as follows:

1. GRANT OF LICENSE - The County hereby grants Licensee permission to dispose of approximately 850 cubic yards of mechanically dredged material from Beaverdam Creek, a tributary of the Wicomico River in the proximity of Beaverdam Creek Dam which is owned by the City of Salisbury, MD into the Sharps Point Dredge Material Placement Site. The County has all the necessary right to grant this license. Deposit of the dredge material shall be within the area of the Dredge Material Placement site designated by the County at the time of the disposal.
2. DURATION OF LICENSE - The rights conferred upon Licensee under this Agreement shall commence immediately upon the execution of this Agreement and all dredge material disposal shall have been completed on or before March 31, 2017.
3. LICENSE FEE - The Licensee agrees to pay the County, for the disposal of dredged material, at the unit price of Fifteen Dollars and Zero Cents (\$ 15.00) per cubic yard for up 850 cubic yards. Payment shall be due within 30 days following completion of the deposit of the material.
4. PRE-CONSTRUCTION MEETING - The Licensee agrees to hold a "Pre-Construction Meeting" prior to the placement of the Licensee's dredge material into the Sharps Point Dredge Material Placement Site. The meeting will be held at the Sharps Point Dredge Material Placement Site. The attendees of this meeting will be: representative from the Wicomico County Department of Public Works, representatives of the Licensee, representatives of the dredging contractor, and representatives of the U.S. Army Corp of Engineers. Topics of discussion will include but are not limited to: dredge material placement location within the Sharps Point Dredge Material Placement Site, turbidity monitoring at the Sharps Point Dredge Material Placement Site outfall structure, placement site maintenance, and final inspection once dredging has been completed.

5. **RIGHTS OF ACCESS** - County also grants Licensee the right to use, for purposes of ingress to and egress from the Sharps Point Dredge Material Placement Site such areas or portions of the property to be mutually selected and identified by the parties.
6. **OWNERSHIP OF DREDGED MATERIAL** - The parties hereto covenant and agree that upon deposit of the dredged material on the Sharps Point Dredge Material Placement Site, ownership of said material shall automatically vest in the County.
7. **DREDGE MATERIAL TESTING** – The County shall have one sediment sample taken by an approved soil testing firm for sediment toxicity testing from the area to be dredged. The sample is to be tested for EPA priority pollutants which includes certain metals and volatile organic compounds. The County shall be reimbursed by the Licensee for the cost of sampling and testing of the sediment sample.
8. **DREDGE AREA LOCATION MAP** - The “Licensee” shall provide a “location map” of the “proposed area to be dredged” to be attached with the MOU. The “location map” is to show the dimensions of the dredge area and the depth below Mean Low Water to which the area is to be dredged.
9. **MAINTENANCE OF RIGHTS-OF-WAY** - Licensee agrees (a) to neatly and carefully maintain all lanes, roadways, or other areas used by it in connection with its use of the Licensed portion of the Property (b) to promptly repair or replace, as County may require, any damage occurring as a result thereof, and (c) to use all reasonable efforts to minimize the impact of the construction or use of the Sharps Point Dredge Material Placement Site upon the remaining portion of the Property.
10. **PERMITS AND FEES** - Licensee shall be responsible to secure, and to maintain in force, whatever governmental permits or approvals may be required in connection with the dredging process and use of the Sharps Point Dredge Material Placement Site, and to pay any and all fees, charges, fines or penalties assessed or assessable in connection therewith.
11. **INSURANCE REQUIREMENTS** - Licensee shall provide to County, prior to entering or occupying any portion of the Property, a certificate of insurance, evidencing the fact that County is named as an additional insured under Licensee’s public liability insurance, if allowed by law and allowed under the Licensee’s insurance policy, the policy limits of which shall be not less than Five Hundred Thousand Dollars (\$500,000.00) for death or injury to one person and One Million Dollars (\$1,000,000) for death or injury to two or more persons arising out of the same accident, and not less than One Hundred Thousand Dollars (\$100,000) for damage to or destruction of property, to protect County from financial loss in the event of harm occurring to a third party as the result of the Licensee’s activities under this Memorandum of Understanding. Such certificate shall also provide assurance to County that such coverage will not be reduced or terminated except upon at least ten (10) days prior written notice to County. Reduction or termination of such coverage shall immediately, and without the necessity of any action on the part of County, terminate the License and permissions granted hereunder.
12. **INDEMNIFICATION** - The Licensee shall reimburse, indemnify and hold harmless County against and from all costs, expenses, losses, damages, suits, actions, claims and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person or other entity whatsoever incurred or suffered by the County arising out of, connected or related to Licensee’s performance of the terms and conditions of this Agreement, including, but not limited to, the disposal of dredge material into the Sharps Point Dredge Material Placement Site only if Licensee is found to be negligent with regard to said identified items and the County is free from negligence on its part.
13. **NO RIGHT TO ASSIGN** - Except as may be expressly authorized under other provision hereof, Licensee shall not assign or attempt to assign its rights under this agreement except with the prior written consent of County, which consent County is under no obligation to give.

14. MISCELLANEOUS PROVISIONS -

A. Choice of Law - This Agreement, and the respective rights and duties of the parties thereto, shall in all respects be governed by and construed under the laws of the State of Maryland, except to the extent, if any, that those laws may have been pre-empted by the laws of the United States.

B. Entire Agreement - This instrument sets forth the entire intention, understanding and agreement between the parties, and there exist no warranties, representations, promises, covenants, agreements or undertakings except those expressly set forth herein. This instrument is intended to constitute an integration of all warranties, representations, promises, covenants, agreements and undertakings expressed by either party to the other with respect to the subject matter thereof at any time prior to, or contemporaneously with, the execution thereof, all of the same being deemed to have merged into this Agreement, which Agreement, standing alone, fully and completely expresses the intentions of the parties as of the date hereof.

C. Parties to be Bound - All of the provisions hereof shall be binding upon, and shall insure to the benefit of, the parties themselves and their respective heirs, personal representatives, successors and assigns.

D. Modification and Waiver - This Agreement may not be modified, altered or amended except by a subsequent written instrument executed by all of the parties hereto. No waiver of any provision of this Agreement shall be binding unless evidenced by a subsequent written instrument executed by the party against whom it is sought to be enforced.

15. The premises to this Agreement are incorporated herein as if fully set forth.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives hereunder duly authorized, all as of the day and year first above written.

Kimberly R. Nichols
Witness:

ATTEST
[Signature]
R. Wayne Strausburg
Director of Administration

CITY OF SALISBURY, MD

BY: [Signature] (SEAL)
Jacob R. Day
Mayor

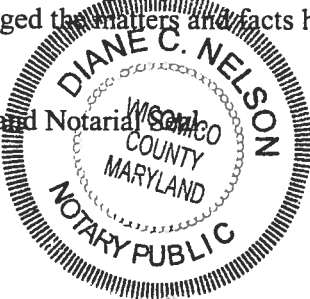
WICOMICO COUNTY, MARYLAND,

BY: [Signature] (SEAL)
Bob Culver
County Executive

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this 25th day of May, 20 16, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Mayor Jacob R. Day of the City of Salisbury, Maryland, being duly authorized, and he did make oath in due form of law that as authorized he acknowledged the matters and facts hereinbefore set forth to be the act of the City of Salisbury, MD.

AS WITNESS my hand and Notarial Seal.

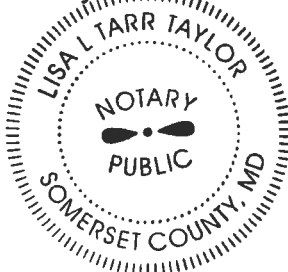


[Signature]
NOTARY PUBLIC
My Commission Expires: 5-16-18

STATE OF MARYLAND, WICOMICO COUNTY TO WIT:

I HEREBY CERTIFY that on this 26th day of MAY, 20 16, before me, the subscriber, a Notary Public, in and for the State and County aforesaid, personally appeared Bob Culver, Wicomico County Executive, and as such Executive, he did make oath in due form of law that the matters and facts hereinbefore set forth are the act of the Wicomico County Executive

AS WITNESS my hand and Notarial Seal.



[Signature]
NOTARY PUBLIC
My Commission Expires: 12-6-18