



Mayor and Town Council
Town of Friendsville
Founded 1765

P.O Box 9,
Friendsville MD 21531
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www.friendsville.org

Friendsville Mayor & Town Council Minutes
May 20, 2024

Attendance: Mayor Spencer Schlosnagle, and Wanda Guard, Administrative Assistant, Clerk-Treasurer. Council President: Pamela Humberson Council members: Michael Artice, James Hook, Edward Kelley, Sheryl MacLane, and Robert Sines.

Citizens/Guests: Jen Resh, Gavin Yutzy, Jarod Horseman, Jennifer & Terry Uphold, Friendsville Pharmacy, Terry Spear, FVFRD, & Claire Sullivan, The Republican Newspaper.

Call to Order: Council President Humberson, convened the general meeting of the Mayor and Town Council on May 20, 2024, at 6:00 p.m. to order.

Invocation/Pledge of Allegiance: All attending the meeting recited the Lord's Prayer and the Pledge of Allegiance.

Summary of Closed Session Held on May 20, 2024

The closed session of the Mayor & Town Council meeting was held on Monday, May 20, 2024, at 5:30 p.m. Wanda conducted a roll call, noting 7 ayes for the meeting, with President Pamela Humberson, James Hook, Robert Sines, Edward Kelley, Sheryl MacLane and Michael Artice attending the closed executive session. This meeting was closed under the following provision of General Provisions Art 3-305 (7). The purpose of the meeting was to share with council members the legal advice from attorney, Michael Llewellyn via his email dated Monday, May 13, 2024. The email was discussed and the motions and votes in the prior closed session on May 6, 2024 is void and of no effect.

Approval of the Agenda – May 20, 2024

President Humberson asked for any additions or corrections to the agenda. Mayor Schlosnagle shared that Connor Norman will not be able to attend this evening. He will be attending on Monday, July 15th. Under new business: An email was received from Siera Wigfield to review.

Motion #1: (Council member Kelley/Council member Sines) Approval to accept the May 20, 2024, agenda. 6 in favor/0 opposed/0 abstention. Motion carries.

Approval of the Minutes

Motion #2: (Council member Sines/Council member Artice) Approval to accept the public hearing meeting minutes for May 6, 2024. 6 in favor/0 opposed/0 abstention. Motion carries.

Motion #3: (Council member Sines/Council member Kelley) Approval to accept the general meeting minutes for May 6, 2024. 6 in favor/0 opposed/0 abstention. Motion carries.

To The Floor:

Gavin Yutzy requested that the Mayor and Town Council consider changing the direction of the one-way alley from Maple Street to Walnut Street. He also highlighted that the side alleyway presents a visibility obstruction. Council President Humberson acknowledged these concerns, and the council will take them under advisement.

Terry Uphold informed the council that the meters and grates are not flush with the sidewalks. He brought this to the contractor's attention, and the issue was addressed. Mayor Schlosnagle mentioned the need to collaborate with the county. Jennifer Uphold emphasized the importance of maintaining the one-way direction from Walnut Street to Maple Street, as it allows a handicapped person to use the alleyway, turn right, and reach the ramp at the sidewalk. She also noted that vehicles often cut too soon and drive over the curb. Additionally, Jennifer pointed out that the law requires parking with the passenger side adjacent to the sidewalk.

Unfinished Business:

Concession Stand & ADA Restroom

Mayor Schlosnagle shared that two pre-bid packets were given out.

1. Cornerstone Construction, LLC, Mark Hinebaugh
2. Everything Drywall, Chad Fike

Council President Humberson reviewed the bid received from Cornerstone Construction, LLC (Mark & Jon Hinebaugh) \$169,300.00.

Motion #4: (Council member Hook/Council member Sines) Approval to accept the bid from Cornerstone Construction, LLC \$169,300.00. 6 in favor/0 opposed/0 abstention. Motion carries.

TVR Ordinance Committee

Wanda distributed the document from Peggy Jamison regarding transient vacation rentals (TVR).

Council member Kelley shared that we need a committee to regularly meet to discuss and research the pros and cons of TVRs, conduct surveys to gather community feedback and opinions on TVRs. The council first would need to address the zoning ordinance and then collaborate with the committee to draft a proposed TVR ordinance for the Town of Friendsville.

It was pointed out that TVRs and long-term rentals will need to be inspected and who would do this for the buildings.

Council member Kelley volunteered to participate on the committee even though he is limited on time.

Motion #5: (Council member Kelley/Council President Humberson) Approval to change the zoning ordinance and in the meantime to set up a committee of volunteers who are in favor and opposed to having a TVR ordinance to explore, survey the community and present recommendations to the council. 4 in favor/2 opposed/0 abstention. Motion carries.

Take Out Signs

Mayor Schlosnagle announced that Jess Whittemore will help install the new signs for the Town of Friendsville. The signs will go into production this week and are expected to be ready by the following week.

Alleyway One Way – Walnut to Maple

It was decided that Mayor Schlosnagle would reach out to the Traffic Advisory Committee regarding the present situation with the one-way street located at Walnut Street to Maple Street and will address the possible need for stop signs.

2/8

Tree Removal

The trees were removed, and the job is finished.

Sidewalk Repairs

Beitzel Corporation is currently working on the sidewalks. Council member Sines inquired whether Beitzel is responsible for disposing of the old sidewalks and debris and if they have a plan for this.

AL/GAR MML meeting on May 8, 2024

The dinner meeting was held at Kitzmiller. Mayor Schlosnagle, Council member Kelley, Council President Humberson attended. The chapter endorsed Ray Morriss for nomination for President elect. Mayor Schlosnagle submitted the nomination form on May 20, 2024, to MML. The dues for MML will be \$500.00 for the coming year. Allegany and Garrett sheriffs attended the meeting and served as guest speakers, and it was nice to have a comparison of what is happening in both counties. It was surprising to hear that Fentanyl is a problem in both counties. The next meeting will be in August hosted by the Town of Oakland.

New Business

Mayor Schlosnagle shared a “Thank you” note from the Friendsville Day Committee.

Beitzel Corporation Proposal: P930109-05 05/13/2024 (Appendix A)

Motion #6: (Council member Hook/Council member Kelley) Motion to accept the proposal from Beitzel Corporation Proposal: P930109-05 05/13/2024 \$12,419.00.

5 in favor/1 opposed/0 abstention. Motion carries.

Beitzel Corporation Proposal: P930109-06 05/15/2024 (Appendix B)

Motion #7: (Council member Sines/Council member Kelley) Motion not to accept or move forward with the proposal from Beitzel Corporation Proposal: P930109-06 \$745.00.

5 in favor/1 opposed/0 abstention. Motion carries.

Central Garrett Baseball League-Locks/Keys

On May 16, 2024, Craig Umbel called the Town Hall asking permission from the council to change all the locks on the buildings to a single key system. They would cover the cost of the replacement of the locks and make sure that we would also have a key.

Motion #8: (Council member Hook/Council member Kelley) Motion not to change the locks to a single key system but to use a combination lock instead of lock keys.
6 in favor/0 opposed/0 abstention. Motion carries.

Council requested that Wanda get back with Craig regarding the motion and let them know that the Town is willing to consider assisting with the cost of the purchase of the combination locks.

To The Floor

Barry and Elsie shared a newspaper article titled "State Revitalization Money Supports Community Projects" from the Garrett County Weekender, dated Friday, May 17, 2024, with the Mayor and Town Council. Elsie emphasized that the Town of Friendsville should not miss out on this opportunity, suggesting it could benefit the community.

Ordinance O-2024-03 Fiscal Year 2025 Budget Ordinance

A copy of the Ordinance O-2024-03 Fiscal Year 2025 Budget Ordinance public hearing will be posted in the paper on May 23rd and May 30th, and it will be introduced at the June 3rd meeting. Copies were distributed to council members for review prior to the meeting. The Budget Hearing will be held on June 3rd at 5:00 p.m.

Community Legacy Grant – Friend Family Museum/Library Exterior Improvements

Mayor Schlosnagle shared the email from Rachelle Watkins, Director of Community Development with Garrett County Community Action Committee, Inc. dated Tuesday, May 14, 2024, announcing that the award agreement has been fully executed by the Maryland Department of Housing and Community Development. The award was \$25,000 for the repair of the windows.

Council member Sines inquired about the mural on the side of the building. Council member Artice wanted to know if they wanted to move forward with the painting. Wanda shared that at the January 8th meeting, Council member Artice shared the details of painting the mural, but no motion was made at that time. Council member Artice shared that she is booked up for the next 4 to 5 months and would not be available until October or November. Council Artice will continue to work with his contact on the details of the mural.

member agj

Community Parks & Playgrounds – Community Park Restroom/Electrical Room Renovations

Mayor Schlosnagle shared that a letter dated May 10, 2024, was received from the Maryland Department of Natural Resources notifying us that the funding for the project, Friendsville Community Park Restroom Renovation in the amount of \$241,604.00 was included in the State of Maryland's FY 2025 Budget. The project grant is subject to the Board of Public Works (BPW) approval. Once approval is received from BPW then the work can start, and we can move forward with bids.

Grand Fondo – June 22, 2024 (Friendsville Aide Station Volunteers)

They are expecting approximately 400-500 bikers this year. The Heritage Area will again sponsor the aide station in Friendsville. The Friendsville Aide Station is the first aide station on the ride, which means they will arrive early but also will be early to get done and you can enjoy your Saturday. Volunteers need to be at the Community Park in Friendsville by 6:45 a.m. – 7:00 a.m. Duties include preparing food and snacks for the riders, set up and tear down, guides at the road

for riders and assisting riders as they come in. Snaggy Mountain Slackards will be playing at the aid station from 8:00 a.m. – 10:00 a.m. Mayor Schlosnagle and Council member Artice have committed to helping that day.

Siera Wigfield – Email

Mayor Schlosnagle shared that Siera Wigfield sent an email dated May 8, 2024.

Rich Wesoloswski, with the Board of Education is interested in ADA playground upgrades to the Friendsville Elementary School which Siera was hoping that the Town and Board of Education apply for Community Parks and Playground funding in August. Mayor Schlosnagle shared that this is a 90/10 grant and the BOE would be responsible for the 10%.

Motion #9: (Council member Artice/Council President Humberson) Motion to use the Town of Friendsville name when the Board of Education is applying for the Community Parks and Playground grant for the ADA playground upgrades at Friendsville Elementary School in August.
6 in favor/0 opposed/0 abstention. Motion carries.

Mayor's Report:

Motion #10: (Council member Hook/Council member Sines) Motion to purchase the 2021 Chevrolet Colorado Truck, mileage 41672 from Art Butler Auto Sales for \$19,309.00.
6 in favor/0 opposed/0 abstention. Motion carries.

- Town wide Yard Sales, May 25, 2024 & July 20, 2024, the flyers have been distributed; posted on website and on Facebook.
- The Celtic Festival is June 1, 2024, at the Community Park; they are asking for help again.
 - Welcoming Opening Ceremonies
 - Platform (Wooden Crates)
 - American & State Flags
 - Portable Sound System
 - Dred & Clint Assistance
 - Additional Volunteers to help on Saturday.
- The Fishing Rodeo was held this past Saturday, May 18th. The attendance was great, and it was a successful event.
- Street sweeping took place last Wednesday, May 15th. The Town of Oakland conducted the sweeping, and the task is now complete.
- The Heritage Area Board met today, May 20th at the chamber office. He represents the eight municipalities. Portable kiosk to encourage visiting the towns.
- The Army Corp of Engineers removed the tree at the takeout area.

Committees Reports:

- **Buildings:** Council member Sines inquired about the Old Mill roof. No response from the owner.
- **Safety:** Citizen Terry Uphold mentioned that arrows and signs are needed at the intersection of 742 and 42 to clarify turning directions. The Mayor will bring this up with the Traffic Advisory Committee.

- **Streets & Sidewalks:** Council member MacLane noted that the speed limit should be 25 when entering town. She suggested dropping it to 25 all the way out at Marlene Schroyer's house coming down Bear Creek Rd towards town. *Incorrect; After discussion it was decided to strike & remove & readdress at another meeting.*
Citizen Terry Uphold asked about installing a speed bump during the summer months. Mayor Schlosnagle will address both issues with the Traffic Advisory Committee. *2/8/24*

- **Community Park:** Council President Humberson shared that Pam Jasper donates and plants flowers around the Community Park entrance sign. It has come to her attention that someone is removing and taking the plants. This also occurred last year.

Council member Kelley also shared that there is an issue of someone taking toilet paper from the restrooms and taking light bulbs.

- **Trees & Shrub:** Council member MacLane announced that the quilters would be judging the posters. She also requested a list of the youth participants in the poster contest, as the posters are currently only identified by numbers. Wanda will obtain the list from Lori Schmidt and forward it to Council member MacLane.

Council member Kelley noted that the trees behind Friendship Heights are too large for a lawn tractor to handle, making the area impossible to mow with standard equipment. He suggested that the area needs to be handled differently.

- **Economic Development:** Nothing

Concerns of Council Members: Nothing

The Next Mayor & Town Council meeting will be on June 3, 2024

- 5:00 p.m. – Public Hearing Ordinance O-2024-03 FY2025 Budget
- 6:00 p.m. – Mayor & Town Council Meeting
- 7:00 p.m. – Public Hearing Resolution #2024-02

Adjournment:

Motion #11 (Council member Hook/Council member Artice): Approval to adjourn the meeting.
6 in favor/0 opposed/0 abstention. Motion carries.

The meeting was adjourned at 7:40 p.m.

Respectfully Submitted,

Wanda M. Guard
Wanda M. Guard,
Administrative Assistant, Clerk-Treasurer

Approved by:
Spencer R. Schlosnagle,
Mayor
6/3/2024

Appendix A



PROPOSAL: P930109-05 05/13/2024

333 Corporate Drive – Grantsville, MD 21536 – 301-245-4108 – BEITZELCORP.COM

QUOTE NAME: Town of Friendsville - Sidewalk Replacement

SUBMITTED TO: Friendsville, Town of – PO Box 9, Friendsville, MD, 21531

ATTENTION: Spencer Schlosnagle –srschlosnagle@gmail.com– 301-501-1605

PREPARED BY: Jared Beitzel – Project Manager

CONTACT: Jared Beitzel – jaredbeitzel@beitzelcorp.com – 301-616-2958

SCOPE:

1. Removal and replacement of approximately 236 SF (5'2"X45'6") of existing sidewalk located at 253 Maple St
 - General conditions and mobilization of equipment, tools, and crew.
 - Excavations incidental to new concrete and forms.
 - Demolition and removal of existing sidewalk.
 - Excavations of sub-base for 5" of concrete and 3" of stone if stone is not present or if 5" of depth is not present.
 - Provide and install up to 3" of stone if stone is not present.
 - Provide, install, and strip concrete forms and bracing.
 - Provide and install welded 6x6 wire mesh.
 - Provide, place, and finish 4000 psi concrete to a 5" depth.
 - Cure concrete with a liquid curing compound.
 - Installation of contraction joints at 5' intervals.
 - Installation of expansion joints and smooth dowels at 20' intervals.
 - Backfilling of new sidewalk.
 - Provide and place seed & mulch at disturbed areas.

Price: \$12,419.00

NOTES & CLARIFICATIONS:

Notes:

- Beitzel's offer assumes no access restrictions to work zones; and, is based on a 10 hour per day workday; with work schedule of Monday-Thursday. In the event that Beitzel Corporations work is interrupted for any reason beyond our control, Beitzel shall be compensated per hour for standby of the crew and equipment.
- Beitzel has assumed we can leave our tool trailer and equipment on the job site property during non-working hours for the construction duration.

- Beitzel's offer includes removal of excavated and demoed materials from work locations to a town designated dump location within a mile of the work sites.
- Beitzel assumes the town will have a designated dumpster available for small debris and trash.
- Beitzel assumes a temporary staging area for stone will be provided in town.
- Beitzel assumes the town has been provided permission from landowners for Beitzel to access their properties to stage materials, work, and install sidewalks where indicated by the town.
- Beitzel's offer assumes work can be completed while crew and equipment are on-site replacing sidewalks awarded in proposals P930109-01 through P930109-03.

Exclusions:

- Any permits required to perform work
- Third party inspections and testing
- Painting of walkways, roadways, or structures
- Surveying
- Traffic control
- Concrete winterization
- Hard rock excavations
- Dumpsters or dump site for excavated and demoed materials
- Relocating electrical, or any unforeseen underground utilities
- Removal of trees, roots, etc
- Removal or relocation of any concrete structures present under existing sidewalks

PRICING

Price: \$12,419.00

Payment to be made as follows: Net 30 days

**Proposal is valid for 30 days*

TERMS & CONDITIONS

1. **General.** Customer's acceptance of these Terms shall be conclusively presumed from Customer's acceptance of all or any part of the Services or from payment to Seller for all or any part of the Services provided. These Terms supersede and will govern in place of any additional or conflicting terms on Customer's purchase order, other correspondence, or documentation submitted to Seller. Seller hereby expressly limits its acceptance of Customer's purchase order to these Terms, and hereby gives notice of objection to any additional or conflicting terms. No amendment to these Terms will be effective unless in signed writing by the parties.
2. **Purchase Orders.** Customer's authorized representative shall purchase Services by issuing a written purchase order indicating the specific Services requested, including but not limited to, material quantity and type, shipping dates, bill-to and ship-to addresses, tax exempt certifications (if applicable), and other pertinent information. The parties will mutually agree on the scope and scheduling of the Services. If Customer's purchase order is for a fixed scope of Services, and Customer requests Seller to provide additional Services outside of the fixed scope, Seller may elect to do so at its then existing time-and-materials rates.
3. **Service Records.** If Seller submits daily, weekly, or monthly records indicating the Services performed therein, Customer shall promptly inspect and compare the actual Services and the recorded Services, and Customer's signature or failure to object to the recorded Services shall constitute acceptance of the Services as recorded.
4. **Payment.** The following payment terms apply to Services:
 - a. **Invoices.** Seller may submit invoices on a weekly, monthly, or other agreed upon basis, and Customer shall make payment within 30 days of the invoice date. All invoices not timely paid will accrue interest at a rate of 1.5% per month. Customer shall pay all sales and use taxes pursuant to any applicable state codes or regulations.
 - b. **Time and Material Rates.** Any Services provided on a time and material basis will be at Seller's then existing time and material rates. Seller may modify its time and material rates following notice to Customer.
 - c. **Acceptance.** In the absence of Customer's express acceptance, Customer will be deemed to have accepted the Services upon the earlier of (i) payment of the invoice amount, (ii) receipt and review of Seller's service records, or (iii) ten (10) days after Seller's notice of completion of the Services.
5. **Material Escalation.** The parties hereby agree that certain Services are subject to unforeseen market fluctuations. Accordingly, certain portions of Services comprised of steel or aluminum will be subject to price adjustments based on the 20-city average Material Cost Index ("MCI") as recorded in the Construction Weekly Publication "Engineering News-Record" ("ENR"). The fixed prices or unit price for the above referenced portions of Services are subject to adjustment as follows:
 - a. If necessary, Seller shall include in its invoices a line item detailing any escalation payment due. Any adjustment will be based on the percent difference of the most recently published MCI prior to Seller's invoice date (each an "Invoice MCI"), and the most recently published MCI prior to the date on the face of Seller's proposal ("Baseline MCI"). Each applicable Invoice MCI and the Baseline MCI are made a part of this Purchase Agreement and are hereby incorporated by reference.
 - b. The following circumstances determine whether an adjustment to Service prices comprised of steel or aluminum are required.
 - i. **No Adjustment.** If the percentage change (either as an increase or decrease) in the applicable Invoice MCI and the Baseline MCI is equal to or less than 5%, then no adjustment will occur.
 - ii. **Escalation Payment.** If the percentage change between the applicable Invoice MCI and the Baseline MCI increases by more than 5%, Customer shall issue a change order to cover the increased cost based on the percentage in excess of the 5% increase. Seller shall be responsible for the first 5% increase and Customer shall be responsible for the remainder of the total increase after the initial 5% increase. Customer shall make said payment on the next regularly scheduled payment date.
 - iii. **Fuel.** The parties further agree that in addition to the above, Seller may add a reasonable surcharge to reflect increased fuel costs. Seller will separately state the increased surcharge on each applicable invoice.
6. **Customer's Responsibility.**
 - a. **Worksite Condition.** If Customer is to prepare the worksite for Seller's performance, Customer represents and warrants that such worksite will be provided in a condition fit and suitable for Seller to perform its Services. Seller may inspect such worksite and require additional preparation or changes to be performed by Customer if the worksite is not safe or fit for Seller's performance. Customer shall provide Seller with all relevant reports, designs, drawings, and all other applicable material. If Seller informs Customer of any subsurface or latent conditions at the worksite differing materially from those indicated in the purchase order and its exhibits, or physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of a similar nature, Customer shall grant an equitable adjustment to the Service price and schedule. Customer further represents that the worksite has sufficient electric power to support the work provided by Seller.
 - b. **Third Party Work.** If Customer performs work at the worksite directly or by others, Customer shall coordinate, and shall require each separate contractor to coordinate, the activities to avoid interfering with Seller's schedule and performance of Services. Seller will receive an equitable adjustment to the Service price and schedule for any delay due to interfering on-site work.
7. **Warranty.**
 - a. **Seller Warranty.** Seller solely warrants that it will fabricate the Services and associated goods in accordance with the Customer's written specifications. To the fullest extent permitted by applicable law, Seller hereby expressly disclaims all warranties, whether express or implied warranties, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Except as otherwise set forth in this Section 7(a), all Services are provided AS-IS.
 - b. **Customer Representation.** Customer represents that all Seller may rely on the accuracy of all Customer supplied drawings, specifications, and other written directives.
8. **Risk of Loss.** If the Services require Seller to use tools, equipment, or materials ("Customer Equipment") supplied by Customer, Customer shall bear the entire risk of loss, theft, damage to, or destruction of ("Risk") all Customer Equipment from any cause from the time the Customer Equipment is delivered to Seller until it is returned to Customer, except to the extent caused by Seller's sole negligence.
9. **Indemnity.**
 - a. **Seller Indemnity.** Seller shall indemnify, defend, and hold Customer harmless from and against all losses, including costs and reasonable attorneys' fees (whether from in-house or outside counsel) to the extent caused by the negligence of Seller or its material breach of these Terms.
 - b. **Customer Indemnity.** Customer shall indemnify, defend, and hold Seller harmless from and against all losses, including costs and reasonable attorneys' fees (whether from in-house or outside counsel) to the extent caused by the negligence of Customer or third parties under its control, or due to Customer's material breach of these Terms.
10. **Insurance.** Each party shall purchase at their respective expense and maintain throughout the course of the Services insurance with customary coverage and sufficient minimum amounts to support their respective obligations under these Terms. Each party further agrees to waive, and to cause their respective insurers to waive, any right to subrogate a claim arising out of these Terms and Services. Such coverages, minimum amounts, and waiver will be evidenced on certificates of insurance, as requested.
11. **Termination.**

- a. **Termination for Convenience.** Either party may terminate all or part of the Services without cause and for its own convenience following thirty (30) days written notice to the other party. If Customer terminates the Services, Seller shall cease operations as directed in Customer's notice and take reasonable actions to protect and preserve the Work. In case of such termination, Customer shall pay Seller for all Services performed up to the date of termination and all reasonable expenses incurred as a result of such termination, plus ten percent.
 - b. **Termination for Cause.** Either party may terminate all or part of the Services for a material breach by the other if such breach is not cured within fifteen (15) days of receipt of written notice. In such event, the non-breaching party may recover its reasonable, actual direct damages due to such breach, subject to Section 14.
12. **Independent Contractor.** Seller is an independent contractor with respect to the Services for Customer, and neither Customer nor anyone used or employed by Customer is an agent, employee, or joint venture of Seller. To the extent that Seller provides crane services, Customer acknowledges and agrees that Seller will retain exclusive control of all crane equipment at all times. Seller will provide crane services for a specific task or set of tasks as agreed to in a purchase order, and Seller shall retain exclusive control and discretion over the operation of crane equipment and manner of completion. Customer acknowledges that Seller's cranes are not furnished for Customer's discretionary use and that the form of purchase order pricing neither determines the substance of the transaction nor Seller's control over the crane equipment.
13. **Force Majeure.** Neither party will be liable to the other for any failure to perform (except payment obligations) or delay arising out of causes unforeseen and reasonably beyond the affected party's control.
14. **Limitation of Liability.** Neither party shall be liable to the other for any indirect, incidental, special, punitive, or consequential damages in any manner in connection with or arising out of these Terms, regardless of the form of the action or the basis of the claim, or whether or not such party has been advised of the possibility of such damages. To the extent permitted by applicable law, Seller's aggregate liability to Customer under these Terms or otherwise is limited to no more than the total annual dollar amount paid to Seller for the particular Services giving rise to the liability under the particular purchase order.
15. **Severability.** If any term of this Agreement is held invalid or unenforceable, such term will be excluded to the extent of such invalidity or unenforceability. All other terms will remain in full force and effect.
16. **Waiver.** A delay or failure in enforcing any right or remedy in these Terms or provided by law will not prejudice or operate to waive that right or remedy.
17. **Negotiated Terms.** These Terms are the result of negotiations between Customer and Seller. Accordingly, these Terms will not be construed in favor of or against either Party.
18. **Claims.** Any claims by Customer, whether in contract, tort, or under any other theory of law, and arising out of these Terms must be submitted to Seller in writing within 1 year from the date of Customer's knowledge of such claim. Customer's failure to do so will constitute a waiver by Customer of any legal or equitable rights with respect to the claim or dispute.
19. **Governing Law and Venue.** The laws of the State of Maryland shall govern all matters arising out of or relating to these Terms and Services, excluding conflict of law principles. Any party bringing legal action or proceeding against any other party shall only bring the legal action in a court in the State of Maryland. The parties hereby irrevocably consent to jurisdiction and venue exclusively in the State of Maryland, and hereby waive any claim of forum nonconveniens.

Entire Agreement. These terms constitute the complete, entire, and fully integrated understanding of the parties with respect to the Services.

License Numbers: Control # 11384881 00078256

Customer's Name: _____

By: _____

Its: _____

Date: _____



PROPOSAL: P930109-06 05/15/2024

333 Corporate Drive – Grantsville, MD 21536 – 301-245-4108 – BEITZELCORP.COM

QUOTE NAME: Town of Friendsville - Sidewalk Replacement

SUBMITTED TO: Friendsville, Town of – PO Box 9, Friendsville, MD, 21531

ATTENTION: Spencer Schlosnagle –srschlosnagle@gmail.com– 301-501-1605

PREPARED BY: Jared Beitzel – Project Manager

CONTACT: Jared Beitzel – jaredbeitzel@beitzelcorp.com – 301-616-2958

SCOPE:

1. Removal and replacement of approximately 20 SF (5'X4') of existing sidewalk located at 245 Maple St
 - General conditions and mobilization of equipment, tools, and crew.
 - Excavations incidental to new concrete and forms.
 - Demolition and removal of existing sidewalk.
 - Provide, install, and strip concrete forms and bracing.
 - Provide and install welded 6x6 wire mesh.
 - Install dowels between existing sidewalk and new sidewalk.
 - Provide, place, and finish 4000 psi concrete
 - Cure concrete with a liquid curing compound.
 - Backfilling of new sidewalk.
 - Provide and place seed & mulch at disturbed areas.

Price: \$754.00

NOTES & CLARIFICATIONS:

Notes:

- Beitzel's offer assumes no access restrictions to work zones; and, is based on a 10 hour per day workday; with work schedule of Monday-Thursday. In the event that Beitzel Corporations work is interrupted for any reason beyond our control, Beitzel shall be compensated per hour for standby of the crew and equipment.
- Beitzel has assumed we can leave our tool trailer and equipment on the job site property during non-working hours for the construction duration.
- Beitzel's offer includes removal of excavated and demoed materials from work locations to a town designated dump location within a mile of the work sites.
- Beitzel assumes the town will have a designated dumpster available for small debris and trash.
- Beitzel assumes the town has been provided permission from landowners for Beitzel to access their properties to stage materials, work, and install sidewalks where indicated by the town.

- Beitzel's offer assumes work can be completed while crew and equipment are on-site replacing sidewalks awarded in proposals P930109-01 through P930109-03.

Exclusions:

- Any permits required to perform work
- Third party inspections and testing
- Painting of walkways, roadways, or structures
- Surveying
- Traffic control
- Concrete winterization
- Hard rock excavations
- Dumpsters or dump site for excavated and demoed materials
- Relocating electrical, or any unforeseen underground utilities
- Removal of trees, roots, etc
- Removal or relocation of any concrete structures present under existing sidewalks

PRICING

Price: \$754.00

Payment to be made as follows: Net 30 days

**Proposal is valid for 30 days*

TERMS & CONDITIONS

1. **General.** Customer's acceptance of these Terms shall be conclusively presumed from Customer's acceptance of all or any part of the Services or from payment to Seller for all or any part of the Services provided. These Terms supersede and will govern in place of any additional or conflicting terms on Customer's purchase order, other correspondence, or documentation submitted to Seller. Seller hereby expressly limits its acceptance of Customer's purchase order to these Terms, and hereby gives notice of objection to any additional or conflicting terms. No amendment to these Terms will be effective unless in signed writing by the parties.
2. **Purchase Orders.** Customer's authorized representative shall purchase Services by issuing a written purchase order indicating the specific Services requested, including but not limited to, material quantity and type, shipping dates, bill-to and ship-to addresses, tax exempt certifications (if applicable), and other pertinent information. The parties will mutually agree on the scope and scheduling of the Services. If Customer's purchase order is for a fixed scope of Services, and Customer requests Seller to provide additional Services outside of the fixed scope, Seller may elect to do so at its then existing time-and-materials rates.
3. **Service Records.** If Seller submits daily, weekly, or monthly records indicating the Services performed therein, Customer shall promptly inspect and compare the actual Services and the recorded Services, and Customer's signature or failure to object to the recorded Services shall constitute acceptance of the Services as recorded.
4. **Payment.** The following payment terms apply to Services:
 - a. **Invoices.** Seller may submit invoices on a weekly, monthly, or other agreed upon basis, and Customer shall make payment within 30 days of the invoice date. All invoices not timely paid will accrue interest at a rate of 1.5% per month. Customer shall pay all sales and use taxes pursuant to any applicable state codes or regulations.
 - b. **Time and Material Rates.** Any Services provided on a time and material basis will be at Seller's then existing time and material rates. Seller may modify its time and material rates following notice to Customer.
 - c. **Acceptance.** In the absence of Customer's express acceptance, Customer will be deemed to have accepted the Services upon the earlier of (i) payment of the invoice amount, (ii) receipt and review of Seller's service records, or (iii) ten (10) days after Seller's notice of completion of the Services.
5. **Material Escalation.** The parties hereby agree that certain Services are subject to unforeseen market fluctuations. Accordingly, certain portions of Services comprised of steel or aluminum will be subject to price adjustments based on the 20-city average Material Cost Index ("MCI") as recorded in the Construction Weekly Publication "Engineering News-Record" ("ENR"). The fixed prices or unit price for the above referenced portions of Services are subject to adjustment as follows:
 - a. If necessary, Seller shall include in its invoices a line item detailing any escalation payment due. Any adjustment will be based on the percent difference of the most recently published MCI prior to Seller's invoice date (each an "Invoice MCI"), and the most recently published MCI prior to the date on the face of Seller's proposal ("Baseline MCI"). Each applicable Invoice MCI and the Baseline MCI are made a part of this Purchase Agreement and are hereby incorporated by reference.
 - b. The following circumstances determine whether an adjustment to Service prices comprised of steel or aluminum are required:
 - i. **No Adjustment.** If the percentage change (either as an increase or decrease) in the applicable Invoice MCI and the Baseline MCI is equal to or less than 5%, then no adjustment will occur.
 - ii. **Escalation Payment.** If the percentage change between the applicable Invoice MCI and the Baseline MCI increases by more than 5%, Customer shall issue a change order to cover the increased cost based on the percentage in excess of the 5% increase. Seller shall be responsible for the first 5% increase and Customer shall be responsible for the remainder of the total increase after the initial 5% increase. Customer shall make said payment on the next regularly scheduled payment date.
 - iii. **Fuel.** The parties further agree that in addition to the above, Seller may add a reasonable surcharge to reflect increased fuel costs. Seller will separately state the increased surcharge on each applicable invoice.
6. **Customer's Responsibility.**
 - a. **Worksite Condition.** If Customer is to prepare the worksite for Seller's performance, Customer represents and warrants that such worksite will be provided in a condition fit and suitable for Seller to perform its Services. Seller may inspect such worksite and require additional preparation or changes to be performed by Customer if the worksite is not safe or fit for Seller's performance. Customer shall provide Seller with all relevant reports, designs, drawings, and all other applicable material. If Seller informs Customer of any subsurface or latent conditions at the worksite differing materially from those indicated in the purchase order and its exhibits, or physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of a similar nature, Customer shall grant an equitable adjustment to the Service price and schedule. Customer further represents that the worksite has sufficient electric power to support the work provided by Seller.
 - b. **Third Party Work.** If Customer performs work at the worksite directly or by others, Customer shall coordinate, and shall require each separate contractor to coordinate, the activities to avoid interfering with Seller's schedule and performance of Services. Seller will receive an equitable adjustment to the Service price and schedule for any delay due to interfering on-site work.
7. **Warranty.**
 - a. **Seller Warranty.** Seller solely warrants that it will fabricate the Services and associated goods in accordance with the Customer's written specifications. To the fullest extent permitted by applicable law, Seller hereby expressly disclaims all warranties, whether express or implied warranties, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Except as otherwise set forth in this Section 7(a), all Services are provided AS-IS.
 - b. **Customer Representation.** Customer represents that all Seller may rely on the accuracy of all Customer supplied drawings, specifications, and other written directives.
8. **Risk of Loss.** If the Services require Seller to use tools, equipment, or materials ("Customer Equipment") supplied by Customer, Customer shall bear the entire risk of loss, theft, damage to, or destruction of ("Risk") all Customer Equipment from any cause from the time the Customer Equipment is delivered to Seller until it is returned to Customer, except to the extent caused by Seller's sole negligence.
9. **Indemnity.**
 - a. **Seller Indemnity.** Seller shall indemnify, defend, and hold Customer harmless from and against all losses, including costs and reasonable attorneys' fees (whether from in-house or outside counsel) to the extent caused by the negligence of Seller or its material breach of these Terms.
 - b. **Customer Indemnity.** Customer shall indemnify, defend, and hold Seller harmless from and against all losses, including costs and reasonable attorneys' fees (whether from in-house or outside counsel) to the extent caused by the negligence of Customer or third parties under its control, or due to Customer's material breach of these Terms.
10. **Insurance.** Each party shall purchase at their respective expense and maintain throughout the course of the Services insurance with customary coverage and sufficient minimum amounts to support their respective obligations under these Terms. Each party further agrees to waive, and to cause their respective insurers to waive, any right to subrogate a claim arising out of these Terms and Services. Such coverages, minimum amounts, and waiver will be evidenced on certificates of insurance, as requested.
11. **Termination.**

- a. **Termination for Convenience.** Either party may terminate all or part of the Services without cause and for its own convenience following thirty (30) days written notice to the other party. If Customer terminates the Services, Seller shall cease operations as directed in Customer's notice and take reasonable actions to protect and preserve the Work. In case of such termination, Customer shall pay Seller for all Services performed up to the date of termination and all reasonable expenses incurred as a result of such termination, plus ten percent.
 - b. **Termination for Cause.** Either party may terminate all or part of the Services for a material breach by the other if such breach is not cured within fifteen (15) days of receipt of written notice. In such event, the non-breaching party may recover its reasonable, actual direct damages due to such breach, subject to Section 14.
- 12. **Independent Contractor.** Seller is an independent contractor with respect to the Services for Customer, and neither Customer nor anyone used or employed by Customer is an agent, employee, or joint venture of Seller. To the extent that Seller provides crane services, Customer acknowledges and agrees that Seller will retain exclusive control of all crane equipment at all times. Seller will provide crane services for a specific task or set of tasks as agreed to in a purchase order, and Seller shall retain exclusive control and discretion over the operation of crane equipment and manner of completion. Customer acknowledges that Seller's cranes are not furnished for Customer's discretionary use and that the form of purchase order pricing neither determines the substance of the transaction nor Seller's control over the crane equipment.
 - 13. **Force Majeure.** Neither party will be liable to the other for any failure to perform (except payment obligations) or delay arising out of causes unforeseen and reasonably beyond the affected party's control.
 - 14. **Limitation of Liability.** Neither party shall be liable to the other for any indirect, incidental, special, punitive, or consequential damages in any manner in connection with or arising out of these Terms, regardless of the form of the action or the basis of the claim, or whether or not such party has been advised of the possibility of such damages. To the extent permitted by applicable law, Seller's aggregate liability to Customer under these Terms or otherwise is limited to no more than the total annual dollar amount paid to Seller for the particular Services giving rise to the liability under the particular purchase order.
 - 15. **Severability.** If any term of this Agreement is held invalid or unenforceable, such term will be excluded to the extent of such invalidity or unenforceability. All other terms will remain in full force and effect.
 - 16. **Waiver.** A delay or failure in enforcing any right or remedy in these Terms or provided by law will not prejudice or operate to waive that right or remedy.
 - 17. **Negotiated Terms.** These Terms are the result of negotiations between Customer and Seller. Accordingly, these Terms will not be construed in favor of or against either Party.
 - 18. **Claims.** Any claims by Customer, whether in contract, tort, or under any other theory of law, and arising out of these Terms must be submitted to Seller in writing within 1 year from the date of Customer's knowledge of such claim. Customer's failure to do so will constitute a waiver by Customer of any legal or equitable rights with respect to the claim or dispute.
 - 19. **Governing Law and Venue.** The laws of the State of Maryland shall govern all matters arising out of or relating to these Terms and Services, excluding conflict of law principles. Any party bringing legal action or proceeding against any other party shall only bring the legal action in a court in the State of Maryland. The parties hereby irrevocably consent to jurisdiction and venue exclusively in the State of Maryland, and hereby waive any claim of forum nonconveniens.

Entire Agreement. These terms constitute the complete, entire, and fully integrated understanding of the parties with respect to the Services.

License Numbers: Control # 11384881 00078256

Customer's Name: _____

By: _____

Its: _____

Date: _____