

**86th Regular Session
Mayor and City Council
March 22, 2016
Agenda**

7:00 PM - March 22, 2016 - REGULAR SESSION -*Council Chamber*

I. CALL TO ORDER

Mayor David S. Gysberts

II. INVOCATION

Councilmember Lewis C. Metzner

III. PLEDGE TO THE FLAG

IV. ANNOUNCEMENTS

- A. A. Rules of Procedure - *Adopted September 24, 2013*
- B. Use of cell phones during meetings is restricted
- C. All correspondence for distribution to Elected Officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.
- D. Meeting Schedule:
 - 1. Tuesday, April 5, 2016 - Work Session at 4:00 p.m.
 - 2. Tuesday, April 12, 2016 - Work Session at 4:00 p.m.
 - 3. Tuesday, April 19, 2016 - Work Session at 4:00 p.m.
 - 4. Tuesday, April 19, 2016 - Regular Session at 7:00 p.m.
 - 5. Tuesday, April 26, 2016 - No Meeting - Primary Election Day

V. APPOINTMENTS

- A. Hagerstown Cultural Trail - Artist Selection Committee
 - Mary Ann Burke, Executive Director of the Washington Council Arts Council
 - Rebecca Massie Lane, Washington County Museum of Fine Arts
 - Aaron Peteranecz, Local Architect and Main Street Group Leader
 - Lesley Whalley, Founding Committee Member of Downtown Movement and Artist

VI. GUESTS

Proclamation: Week of the Young Child - April 10-16, 2016 - *Presented to The Maryland Association of Young Children - Western Maryland Chapter and Washington County Department of Social Services*

VII. CITIZEN COMMENTS

VIII. CITY ADMINISTRATOR'S COMMENTS

IX. MAYOR AND COUNCIL COMMENTS

X. MINUTES

February 9, 2016, February 16, 2016, and February 23, 2016

XI. CONSENT

A. Police

1. Predictive Policing Software Subscription - PredPol, Inc. (Santa Cruz, California)
\$15,000.00

B. Utilities

1. Manhole Risers - East Jordan Iron Works (Finksburg, MD) \$24,938.48

XII. UNFINISHED BUSINESS

- A. Approval of an Ordinance: Relinquishing Rights to Alley Parallel to East Franklin Street and Liberty Street
- B. Approval of an Ordinance: Amend Chapter 117, Recycling and Refuse Collection, of the City Code
- C. Approval of an Ordinance: Amend Chapter 64-8, Property Maintenance Code, Section 202, of the City Code
- D. Approval of an Ordinance: Amend Chapter 64-8, Property Maintenance Code, Section 307, of the City Code

XIII. NEW BUSINESS

- A. Approval of a Resolution: 2016 Summer Play Camp - Hagerstown YMCA
- B. Approval of a Resolution: 2016 Summer Play Camp - Girls Incorporated of Washington County
- C. Approval of a Resolution: 2016 Summer Play Camp - Robert W. Johnson Community Center
- D. Approval of a Resolution: Residential Lease for 38 N. Potomac Street - Apt. 2
- E. Approval of a Resolution: Residential Lease for 38 N. Potomac Street - Apt. 3
- F. Approval of a Resolution: Authorizing the Sale of 278 S. Prospect Street for Homeownership - Community's City Center Plan Catalytic Project #8
- G. Approval of a Resolution: Second Amendment to Long-Term User Agreement with the Hagerstown Fairgrounds Softball Association
- H. Approval of a Grant Agreement for a Maryland Bikeways Grant with the Maryland Department of Transportation
- I. Approval of Sister City Affiliation with Xinjin County, Chengdu, Sichuan, China
- J. Approval of Engineering Consulting Services for the Wholesale Power Supply Procurement with GDS Associates, Inc.
- K. Approval of Appalachian Regional Commission (ARC) FY 17 Project Funding Requests
- L. Approval of Trash and Recycling Receptacle and Container Placement Policy

XIV. ADJOURN

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Mayor David S. Gysberts

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Councilmember Lewis C. Metzner

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

- A. Rules of Procedure - *Adopted September 24, 2013*
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Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Hagerstown Cultural Trail - Artist Selection Committee

Mary Ann Burke, Executive Director of the Washington Council Arts Council

Rebecca Massie Lane, Washington County Museum of Fine Arts

Aaron Peteranecz, Local Architect and Main Street Group Leader

Lesley Whalley, Founding Committee Member of Downtown Movement and Artist

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

cultural_trail.2016.pdf

Description

Hagerstown Cultural Trail



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

March 15, 2016

TO: Valerie Means, City Administrator
FROM: Rodney Tissue, City Engineer *RT*
RE: Hagerstown Cultural Trail
Nominations for Artist Selection Committee

=====

Staff would like to recommend the following people to serve on the Artist Selection Committee for the Hagerstown Cultural Trail:

- Mary Ann Burke, Executive Director of the Washington County Arts Council
- Rebecca Massie Lane – Washington County Museum of Fine Arts
- Aaron Peteranecz – Local Architect and Main Street group leader
- Lesley Whalley – Founding Committee member of Downtown Movement and artist

We may have others to add in the future, but these folks, along with William Cochran (our Art Consultant) will make a good team to start.

Staff will be present at the work shop to review the recommendations with the Mayor & Council and to answer any questions you may have.

c: William Cochran

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Proclamation: Week of the Young Child - April 10-16, 2016 - *Presented to The Maryland Association of Young Children - Western Maryland Chapter and Washington County Department of Social Services*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

February 9, 2016, February 16, 2016, and February 23, 2016

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Predictive Policing Software Subscription - PredPol, Inc. (Santa Cruz, California) \$15,000.00

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Consent_-_Police.pdf

Description

Consent Form

Do Not Complete This Section:
APPROVED FOR:
CONSENT AGENDA _____
NEW BUSINESS _____

Unbudgeted * \$ _____ Source of Funds General Fund
 *(See Department Manager's Comments)

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<u>1</u>	<u>Predictive Policing Software Subscription</u>	\$ 15,000.00
	TOTAL VALUE	\$ 15,000.00

ABOVE TO BE USED FOR:

Predictive Policing Software Subscription 03/01/16 - 02/28/17

RECOMMENDED VENDOR:

BUSINESS NAME: PredPol, Inc.

ADDRESS: 2801 Mission Street, #2803

CITY, STATE: Santa Cruz, California 95060-5755

BID/PROPOSAL/QUOTE NO.: _____ (Circle one)

OTHER VENDORS:

[illegible]

COMMENTS

(1) DEPARTMENT MANAGER:

This purchase is for renewal of existing software.

Paul K 2/29/16
Signature/Date

(2) PURCHASING AGENT:

Recommend Approval.

Jason L Miller 3/9/2016
Signature/Date

(3) FINANCE MANAGER:

Recommend approval. Adequate funding exists in the FY16 approved budget to cover this.

Michelle H 3/9/16
Signature/Date

(4) CITY ADMINISTRATOR'S RECOMMENDATION:

Recommend Approval

Valerie A Mason 3/5/16
Signature/Date

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Manhole Risers - East Jordan Iron Works (Finksburg, MD) \$24,938.48

Mayor and City Council Action Required:

Requested approval of the Wastewater Division Consent Agenda Replacement of Manhole Lids and Risers in the amount of \$24,938.48.

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Consent_-_Manhole.pdf

Wastewater_Division_Consent_EJIW_Manhole_Lids_and_Risers_032216.pdf

Description

Consent Form

Wastewater Division

Consent EJIW

Manhole Lids and

Risers 032216

Approval For: _____
Consent Agenda: _____ X _____
New Business: _____

Quantity	Description	Value
See Attached	Manhole casting risers and lids	\$ 24,938.48
	TOTAL	\$24,938.48

Above To Be Used For:
The purchase of 50 manhole lids and risers to be used to raise manhole elevations throughout the collection system. Sole Source Purchase required to match existing equipment.

Other Vendors: **Sole Source**

Amount

Sole Source Purchase

Comments

Department Manager (required on all unbudgeted items):

The purchase of 50 manhole lids and risers to be used to raise manhole elevations throughout the collection system. Sole Source Purchase required to match existing equipment.

Joseph W. Miller

Signature

March 8, 2016

Date

Finance Department:

Recommend Approval.

Joseph L. Miller

Signature

3/9/2016

Date

Finance Manager:

Recommend approval. This was included in FY16 approved budget; WWT funds are adequate to cover this purchase.

Michelle S. Miller

Signature

3/9/16

Date

City Administrator's Recommendation:

Recommend Approval

Velen G. Mean

Signature

3/9/16

Date



P.O.BOX 245 FINKSBURG MD. 2104
OFFICE : 410 FAX : 410-833-9521

NAME : David Scriver
FAX: E-MAILED

LOCATION:

PROJECT NAME:		STOCK		
ITEM	Qty	DESCRIPTION	UNIT PRICE	
M5240015154C	50	1 1/2" Rise 1 1/2" Ild Conversion Riser	\$193.52	\$9,676.00
112068	50	1120 A Cover Sanitary Sewer Asphalt Coated	\$129.18	\$6,459.00
M5240015104A	5	1120 H 24.00T 23.75B 1.50L 1.00 Rise	\$193.52	\$967.60
M22400015254A	6	1120 H 24.00T 23.75B 1.50L 2.5 Rise	\$222.23	\$1,333.38
M2240015354A	5	1120 H 24.00T 23.75B 1.50L 3.5 Rise	\$249.70	\$1,248.50
M5258825254M	12	1545M ADJ RG 25.88T 25.63B 2.50L 1.50R	\$208.50	\$2,502.00
M5258825204M	12	1545M ADJ RG 25.88T 25.63B 2.50L 1.00R	\$208.50	\$2,502.00

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Ordinance: Relinquishing Rights to Alley Parallel to East Franklin Street and Liberty Street

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Liberty_Street.2016.pdf

Description

Approval of Ordinance:
Relinquishing Rights to Alley
Parallel to East Franklin
Street and Liberty Street

REQUIRED MOTION
MAYOR & CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: Approval of Ordinance: Relinquishing Rights to Alley Parallel to East Franklin Street and Liberty Street

Charter Amendment	_____
Code Amendment	_____
Ordinance	<u> X </u>
Resolution	_____
Other	_____

MOTION: I hereby move for the approval of an Ordinance making a determination that certain property is no longer needed for a public purpose and authorizing conveyance of a portion of the property to the adjoining property owners Robert F Knode and Patsy J Knode.

Date of Introduction: February 23, 2016

Date of Passage: March 22, 2016

Effective Date: April 22, 2016

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE MAKING A DETERMINATION
THAT CERTAIN PROPERTY IS NO LONGER
NEEDED FOR A PUBLIC PURPOSE AND AUTHORIZING
CONVEYANCE TO ADJOINING PROPERTY OWNER**

RECITALS

WHEREAS, the City of Hagerstown is a Municipal Corporation existing under and by virtue of the laws of the State of Maryland; and

WHEREAS, the City has an interest in an approximately 10 foot wide, unnamed alley located between and running parallel with East Franklin and Liberty Streets, between Alleys 4-62 and 4-66 (hereinafter the "Alley"); and

WHEREAS, on July 2, 1973 the Council voted to relinquish all rights to the Alley and give the adjoining property owners permission to obtain quit claim deeds thereto at their expense; and

WHEREAS, in accordance with the provision of the Maryland Code and the Charter of the City of Hagerstown, the Mayor and Council, as the duly constituted legislative body for the City has determined that the aforesaid Alley is no longer needed for a public purpose; and

WHEREAS, Robert F. Knode and Patsy J. Knode, his wife own property adjoining the Alley and have requested that the City execute a quit claim deed vesting them with title to the portion of the Alley adjacent to and adjoining their property; and

WHEREAS, the Mayor and Council find that the property may be quit claimed and conveyed to the adjoining landowners, Robert F. Knode and Patsy J. Knode, his wife;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED as follows:

1. That the foregoing recitals be and are incorporated herein as if fully set forth.
2. That the Mayor and Council find that the Alley is no longer needed for a public purpose.
3. That the Mayor be and is hereby authorized to execute and deliver the Quit Claim Deed, a copy of which is attached hereto and incorporated herein by reference, vesting title of a portion of the Alley in and to the adjoining property owners, Robert F. Knode and Patsy J. Knode, his wife. The description and extent of the property so conveyed is as described on the Exhibit A attached to said Quit Claim Deed.

4. That the Mayor be and is hereby authorized to execute additional documentation and take all necessary steps to carry out the purpose of this Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that this Ordinance shall become effective upon the expiration of 30 days from the date of its passage.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

David S. Gysberts, Mayor

Date of Introduction: February 23, 2016
Date of Passage: March 22, 2016
Effective Date: April 22, 2016

PREPARED BY:
SALVATORE & BOYER
CITY ATTORNEYS

CLEVELAND

Byron D. Middlekauff
719/302

Evelyn L. Gochenour
718/1097

EAST FRANKLIN ST

AVENUE

Donald A. Forcino
512/116

Thomas H. Shank
713/5

John M. Kline
293/401

Leonard W. Gaffney
645/129

Jesse R. Hurd Sr.
740/672
See 74-030

John P. Lockhart
715/650

Margaret C. Rose
715/650

ALLEY 4-62

Andy B. Stammer Jr.
737/306

Ralph W. Stottlemeyer
668/591

Gary L. Procter
639/361

Michael A. Morgan
689/305

Van O. Tran
711/400

Marie E. Bell
715/650

Robert F. Procter
715/650

Robert C. Swope
564/195

LIBERTY ST

Edgar W. Varner, et al
c/o Robert W. Shay
513 Liberty St. Lot 21

Lillian L. Kinsey
740/175

Warran S. Fraker
375/79

John W. Shirk
637/407
296'

Roy E. Bowers
291/291

Robert C. Swope
564/195

Robert C. Swope
564/195

Robert C. Swope
564/195

ALLEY 4-66

MAYOR & COUNCIL
VOTE TO RELINQUISH
ALL RIGHTS TO
PROPOSED ALLEY
MEETING OF
JULY 2, 1973

55

P/O MAP 48
PRINT DATE JULY 11, 1983

MAIL TO: Mr. and Mrs. Robert F. Knode
559 Liberty Street
Hagerstown, MD 21740

THIS QUIT-CLAIM DEED, Made this _____ day of _____, 2016, by the **CITY OF HAGERSTOWN**, a municipal corporation existing under and by virtue of the Laws of the State of Maryland, hereinafter referred to as "Grantor".

RECITAL

On or about July, 1973, during a meeting of the Mayor and Council of the City of Hagerstown, a Motion of Councilman McCauley voted to relinquish all rights to an "unnamed plated right-of way (proposed Alley) located to the rear" of properties fronting on Liberty Street as well as Eat Franklin Street.

It has been determined that no Quit Claim Deeds have ever been issued to any of the owners of any of the lots which adjoin this alley.

The Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body on _____, 2016 passed an ordinance declaring the hereinafter described property, not needed for a public purpose and to confirm the 1973 action.

It has been determined that said area in question has never been utilized by the City and no offer of dedication has ever been accepted to said alley. The Mayor and Council of the City of Hagerstown have determined to Quit Claim any interest that it may have in and to said alley to the Grantee herein.

Each and every paragraph of this Recital is incorporated in the remainder of this Quit Claim Deed and constitutes a part thereof. Each and every paragraph of the remainder of the Quit Claim Deed is included in this Recital and made a part thereof.

NOW, THEREFORE, That for **NO (\$00.00) MONETARY** consideration, the Grantor herein, does hereby grant, bargain sell, convey, quit-claim, remise release and forever discharge unto **ROBERT F. KNODE and PATSY J. KNODE**, his wife, any or all right, title or interest of whatsoever nature or kind, either in law or in equity, that it may have in and to all that real property situate and lying in Election District 22, Hagerstown, Washington County, Maryland, and being more particularly described as follows:

All that lot or parcel of land, more particularly described on Exhibit 'A' entitled "Property Plan 559 Liberty Street Knode Property" as the cross-hatched area described as "This

Strip Available to Northern Lot to Acquire" prepared by the City of Hagerstown on January 12, 2016 and designated as Project Number 83-726-01.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized representative, and its corporate seal to be hereunto duly affixed and attested by the City Clerk.

WITNESS AND ATTEST
AS TO CORPORATE SEAL:

CITY OF HAGERSTOWN

Donna K. Spickler, City Clerk

BY: _____ (SEAL)
David S. Gysberts, Mayor

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

I HEREBY CERTIFY, That on this _____ day of _____, 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared DAVID S. GYSBERTS, who acknowledged himself to be the Mayor of the City of Hagerstown, a Maryland Municipal Corporation, and that he as such Officer being authorized so to do, executed the foregoing Deed for the purposes therein by signing, in my presence, the name of the City of Hagerstown, by himself as Mayor, and certified that this conveyance is not part of transaction in which there is a sale, lease exchange or other transfer or all or substantially all of the property and assets of the City of Hagerstown, Maryland.

I HEREBY CERTIFY, that the Grantor herein did acknowledge that the City of Hagerstown, Maryland is a corporation of the State of Maryland.

WITNESS my hand and Official Notarial Seal.

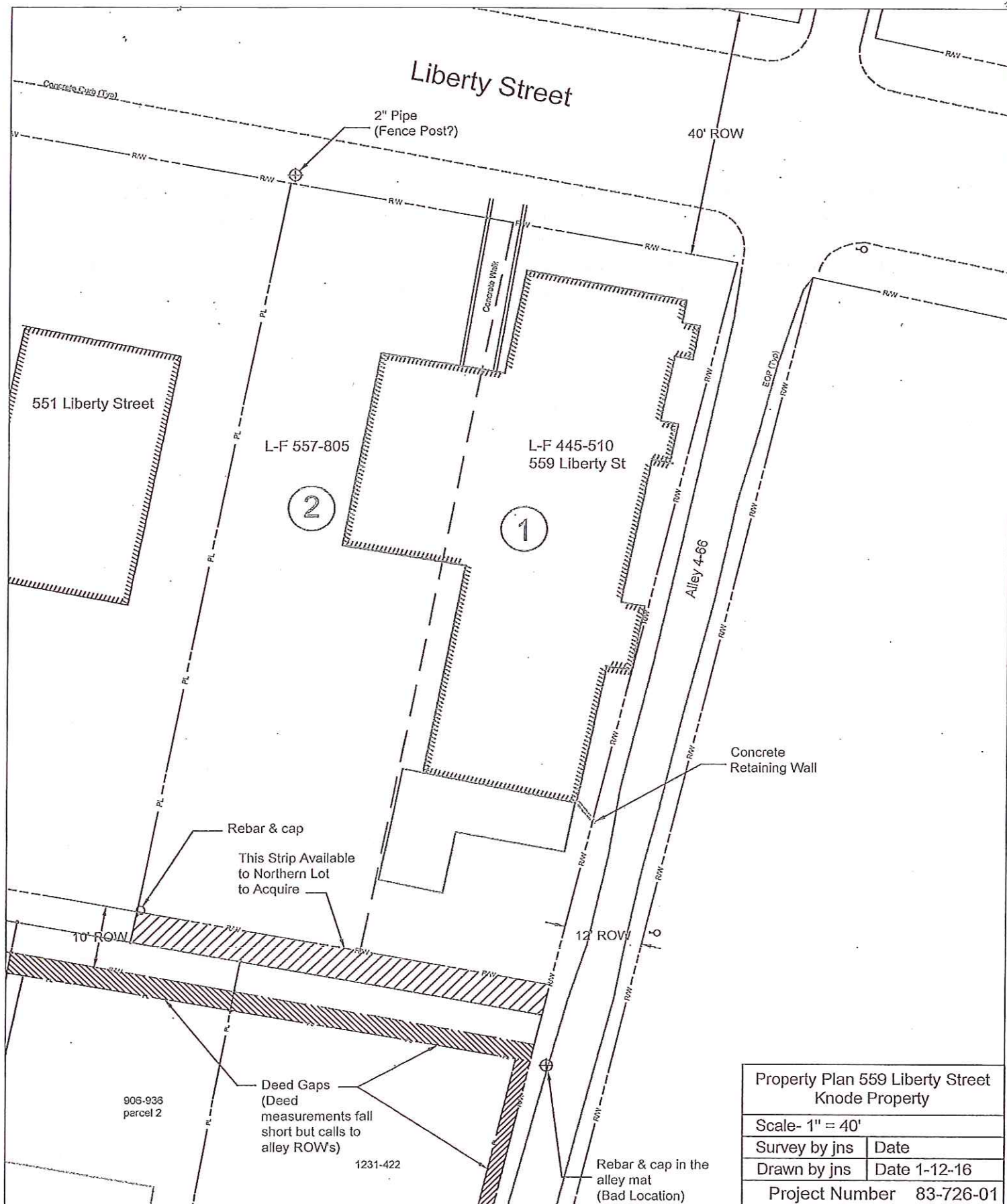
My Commission Expires:

Notary Public

I HEREBY CERTIFY, That the above instrument was prepared by or under the supervision of an attorney admitted to practice law in the State of Maryland.

Edward L. Kuczynski

An Ordinance was enacted by the Mayor and Council of the City of Hagerstown, declaring the property no longer needed for a public purpose and authorizing the foregoing transfer and is recorded among the Acts, Ordinances and Resolutions for Incorporated Towns among the records for the Clerk of the Circuit Court of Washington County, Maryland on _____, 2016 and/or maintained by the City Clerk among Ordinances of the City of Hagerstown.



Property Plan 559 Liberty Street
Knode Property

Scale- 1" = 40'

Survey by jns Date

Drawn by jns Date 1-12-16

Project Number 83-726-01

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Ordinance: Amend Chapter 117, Recycling and Refuse Collection, of the City Code

Mayor and City Council Action Required:

Approval of an ordinance to amend Chapter 117, Recycling and Refuse Collection, to modify provisions regarding storage and set out of recycling and refuse in order to provide additional protections for our neighborhoods and the downtown from blight and nuisance conditions.

Discussion:

Financial Impact:

Recommendation:

Approval.

Motion:

Action Dates:

Intro - 3/1/16

Approval - 3/22/16

Effective - 4/22/16

ATTACHMENTS:

File Name

Description

Trash_Code_Ch117_Ordinance_and_Enactment_Ordinance_2.23.16.pdf

Approval of
Ordinance: Amend
Chapter 117

MOTION_Chapter_117.doc

Motion - Approval of
Ordinance: Amend
Chapter 117

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE CODE
OF THE CITY OF HAGERSTOWN,
CHAPTER 117, THEREOF ENTITLED
RECYCLING AND REFUSE COLLECTION
TO AMEND REQUIREMENTS FOR STORAGE OF REFUSE
AND TO REQUIRE USE OF RECEPTACLES OR CONTAINERS
IN THE DOWNTOWN DISTRICT**

RECITALS

WHEREAS, the City of Hagerstown regulates recycling and refuse collection within the City; and

WHEREAS, the Mayor and Council have a responsibility to promote the health, safety and welfare of the citizens of the City; and

WHEREAS, the Mayor and Council have a responsibility to reduce blight and promote an aesthetically pleasing atmosphere within the City; and

WHEREAS, it has come to the attention of the Mayor and Council that the current recycling and refuse regulations are not adequately meeting the needs of the City of Hagerstown; and

WHEREAS, City staff has made the Mayor and Council aware of some of the blighting conditions that have occurred, specifically in the Downtown District; and

WHEREAS, the Mayor and Council recognize that the different geographical neighborhoods of the City require different regulations regarding recycling and refuse disposal, due in part to: differing population densities; differing architectural, structural and topographical limitations; and different uses, character and zoning restrictions of neighborhoods; and

WHEREAS, the Mayor and Council find that the Downtown District (as defined in the amendments) has a unique makeup of residential, business, and historical use, such that it requires unique handling of recycling and refuse disposal; and

WHEREAS, upon the investigation and recommendation of City staff, the Mayor and Council find it in the best interests of the citizens to amend the regulation of the collection of recycling and refuse within the City of Hagerstown as hereafter described;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. The foregoing recitals be and are incorporated herein as if restated verbatim.
2. Chapter 117 of the Code of the City of Hagerstown, Section 117-2 Definitions, thereof, be and is hereby amended to add definitions for Downtown District, Enclosure, Refuse Bag, and Storage Area and to modify the definition of Receptacle or Collection Container as follows:

Downtown District

For the purposes of this chapter, the “downtown district” shall be defined as those properties located within Zone F of the City’s Trash Collection Program.

Enclosure

Any structure used to house refuse or recycling containers.

Receptacle or Collection Container

Any steel, plastic, aluminum, or galvanized receptacle or bin manufactures for the purpose of storing residential recycling or refuse that allows for easy lifting with two handles and capacity of not more than 35 gallons or weighing more than 50 pounds when filled with refuse or recycling. City-issued bins or totes shall be used when applicable and totes are exempt from the maximum capacity restriction of 35 gallons. All receptacles or containers shall have lids that tightly fit as designed by the manufacture.

Refuse Bags

A secured, leakproof plastic bags, manufactured for the purpose of securing household refuse, of sufficient strength to hold its contents without tearing or allowing the contents to spill, leak or otherwise escape from the bag.

Storage Area

A confined space or area reserved for storing refuse and/or recycling receptacles or containers on a property.

3. Chapter 117 of the Code of the City of Hagerstown, Section 117-5 Service fee payment; property owner responsibility, thereof, is hereby amended to read as follows:

(See Attached)

4. This amendment to the Code of the City of Hagerstown shall become effective immediately upon the effective date of this Enacting Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Enacting Ordinance shall become effective upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction:
Date of Passage:
Effective Date:

PREPARED BY
SALVATORE & BOYER, LLC,
CITY ATTORNEY

CHAPTER 117, Recycling and Refuse Collection

117-5 Service fee payment; property owner responsibility.

A. Recycling and refuse service fee. Consistent with City policy, all property owners of improved residential property within the City shall subscribe to recycling and refuse collection and disposal service, and shall be subject to the levy of a recycling and refuse service fee as further set out pursuant to this chapter. It shall be the responsibility of the property owner of a residential dwelling unit to pay or cause to be paid to the City, the recycling and refuse service fee incurred by each separate residential unit(s) for the benefits offered or received by such dwelling unit for refuse collection and recycling collection. Failure to pay the recycling and refuse service fee shall be considered a violation of this chapter and may be collected as provided for further herein, or as otherwise provided for by the laws of the State of Maryland.

B. Receptacles, Containers, and Bags.

- (1) The City of Hagerstown will provide residential properties throughout the city with recycling containers.
- (2) It shall be the duty of the residential property owner(s) and tenant(s) to provide approved receptacles or containers (as defined herein) to contain all refuse generated from residences in accordance with the provisions herein.
- (3) All refuse bags shall be stored indoors or in receptacles or containers.

C. Refuse and Recycling Storage. It shall further be the duty of the residential property owner(s) and their tenant(s) to ensure that receptacles for recycling and refuse are stored in accordance with this chapter (until the appropriate set out time for collection) and consistent with the following conditions:

- (1) Refuse and recycling stored on the exterior of the property shall be in an approved receptacle or container.
- (2) Owners or residents of properties located in the South Prospect Street Historic District shall store containers out of public view or shielded from public view of South Prospect Street, unless an exception is approved per Mayor and City Council policy on Special Circumstances for Storage of Refuse and Recycling Containers. When requested by property owners and residents, the Mayor and City Council may approve other neighborhoods for similar public view restrictions on storage of containers and receptacles between collection dates.
- (3) Every occupant of a structure shall not store receptacles or containers on front yards as defined in Chapter 140, front porches, or public ways.

Exceptions:

- a. In zero setback areas, properties with no side yard;
- b. Receptacles or containers in an approved enclosure;
- c. Mayor and City Council policy on Special Circumstances for Storage of Refuse and Recycling Containers

- (4) Properties with four or more residential units shall have one designated storage area for refuse and recycling containers between collection days in accordance with this Chapter.

D. Set Out Time; Placement of Materials for Collection; Abatement Fees

(1) Set out time and placement of materials for collection.

- a. No earlier than 4:00 p.m. on the eve of the day on which the contractor shall collect recycling or refuse on their street in the City, it shall be the duty of the residential property owners and their tenants to place their recycling or refuse in the public way in front of their premises as close as possible to the curb, or collection point designated by the City Engineer, so as to be of easy access to the contractor.
- b. In the Downtown District, refuse and recycling must be set out for collection in receptacles or containers. In all other areas, refuse bags may be set out for collection consistent with the provisions of this section.
- c. Placement of these materials shall not block the free passage (minimum 36" width) of pedestrians on the public sidewalk.
- d. All such receptacles or containers shall be removed as soon as possible after the collection and, in no instance, shall they be permitted to remain curbside after 7:00pm on the day of collection.
- e. Any persons placing garbage and/or household refuse containers out for collection prior to 4:00 p.m. on the eve of the collection, or at any time not consistent with the scheduled collection date, or the owner of any property upon which such a violation exists shall be guilty of a municipal infraction and subject to a fine of Two Hundred Dollars (\$200.00).

- (2) Abatement Fee.** In addition to the penalty hereinabove enumerated, the City may abate a condition where garbage and/or household refuse bags, containers, or receptacles have been placed out for collection prior to 4:00pm on the eve of, or at any time not consistent with the schedule collection date, and may charge a reasonable abatement fee as from time to time established by the Council for the removal and disposal thereof. Said abatement fee shall be billed to the property owner as a separate and distinct charge from the service fee and if unpaid for thirty (30) days shall constitute a lien against the property.

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: March 22, 2016

TOPIC: **Approval of Ordinance: Amend Chapter 117, Recycling and Refuse Collection, of the City Code**

Charter Amendment

Code Amendment

Ordinance

X

Resolution

Other

MOTION: I hereby move that the Mayor and City Council approve an ordinance to amend Chapter 117, Recycling and Refuse Collection, of the Code of the City of Hagerstown. These amendments modify the provisions regarding storage and set out of recycling and refuse in order to provide additional protections for our neighborhoods and downtown from blight and nuisance conditions. Changes include:

1. requiring outdoor storage of recycling and refuse in receptacles and containers with sealing lids,
2. requiring set out of recycling and refuse in the downtown area in receptacles and containers with sealing lids,
3. requiring properties with four or more dwelling units to designate one storage area for recycling and refuse receptacles and containers, and
4. requiring storage of recycling and refuse receptacles and containers out of front yards, front porches, public right-of-way, and out of view of S. Prospect Street unless special circumstances exist to warrant alternative locations.

A policy on acceptable special circumstances for alternative locations for storage of recycling and refuse receptacles and containers shall be approved by the Mayor and City Council under separate motion and prior to the effective date of this ordinance.

DATE OF INTRODUCTION: 03/01/16

DATE OF ADOPTION: 03/22/16

EFFECTIVE DATE: 04/22/16

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Ordinance: Amend Chapter 64-8, Property Maintenance Code, Section 202, of the City Code

Mayor and City Council Action Required:

Approval of an ordinance to amend Chapter 64-8, Property Maintenance Code, Section 202, to modify provisions regarding storage and set out of recycling and refuse in order to provide additional protections for our neighborhoods and the downtown from blight and nuisance conditions.

Discussion:

Financial Impact:

Recommendation:

Approval

Motion:

Action Dates:

Intro - 3/1/16

Approval - 3/22/16

Effective - 4/22/16

ATTACHMENTS:

File Name

Description

Property_Maintenance_Code_Ordinance_and_Enactment_Ordinance_2.23.16.pdf

Approval of
Ordinance:
Amend
Chapter 64-8,
Sec 202
Motion -
Approval of
Ordinance:
Amend
Chapter 64-8,
Sec 202

MOTION_Chapter_64__PMC__Sec_202.doc

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE
PROPERTY MAINTENANCE CODE OF THE CITY OF HAGERSTOWN,
SECTION 202 THEREOF ENTITLED
GENERAL DEFINITIONS
TO AMEND THE DEFINITIONS REGARDING
REFUSE STORAGE**

RECITALS

WHEREAS, the City of Hagerstown regulates recycling and refuse collection within the City; and

WHEREAS, the Mayor and Council have a responsibility to promote the health, safety and welfare of the citizens of the City; and

WHEREAS, the Mayor and Council have a responsibility to reduce blight and promote an aesthetically pleasing atmosphere within the City; and

WHEREAS, it has come to the attention of the Mayor and Council that the current recycling and refuse regulations are not adequately meeting the needs of the City of Hagerstown; and

WHEREAS, City staff has made the Mayor and Council aware of some of the blighting conditions that have occurred, specifically in the Downtown District; and

WHEREAS, Mayor and Council are responsible for ensuring that the Property Maintenance Code is consistent with the Code of the City of Hagerstown, Chapter 117; and

WHEREAS, upon the investigation and recommendation of City staff, the Mayor and Council find it in the best interests of the citizens to amend the regulations regarding the storage of refuse and recycling within the City of Hagerstown as hereafter described;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. The foregoing recitals be and are incorporated herein as if restated verbatim.
2. Section 202 of the Property Maintenance Code of the City of Hagerstown, General Definitions, thereof, be and is hereby amended to add a definition for Enclosure and to modify the definition of Approved Receptacle or Container (Refuse Cans) as follows:

Approved Receptacle or Container (Refuse Cans). Any steel, plastic, aluminum, or galvanized receptacle or bin manufactures for the purpose of storing residential recycling or refuse that allows for easy lifting with two handles and capacity of not more than 35 gallons or weighing more than 50 pounds when filled with refuse or recycling. City-issued bins or totes shall be used when applicable and totes are exempt from the maximum capacity restriction of 35 gallons. All receptacles or containers shall have lids that tightly fit as designed by the manufacture.

Enclosure. Any structure used to house refuse or recycling containers.

3. This amendment to the Code of the City of Hagerstown shall become effective immediately upon the effective date of this Enacting Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Enacting Ordinance shall become effective upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction:
Date of Passage:
Effective Date:

PREPARED BY
SALVATORE & BOYER, LLC,
CITY ATTORNEY

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: March 22, 2016

TOPIC: **Approval of Ordinance: Amend Chapter 64-8, Property
Maintenance Code, Section 202, of the City Code**

Charter Amendment

Code Amendment

Ordinance

X

Resolution

Other

MOTION: I hereby move that the Mayor and City Council approve an ordinance to amend Chapter 64-8, Property Maintenance Code, Section 202, General Definitions, of the Code of the City of Hagerstown. These amendments modify the definition of “Approved Receptacle and Container (Refuse Cans)” to be consistent with the definition in Chapter 117, Recycling and Refuse Collection. The amendment to both chapters of the code regarding recycling and refuse storage and set out are intended to provide additional protections for our neighborhoods and downtown from blight and nuisance conditions.

DATE OF INTRODUCTION: 03/01/16

DATE OF ADOPTION: 03/22/16

EFFECTIVE DATE: 04/22/16

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of an Ordinance: Amend Chapter 64-8, Property Maintenance Code, Section 307, of the City Code

Mayor and City Council Action Required:

Approval of an ordinance to amend Chapter 64-8, Property Maintenance Code, Section 307, to modify provisions regarding storage and set out of recycling and refuse in order to provide additional protections for our neighborhoods and the downtown from blight and nuisance conditions.

Discussion:

Financial Impact:

Recommendation:

Approval

Motion:

Action Dates:

Intro: 3/1/16

Approval: 3/22/16

Effective: 4/22/16

ATTACHMENTS:

File Name

Property_Maintenance_Code_Ordinance_and_Enactment_Ordinance_Part_2_2.23.16.pdf

MOTION_Chapter_64__PMC__Sec_307.doc

Description

Approval of
Ordinance:
Amend
Chapter 64-
8, Section
307

Motion -
Approval of
Ordinance:
Amend
Chapter 64-
8, Section

307

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE
PROPERTY MAINTENANCE CODE OF THE CITY OF HAGERSTOWN,
SECTION 307 THEREOF ENTITLED
RUBBISH AND GARBAGE
TO AMEND THE DEFINITIONS REGARDING
REFUSE STORAGE**

RECITALS

WHEREAS, the City of Hagerstown regulates recycling and refuse collection within the City; and

WHEREAS, the Mayor and Council have a responsibility to promote the health, safety and welfare of the citizens of the City; and

WHEREAS, the Mayor and Council have a responsibility to reduce blight and promote an aesthetically pleasing atmosphere within the City; and

WHEREAS, it has come to the attention of the Mayor and Council that the current recycling and refuse regulations are not adequately meeting the needs of the City of Hagerstown; and

WHEREAS, City staff has made the Mayor and Council aware of some of the blighting conditions that have occurred, specifically in the Downtown District; and

WHEREAS, Mayor and Council are responsible for ensuring that the Property Maintenance Code is consistent with the Code of the City of Hagerstown, Chapter 117; and

WHEREAS, upon the investigation and recommendation of City staff, the Mayor and Council find it in the best interests of the citizens to amend the regulations regarding the storage of refuse and recycling within the City of Hagerstown as hereafter described;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. The foregoing recitals be and are incorporated herein as if restated verbatim.
2. Section 307 of the Property Maintenance Code of the City of Hagerstown, Rubbish and Garbage, Sections 307.2, 307.3, 307.3.1, and 307.3.2, thereof, is hereby amended to read as follows:

Sec. 307.2. Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in an approved receptacle or container.

Sec. 307.3. Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved receptacles or containers.

Sec. 307.3.1. Receptacles and Containers. The operator of every establishment producing non-residential garbage shall provide, and at all times cause to be utilized, approved receptacles or containers or dumpsters for the storage of such materials until removed from the premises for disposal. If receptacles, containers, or dumpsters are not located within an enclosure, at no time shall garbage be stacked beside or on top of receptacles, containers, or dumpsters.

Sec. 307.3.2. Receptacle and Container placement. Every occupant and owner of a structure shall store residential garbage receptacles and containers consistent with the requirements of Chapter 117, Recycling and Refuse Collection.

3. This amendment to the Code of the City of Hagerstown shall become effective immediately upon the effective date of this Enacting Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Enacting Ordinance shall become effective upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction:
Date of Passage:
Effective Date:

PREPARED BY
SALVATORE & BOYER, LLC,
CITY ATTORNEY

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: March 22, 2016

TOPIC: **Approval of Ordinance: Amend Chapter 64-8, Property
Maintenance Code, Section 307, of the City Code**

Charter Amendment

Code Amendment

Ordinance

X

Resolution

Other

MOTION: I hereby move that the Mayor and City Council approve an ordinance to amend Chapter 64-8, Property Maintenance Code, Section 307, Rubbish and Garbage, of the Code of the City of Hagerstown. These amendments modify several subsections regarding disposal of rubbish and garbage and regarding receptacles and containers to be consistent with the provisions in Chapter 117, Recycling and Refuse Collection. The amendment to both chapters of the code regarding recycling and refuse storage and set out are intended to provide additional protections for our neighborhoods and downtown from blight and nuisance conditions.

DATE OF INTRODUCTION: 03/01/16

DATE OF ADOPTION: 03/22/16

EFFECTIVE DATE: 04/22/16

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: 2016 Summer Play Camp - Hagerstown YMCA

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

ymca_2016_summer_camp.pdf

Description

2016 Summer Play Camp
Operation - Hagerstown
YMCA

REQUIRED MOTION
MAYOR & CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: 2016 Summer Play Camps Operation - Hagerstown YMCA

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	<u> X </u>
Other	_____

MOTION: I hereby move for the approval of a Resolution to authorize the execution of a contract with the Hagerstown YMCA to conduct summer play camps for the 2016 season from June 20, 2016 through August 12, 2016 at Hellane Park and Pangborn Park. The camps will each serve approximately 60 youth per day at a total cost of \$32,343. Funding is from the Parks & Recreation operating budget.

DATE OF PASSAGE: 3/22/2016

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE
PROVISION OF SUMMER CAMP PROGRAMMING BETWEEN
THE CITY OF HAGERSTOWN AND THE HAGERSTOWN YMCA**

RECITALS

WHEREAS, The City of Hagerstown, Maryland has previously provided funding for certain summer play camp activities held within the corporate limits of the City of Hagerstown; and

WHEREAS, The Hagerstown YMCA has previously conducted summer play camp operations at two City park locations; and

WHEREAS, The Hagerstown YMCA has requested the opportunity to conduct summer play camp operations during the 2016 summer season at Hellane Park and Pangborn Park; and

WHEREAS, The Mayor and Council find it to be in the best interests of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Hagerstown, Maryland as its duly constituted legislative body, as follows:

1. That the aforementioned recitals are incorporated herein by reference.
2. That the Mayor be and is hereby authorized to execute and deliver the Contract For The Provision Of Summer Camp Programming Between the City of Hagerstown and the Hagerstown YMCA, a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver any other documentation necessary to effectuate the purpose of this Resolution.

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
Salvatore & Boyer, LLC, City Attorney

**CONTRACT
FOR THE PROVISION OF
Summer Camp Programming**

Between

THE CITY OF HAGERSTOWN

AND

THE HAGERSTOWN YMCA

THIS AGREEMENT is made as of this _____ day of _____, 2016, by and between the City of Hagerstown, and The Hagerstown YMCA hereinafter "Contractor".

1. **Work Effort.** Contractor hereby agrees to provide the services described and defined in the program proposal submitted by Contractor which is attached hereto and incorporated herein by reference.
2. **Purpose of Contract.** The purpose of this Contract is to provide two (2) summer play camp sites at Hellane Park and Pangborn Park. The programs will be conducted Monday-Friday, **June 20 – August 12, 2016**. It is proposed that sixty (60) children will be served at each site on a daily basis. The programs will be free of charge to the children (ages 6 – 12) and their families.
3. **Contract Period.** This Contract shall commence as of **June 20, 2016, and shall terminate on August 12, 2016**. Any renewal of this Contract is subject to available funding and performance by Contractor satisfactory to the City of Hagerstown.
4. **Compensation and Invoicing.**
 - A. For the provision of services described above, Contractor shall be compensated monthly as specified under Section 5.
 - B. Contractor shall invoice the City of Hagerstown on a monthly basis for work satisfactorily completed and costs actually incurred. Each invoice must include a description of the number of participants receiving services, and the services performed and costs incurred on a daily or "fee for service" type basis, for the period covered by the invoice. Contractor's invoices shall be sent to: City of Hagerstown, Parks & Recreation Division, 351 N. Cleveland Ave., Hagerstown, MD 21740, will be reviewed and verified for work accomplished as set forth in the statement of work and when certified as acceptable, will be forwarded to the Accounting Department for payment.
 - C. In the event of dispute, the City of Hagerstown reserves the right to withhold payment of the disputed amount until such time as the dispute is

resolved, the deficient work corrected, or settlement is achieved through other means.

5. **Consideration, Payment, and Performance:**

- A. **Billing.** Contractor shall bill monthly based upon the actual expenditures incurred during the preceding month in accordance with the approved expenditures set forth in the Budget. All Summer Camp programming forms prepared by the City of Hagerstown must be completed by the Contractor in accordance with the required information and accompany the monthly invoices. Monthly invoices must be received by the City of Hagerstown, Parks & Recreation Division, by the 10th of the month following the month for which the invoice is submitted. The Contractor may receive, upon request, an initial drawdown in an amount not to exceed 5% of the funding award, which shall be applied against monthly invoices. Once invoices of actual expenditures exceed the initial drawdown, payments will be made. The maximum sum which Contractor may receive under this Contract is \$32,343.00, the total sum of the funding award.
- B. **Payment to Contractor.** Payment to the Contractor pursuant to this Contract in excess of any drawdown shall be due and payable within thirty (30) days after receipt by the City of Hagerstown of a proper invoice from the Contractor.
- C. **Unauthorized Expenditures.** Contractor's unauthorized expenditures shall be the sole and exclusive responsibility of the Contractor. Unauthorized expenditures include but are not necessarily limited to:
 - 1) those which cause total expenditures to exceed the amount of the approved budget;
 - 2) unbudgeted expenditures;
 - 3) those which differ from the approved budgeted amount; and
 - 4) those which are at variance with an explicit provision of this Contract.
- D. **Reconciliation.** Reconciliation is a fiscal resolution of the Contract pending audit, usually conducted at the termination of the Contract period and at the end of the City of Hagerstown's fiscal year. Reconciliation is based upon reported expenditures and income, subject to correction by the City of Hagerstown. Reconciliation will be conducted in accordance with the terms of the Contract. Based on the review of the final report, any funds due to the City of Hagerstown or the Contractor are due at the conclusion of the reconciliation. Any funds not expended or appropriately retained within the fiscal year must be refunded to the City of Hagerstown.

It is understood and agreed that the City of Hagerstown, its officials, agents, servants, and employees, shall not be responsible for the financial records of the Contractor and shall not be liable for any acts or omissions of the Contractor, its subcontractors, agents, or assignees committed in connection therewith.

- E. Audit. The Contractor agrees that the City of Hagerstown and/or its authorized representatives for a period of five (5) years after complete performance or earlier termination of this Contract shall have access to and the right to audit all documents pertaining to the operation of the Contractor's Summer Camp Program.
6. Budget Modification. The Contractor may request a budget modification to reallocate the existing budget at any time prior to the expiration of the Contract. A modification does not affect the amount of the award but may affect the amount available for other services. The Contractor must submit a request to the City of Hagerstown Parks & Recreation Division for budget modification:
- 1) Whenever a change would affect any of the following controlled line items reported on the approved budget:
 - a) total salaries, consultant, and/or fringe costs increased by 5% of the budgeted amount
 - b) equipment increases over the budgeted amount; and
 - c) purchase of service increases over the budgeted amount and/or renovation or remodeling increases over the budgeted amount;
 - 2) Whenever a new estimate of third-party income (including fee collections) is over or under the previous estimate of incomes by 5%; or
 - 3) To purchase additional items or substitute items that were not included in the approved budget.

A request for budget modification must be submitted for approval to the Parks & Recreation Division in writing with supporting documentation.

7. Program Modifications. No program changes will be authorized without the written approval of the City of Hagerstown and the Contractor. Properly authorized program modifications will become an addendum to this Contract. The City of Hagerstown hereby designates the Parks Superintendent to approve or disapprove any program modifications pertaining to a change to a personnel position listed on the approved budget, including a salary reduction or increase, a change which affects the project scope such as a change in target population or services to be provided, or a change in the dates of the program duration.
8. Equipment. All equipment having an acquisition cost of Five Hundred Dollars (\$500.00) or more per unit and a useful life of more than two (2) years which is purchased with funds received under this Contract ("Capital Equipment"), shall be the property of the City of Hagerstown and shall be conspicuously labeled by Contractor immediately after its purchase as "Property of the City of Hagerstown, Maryland." Within ten (10) days of the termination or expiration of this Contract, including any renewal period, Contractor shall furnish the City of Hagerstown with a written inventory of all Capital Equipment acquired under this Contract. If the City of Hagerstown does not take physical possession of an item of Capital

Equipment after the date of termination or expiration of this Contract, including any renewal period, that item of Capital Equipment shall automatically become the property of Contractor at the end of that twelve-month period.

9. **Program Evaluation Contract and Reporting.** The Contractor will be evaluated bi-monthly by the Parks Superintendent. Bi-monthly program reports submitted by the Contractor will be included in the bi-monthly evaluation. Both the Contractor and the Parks & Recreation Division will maintain copies of the evaluation reports.
10. **Meetings.** When requested by the Parks Superintendent, selected Contractor personnel shall attend meetings, conferences and presentations with the City of Hagerstown staff, public agencies, private organizations and others concerned with this project.
11. **Personnel.** Contractor represents that it has or will secure, at its own expense, all personnel needed to perform the services required to be performed by it under this Contract.
12. **Conflict of Interest.**
 - A. No official or employee of the City of Hagerstown, who exercises any functions or responsibilities in reviewing or approving the award or performance of this Contract during his/her tenure or one year thereafter shall have any personal interest, direct or indirect, apart from official duties, in this Contract or the proceeds thereof.
 - B. Contractor covenants that neither it nor any of its employees has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
13. **Execution of Contract.** This Contract may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.
14. **Ownership and Dissemination of Information.** During the term of this Contract and thereafter, Contractor shall not release any information related to the services or performance of the services under this Contract or publish any final reports or documents without the prior written approval of the City of Hagerstown, except as such release is mandated by federal or state law. Any reports, data, studies, or other materials in any form generated by or created in any way from or by the use of funds provided under this Contract shall be the sole and exclusive property of the City of Hagerstown.
15. **Sanctions upon Improper Acts.** If Contractor, or any of its officers, partners, principals, or agents, or if any employee of Contractor acting with Contractor's acquiescence, is convicted of a crime arising out of or in connection with the procurement of this Contract or the services or any payment under it, the Contract

may be terminated at the option of the City of Hagerstown. In the event of a conviction occurring after the expiration or termination of this Contract, Contractor shall be liable for the refund of all fees or profit paid under the Contract which is directly related to the criminal conduct.

16. Miscellaneous Provisions.

- A. Applicable law. The interpretation, performance, and enforcement of this Contract shall be governed by the law of the State of Maryland.
- B. Amendments and Waivers. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract is superseded by this Contract. Any amendment, Program Modifications, or Budget Modifications to this Contract must be made in writing and signed by both parties, subject to any additional approvals required by State law.

No term or conditional provision of this Contract shall be deemed waived and no breach shall be excused by the action or inaction of a party.

- C. Non-Discrimination in Employment. Contractor affirms and agrees that in relation to employment and personnel practices, it does not and shall not discriminate on the basis of race, age, religion, color, national origin, gender, marital status, or physical or mental disability (except for such disability which reasonably precludes the performance of such employment). Contractor will take affirmative action to ensure that employees are hired and treated during employment without regard to said factors.

In addition, Contractor further certifies that it now complies and will continue to comply with all federal, state and local laws and regulations pertaining to equal employment opportunity and equal employment practices.

- D. Contingent Fee Prohibition. Contractor warrants that it has not employed or retained any person, or entity, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, or entity, any fee or any other consideration contingent on the making of this Contract.
- E. Non-Availability of Funding. If the City of Hagerstown fails to provide funds or if funds are not otherwise made available for the performance of this Contract, this Contract shall be cancelled/terminated automatically as of the beginning of the period for which funds are not so provided. The effect of cancellation/termination of this Contract will be to discharge both Contractor and the City of Hagerstown from future performance of the Contract, but not from their rights and obligations existing at the date of termination. Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The City of Hagerstown shall notify Contractor as soon as it has

knowledge that funds may not be available for the continuation of this Contract.

- F. Termination for Cause. If Contractor fails to perform any of its obligation under this Contract, including timely performance, or otherwise breaches any provision of this Contract, the City of Hagerstown may terminate this Contract upon thirty (30) days prior written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. The City of Hagerstown shall pay Contractor fair and equitable compensation for satisfactory performance prior to receipt of such a termination notice.
- G. Retention of Records. Contractor shall retain and maintain all records and documents relating to this contract for five (5) years after final payment by the City of Hagerstown hereunder and shall make them available for inspection at all reasonable times. In addition, where applicable and pursuant to 42 Code of Federal Regulations (CFR), Part 420, Contractor shall retain until the expiration of five (5) years after the services are furnished under this Contract such books, documents, and records as required by those regulations. This provision shall survive the termination of this Contract, by expiration or otherwise.
- H. Compliance with Laws. Contractor hereby represents and warrants that it shall comply with all federal, state and local laws, regulations, policies and ordinances applicable to its activities and obligations under this Contract, including the Americans with Disabilities Act of 1990, Public Law 101-336, as amended; and that it shall obtain all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.

Contractor further agrees to comply with all federal, state, and local laws, regulations, policies and ordinances as are applicable subsequent to the termination of this Contract, by expiration or otherwise, including those specifically related to confidentiality of records and information and to retention of records. Contractor understands, acknowledges and agrees that this provision shall survive the termination of this Contract, by expiration and otherwise.

- I. Liability for Lost Data. In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of Contractor, the Contractor shall be solely responsible for recreating such lost data or records.
- J. Subcontracting/Assignment. Contractor may not subcontract or assign any portion of its services to be provided under this Contract without prior written approval of the City of Hagerstown.
- K. Indemnification/Non-Liability. Contractor shall save and hold harmless and indemnify the City of Hagerstown against any liability and shall pay all judgments rendered against it for any and all loss or damage of whatever kind and nature, and for any suits, actions, or claims of any character arising from or as a consequence of the performance of

Contractor under this Contract, up to the amount for which the City of Hagerstown is found liable under the Local Government Tort Claims Act, MD Courts and Judicial Proceedings Code Ann., Sections 5-301, *et. seq.* Contractor shall notify the City of Hagerstown within five (5) days of any claim or suit made or filed against Contractor regarding any matter resulting from or relating to Contractor's obligations or performance under the Contract and, in addition to the other obligations set out in this Article, shall cooperate, assist, and consult with the City of Hagerstown in the defense or investigation of any claim, suit, or action made or filed against the City of Hagerstown as a result of or relating to Contractor's performance under this Contract.

Contractor shall maintain general liability insurance in a minimum amount of one million dollars per occurrence, two million dollars in the aggregate, naming the City of Hagerstown as an additional insured. Contractor shall also keep in place a commercially reasonable policy of Worker's Compensation Insurance. Contractor shall provide certificates of said insurance to the City of Hagerstown prior to the commencement of this Contract.

- L. Criminal Background Investigation. Contractor shall be responsible for completing criminal background investigations of all staff and volunteers providing service under this Contract, as mandated by law. Contractor shall maintain approved copies of reports of these background investigations in its personnel files and will also be responsible for complying with Family Law Article, 5-560 through 5-568, Annotated Code of Maryland.

In any case where a criminal record is reported, Contractor shall (1) notify the City of Hagerstown by the next work day and (2) take immediate and appropriate action to protect the safety and welfare of the children served hereunder.

- M. Independent Contractor Status. Contractor is an independent contractor and neither Contractor nor its employees, agents, or representatives shall be considered employees, agents or representatives of the City of Hagerstown. Nothing contained in the Contract is intended or should be construed as creating the relationship of co-partners or joint ventures, or an association of the City of Hagerstown and Contractor. From any amount due Contractor, there will be no deductions for federal income tax or FICA payments, nor for any State income tax, nor for any other purposes that are associated with any employer-employee relationship. Payment of federal income tax, FICA, and any State income tax shall be the responsibility of Contractor.

- N. Administration. The Parks Superintendent for the Parks & Recreation Division will serve as Contract Monitor. The Contractor agrees to permit the Contract Monitor to inspect any and all records of children and families pertaining to this Contract.

- O. Data. The Contractor agrees to observe all state and federal laws and regulations as to the disclosure of information and records on children being served. Written permission must be obtained from the City of Hagerstown prior to use or disclosure of such information.
- P. Word Forms. The use of any gender, tense or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.
- Q. Paragraph Headings. Any heading utilized is so used for reference and convenience only and is not intended to define or limit the scope of any provision of this Contract nor affect the interpretation thereof.
- R. Party's Authority. The individual(s) executing this Contract on behalf of Contractor hereby covenant and warrant that they are duly authorized to execute and deliver this Contract on behalf of the Contractor. Parks & Recreation is a Division of the City of Hagerstown and serves as its' agent for all purposes under this Contract.

IN WITNESS THEREOF, the parties have caused this Contract to be executed by affixing hereon their respective seals and signatures of the proper officers. This Contract is effective as of the day and year first above written.

Witness

City of Hagerstown

Witness

Mayor

Date

Organization Name (User)

Officer Signature

Date

Officer Name (Printed)

Title

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: 2016 Summer Play Camp - Girls Incorporated of Washington County

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

girls_inc_2016_summer_camp.pdf

Description

2016 Summer Play Camp
Operation - Girls
Incorporated of Washington
County

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: 2016 Summer Play Camp Operation - Girls Incorporated of Washington County

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	<u> X </u>
Other	_____

MOTION: I hereby move for the approval of a Resolution to authorize the execution of a contract with Girls Incorporated of Washington County to conduct a summer play camp for the 2016 season from June 13, 2016 through August 5, 2016 at Girls Incorporated. The camp will serve approximately 80 to 100 youth per day at a cost of \$15,000. Funding is from the Parks & Recreation operating budget.

DATE OF PASSAGE: 3/22/2016

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE
PROVISION OF SUMMER CAMP PROGRAMMING BETWEEN
THE CITY OF HAGERSTOWN AND GIRLS, INC. OF WASHINGTON COUNTY**

RECITALS

WHEREAS, The City of Hagerstown, Maryland has previously provided funding for certain summer play camp activities held within the corporate limits of the City of Hagerstown; and

WHEREAS, Girls, Incorporated of Washington County (Girls, Inc.) has previously conducted summer play camp operations; and

WHEREAS, Girls, Inc. has requested the opportunity to conduct summer play camp operations during the 2016 summer season at the Girls, Inc. Center; and

WHEREAS, The Mayor and Council find it to be in the best interests of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Hagerstown, Maryland as its duly constituted legislative body, as follows:

1. That the aforementioned recitals are incorporated herein by reference.
2. That the Mayor be and is hereby authorized to execute and deliver the Contract For The Provision Of Summer Camp Programming Between the City of Hagerstown and Girls, Inc. of Washington County, copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver any other documentation necessary to effectuate the purpose of this Resolution.

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
Salvatore & Boyer, LLC, City Attorney

**CONTRACT
FOR THE PROVISION OF
Summer Camp Programming**

Between

THE CITY OF HAGERSTOWN

AND

GIRLS INCORPORATED OF WASHINGTON COUNTY

THIS AGREEMENT is made as of this _____ day of _____, 2016, by and between the City of Hagerstown, and Girls Incorporated of Washington County hereinafter "Contractor".

1. **Work Effort.** Contractor hereby agrees to provide the services described and defined in the program proposal submitted by Contractor which is attached hereto and incorporated herein by reference.
2. **Purpose of Contract.** The purpose of this Contract is to provide summer camp for (80) – (100) participants at Girls Incorporated of Washington County. The program will be conducted Monday-Friday, **June 13 – August 5, 2016**. The program will be free of charge to the children (ages 6 – 16) and their families.
3. **Contract Period.** This Contract shall commence as of **June 13, 2016, and shall terminate on August 5, 2016**. Any renewal of this Contract is subject to available funding and performance by Contractor satisfactory to the City of Hagerstown.
4. **Compensation and Invoicing.**
 - A. For the provision of services described above; Contractor shall be compensated monthly as specified under Section 5.
 - B. Contractor shall invoice the City of Hagerstown on a monthly basis for work satisfactorily completed and costs actually incurred. Each invoice must include a description of the number of participants receiving services, and the services performed and costs incurred on a daily or "fee for service" type basis, for the period covered by the invoice. Contractor's invoices shall be sent to: City of Hagerstown, Parks & Recreation Division, 351 N. Cleveland Ave., Hagerstown, MD 21740, will be reviewed and verified for work accomplished as set forth in the statement of work and when certified as acceptable, will be forwarded to the Accounting Department for payment.
 - C. In the event of dispute, the City of Hagerstown reserves the right to withhold payment of the disputed amount until such time as the dispute is

resolved, the deficient work corrected, or settlement is achieved through other means.

5. **Consideration, Payment, and Performance:**

- A. **Billing.** Contractor shall bill monthly based upon the actual expenditures incurred during the preceding month in accordance with the approved expenditures set forth in the Budget. All Summer Camp programming forms prepared by the City of Hagerstown must be completed by the Contractor in accordance with the required information and accompany the monthly invoices. Monthly invoices must be received by the City of Hagerstown, Parks & Recreation Division, by the 10th of the month following the month for which the invoice is submitted. The Contractor may receive, upon request, an initial drawdown in an amount not to exceed 5% of the funding award, which shall be applied against monthly invoices. Once invoices of actual expenditures exceed the initial drawdown, payments will be made. The maximum sum which Contractor may receive under this Contract is **\$15,000**, the total sum of the funding award.
- B. **Payment to Contractor.** Payment to the Contractor pursuant to this Contract in excess of any drawdown shall be due and payable within thirty (30) days after receipt by the City of Hagerstown of a proper invoice from the Contractor.
- C. **Unauthorized Expenditures.** Contractor's unauthorized expenditures shall be the sole and exclusive responsibility of the Contractor. Unauthorized expenditures include but are not necessarily limited to:
 - 1) those which cause total expenditures to exceed the amount of the approved budget;
 - 2) unbudgeted expenditures;
 - 3) those which differ from the approved budgeted amount; and
 - 4) those which are at variance with an explicit provision of this Contract.
- D. **Reconciliation.** Reconciliation is a fiscal resolution of the Contract pending audit, usually conducted at the termination of the Contract period and at the end of the City of Hagerstown's fiscal year. Reconciliation is based upon reported expenditures and income, subject to correction by the City of Hagerstown. Reconciliation will be conducted in accordance with the terms of the Contract. Based on the review of the final report, any funds due to the City of Hagerstown or the Contractor are due at the conclusion of the reconciliation. Any funds not expended or appropriately retained within the fiscal year must be refunded to the City of Hagerstown.

It is understood and agreed that the City of Hagerstown, its officials, agents, servants, and employees, shall not be responsible for the financial records of the Contractor and shall not be liable for any acts or omissions of the Contractor, its subcontractors, agents, or assignees committed in connection therewith.

- E. Audit. The Contractor agrees that the City of Hagerstown and/or its authorized representatives for a period of five (5) years after complete performance or earlier termination of this Contract shall have access to and the right to audit all documents pertaining to the operation of the Contractor's Summer Camp Program.
6. Budget Modification. The Contractor may request a budget modification to reallocate the existing budget at any time prior to the expiration of the Contract. A modification does not affect the amount of the award but may affect the amount available for other services. The Contractor must submit a request to the City of Hagerstown Parks & Recreation Division for budget modification:
- 1) Whenever a change would affect any of the following controlled line items reported on the approved budget:
 - a) total salaries, consultant, and/or fringe costs increased by 5% of the budgeted amount
 - b) equipment increases over the budgeted amount; and
 - c) purchase of service increases over the budgeted amount and/or renovation or remodeling increases over the budgeted amount;
 - 2) Whenever a new estimate of third-party income (including fee collections) is over or under the previous estimate of incomes by 5%; or
 - 3) To purchase additional items or substitute items that were not included in the approved budget.

A request for budget modification must be submitted for approval to the Parks & Recreation Division in writing with supporting documentation.

7. Program Modifications. No program changes will be authorized without the written approval of the City of Hagerstown and the Contractor. Properly authorized program modifications will become an addendum to this Contract. The City of Hagerstown hereby designates the Parks Superintendent to approve or disapprove any program modifications pertaining to a change to a personnel position listed on the approved budget, including a salary reduction or increase, a change which affects the project scope such as a change in target population or services to be provided, or a change in the dates of the program duration.
8. Equipment. All equipment having an acquisition cost of Five Hundred Dollars (\$500.00) or more per unit and a useful life of more than two (2) years which is purchased with funds received under this Contract ("Capital Equipment"), shall be the property of the City of Hagerstown and shall be conspicuously labeled by Contractor immediately after its purchase as "Property of the City of Hagerstown, Maryland." Within ten (10) days of the termination or expiration of this Contract, including any renewal period, Contractor shall furnish the City of Hagerstown with a written inventory of all Capital Equipment acquired under this Contract. If the City of Hagerstown does not take physical possession of an item of Capital

Equipment after the date of termination or expiration of this Contract, including any renewal period, that item of Capital Equipment shall automatically become the property of Contractor at the end of that twelve-month period.

9. **Program Evaluation Contract and Reporting.** The Contractor will be evaluated bi-monthly by the Parks Superintendent. Bi-monthly program reports submitted by the Contractor will be included in the bi-monthly evaluation. Both the Contractor and the Parks & Recreation Division will maintain copies of the evaluation reports.
10. **Meetings.** When requested by the Parks Superintendent, selected Contractor personnel shall attend meetings, conferences and presentations with the City of Hagerstown staff, public agencies, private organizations and others concerned with this project.
11. **Personnel.** Contractor represents that it has or will secure, at its own expense, all personnel needed to perform the services required to be performed by it under this Contract.
12. **Conflict of Interest.**
 - A. No official or employee of the City of Hagerstown, who exercises any functions or responsibilities in reviewing or approving the award or performance of this Contract during his/her tenure or one year thereafter shall have any personal interest, direct or indirect, apart from official duties, in this Contract or the proceeds thereof.
 - B. Contractor covenants that neither it nor any of its employees has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
13. **Execution of Contract.** This Contract may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.
14. **Ownership and Dissemination of Information.** During the term of this Contract and thereafter, Contractor shall not release any information related to the services or performance of the services under this Contract or publish any final reports or documents without the prior written approval of the City of Hagerstown, except as such release is mandated by federal or state law. Any reports, data, studies, or other materials in any form generated by or created in any way from or by the use of funds provided under this Contract shall be the sole and exclusive property of the City of Hagerstown.
15. **Sanctions upon Improper Acts.** If Contractor, or any of its officers, partners, principals, or agents, or if any employee of Contractor acting with Contractor's acquiescence, is convicted of a crime arising out of or in connection with the procurement of this Contract or the services or any payment under it, the Contract

may be terminated at the option of the City of Hagerstown. In the event of a conviction occurring after the expiration or termination of this Contract, Contractor shall be liable for the refund of all fees or profit paid under the Contract which is directly related to the criminal conduct.

16. **Miscellaneous Provisions.**

- A. Applicable law. The interpretation, performance, and enforcement of this Contract shall be governed by the law of the State of Maryland.
- B. Amendments and Waivers. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract is superseded by this Contract. Any amendment, Program Modifications, or Budget Modifications to this Contract must be made in writing and signed by both parties, subject to any additional approvals required by State law.

No term or conditional provision of this Contract shall be deemed waived and no breach shall be excused by the action or inaction of a party.

- C. Non-Discrimination in Employment. Contractor affirms and agrees that in relation to employment and personnel practices, it does not and shall not discriminate on the basis of race, age, religion, color, national origin, gender, marital status, or physical or mental disability (except for such disability which reasonably precludes the performance of such employment). Contractor will take affirmative action to ensure that employees are hired and treated during employment without regard to said factors.

In addition, Contractor further certifies that it now complies and will continue to comply with all federal, state and local laws and regulations pertaining to equal employment opportunity and equal employment practices.

- D. Contingent Fee Prohibition. Contractor warrants that it has not employed or retained any person, or entity, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, or entity, any fee or any other consideration contingent on the making of this Contract.
- E. Non-Availability of Funding. If the City of Hagerstown fails to provide funds or if funds are not otherwise made available for the performance of this Contract, this Contract shall be cancelled/terminated automatically as of the beginning of the period for which funds are not so provided. The effect of cancellation/termination of this Contract will be to discharge both Contractor and the City of Hagerstown from future performance of the Contract, but not from their rights and obligations existing at the date of termination. Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The City of Hagerstown shall notify Contractor as soon as it has

knowledge that funds may not be available for the continuation of this Contract.

- F. Termination for Cause. If Contractor fails to perform any of its obligation under this Contract, including timely performance, or otherwise breaches any provision of this Contract, the City of Hagerstown may terminate this Contract upon thirty (30) days prior written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. The City of Hagerstown shall pay Contractor fair and equitable compensation for satisfactory performance prior to receipt of such a termination notice.
- G. Retention of Records. Contractor shall retain and maintain all records and documents relating to this contract for five (5) years after final payment by the City of Hagerstown hereunder and shall make them available for inspection at all reasonable times. In addition, where applicable and pursuant to 42 Code of Federal Regulations (CFR), Part 420, Contractor shall retain until the expiration of five (5) years after the services are furnished under this Contract such books, documents, and records as required by those regulations. This provision shall survive the termination of this Contract, by expiration or otherwise.
- H. Compliance with Laws. Contractor hereby represents and warrants that it shall comply with all federal, state and local laws, regulations, policies and ordinances applicable to its activities and obligations under this Contract, including the Americans with Disabilities Act of 1990, Public Law 101-336, as amended; and that it shall obtain all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.

Contractor further agrees to comply with all federal, state, and local laws, regulations, policies and ordinances as are applicable subsequent to the termination of this Contract, by expiration or otherwise, including those specifically related to confidentiality of records and information and to retention of records. Contractor understands, acknowledges and agrees that this provision shall survive the termination of this Contract, by expiration and otherwise.

- I. Liability for Lost Data. In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of Contractor, the Contractor shall be solely responsible for recreating such lost data or records.
- J. Subcontracting/Assignment. Contractor may not subcontract or assign any portion of its services to be provided under this Contract without prior written approval of the City of Hagerstown.
- K. Indemnification/Non-Liability. Contractor shall save and hold harmless and indemnify the City of Hagerstown against any liability and shall pay all judgments rendered against it for any and all loss or damage of whatever kind and nature, and for any suits, actions, or claims of any character arising from or as a consequence of the performance of

Contractor under this Contract, up to the amount for which the City of Hagerstown is found liable under the Local Government Tort Claims Act, MD Courts and Judicial Proceedings Code Ann., Sections 5-301, *et. seq.* Contractor shall notify the City of Hagerstown within five (5) days of any claim or suit made or filed against Contractor regarding any matter resulting from or relating to Contractor's obligations or performance under the Contract and, in addition to the other obligations set out in this Article, shall cooperate, assist, and consult with the City of Hagerstown in the defense or investigation of any claim, suit, or action made or filed against the City of Hagerstown as a result of or relating to Contractor's performance under this Contract.

Contractor shall maintain general liability insurance in a minimum amount of one million dollars per occurrence, two million dollars in the aggregate, naming the City of Hagerstown as an additional insured. Contractor shall also keep in place a commercially reasonable policy of Worker's Compensation Insurance. Contractor shall provide certificates of said insurance to the City of Hagerstown prior to the commencement of this Contract.

- L. Criminal Background Investigation. Contractor shall be responsible for completing criminal background investigations of all staff and volunteers providing service under this Contract, as mandated by law. Contractor shall maintain approved copies of reports of these background investigations in its personnel files and will also be responsible for complying with Family Law Article, 5-560 through 5-568, Annotated Code of Maryland.

In any case where a criminal record is reported, Contractor shall (1) notify the City of Hagerstown by the next work day and (2) take immediate and appropriate action to protect the safety and welfare of the children served hereunder.

- M. Independent Contractor Status. Contractor is an independent contractor and neither Contractor nor its employees, agents, or representatives shall be considered employees, agents or representatives of the City of Hagerstown. Nothing contained in the Contract is intended or should be construed as creating the relationship of co-partners or joint ventures, or an association of the City of Hagerstown and Contractor. From any amount due Contractor, there will be no deductions for federal income tax or FICA payments, nor for any State income tax, nor for any other purposes that are associated with any employer-employee relationship. Payment of federal income tax, FICA, and any State income tax shall be the responsibility of Contractor.

- N. Administration. The Parks Superintendent for the Parks & Recreation Division will serve as Contract Monitor. The Contractor agrees to permit the Contract Monitor to inspect any and all records of children and families pertaining to this Contract.

- O. Data. The Contractor agrees to observe all state and federal laws and regulations as to the disclosure of information and records on children being served. Written permission must be obtained from the City of Hagerstown prior to use or disclosure of such information.
- P. Word Forms. The use of any gender, tense or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.
- Q. Paragraph Headings. Any heading utilized is so used for reference and convenience only and is not intended to define or limit the scope of any provision of this Contract nor affect the interpretation thereof.
- R. Party's Authority. The individual(s) executing this Contract on behalf of Contractor hereby covenant and warrant that they are duly authorized to execute and deliver this Contract on behalf of the Contractor. Parks & Recreation is a Division of the City of Hagerstown and serves as its' agent for all purposes under this Contract.

IN WITNESS THEREOF, the parties have caused this Contract to be executed by affixing hereon their respective seals and signatures of the proper officers. This Contract is effective as of the day and year first above written.

Witness

City of Hagerstown

Witness

Mayor

Date

Organization Name (User)

Officer Signature

Date

Officer Name (Printed)

Title

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: 2016 Summer Play Camp - Robert W. Johnson Community Center

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

rwjohnson_center_2016_summer_camp.pdf

Description

2016 Summer Play Camp
Operation - Robert W
Johnson Community Center,
Inc.

REQUIRED MOTION
MAYOR & CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: 2016 Summer Play Camp Operation - Robert W. Johnson Community Center, Inc.

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	<u> X </u>
Other	_____

MOTION: I hereby move for the approval of a Resolution to authorize the execution of a contract with the Robert W. Johnson Community Center, Inc. to operate a summer play camp for the 2016 season from June 20, 2016 through August 12, 2016 at Wheaton Park. The camp will serve approximately 80 youths per day at a cost of \$25,600. Funding is from the Parks & Recreation operating budget.

DATE OF PASSAGE: 3/22/2016

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE
PROVISION OF SUMMER CAMP PROGRAMMING BETWEEN
THE CITY OF HAGERSTOWN AND MEMORIAL RECREATION CENTER, INC.**

RECITALS

WHEREAS, The City of Hagerstown, Maryland has previously provided funding for certain summer play camp activities held within the corporate limits of the City of Hagerstown; and

WHEREAS, The Memorial Recreation Center, Inc. has previously conducted summer play camp operations; and

WHEREAS, The Memorial Recreation Center, Inc. has requested the opportunity to conduct summer play camp operations during the 2016 summer season at Wheaton Park; and

WHEREAS, The Mayor and Council find it to be in the best interests of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Hagerstown, Maryland as its duly constituted legislative body, as follows:

1. That the aforementioned recitals are incorporated herein by reference.
2. That the Mayor be and is hereby authorized to execute and deliver the Contract For The Provision Of Summer Camp Programming Between the City of Hagerstown and the Memorial Recreation Center, Inc., a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver any other documentation necessary to effectuate the purpose of this Resolution.

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
Salvatore & Boyer, LLC, City Attorney

**CONTRACT
FOR THE PROVISION OF
Summer Camp Programming**

Between

THE CITY OF HAGERSTOWN

AND

THE ROBERT W. JOHNSON COMMUNITY CENTER, INC.

THIS AGREEMENT is made as of this _____ day of _____, 2016, by and between the City of Hagerstown, and The Robert W. Johnson Community Center, Inc. hereinafter "Contractor".

1. **Work Effort.** Contractor hereby agrees to provide the services described and defined in the program proposal submitted by Contractor which is attached hereto and incorporated herein by reference.
2. **Purpose of Contract.** The purpose of this Contract is to provide summer camp for eighty (80) participants at Wheaton Park. The program will be conducted Monday-Friday, **June 20 – August 12, 2016.** The programs will be free of charge to the children (ages 6 – 13) and their families.
3. **Contract Period.** This Contract shall commence as of **June 20, 2016, and shall terminate on August 12, 2016.** Any renewal of this Contract is subject to available funding and performance by Contractor satisfactory to the City of Hagerstown.
4. **Compensation and Invoicing.**
 - A. For the provision of services described above, Contractor shall be compensated monthly as specified under Section 5.
 - B. Contractor shall invoice the City of Hagerstown on a monthly basis for work satisfactorily completed and costs actually incurred. Each invoice must include a description of the number of participants receiving services, and the services performed and costs incurred on a daily or "fee for service" type basis, for the period covered by the invoice. Contractor's invoices shall be sent to: City of Hagerstown, Parks & Recreation Division, 351 N. Cleveland Ave., Hagerstown, MD 21740, will be reviewed and verified for work accomplished as set forth in the statement of work and when certified as acceptable, will be forwarded to the Accounting Department for payment.
 - C. In the event of dispute, the City of Hagerstown reserves the right to withhold payment of the disputed amount until such time as the dispute is

resolved, the deficient work corrected, or settlement is achieved through other means.

5. **Consideration, Payment, and Performance:**

- A. **Billing.** Contractor shall bill monthly based upon the actual expenditures incurred during the preceding month in accordance with the approved expenditures set forth in the Budget. All Summer Camp programming forms prepared by the City of Hagerstown must be completed by the Contractor in accordance with the required information and accompany the monthly invoices. Monthly invoices must be received by the City of Hagerstown, Parks & Recreation Division, by the 10th of the month following the month for which the invoice is submitted. The Contractor may receive, upon request, an initial drawdown in an amount not to exceed 5% of the funding award, which shall be applied against monthly invoices. Once invoices of actual expenditures exceed the initial drawdown, payments will be made. The maximum sum which Contractor may receive under this Contract is **\$25,600.00**, the total sum of the funding award.
- B. **Payment to Contractor.** Payment to the Contractor pursuant to this Contract in excess of any drawdown shall be due and payable within thirty (30) days after receipt by the City of Hagerstown of a proper invoice from the Contractor.
- C. **Unauthorized Expenditures.** Contractor's unauthorized expenditures shall be the sole and exclusive responsibility of the Contractor. Unauthorized expenditures include but are not necessarily limited to:
 - 1) those which cause total expenditures to exceed the amount of the approved budget;
 - 2) unbudgeted expenditures;
 - 3) those which differ from the approved budgeted amount; and
 - 4) those which are at variance with an explicit provision of this Contract.
- D. **Reconciliation.** Reconciliation is a fiscal resolution of the Contract pending audit, usually conducted at the termination of the Contract period and at the end of the City of Hagerstown's fiscal year. Reconciliation is based upon reported expenditures and income, subject to correction by the City of Hagerstown. Reconciliation will be conducted in accordance with the terms of the Contract. Based on the review of the final report, any funds due to the City of Hagerstown or the Contractor are due at the conclusion of the reconciliation. Any funds not expended or appropriately retained within the fiscal year must be refunded to the City of Hagerstown.

It is understood and agreed that the City of Hagerstown, its officials, agents, servants, and employees, shall not be responsible for the financial records of the Contractor and shall not be liable for any acts or omissions of the Contractor, its subcontractors, agents, or assignees committed in connection therewith.

E. Audit. The Contractor agrees that the City of Hagerstown and/or its authorized representatives for a period of five (5) years after complete performance or earlier termination of this Contract shall have access to and the right to audit all documents pertaining to the operation of the Contractor's Summer Camp Program.

6. Budget Modification. The Contractor may request a budget modification to reallocate the existing budget at any time prior to the expiration of the Contract. A modification does not affect the amount of the award but may affect the amount available for other services. The Contractor must submit a request to the City of Hagerstown Parks & Recreation Division for budget modification:

- 1) Whenever a change would affect any of the following controlled line items reported on the approved budget:
 - a) total salaries, consultant, and/or fringe costs increased by 5% of the budgeted amount
 - b) equipment increases over the budgeted amount; and
 - c) purchase of service increases over the budgeted amount and/or renovation or remodeling increases over the budgeted amount;
- 2) Whenever a new estimate of third-party income (including fee collections) is over or under the previous estimate of incomes by 5%; or
- 3) To purchase additional items or substitute items that were not included in the approved budget.

A request for budget modification must be submitted for approval to the Parks & Recreation Division in writing with supporting documentation.

7. Program Modifications. No program changes will be authorized without the written approval of the City of Hagerstown and the Contractor. Properly authorized program modifications will become an addendum to this Contract. The City of Hagerstown hereby designates the Parks Superintendent to approve or disapprove any program modifications pertaining to a change to a personnel position listed on the approved budget, including a salary reduction or increase, a change which affects the project scope such as a change in target population or services to be provided, or a change in the dates of the program duration.

8. Equipment. All equipment having an acquisition cost of Five Hundred Dollars (\$500.00) or more per unit and a useful life of more than two (2) years which is purchased with funds received under this Contract ("Capital Equipment"), shall be the property of the City of Hagerstown and shall be conspicuously labeled by Contractor immediately after its purchase as "Property of the City of Hagerstown, Maryland." Within ten (10) days of the termination or expiration of this Contract, including any renewal period, Contractor shall furnish the City of Hagerstown with a written inventory of all Capital Equipment acquired under this Contract. If the City of Hagerstown does not take physical possession of an item of Capital

Equipment after the date of termination or expiration of this Contract, including any renewal period, that item of Capital Equipment shall automatically become the property of Contractor at the end of that twelve-month period.

9. **Program Evaluation Contract and Reporting.** The Contractor will be evaluated bi-monthly by the Parks Superintendent. Bi-monthly program reports submitted by the Contractor will be included in the bi-monthly evaluation. Both the Contractor and the Parks & Recreation Division will maintain copies of the evaluation reports.
10. **Meetings.** When requested by the Parks Superintendent, selected Contractor personnel shall attend meetings, conferences and presentations with the City of Hagerstown staff, public agencies, private organizations and others concerned with this project.
11. **Personnel.** Contractor represents that it has or will secure, at its own expense, all personnel needed to perform the services required to be performed by it under this Contract.
12. **Conflict of Interest.**
 - A. No official or employee of the City of Hagerstown, who exercises any functions or responsibilities in reviewing or approving the award or performance of this Contract during his/her tenure or one year thereafter shall have any personal interest, direct or indirect, apart from official duties, in this Contract or the proceeds thereof.
 - B. Contractor covenants that neither it nor any of its employees has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
13. **Execution of Contract.** This Contract may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect.
14. **Ownership and Dissemination of Information.** During the term of this Contract and thereafter, Contractor shall not release any information related to the services or performance of the services under this Contract or publish any final reports or documents without the prior written approval of the City of Hagerstown, except as such release is mandated by federal or state law. Any reports, data, studies, or other materials in any form generated by or created in any way from or by the use of funds provided under this Contract shall be the sole and exclusive property of the City of Hagerstown.
15. **Sanctions upon Improper Acts.** If Contractor, or any of its officers, partners, principals, or agents, or if any employee of Contractor acting with Contractor's acquiescence, is convicted of a crime arising out of or in connection with the procurement of this Contract or the services or any payment under it, the Contract

may be terminated at the option of the City of Hagerstown. In the event of a conviction occurring after the expiration or termination of this Contract, Contractor shall be liable for the refund of all fees or profit paid under the Contract which is directly related to the criminal conduct.

16. **Miscellaneous Provisions.**

- A. Applicable law. The interpretation, performance, and enforcement of this Contract shall be governed by the law of the State of Maryland.
- B. Amendments and Waivers. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract is superseded by this Contract. Any amendment, Program Modifications, or Budget Modifications to this Contract must be made in writing and signed by both parties, subject to any additional approvals required by State law.

No term or conditional provision of this Contract shall be deemed waived and no breach shall be excused by the action or inaction of a party.

- C. Non-Discrimination in Employment. Contractor affirms and agrees that in relation to employment and personnel practices, it does not and shall not discriminate on the basis of race, age, religion, color, national origin, gender, marital status, or physical or mental disability (except for such disability which reasonably precludes the performance of such employment). Contractor will take affirmative action to ensure that employees are hired and treated during employment without regard to said factors.

In addition, Contractor further certifies that it now complies and will continue to comply with all federal, state and local laws and regulations pertaining to equal employment opportunity and equal employment practices.

- D. Contingent Fee Prohibition. Contractor warrants that it has not employed or retained any person, or entity, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, or entity, any fee or any other consideration contingent on the making of this Contract.
- E. Non-Availability of Funding. If the City of Hagerstown fails to provide funds or if funds are not otherwise made available for the performance of this Contract, this Contract shall be cancelled/terminated automatically as of the beginning of the period for which funds are not so provided. The effect of cancellation/termination of this Contract will be to discharge both Contractor and the City of Hagerstown from future performance of the Contract, but not from their rights and obligations existing at the date of termination. Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The City of Hagerstown shall notify Contractor as soon as it has

knowledge that funds may not be available for the continuation of this Contract.

- F. Termination for Cause. If Contractor fails to perform any of its obligation under this Contract, including timely performance, or otherwise breaches any provision of this Contract, the City of Hagerstown may terminate this Contract upon thirty (30) days prior written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. The City of Hagerstown shall pay Contractor fair and equitable compensation for satisfactory performance prior to receipt of such a termination notice.
- G. Retention of Records. Contractor shall retain and maintain all records and documents relating to this contract for five (5) years after final payment by the City of Hagerstown hereunder and shall make them available for inspection at all reasonable times. In addition, where applicable and pursuant to 42 Code of Federal Regulations (CFR), Part 420, Contractor shall retain until the expiration of five (5) years after the services are furnished under this Contract such books, documents, and records as required by those regulations. This provision shall survive the termination of this Contract, by expiration or otherwise.
- H. Compliance with Laws. Contractor hereby represents and warrants that it shall comply with all federal, state and local laws, regulations, policies and ordinances applicable to its activities and obligations under this Contract, including the Americans with Disabilities Act of 1990, Public Law 101-336, as amended; and that it shall obtain all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.

Contractor further agrees to comply with all federal, state, and local laws, regulations, policies and ordinances as are applicable subsequent to the termination of this Contract, by expiration or otherwise, including those specifically related to confidentiality of records and information and to retention of records. Contractor understands, acknowledges and agrees that this provision shall survive the termination of this Contract, by expiration and otherwise.

- I. Liability for Lost Data. In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of Contractor, the Contractor shall be solely responsible for recreating such lost data or records.
- J. Subcontracting/Assignment. Contractor may not subcontract or assign any portion of its services to be provided under this Contract without prior written approval of the City of Hagerstown.
- K. Indemnification/Non-Liability. Contractor shall save and hold harmless and indemnify the City of Hagerstown against any liability and shall pay all judgments rendered against it for any and all loss or damage of whatever kind and nature, and for any suits, actions, or claims of any character arising from or as a consequence of the performance of

Contractor under this Contract, up to the amount for which the City of Hagerstown is found liable under the Local Government Tort Claims Act, MD Courts and Judicial Proceedings Code Ann., Sections 5-301, *et. seq.* Contractor shall notify the City of Hagerstown within five (5) days of any claim or suit made or filed against Contractor regarding any matter resulting from or relating to Contractor's obligations or performance under the Contract and, in addition to the other obligations set out in this Article, shall cooperate, assist, and consult with the City of Hagerstown in the defense or investigation of any claim, suit, or action made or filed against the City of Hagerstown as a result of or relating to Contractor's performance under this Contract.

Contractor shall maintain general liability insurance in a minimum amount of one million dollars per occurrence, two million dollars in the aggregate, naming the City of Hagerstown as an additional insured. Contractor shall also keep in place a commercially reasonable policy of Worker's Compensation Insurance. Contractor shall provide certificates of said insurance to the City of Hagerstown prior to the commencement of this Contract.

- L. Criminal Background Investigation. Contractor shall be responsible for completing criminal background investigations of all staff and volunteers providing service under this Contract, as mandated by law. Contractor shall maintain approved copies of reports of these background investigations in its personnel files and will also be responsible for complying with Family Law Article, 5-560 through 5-568, Annotated Code of Maryland.

In any case where a criminal record is reported, Contractor shall (1) notify the City of Hagerstown by the next work day and (2) take immediate and appropriate action to protect the safety and welfare of the children served hereunder.

- M. Independent Contractor Status. Contractor is an independent contractor and neither Contractor nor its employees, agents, or representatives shall be considered employees, agents or representatives of the City of Hagerstown. Nothing contained in the Contract is intended or should be construed as creating the relationship of co-partners or joint ventures, or an association of the City of Hagerstown and Contractor. From any amount due Contractor, there will be no deductions for federal income tax or FICA payments, nor for any State income tax, nor for any other purposes that are associated with any employer-employee relationship. Payment of federal income tax, FICA, and any State income tax shall be the responsibility of Contractor.

- N. Administration. The Parks Superintendent for the Parks & Recreation Division will serve as Contract Monitor. The Contractor agrees to permit the Contract Monitor to inspect any and all records of children and families pertaining to this Contract.

- O. Data. The Contractor agrees to observe all state and federal laws and regulations as to the disclosure of information and records on children being served. Written permission must be obtained from the City of Hagerstown prior to use or disclosure of such information.
- P. Word Forms. The use of any gender, tense or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.
- Q. Paragraph Headings. Any heading utilized is so used for reference and convenience only and is not intended to define or limit the scope of any provision of this Contract nor affect the interpretation thereof.
- R. Party's Authority. The individual(s) executing this Contract on behalf of Contractor hereby covenant and warrant that they are duly authorized to execute and deliver this Contract on behalf of the Contractor. Parks & Recreation is a Division of the City of Hagerstown and serves as its' agent for all purposes under this Contract.

IN WITNESS THEREOF, the parties have caused this Contract to be executed by affixing hereon their respective seals and signatures of the proper officers. This Contract is effective as of the day and year first above written.

Witness

City of Hagerstown

Witness

Mayor

Date

Organization Name (User)

Officer Signature

Date

Officer Name (Printed)

Title

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: Residential Lease for 38 N. Potomac Street - Apt. 2

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

REQUIRED_MOTION_Layman_Apt_2.pdf

CLAYTON_LAYMAN_Artist_Lofts_Residential_Lease_(2).pdf

Resolution_-_Artist_Lofts_Unit_2_(Layman)031416.pdf

Description

Motion

Lease Agreement

Resolution

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

DATE: March 22, 2016

TOPIC: **Approval of a Resolution: Execution of a residential Lease Agreement for the City of Hagerstown property located at 38 North Potomac Street Apt #2, Hagerstown, MD.**

Charter Amendment	—
Code Amendment	—
Ordinance	—
Resolution	<u>X</u>
Other	—

MOTION: I hereby move that the Mayor and City Council approve the attached resolution authorizing the execution of a residential Lease Agreement at the City of Hagerstown property located at 38 North Potomac Street in Hagerstown, MD. The Lease will be between the City of Hagerstown and Clayton Layman and shall be in effect from April 1, 2016 to March 31, 2017.

DATE OF INTRODUCTION:	03/22/2016
DATE OF PASSAGE:	03/22/2016
EFFECTIVE DATE:	03/22/2016

Residential Lease

THIS LEASE made on the 22nd day of March, 2016, between City of Hagerstown, Landlord, and Clayton Layman, Tenant.

WITNESSETH, that the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, premises known as *The Studios on NoPo*, 38 North Potomac Street, Apartment #2, Hagerstown, Maryland 21740.

1. **TERM.** This Lease shall be for a term of one year, beginning on the 1st day of April 2016 and ending on the 31st day of March, 2017. Thereafter, the Tenant shall be considered a month to month, periodic tenant.

2. **RENT.** Total annual rent of Six Thousand Dollars (\$6,000) payable in equal monthly installments of Five Hundred Dollars (\$500) per month in advance on the first day of each and every month of said term, without deduction or demand at the office of the Landlord at the cashier's office, 1 East Franklin Street, Hagerstown, MD.

If this Lease commences on a day other than the first of the month, the pro-rated amount of rent for the balance of the first month shall be paid to the Landlord at the time of possession. Thereafter, rent shall be paid on the first day of each month according to the amounts described above.

3. **SERVICE CHARGES.** Landlord shall have the right to require rent payments to be made in cash, money order, Cashier's Check and/or certified check. A service charge of \$35.00 will automatically be made for each instance in which a check is returned unpaid by the Tenant's bank for any reason. A late Charge of five percent (5%) of the amount of rent due for the monthly rental period shall be assessed for any payment delinquent ten (10) days after the due date.

4. **SECURITY DEPOSIT.** In addition to payment of the first month's rent, Tenant, upon the execution of this Lease, will deposit with Landlord the sum of \$500 as Security Deposit. If the Tenant has a pet within the guidelines outlined in Section 9 of this lease, an additional \$250 shall be collected as the Pet Deposit.

This Security Deposit shall be held as security by Landlord for the full and complete performance by Tenant of Tenant's obligations under this Lease, and shall be applied at the expiration of the term of this Lease, or any extensions, thereof, if any, on account of any unpaid rent, damage due to breach of this Lease or damage to the premises by Tenant, Tenant's family, agents, or social guests in excess of ordinary wear and tear. In no event, shall Tenant apply the Security Deposit toward any month's rent due under this Lease, without prior written consent of Landlord. In the event Tenant shall have fully and completely performed Tenant's obligations under this Lease upon its termination, the Security Deposit shall be refunded to Tenant within forty-five (45) days after the termination of the Lease in accordance with the terms hereof, together with simple interest which shall have accrued in the amount required by State law, currently three percent (3%) per annum, from the receipt of the Security by Landlord. Landlord shall, upon written request of Tenant, made within fifteen (15) days of the occupancy of the premises by Tenant, promptly provide Tenant with a written list of all existing damages, if any, on the premises. Upon tenant's written notification to Landlord of Tenant's intention to vacate premises, the date of moving and Tenant's new address, Tenant has the right to be present when Landlord inspects the premises in order to determine the existence of any damages caused during the tenancy. Upon receipt of Tenant's written notice of Tenant's intention to vacate premises, Landlord shall notify Tenant in writing of the date and time when the premises are to be inspected. The date of inspection shall occur within five (5) days before or five (5) days after the date of moving as designated in Tenant's written notice.

5. **DELIVERY OF POSSESSION.** Delivery of possession shall occur only after the first month's rent and security deposit have been paid to the Landlord. The Landlord shall then tender two key sets for the premises to the Tenant.

6. **SUBLEASE.** Tenant shall not assign this Lease or sublet the premises, or any portion thereof, or transfer possession or occupancy thereof to any other person or persons without prior written consent of Landlord.

7. **OCCUPANTS.** Tenant agrees that the premises shall be occupied by the individuals listed below, and as set forth in the NoPo Studio Application, who are specifically declared as follows:

- Clayton Layman (Tenant)

- _____ (Tenant)

Otherwise, children of the above-listed Tenants are allowed to occupy the premises. Additional persons will be permitted to occupy the Premises only upon written consent of the Landlord. Guests of Tenant will be considered additional occupants of the Premises if any such guest remains on the Premises for more than five (5) days in any 30 day period. Tenant shall notify Landlord immediately if Tenant intends to have a guest for more than five days.

8. **THE STUDIOS ON NOPO APPLICATION.** In connection with The Studios on NoPo Application, Tenant has submitted asset verification, employment verification, rental verification, and income certification statements, all of which are considered a part of the Studios on NoPo Application. Tenant has also provided authorization for the Landlord to perform credit report check(s) and criminal background check(s) for the household member(s). The parties acknowledge that Landlord relies upon the information given by Tenant in the Rental Application to enter into this Lease, and said information is incorporated herein by reference as fully as if attached hereto.

9. **ANIMALS.** One cat or dog under 25 pounds is permitted in each studio apartment, after paying the Pet Deposit described above in Section 4.

10. **MAINTENANCE, CONDITIONS, NOISE AND ALTERATIONS.**

(a) Tenant has examined the Premises and all appliances and equipment thereon owned by Landlord, and hereby accepts them in their "AS IS" condition and acknowledges that Landlord has made no representations or warranties, either expressed or implied, as to the condition or use of the Premises. Tenant shall immediately notify Landlord of any defects or dangerous conditions. Tenant shall keep the Premises in good order and condition and shall pay Landlord promptly for any repairs to the Premises or its equipment caused by Tenant's negligence or misuse or by the negligence or misuse of tenant's invitees, licensees or guests. Tenant shall return the Premises and all fixtures, appliances and improvements therein owned by Landlord in substantially the same condition as received, including but not limited to, general cleanliness and upkeep. Tenant acknowledges that Tenant shall pay to Landlord, upon vacating the Premises, expenses as may be incurred to restore the Premises to the condition in which it was delivered to Tenant at the commencement of this Lease, reasonable wear and tear excepted.

(b) Tenant shall not make any alterations or additions to the Premises without the prior written consent of Landlord.

(c) Tenant shall maintain the premises in a clean and sanitary condition at all times; and complies with all laws, ordinances and regulations, health, fire and police regulations with respect to the Premises. Tenant shall indemnify and save Landlord from all liability arising out of any violation by Tenant of such laws or regulations or arising out of any neglect or any violation or non-performance by the Tenant of any of the covenants contained in this Lease. Landlord shall monitor the condition of the premises and maintenance of the property. If the Tenant is negligent and Landlord incurs cost to maintain property, or be charged fines or fees the tenant will subsequently be charged for any and all costs incurred and shall be due as additional RENT.

(d) Tenant shall keep all plumbing from becoming obstructed due to negligence. NOTE: the sanitary sewer system may only be used for its designed and intended purposes. No diapers, condoms, paper towels, feminine hygiene products, or like materials may be flushed in the sanitary sewer system. If the plumbing becomes obstructed because of Tenant negligence or deliberate acts, Tenant shall pay the costs to have lines cleared.

(e) Tenant shall keep noise of occupants and guests and noise from radios, television sets, stereos, etc. to a level of sound that does not annoy or interfere with neighbors.

11. UTILITIES. The Landlord shall provide the utilities listed in Column 1 without any additional charge to the Tenant. The utilities listed in Column 2 are not included in the rent and are to be paid solely by the Tenant. The utilities payable by the tenant in Column 2 shall be considered additional rent.

Utility	Column 1 Landlord Paid	Column 2 Tenant Paid
Heating (Electric)		X
Hot Water (Electric)		X
Cooking (Electric)		X
Lights (Electric)		X
Water/Sewer/Trash Collection	X	
Phone/Cable TV/Hard-Wired Internet		X

12. INSPECTION. Landlord shall have the right to enter the Premises at all reasonable times necessary to inspect the Premises, to control pests and vermin, and to make necessary repairs to and maintain the Premises, including but not limited to, the heating, ventilation and air conditioning systems, the plumbing system, the electrical systems, etc. When practical, the Landlord shall give Tenant a one (1) day posted written notice of its intent to inspect the premises and the approximate time for said inspection. The notice shall be posted to the front door and such posting shall meet all requirements for said notice. In case of emergency, Landlord may enter the premises immediately and without notice to Tenant. During the last 60 days of the term of this Lease or any extension thereof, Landlord or its Agent may enter the premises during daylight hours to exhibit the same, and place a "for rent" or "for sale" sign thereof.

13. USE OF PREMISES. The Premises shall be primarily used for residential and light artistic use, not to include industrial arts. Tenant shall comply with all requirements of the Landlord and by all applicable laws, ordinances, and governmental regulations. No smoking or burning of incense or candles shall be permitted on the premises.

14. INDEMNIFICATION. The tenant agrees to indemnify, exonerate and save the landlord harmless from any and all suits, claims for loss, expenses, damages or injury to person or property sustained on the premises or

arising out of the use of the premises by the tenant or the tenant's family, employees, invitees, guests or licensees.

15. **HANDBOOK.** The Tenant shall be in compliance with all property rules and regulations in the booklet titled, *The Studios on NoPo Tenant Handbook*, revised 3/2014 and hereby incorporated into this lease by reference and attached at Exhibit 2.

16. **ILLEGAL ACTIVITY.** Notwithstanding anything which in any way might be construed to the contrary, it shall be deemed to be a material breach of this Lease for Tenant, or any member of the Tenant's household to engage in and/or to suffer the engagement in any criminal activity, including drug-related criminal activity, on or off the premises, while such Tenant is a Tenant in occupancy of any housing unit under control of Landlord. The term "drug-related criminal activity" shall mean the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance [as defined in Section 102 of the Controlled Substance Act (U.S.C. 802) as amended].

17. **INSURANCE.** Tenant acknowledges that Landlord maintains insurance on the Premises, which insurance does not protect the personal property, possessions, or personal liability of Tenant. Tenant must consult her own Agent for insurance protection. It is the responsibility of the Tenant to obtain adequate insurance on personal property of Tenant placed on, in, or about the premises.

18. **CASUALTY.**

(a) If the Premises is damaged or destroyed by fire or other casualty to an extent that the use of the Premises is substantially impaired, Tenant may immediately vacate the Premises and may terminate this Lease upon written notice to Landlord given within ten (10) days of Tenant's vacation of the Premises. In the event Tenant remains in possession of the damaged Premises, Rent shall be reduced in proportion to the impairment of use of the premises until same are repaired.

(b) In the event the Premises are damaged by fire or other casualty, and Landlord elects not to restore, repair and rebuild, Landlord may terminate this Lease by giving written notice to Tenant, whereupon Tenant shall promptly vacate the premises. Rent shall be paid through the date Tenant vacates.

19. **CONDEMNATION.**

(a) If the whole or any part of the Premises shall be taken by any competent authority for public or quasi-public use or purpose, then and in that event, this Lease shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose.

(b) All damages awarded for such taking shall belong to and be the property of Landlord. Tenant shall not be entitled to any sum from Landlord or the condemning authority as compensation for the loss to the unexpired Term, nor for any other damages.

20. **BREACH AND REMEDIES.** If Tenant breaches this Lease, Landlord may repossess the Premises pursuant to judicial process, and Landlord shall have other rights as may be allowed by law. Tenant will pay the court costs charged to Landlord for notice sent for non-payment of rent, and Tenant also agrees to reimburse Landlord for all reasonable expenses incurred by Landlord, including attorney's fees as Additional Rent, if ejectment is ordered by the court.

21. **ATTORNEY FEES.** If Landlord be compelled to incur any expenses including reasonable attorney's fees in instituting and prosecuting any action or proceeding by reason of any default of Tenant hereunder, the

sum or sums so paid by Landlord with all interest, costs, and damages shall be deemed to be additional rent hereunder and shall be due from Tenant to Landlord on the 1st day of the month following the incurring of such respective expenses. Tenant agrees to reimburse Landlord for any reasonable attorney fees incurred by Landlord in enforcing the provisions of this Lease. In the event that Tenant files suit against Landlord in connection with this lease and Tenant is unsuccessful in obtaining a judgment against Landlord, Tenant agrees to pay Landlord's reasonable attorney fees in defending said suit.

22. EXTENDED ABSENCES. Tenant shall give Landlord prior written notice of any anticipated absence from the premises in excess of seven (7) days, during which absence Landlord may enter the premises as reasonably necessary. In the event Tenant fails to give notification to Landlord of an extended absence in excess of seven (7) days, Landlord may recover actual damages, if any, from Tenant.

23. ENTIRE AGREEMENT. The provisions hereof together with the Rental Application and the Rules and Regulations which are incorporated herein by reference along with any addendum attached hereto and initialed by the parties represent the complete and entire agreement between the parties with respect to the Premises. This Lease cannot be changed or supplemented except by agreement in writing signed by both parties.

24. DEFAULT. If the premises are abandoned or become vacant during the term, the Lessor or its agents may re-enter the same by force or otherwise without being liable to any prosecution therefore and, in addition to any other remedies, re-rent the premises in whole or in part as the agent of the Lessee who in all events shall remain liable for any unpaid rentals for the full term of this Lease. Lessor may receive the rent from any such re-rental applying the same first to the payment of such expenses as the Lessor may incur in re-entering and re-letting, and then to the payment of the rent due hereunder.

If any default is made in the payment of the rent due hereunder including utilities, or if any default or violation be made in the performance of any of the covenants and agreements herein contained on the part of the Lessee to be performed, and if such default shall not be cured by the Lessee within fifteen (15) days after receipt by the Lessee of written notice from the Lessor of such default, then the relation of Lessor and Lessee, at the option of the Lessor, shall wholly cease and determine and, in addition to any other remedies, the Lessor may re-enter the premises by force, if necessary, and remove all persons therefrom and distrain for rent, if any be due, and assume and take possession of the premises and Lessee's property therein; and the Lessee, in any such event, expressly waives the service of any notice to Quit or Demand for Possession, but the Lessee shall, nevertheless, remain liable for any unpaid rental for the full term of this Agreement.

If any legal process whatsoever shall be issued for the purpose of attaching or taking in execution of any of Lessee's chattels located on the premises or Lessee's interest in the premises created by this Agreement, or if Lessee shall petition or have a petition filed against him to be adjudicated a bankrupt or insolvent, and such petition is not removed within ten (10) days, or if a receiver or trustee shall be appointed for Lessee's business or property, or if Lessee shall make a general assignment for the benefit of creditors, or if a corporate reorganization of Lessee or any arrangement with Lessee's creditors shall be approved by a court under any provision of the Federal Bankruptcy law, or if, in any other manner, the Lessee's interest under this Agreement would otherwise pass to another by operation of law, or if Lessee, without Lessor's prior written consent, shall assign or transfer to another in bulk, and not in the ordinary course of business, a major part of the materials, supplies, merchandise and other inventory, or substantially all of the fixtures and equipment located on the premises, then in any such event, Lessee shall be deemed to have committed a material breach of this Agreement and the Lessor may, at its option, forthwith by written notice re-enter the premises, and re-rent the premises as the agent for the Lessee. Notwithstanding any such

action(s) by Lessor, Lessee shall in all events remain liable for any unpaid rental for the full term of this Lease.

Lessee hereby expressly waives the benefits of all laws exempting property of any amount or value from levy and sale on execution of distress for rent, or upon any execution under any judgment that may be recovered from rent due under this Agreement.

Lessor shall in all events be entitled to the benefit of all provisions of applicable laws respecting the speedy recovery of lands and tenements held over by Tenants or proceedings in forcible entry and detainer.

25. FAILURE TO PERFORM. Tenant covenants that in case Landlord, by reason of the failure of Tenant to perform any of the provisions hereof, shall be compelled to pay or shall pay any sum of money, or shall be compelled to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, together with all interest, costs and damages, shall be added to the next installment of rent due or to any subsequent installment of rent and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved.

26. ADDITIONAL ITEMS / REQUIREMENTS.

1. Tenant, in addition to rent, commits to assist in the operation of the Art Gallery on the first floor of the premises by contributing time at the Gallery without compensation for a minimum of five (5) hours per week. This obligation shall be scheduled through the Gallery Coordinator. Tenant may also display his own art in the Gallery, which display shall be subject to the discretion of the Gallery Coordinator.

2. The terms of the Lease shall include the terms of the Tenant Handbook, a copy of which is incorporated herein as Exhibit 2.

4. Attached as Exhibit 1 is a lead paint notification.

5. Attached as Exhibit 3 is the wireless network benefit.

27. CRIME FREE HOUSING. Tenant, any members of the Tenant's household or a guest or other persons affiliated with the Tenant or affiliated with any member of the Tenant's household:

a. Shall not engage in criminal activity at, on or near the said premises. "Criminal activity" means the commission of any of the acts defined in the Maryland Criminal Law Code Annotated, as from time to time amended.

b. Shall not engage in any act intended to facilitate criminal activity and shall not permit the premises to be used for or to facilitate criminal activity, regardless of whether the individual engaging in the activity is a Tenant, a member of the Tenant's household, a guest, or another person affiliated with the Tenant.

c. Violation of the above provisions shall be a material breach of the Lease and good cause for immediate termination of tenancy. Proof of a violation of the Lease hereunder shall not require a criminal conviction, but shall be by a preponderance of the evidence.

28. MODIFICATIONS. The provisions contained in this Lease shall not be changed or modified without express consent of Tenant and Landlord.

29. SEVERABILITY. In the event that any term or condition of this Lease shall be determined to be void or

unenforceable for any reason, then notwithstanding such determination, the balance of this Lease shall nonetheless remain in full force and effect and be construed and applied as though that term or condition was not contained herein.

This Lease contains the entire understanding between the parties hereto. There are no representations, warranties or agreements concerning the subject matter of this Lease other than as expressly set forth herein.

LANDLORD: The City of Hagerstown

TENANT: Clayton Layman

Signed: _____

Print: David S. Gysberts

Title: Mayor of the City of Hagerstown

Witness:

Witness:

Exhibit 1

LEAD-BASED PAINT DISCLOSURE

Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Lead Warning Statement:

Every Tenant of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Landlord of any interesting residential real property is required to provide the Tenant with any information on lead-based paint hazards from risk assessments or inspections in the Landlord's possession and notify the Tenant of any known lead-based paint hazards. A risk assessment or inspections for possible lead-based paint hazards is recommended prior to occupancy of the rental property.

Landlord's Disclosure (initial)

_____ (a.) Presence of lead-based paint and/or lead-based hazards (check one below):

- (☒) Known lead-based paint and/or lead based paint hazards are present in the housing (explain).
Structure was constructed prior to 1950 and it is likely that lead based paint was used in building components at that time.
(☐) Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b.) Records and reports available to the Landlord (check one below):

- (☐) Landlord has provided the Tenant with all available records and reports pertaining to lead-based paint and/or lead based paint hazards in the housing (list documents below).

- (X) Landlord has no reports or records pertaining to lead-based paint and/or lead-based hazards in the housing.

Tenant's acknowledgement (initial)

_____ (c.) Tenant has received copies of all information listed above.

_____ (d.) Tenant has received the pamphlet *Protect Your Family From Lead in Your Home*

_____ (e.) Tenant has received a copy of the lead inspection certificate from Landlord (to be delivered to the Tenant upon receipt in November 2011).

_____ (f.) Tenant has received a copy of the Notice of Tenants' Rights, a Maryland Department of Environment publication from Landlord, as required by Annotated Code of Maryland, Environment Section 6-820.

Certification of Accuracy

By signing this lease, the parties agree that they have reviewed the information above and certify; to the best of their knowledge, that the information provided by the signatory is true and accurate.

LANDLORD: The City of Hagerstown

TENANT: Clayton Layman

By: _____

Title: _____

Date

Witness:

Date

The Studios on NoPo Tenant Handbook

Welcome to the Studios on NoPo!

This tenant handbook has been created for easy reference of answers to anticipated questions.

Maintenance Requests: Please see the *Residential Maintenance Request Information* at the end of this handbook.

Common Areas: The second floor lounge is considered a common area. Tenants are encouraged to use this area to enhance the enjoyment of their stay.

Noise: All residents and guests of the Studios on NoPo must conduct themselves in a respectful manner to the other residents and guests. Noise levels must be reasonable so as to not impair the quiet enjoyment of the other residents.

Entrance Vestibule: The entrance area is a common space. Tenants shall not change, alter, decorate or store any items in this area.

Landscaped Areas: The Landlord will maintain all landscaped areas. Tenants are not permitted to alter or change any landscaping without prior permission from the Landlord. At no time shall a planter, plant or support for a plant be attached to the structure or any component of the structure without prior permission from the Landlord.

Sanitation - Exterior of Structure: The Landlord shall maintain the exterior of the structure in a clean and sanitary manner. Tenants are responsible for ensuring that all household rubbish and garbage is secured in leak proof containers. Grocery or similar bags cannot be used for the temporary storage of rubbish and garbage. Additionally, tenants are responsible for the timely removal of any litter caused by said tenant or their guests.

Recycling: The City of Hagerstown offers numerous recycling programs. The Landlord encourages all tenants and their guests to participate in the recycling programs.

Exterior Storage: Tenants are prohibited from storing (temporarily or long-term) any items outside their dwelling unit. Boxes, household items, cleaning instruments, and other such personal items must not be stored on the exterior of the structure. Items left in the common areas and entrance vestibule will be considered discarded. As such they will be disposed of at the tenant's expense.

Stickers, flags, banners, signs, posters, or similar items: Such items are prohibited on the exterior of your dwelling unit or affixed to the interior of the unit in such a manner as to intend them to be visible on the exterior of the structure.

Smoking/Burning: Smoking is ONLY permitted at the exterior rear area of premises. Candles, Incense or similar burning devices: Use of these or any such item is prohibited.

Clothes lines, exterior blinds or similar items: These items are prohibited.

Pets: Pets are permitted, as outlined in the Lease Agreement.

Yard Sales, Flea Markets, and Porch Sales: Permission must be obtained from the Landlord prior to conducting any such sale on the premises.

Window Treatments: Mini-blinds are provided for each window. Tenants may add window treatments with permission of the Landlord. However, such window treatments must be designed and constructed for that purpose. Window treatments visible to the exterior of the structure shall not contain any messages, (written or drawn). Sheets, blankets, drawn characters, or items considered signs shall not be used as additional window treatments. The mini-blinds shall not be removed without prior permission from the Landlord.

City, State, and Federal Laws, Codes, Ordinances: Tenants and their guest must comply with any and all laws, codes, and ordinances. Any costs incurred by the Landlord for the tenants violating the above shall be billed as rent on the next following month.

These rules are hereby incorporated into the lease and are part of said lease. Violations of rules and regulations constitute a material violation of said lease.

Acknowledge of Receipt

Tenant

Rev. 3/2014

Exhibit 3
WIRELESS NETWORK BENEFIT

A wireless internet connection is available via a secured network to the tenants of the *Studios on NoPo* at 38 North Potomac Street, Hagerstown, MD. This access is for the exclusive benefit of our tenants, with the following understandings:

- The access of this network is not to be used for any commercial venture or any illegal activity.
- The use of this wireless network is not and will not be included in the lease agreement.
- The owners may at any time without cause or notice eliminate access to this network. The tenant is prohibited from giving others the access code to this secured network.
- The owners do not warrant against any damage or injury from the use of or access to the internet via this connection. The tenant assumes all risk associated with use of the internet and releases, indemnifies, and holds harmless the owners in regards to internet access, the tenant's computer and associated components and related activities.

RELEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

Whereas, The City of Hagerstown, hereinafter known as the "owners" desire to make available to the tenants of the *Studios on NoPo*, Secured Network Wireless Internet, and

Whereas, the herein named tenant desires to use said Secured Network Wireless Internet, the tenant hereby releases the owners, their agents or assignees of any and all liability either real or perceived arising from damage to personal property or personal injury in gaining access to or the use of said Secured Network Wireless Internet. The tenant hereby releases, indemnifies, and holds harmless the owners in reference to the herein described activity.

The tenant further acknowledges that access to and use of said Secured Network Wireless Internet is not a requirement of any lease or other written or verbal agreement. Further that the access to and use of said Secured Network Wireless Internet may be terminated by the owners without notice or cause.

Further, tenant agrees and affirms that the tenant shall follow all laws associated with internet use and use ordinary care in the access of the Secured Network Wireless Internet. The tenant agrees and affirms that any and all damage caused to *The Studios on NoPo*, equipment or building systems by the tenant's unlawful use of the internet shall be the sole responsibility of the tenant.

Tenant

Date

City of Hagerstown

Date

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION AND
DELIVERY OF A LEASE BETWEEN THE CITY OF HAGERSTOWN
AND CLAYTON LAYMAN FOR THE RESIDENCE KNOWN AS
38 NORTH POTOMAC STREET, UNIT 2**

RECITALS

WHEREAS, The City of Hagerstown, Maryland owns and operates an art gallery known as *The Studios on NoPo*, as well as maintaining artist loft residential housing at 38 North Potomac Street within the corporate limits of the City of Hagerstown; and

WHEREAS, Clayton Layman desires to enter into a residential lease with the City of Hagerstown for 38 North Potomac Street, Unit 2; and

WHEREAS, the Mayor and Council find it in the best interest of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing recitals be and are incorporated herein as if restated verbatim.
2. That the Council hereby authorizes the lease of the residence known as 38 North Potomac Street, Unit 2 Hagerstown, Maryland to Clayton Layman pursuant to the terms of the Residential Lease for said premises, a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver the Residential Lease and any further documents and take any additional action necessary to effectuate the purpose to this resolution.

BE IT FURTHER RESOLVED enacted and ordained that this Resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
SALVATORE & BOYER, City Attorneys

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: Residential Lease for 38 N. Potomac Street - Apt. 3

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

REQUIRED_MOTION_Jobe_Apt_3.pdf
IAN_JOBE_Artist_Lofts_Residential_Lease_(2).pdf
Resolution_-_Artist_Lofts_Unit_3_(Jobe)031416.pdf

Description

Motion
Lease Agreement
Resolution

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

DATE: March 22, 2016

TOPIC: **Approval of a Resolution: Execution of a residential Lease Agreement for the City of Hagerstown property located at 38 North Potomac Street Apt #3, Hagerstown, MD.**

Charter Amendment	—
Code Amendment	—
Ordinance	—
Resolution	<u>X</u>
Other	—

MOTION: I hereby move that the Mayor and City Council approve the attached resolution authorizing the execution of a residential Lease Agreement at the City of Hagerstown property located at 38 North Potomac Street in Hagerstown, MD. The Lease will be between the City of Hagerstown and Ian Jobe and shall be in effect from April 1, 2016 to March 31, 2017.

DATE OF INTRODUCTION:	03/22/2016
DATE OF PASSAGE:	03/22/2016
EFFECTIVE DATE:	03/22/2016

Residential Lease

THIS LEASE made on the 22nd day of March, 2016, between City of Hagerstown, Landlord, and Ian Jobe, Tenant.

WITNESSETH, that the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, premises known as *The Studios on NoPo*, 38 North Potomac Street, Apartment #3, Hagerstown, Maryland 21740.

1. **TERM.** This Lease shall be for a term of one year, beginning on the 1st day of April 2016 and ending on the 31st day of March, 2017. Thereafter, the Tenant shall be considered a month to month, periodic tenant.

2. **RENT.** Total annual rent of Five Thousand Four Hundred Dollars (\$5,400) payable in equal monthly installments of Four Hundred Fifty Dollars (\$450) per month in advance on the first day of each and every month of said term, without deduction or demand at the office of the Landlord at the cashier's office, 1 East Franklin Street, Hagerstown, MD.

If this Lease commences on a day other than the first of the month, the pro-rated amount of rent for the balance of the first month shall be paid to the Landlord at the time of possession. Thereafter, rent shall be paid on the first day of each month according to the amounts described above.

3. **SERVICE CHARGES.** Landlord shall have the right to require rent payments to be made in cash, money order, Cashier's Check and/or certified check. A service charge of \$35.00 will automatically be made for each instance in which a check is returned unpaid by the Tenant's bank for any reason. A late Charge of five percent (5%) of the amount of rent due for the monthly rental period shall be assessed for any payment delinquent ten (10) days after the due date.

4. **SECURITY DEPOSIT.** In addition to payment of the first month's rent, Tenant, upon the execution of this Lease, will deposit with Landlord the sum of \$450 as Security Deposit. If the Tenant has a pet within the guidelines outlined in Section 9 of this lease, an additional \$250 shall be collected as the Pet Deposit.

This Security Deposit shall be held as security by Landlord for the full and complete performance by Tenant of Tenant's obligations under this Lease, and shall be applied at the expiration of the term of this Lease, or any extensions, thereof, if any, on account of any unpaid rent, damage due to breach of this Lease or damage to the premises by Tenant, Tenant's family, agents, or social guests in excess of ordinary wear and tear. In no event, shall Tenant apply the Security Deposit toward any month's rent due under this Lease, without prior written consent of Landlord. In the event Tenant shall have fully and completely performed Tenant's obligations under this Lease upon its termination, the Security Deposit shall be refunded to Tenant within forty-five (45) days after the termination of the Lease in accordance with the terms hereof, together with simple interest which shall have accrued in the amount required by State law, currently three percent (3%) per annum, from the receipt of the Security by Landlord. Landlord shall, upon written request of Tenant, made within fifteen (15) days of the occupancy of the premises by Tenant, promptly provide Tenant with a written list of all existing damages, if any, on the premises. Upon tenant's written notification to Landlord of Tenant's intention to vacate premises, the date of moving and Tenant's new address, Tenant has the right to be present when Landlord inspects the premises in order to determine the existence of any damages caused during the tenancy. Upon receipt of Tenant's written notice of Tenant's intention to vacate premises, Landlord shall notify Tenant in writing of the date and time when the premises are to be inspected. The date of inspection shall occur within five (5) days before or five (5) days after the date of moving as designated in Tenant's written notice.

5. **DELIVERY OF POSSESSION.** Delivery of possession shall occur only after the first month's rent and security deposit have been paid to the Landlord. The Landlord shall then tender two key sets for the premises to the Tenant.

6. **SUBLEASE.** Tenant shall not assign this Lease or sublet the premises, or any portion thereof, or transfer possession or occupancy thereof to any other person or persons without prior written consent of Landlord.

7. **OCCUPANTS.** Tenant agrees that the premises shall be occupied by the individuals listed below, and as set forth in the NoPo Studio Application, who are specifically declared as follows:

- Ian Jobe (Tenant)
- _____ (Tenant)

Otherwise, children of the above-listed Tenants are allowed to occupy the premises. Additional persons will be permitted to occupy the Premises only upon written consent of the Landlord. Guests of Tenant will be considered additional occupants of the Premises if any such guest remains on the Premises for more than five (5) days in any 30 day period. Tenant shall notify Landlord immediately if Tenant intends to have a guest for more than five days.

8. **THE STUDIOS ON NOPO APPLICATION.** In connection with The Studios on NoPo Application, Tenant has submitted asset verification, employment verification, rental verification, and income certification statements, all of which are considered a part of the Studios on NoPo Application. Tenant has also provided authorization for the Landlord to perform credit report check(s) and criminal background check(s) for the household member(s). The parties acknowledge that Landlord relies upon the information given by Tenant in the Rental Application to enter into this Lease, and said information is incorporated herein by reference as fully as if attached hereto.

9. **ANIMALS.** One cat or dog under 25 pounds is permitted in each studio apartment, after paying the Pet Deposit described above in Section 4.

10. **MAINTENANCE, CONDITIONS, NOISE AND ALTERATIONS.**

(a) Tenant has examined the Premises and all appliances and equipment thereon owned by Landlord, and hereby accepts them in their "AS IS" condition and acknowledges that Landlord has made no representations or warranties, either expressed or implied, as to the condition or use of the Premises. Tenant shall immediately notify Landlord of any defects or dangerous conditions. Tenant shall keep the Premises in good order and condition and shall pay Landlord promptly for any repairs to the Premises or its equipment caused by Tenant's negligence or misuse or by the negligence or misuse of tenant's invitees, licensees or guests. Tenant shall return the Premises and all fixtures, appliances and improvements therein owned by Landlord in substantially the same condition as received, including but not limited to, general cleanliness and upkeep. Tenant acknowledges that Tenant shall pay to Landlord, upon vacating the Premises, expenses as may be incurred to restore the Premises to the condition in which it was delivered to Tenant at the commencement of this Lease, reasonable wear and tear excepted.

(b) Tenant shall not make any alterations or additions to the Premises without the prior written consent of Landlord.

(c) Tenant shall maintain the premises in a clean and sanitary condition at all times; and complies with all laws, ordinances and regulations, health, fire and police regulations with respect to the Premises. Tenant shall indemnify and save Landlord from all liability arising out of any violation by Tenant of such laws or regulations or arising out of any neglect or any violation or non-performance by the Tenant of any of the covenants contained in this Lease. Landlord shall monitor the condition of the premises and maintenance of the property. If the Tenant is negligent and Landlord incurs cost to maintain property, or be charged fines or fees the tenant will subsequently be charged for any and all costs incurred and shall be due as additional RENT.

(d) Tenant shall keep all plumbing from becoming obstructed due to negligence. NOTE: the sanitary sewer system may only be used for its designed and intended purposes. No diapers, condoms, paper towels, feminine hygiene products, or like materials may be flushed in the sanitary sewer system. If the plumbing becomes obstructed because of Tenant negligence or deliberate acts, Tenant shall pay the costs to have lines cleared.

(e) Tenant shall keep noise of occupants and guests and noise from radios, television sets, stereos, etc. to a level of sound that does not annoy or interfere with neighbors.

11. UTILITIES. The Landlord shall provide the utilities listed in Column 1 without any additional charge to the Tenant. The utilities listed in Column 2 are not included in the rent and are to be paid solely by the Tenant. The utilities payable by the tenant in Column 2 shall be considered additional rent.

Utility	Column 1 Landlord Paid	Column 2 Tenant Paid
Heating (Electric)		X
Hot Water (Electric)		X
Cooking (Electric)		X
Lights (Electric)		X
Water/Sewer/Trash Collection	X	
Phone/Cable TV/Hard-Wired Internet		X

12. INSPECTION. Landlord shall have the right to enter the Premises at all reasonable times necessary to inspect the Premises, to control pests and vermin, and to make necessary repairs to and maintain the Premises, including but not limited to, the heating, ventilation and air conditioning systems, the plumbing system, the electrical systems, etc. When practical, the Landlord shall give Tenant a one (1) day posted written notice of its intent to inspect the premises and the approximate time for said inspection. The notice shall be posted to the front door and such posting shall meet all requirements for said notice. In case of emergency, Landlord may enter the premises immediately and without notice to Tenant. During the last 60 days of the term of this Lease or any extension thereof, Landlord or its Agent may enter the premises during daylight hours to exhibit the same, and place a "for rent" or "for sale" sign thereof.

13. USE OF PREMISES. The Premises shall be primarily used for residential and light artistic use, not to include industrial arts. Tenant shall comply with all requirements of the Landlord and by all applicable laws, ordinances, and governmental regulations. No smoking or burning of incense or candles shall be permitted on the premises.

14. INDEMNIFICATION. The tenant agrees to indemnify, exonerate and save the landlord harmless from any and all suits, claims for loss, expenses, damages or injury to person or property sustained on the premises or

arising out of the use of the premises by the tenant or the tenant's family, employees, invitees, guests or licensees.

15. **HANDBOOK.** The Tenant shall be in compliance with all property rules and regulations in the booklet titled, *The Studios on NoPo Tenant Handbook*, revised 3/2014 and hereby incorporated into this lease by reference and attached at Exhibit 2.

16. **ILLEGAL ACTIVITY.** Notwithstanding anything which in any way might be construed to the contrary, it shall be deemed to be a material breach of this Lease for Tenant, or any member of the Tenant's household to engage in and/or to suffer the engagement in any criminal activity, including drug-related criminal activity, on or off the premises, while such Tenant is a Tenant in occupancy of any housing unit under control of Landlord. The term "drug-related criminal activity" shall mean the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance [as defined in Section 102 of the Controlled Substance Act (U.S.C. 802) as amended].

17. **INSURANCE.** Tenant acknowledges that Landlord maintains insurance on the Premises, which insurance does not protect the personal property, possessions, or personal liability of Tenant. Tenant must consult her own Agent for insurance protection. It is the responsibility of the Tenant to obtain adequate insurance on personal property of Tenant placed on, in, or about the premises.

18. **CASUALTY.**

(a) If the Premises is damaged or destroyed by fire or other casualty to an extent that the use of the Premises is substantially impaired, Tenant may immediately vacate the Premises and may terminate this Lease upon written notice to Landlord given within ten (10) days of Tenant's vacation of the Premises. In the event Tenant remains in possession of the damaged Premises, Rent shall be reduced in proportion to the impairment of use of the premises until same are repaired.

(b) In the event the Premises are damaged by fire or other casualty, and Landlord elects not to restore, repair and rebuild, Landlord may terminate this Lease by giving written notice to Tenant, whereupon Tenant shall promptly vacate the premises. Rent shall be paid through the date Tenant vacates.

19. **CONDEMNATION.**

(a) If the whole or any part of the Premises shall be taken by any competent authority for public or quasi-public use or purpose, then and in that event, this Lease shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose.

(b) All damages awarded for such taking shall belong to and be the property of Landlord. Tenant shall not be entitled to any sum from Landlord or the condemning authority as compensation for the loss to the unexpired Term, nor for any other damages.

20. **BREACH AND REMEDIES.** If Tenant breaches this Lease, Landlord may repossess the Premises pursuant to judicial process, and Landlord shall have other rights as may be allowed by law. Tenant will pay the court costs charged to Landlord for notice sent for non-payment of rent, and Tenant also agrees to reimburse Landlord for all reasonable expenses incurred by Landlord, including attorney's fees as Additional Rent, if ejectment is ordered by the court.

21. **ATTORNEY FEES.** If Landlord be compelled to incur any expenses including reasonable attorney's fees in instituting and prosecuting any action or proceeding by reason of any default of Tenant hereunder, the

sum or sums so paid by Landlord with all interest, costs, and damages shall be deemed to be additional rent hereunder and shall be due from Tenant to Landlord on the 1st day of the month following the incurring of such respective expenses. Tenant agrees to reimburse Landlord for any reasonable attorney fees incurred by Landlord in enforcing the provisions of this Lease. In the event that Tenant files suit against Landlord in connection with this lease and Tenant is unsuccessful in obtaining a judgment against Landlord, Tenant agrees to pay Landlord's reasonable attorney fees in defending said suit.

22. EXTENDED ABSENCES. Tenant shall give Landlord prior written notice of any anticipated absence from the premises in excess of seven (7) days, during which absence Landlord may enter the premises as reasonably necessary. In the event Tenant fails to give notification to Landlord of an extended absence in excess of seven (7) days, Landlord may recover actual damages, if any, from Tenant.

23. ENTIRE AGREEMENT. The provisions hereof together with the Rental Application and the Rules and Regulations which are incorporated herein by reference along with any addendum attached hereto and initialed by the parties represent the complete and entire agreement between the parties with respect to the Premises. This Lease cannot be changed or supplemented except by agreement in writing signed by both parties.

24. DEFAULT. If the premises are abandoned or become vacant during the term, the Lessor or its agents may re-enter the same by force or otherwise without being liable to any prosecution therefore and, in addition to any other remedies, re-rent the premises in whole or in part as the agent of the Lessee who in all events shall remain liable for any unpaid rentals for the full term of this Lease. Lessor may receive the rent from any such re-rental applying the same first to the payment of such expenses as the Lessor may incur in re-entering and re-letting, and then to the payment of the rent due hereunder.

If any default is made in the payment of the rent due hereunder including utilities, or if any default or violation be made in the performance of any of the covenants and agreements herein contained on the part of the Lessee to be performed, and if such default shall not be cured by the Lessee within fifteen (15) days after receipt by the Lessee of written notice from the Lessor of such default, then the relation of Lessor and Lessee, at the option of the Lessor, shall wholly cease and determine and, in addition to any other remedies, the Lessor may re-enter the premises by force, if necessary, and remove all persons therefrom and distrain for rent, if any be due, and assume and take possession of the premises and Lessee's property therein; and the Lessee, in any such event, expressly waives the service of any notice to Quit or Demand for Possession, but the Lessee shall, nevertheless, remain liable for any unpaid rental for the full term of this Agreement.

If any legal process whatsoever shall be issued for the purpose of attaching or taking in execution of any of Lessee's chattels located on the premises or Lessee's interest in the premises created by this Agreement, or if Lessee shall petition or have a petition filed against him to be adjudicated a bankrupt or insolvent, and such petition is not removed within ten (10) days, or if a receiver or trustee shall be appointed for Lessee's business or property, or if Lessee shall make a general assignment for the benefit of creditors, or if a corporate reorganization of Lessee or any arrangement with Lessee's creditors shall be approved by a court under any provision of the Federal Bankruptcy law, or if, in any other manner, the Lessee's interest under this Agreement would otherwise pass to another by operation of law, or if Lessee, without Lessor's prior written consent, shall assign or transfer to another in bulk, and not in the ordinary course of business, a major part of the materials, supplies, merchandise and other inventory, or substantially all of the fixtures and equipment located on the premises, then in any such event, Lessee shall be deemed to have committed a material breach of this Agreement and the Lessor may, at its option, forthwith by written notice re-enter the premises, and re-rent the premises as the agent for the Lessee. Notwithstanding any such

action(s) by Lessor, Lessee shall in all events remain liable for any unpaid rental for the full term of this Lease.

Lessee hereby expressly waives the benefits of all laws exempting property of any amount or value from levy and sale on execution of distress for rent, or upon any execution under any judgment that may be recovered from rent due under this Agreement.

Lessor shall in all events be entitled to the benefit of all provisions of applicable laws respecting the speedy recovery of lands and tenements held over by Tenants or proceedings in forcible entry and detainer.

25. FAILURE TO PERFORM. Tenant covenants that in case Landlord, by reason of the failure of Tenant to perform any of the provisions hereof, shall be compelled to pay or shall pay any sum of money, or shall be compelled to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, together with all interest, costs and damages, shall be added to the next installment of rent due or to any subsequent installment of rent and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved.

26. ADDITIONAL ITEMS / REQUIREMENTS.

1. Tenant, in addition to rent, commits to assist in the operation of the Art Gallery on the first floor of the premises by contributing time at the Gallery without compensation for a minimum of five (5) hours per week. This obligation shall be scheduled through the Gallery Coordinator. Tenant may also display his own art in the Gallery, which display shall be subject to the discretion of the Gallery Coordinator.

2. The terms of the Lease shall include the terms of the Tenant Handbook, a copy of which is incorporated herein as Exhibit 2.

4. Attached as Exhibit 1 is a lead paint notification.

5. Attached as Exhibit 3 is the wireless network benefit.

27. CRIME FREE HOUSING. Tenant, any members of the Tenant's household or a guest or other persons affiliated with the Tenant or affiliated with any member of the Tenant's household:

a. Shall not engage in criminal activity at, on or near the said premises. "Criminal activity" means the commission of any of the acts defined in the Maryland Criminal Law Code Annotated, as from time to time amended.

b. Shall not engage in any act intended to facilitate criminal activity and shall not permit the premises to be used for or to facilitate criminal activity, regardless of whether the individual engaging in the activity is a Tenant, a member of the Tenant's household, a guest, or another person affiliated with the Tenant.

c. Violation of the above provisions shall be a material breach of the Lease and good cause for immediate termination of tenancy. Proof of a violation of the Lease hereunder shall not require a criminal conviction, but shall be by a preponderance of the evidence.

28. MODIFICATIONS. The provisions contained in this Lease shall not be changed or modified without express consent of Tenant and Landlord.

29. SEVERABILITY. In the event that any term or condition of this Lease shall be determined to be void or

unenforceable for any reason, then notwithstanding such determination, the balance of this Lease shall nonetheless remain in full force and effect and be construed and applied as though that term or condition was not contained herein.

This Lease contains the entire understanding between the parties hereto. There are no representations, warranties or agreements concerning the subject matter of this Lease other than as expressly set forth herein.

LANDLORD: The City of Hagerstown

TENANT: Ian Jobe

Signed: _____

Print: David S. Gysberts

Title: Mayor of the City of Hagerstown

Witness:

Witness:

Exhibit 1

LEAD-BASED PAINT DISCLOSURE

Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards

Lead Warning Statement:

Every Tenant of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Landlord of any interesting residential real property is required to provide the Tenant with any information on lead-based paint hazards from risk assessments or inspections in the Landlord's possession and notify the Tenant of any known lead-based paint hazards. A risk assessment or inspections for possible lead-based paint hazards is recommended prior to occupancy of the rental property.

Landlord's Disclosure (initial)

_____ (a.) Presence of lead-based paint and/or lead-based hazards (check one below):

- (☒) Known lead-based paint and/or lead based paint hazards are present in the housing (explain).
Structure was constructed prior to 1950 and it is likely that lead based paint was used in building components at that time.
- (☐) Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b.) Records and reports available to the Landlord (check one below):

- (☐) Landlord has provided the Tenant with all available records and reports pertaining to lead-based paint and/or lead based paint hazards in the housing (list documents below).

- (X) Landlord has no reports or records pertaining to lead-based paint and/or lead-based hazards in the housing.

Tenant's acknowledgement (initial)

_____ (c.) Tenant has received copies of all information listed above.

_____ (d.) Tenant has received the pamphlet *Protect Your Family From Lead in Your Home*

_____ (e.) Tenant has received a copy of the lead inspection certificate from Landlord (to be delivered to the Tenant upon receipt in November 2011).

_____ (f.) Tenant has received a copy of the Notice of Tenants' Rights, a Maryland Department of Environment publication from Landlord, as required by Annotated Code of Maryland, Environment Section 6-820.

Certification of Accuracy

By signing this lease, the parties agree that they have reviewed the information above and certify; to the best of their knowledge, that the information provided by the signatory is true and accurate.

LANDLORD: The City of Hagerstown

TENANT: Ian Jobe

By: _____

Title: _____

Date

Witness:

Date

Exhibit 2

The Studios on NoPo Tenant Handbook

Welcome to the Studios on NoPo!

This tenant handbook has been created for easy reference of answers to anticipated questions.

Maintenance Requests: Please see the *Residential Maintenance Request Information* at the end of this handbook.

Common Areas: The second floor lounge is considered a common area. Tenants are encouraged to use this area to enhance the enjoyment of their stay.

Noise: All residents and guests of the Studios on NoPo must conduct themselves in a respectful manner to the other residents and guests. Noise levels must be reasonable so as to not impair the quiet enjoyment of the other residents.

Entrance Vestibule: The entrance area is a common space. Tenants shall not change, alter, decorate or store any items in this area.

Landscaped Areas: The Landlord will maintain all landscaped areas. Tenants are not permitted to alter or change any landscaping without prior permission from the Landlord. At no time shall a planter, plant or support for a plant be attached to the structure or any component of the structure without prior permission from the Landlord.

Sanitation - Exterior of Structure: The Landlord shall maintain the exterior of the structure in a clean and sanitary manner. Tenants are responsible for ensuring that all household rubbish and garbage is secured in leak proof containers. Grocery or similar bags cannot be used for the temporary storage of rubbish and garbage. Additionally, tenants are responsible for the timely removal of any litter caused by said tenant or their guests.

Recycling: The City of Hagerstown offers numerous recycling programs. The Landlord encourages all tenants and their guests to participate in the recycling programs.

Exterior Storage: Tenants are prohibited from storing (temporarily or long-term) any items outside their dwelling unit. Boxes, household items, cleaning instruments, and other such personal items must not be stored on the exterior of the structure. Items left in the common areas and entrance vestibule will be considered discarded. As such they will be disposed of at the tenant's expense.

Stickers, flags, banners, signs, posters, or similar items: Such items are prohibited on the exterior of your dwelling unit or affixed to the interior of the unit in such a manner as to intend them to be visible on the exterior of the structure.

Smoking/Burning: Smoking is ONLY permitted at the exterior rear area of premises. Candles, Incense or similar burning devices: Use of these or any such item is prohibited.

Clothes lines, exterior blinds or similar items: These items are prohibited.

Pets: Pets are permitted, as outlined in the Lease Agreement.

Yard Sales, Flea Markets, and Porch Sales: Permission must be obtained from the Landlord prior to conducting any such sale on the premises.

Window Treatments: Mini-blinds are provided for each window. Tenants may add window treatments with permission of the Landlord. However, such window treatments must be designed and constructed for that purpose. Window treatments visible to the exterior of the structure shall not contain any messages, (written or drawn). Sheets, blankets, drawn characters, or items considered signs shall not be used as additional window treatments. The mini-blinds shall not be removed without prior permission from the Landlord.

City, State, and Federal Laws, Codes, Ordinances: Tenants and their guest must comply with any and all laws, codes, and ordinances. Any costs incurred by the Landlord for the tenants violating the above shall be billed as rent on the next following month.

These rules are hereby incorporated into the lease and are part of said lease. Violations of rules and regulations constitute a material violation of said lease.

Acknowledge of Receipt

Tenant

Rev. 3/2014

Exhibit 3
WIRELESS NETWORK BENEFIT

A wireless internet connection is available via a secured network to the tenants of the *Studios on NoPo* at 38 North Potomac Street, Hagerstown, MD. This access is for the exclusive benefit of our tenants, with the following understandings:

- The access of this network is not to be used for any commercial venture or any illegal activity.
- The use of this wireless network is not and will not be included in the lease agreement.
- The owners may at any time without cause or notice eliminate access to this network. The tenant is prohibited from giving others the access code to this secured network.
- The owners do not warrant against any damage or injury from the use of or access to the internet via this connection. The tenant assumes all risk associated with use of the internet and releases, indemnifies, and holds harmless the owners in regards to internet access, the tenant's computer and associated components and related activities.

RELEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

Whereas, The City of Hagerstown, hereinafter known as the "owners" desire to make available to the tenants of the *Studios on NoPo*, Secured Network Wireless Internet, and

Whereas, the herein named tenant desires to use said Secured Network Wireless Internet, the tenant hereby releases the owners, their agents or assignees of any and all liability either real or perceived arising from damage to personal property or personal injury in gaining access to or the use of said Secured Network Wireless Internet. The tenant hereby releases, indemnifies, and holds harmless the owners in reference to the herein described activity.

The tenant further acknowledges that access to and use of said Secured Network Wireless Internet is not a requirement of any lease or other written or verbal agreement. Further that the access to and use of said Secured Network Wireless Internet may be terminated by the owners without notice or cause.

Further, tenant agrees and affirms that the tenant shall follow all laws associated with internet use and use ordinary care in the access of the Secured Network Wireless Internet. The tenant agrees and affirms that any and all damage caused to *The Studios on NoPo*, equipment or building systems by the tenant's unlawful use of the internet shall be the sole responsibility of the tenant.

Tenant

Date

City of Hagerstown

Date

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION AND
DELIVERY OF A LEASE BETWEEN THE CITY OF HAGERSTOWN
AND IAN JOBE FOR THE RESIDENCE KNOWN AS
38 NORTH POTOMAC STREET, UNIT 3**

RECITALS

WHEREAS, The City of Hagerstown, Maryland owns and operates an art gallery known as *The Studios on NoPo*, as well as maintaining artist loft residential housing at 38 North Potomac Street within the corporate limits of the City of Hagerstown; and

WHEREAS, Ian Jobe desires to enter into a residential lease with the City of Hagerstown for 38 North Potomac Street, Unit 3; and

WHEREAS, the Mayor and Council find it in the best interest of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing recitals be and are incorporated herein as if restated verbatim.
2. That the Council hereby authorizes the lease of the residence known as 38 North Potomac Street, Unit 3 Hagerstown, Maryland to Ian Jobe pursuant to the terms of the Residential Lease for said premises, a copy of which is attached hereto and incorporated herein by reference.
3. That the Mayor be and is hereby authorized to execute and deliver the Residential Lease and any further documents and take any additional action necessary to effectuate the purpose to this resolution.

BE IT FURTHER RESOLVED enacted and ordained that this Resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

By: _____
David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
SALVATORE & BOYER, City Attorneys

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: Authorizing the Sale of 278 S. Prospect Street for Homeownership - Community's City Center Plan Catalytic Project #8

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

REQUIRED_MOTION_Sale_of_278_S_Prospect.pdf
Resolution_-_278_S__Prospect_St_(2).pdf
Updated_Contract_OF_SALE-278_S__Prospect_031616.pdf

Description

Motion
Resolution
Contract of Sale

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

March 22, 2016

**TOPIC: Approval of a Resolution: Authorizing the Sale of Property Located at
278 South Prospect Street for the City's Homeownership Program -
Community's City Center Plan Catalytic Project #8**

Charter Amendment	—
Code Amendment	—
Ordinance	—
Resolution	<u>X</u>
Other	—

MOTION: I hereby move for the Mayor & City Council to approve a resolution authorizing the sale of property located at 278 South Prospect Street for the City's Homeownership Program. The property will be conveyed to Piotr Zielinski and Delia Zielinski for a sale price of \$75,000. The sale will be in accordance with all terms and conditions of the attached contract.

DATE OF INTRODUCTION:	03/22/2016
DATE OF PASSAGE:	03/22/2016
EFFECTIVE DATE:	03/22/2016

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION TO APPROVE THE
SALE OF
278 SOUTH PROSPECT STREET, HAGERSTOWN, MARYLAND
TO PIOTR ZIELINSKI AND DELIA ZIELINSKI**

RECITALS

WHEREAS, the City of Hagerstown, Maryland (the “City”) operates a Homeownership Program, utilizing Community Development Block Grant funds to purchase, rehabilitate and sell residential properties within the City of Hagerstown; and

WHEREAS, On May 15, 2015 the Mayor and Council approved by Ordinance (the “Ordinance”) the acquisition, rehabilitation and sale of a property located at 278 South Prospect Street in Hagerstown, Maryland (hereinafter the “Property”); and

WHEREAS, at the time of the City’s acquisition of the Property, it consisted of substandard rental dwellings, had been vacant for a period of time and had become a blighting influence on the South Prospect Street neighborhood; and

WHEREAS, pursuant to the Ordinance, City staff has coordinated the rehabilitation of the Property and offered it for sale through the City Homeownership Program; and

WHEREAS, City staff has reviewed applications for the purchase of the Property pursuant to established City guidelines and recommended the Property be sold to Piotr Zielinski and Delia Zielinski; and

WHEREAS, the Mayor and Council believe that the acquisition, rehabilitation and sale of the Property through the Homeownership Program is consistent with the community’s City Center Plan Catalyst Project No. 8 as well as the goals and priorities of the Mayor and Council; and

WHEREAS, in the Ordinance, the Mayor and Council have previously expressly determined that the Property is not needed for a public purpose; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to do so;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.

2. That the sale of 278 South Prospect Street through the City's Homeownership Program to Piotr Zielinski and Delia Zielinski be and is hereby approved.

3. That the Mayor be and is hereby authorized to execute and deliver the Contract of Sale for 278 South Prospect Street, a copy of which is attached hereto and incorporated herein by reference.

4. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid contract of sale.

BE IT FURTHER RESOLVED THAT this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler,
City Clerk

David S. Gysberts, Mayor

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

PREPARED BY:
SALVATORE & BOYER, LLC
CITY ATTORNEYS

CONTRACT OF SALE

THIS AGREEMENT is made this ____ day of _____, 2016, by and between The City of Hagerstown, a Maryland Municipal Corporation (hereinafter "Seller" or "City"), and Piotr Zielinski and Delia Zielinski (hereinafter "Buyer").

WHEREAS, the Seller is the owner of certain land in Hagerstown, Washington County, Maryland which it desires to sell through its Homeownership Program; and

WHEREAS, the Buyer wishes to purchase land through the City of Hagerstown Homeownership Program;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That the Seller, in consideration of the covenants hereinafter entered into by the Buyer, agrees to sell and does sell to the Buyer, and the Buyer agrees to buy and does buy, subject to the terms and conditions hereinafter set forth, all the following described property:

A tract of land known as 278 South Prospect Street, being all of the property acquired by the Seller by deed dated August 27, 2015 and recorded among the Land Records of Washington County, Maryland, in Liber 5049, folio 439, together with all buildings and other improvements situated thereon and all fixtures located on, attached to, or used in connection with the buildings and other improvements situated thereon and together with all and singular the rights and appurtenances pertaining to such land, including any right, title and interest of the Seller in and to adjacent streets, roads, alleys and rights of way and in, to and under any and all leases affecting such land (the "Premises"), at and for a total purchase price of Seventy Five Thousand and 00/100 Dollars (\$75,000.00), payable on the date of settlement. The Buyer agrees to purchase said property and to pay to the Seller the sum as set forth above.

1. Unless extended by the mutual consent of the parties, settlement shall occur within thirty (30) days of the satisfaction of all contingencies but in no event later than August 31, 2016, at the office of Buyer's attorney.

2. Possession shall be given at the time of settlement, except that Buyer may enter upon the premises at any time and for any purpose reasonably necessary for the inspection of the property by the Buyer or Buyer's agents.

3. All costs of sale shall be borne by the Buyer except for the cost of the preparation of the deed which shall be borne by the Seller.

4. All rent, water rent, real estate and any and all public charges which may exist as liens upon the property shall be apportioned as of the date of settlement.

5. The above described property is to be held at the risk of the Seller until legal

title has passed.

6. This Contract is contingent upon the ability of the Buyer to sell and settle upon their present residence known as 12905 Ardennes Avenue, Rockville, Montgomery County, Maryland. Buyer agrees to use its good faith, best efforts to obtain a buyer and shall promptly and diligently make reasonable efforts to do so, including engaging a licensed realtor. The Buyer will not unreasonably refuse to accept a bona fide written offer to purchase their residence. In the event that Buyer is unable to sell the above referenced property within one hundred twenty (120) days from the date hereof, Buyer shall have the right, but not the obligation to declare this Contract null and void by service of a written notice of termination upon Seller on or before July 31, 2015.

7. The parties acknowledge that this property is being sold for less than fair market value pursuant to the City's Homeownership Program in order to promote the City's homeownership efforts. In consideration thereof, Buyer agrees to use the Premises as their principal residence, which use shall include all permissible accessory uses, for a minimum period of five (5) years from the date of settlement. During this five (5) year period Buyer shall not use the Premises for any other purpose, including but not limited to using it as a rental property, subject to a right of reverter to the City. Except in the case of a foreclosure or other involuntary transfer, if Buyer sells the Premises within five (5) years of the date of settlement, gross profit from such sale over and above the sales price enumerated herein shall be reimbursed to the City in an amount equal to twenty percent (20%) of such total gross profit for each year Buyer is in violation of the five (5) year principal residency requirement. The obligations contained in this provision shall survive closing.

8. Upon payment of the whole purchase money, Seller, on demand, agrees to execute and deliver to Buyer a good and sufficient deed of the above described premises, with covenants of **special** warranty and further assurances free of all liens and encumbrances, except those, if any, herein mentioned and such easements, conditions and restrictions, if any, to which the premises may now be subject. If the title should be found defective and cannot be perfected, then this Agreement shall be null and void. Prior to settlement, Buyer shall be entitled to receive a title report at Buyer's cost with respect to the property, and, in the event that such title report indicates matters of exception to title objectionable to Buyer, Buyer may terminate this Agreement, provided that Buyer notifies Seller of its intention to so terminate this Agreement within Fifteen (15) days of its receipt of such title report. Such title report shall be brought to date at the time of settlement and Buyer may terminate this Agreement if such title report contains any additional exceptions from the previous title report furnished to Buyer.

9. Buyer agrees (a) to accept possession of the real property on the date of settlement in its then current "As Is" condition; (b) to rely upon the inspection which Buyer has made or which Buyer will make before the settlement date; and (c) after delivery of the deed, to assert no claims against Seller for any defects in the condition of the real property. Buyer shall have a period of sixty (60) days commencing on the Effective Date after contract and terminating at 5:00 p.m. Eastern time on the Expiration Date of the Feasibility Period (the "Feasibility Period") within which to conduct any and all examinations, verifications and studies, including without limitation,

environmental, structural and engineering studies of the Property which Buyer may, at Buyer's sole and absolute discretion, deem necessary. If Buyer notifies Seller in writing on or before the Expiration Date of the Feasibility Period that Buyer, as the result of the studies and/or tests conducted by Buyer, does not desire to purchase the Property, then this Contract shall be deemed terminated, whereupon the parties hereto shall have no further obligations one to the other hereunder. In the event that said inspection reveals damage to the property or otherwise needed repairs but Buyer elects to proceed with the contract, said repairs shall be made at Buyer's expense. Seller shall have no obligation to make any such repairs. Seller shall permit Buyer and Buyer's agents and employees to enter upon the Property at all reasonable times during the Feasibility Period for the purpose of conducting such studies and/or tests as Buyer shall deem appropriate, and Buyer shall indemnify and hold Seller harmless from and against any damages which Seller may incur as a result of Buyer's activities on the Property.

10.a. If Buyer defaults in performing any of Buyer's obligations under this Contract for any reason other than Seller's default or a permitted termination by Buyer, Seller shall be entitled to avail itself of any other right or remedy granted to it hereunder or at law or in equity.

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

11. Seller hereby notifies the Buyer that the property may be subject to the Agricultural Transfer Tax as set forth in Tax Property Article, §13-301, et seq., of the Annotated Code of Maryland, and such tax, if applicable, shall be paid by the Buyer upon the recordation of the deed.

12. Each party certifies to the other that it has no knowledge of nor has it assumed any obligation with respect to recognizing or paying any commission to a real estate broker or agent for services rendered in connection with this sale.

13. It is the express understanding of the parties that **TIME IS OF THE ESSENCE** of this Contract, that the terms and provisions hereof shall survive the delivery of the deed of conveyance, and that this Contract shall be binding upon the parties, their heirs, successors and assigns. However, Buyer shall not assign this Contract to any party without the prior written consent of the Seller, in the Seller's sole and absolute discretion.

14. If a substantial part of the Property is taken prior to Closing pursuant to eminent domain proceedings or the Seller has received written notice of an intent to condemn such part of the Property from the condemning authority, then the Buyer may terminate this Agreement within seven (7) days after the date of such taking or receipt of such notice by sending a notice of termination to the Seller or, if the Buyer does not elect to so terminate, the parties shall proceed to Closing with an adjustment in the Purchase Price equal to any condemnation award or payment

actually received by the Seller. If the Seller does not receive such award or payment by the date of Closing, the Seller shall assign all of its right, title and interest in such award or payment to the Buyer at Closing without an adjustment to the Purchase Price. For purposes of this Section, "substantial part of the Property" means that portion of the Property that, if taken pursuant to eminent domain proceedings would have a material adverse effect upon the use of the Property for Buyer's intended purposes. If the Buyer elects to terminate this Agreement under this Section, the Buyer shall notify the Seller of such election and the Seller shall refund any Deposit if applicable to the Buyer, this Agreement shall terminate, and thereafter neither party shall have any further rights, liability or obligations hereunder, except as expressly provided in this Agreement.

15. This Agreement and all documents referred to herein are governed by and construed and interpreted in accordance with the laws of the State of Maryland.

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

17. Regardless of whether Closing occurs hereunder, each party hereto shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including fees of attorneys, engineers, title examiners, consultants and accountants.

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

For the Seller: City of Hagerstown
Attn: Jonathan Kerns
14 North Potomac Street
Hagerstown, MD 21740

For the Buyer: Piotr Zielinski
Delia Zielinski
12905 Ardennes Avenue

Rockville, MD 20851

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

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

(SIGNATURES APPEAR ON FOLLOWING PAGE)

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

ATTEST:

City of Hagerstown, SELLER

Donna K. Spickler, City Clerk

BY: _____(SEAL)
David S. Gysberts, Mayor

ATTEST:

BUYER

_____(SEAL)
Piotr Zielinski

_____(SEAL)
Delia Zielinski

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

I HEREBY CERTIFY that on this day of , 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared David S. Gysberts, known to me to be the Mayor of The City of Hagerstown, whose name is subscribed to the foregoing Contract of Sale, and who acknowledged that he executed the same for the purposes therein contained as the act of The City of Hagerstown, with full authority to do so.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission Expires:

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

I HEREBY CERTIFY that on this day of , 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Piotr Zielinski and Delia Zielinski, known to me or satisfactorily proven to me to be the persons whose names are subscribed to the foregoing Contract of Sale, who acknowledged that they executed the same for the purposes therein contained as their act, with full authority to do so.

WITNESS my hand and Official Notarial Seal.

Notary Public

My Commission Expires:

ADDENDUM TO CONTRACT OF SALE

NOTICE TO PURCHASER OF PURCHASER'S RIGHTS UNDER MARYLAND'S PROPERTY DISCLOSURE LAW

SECTION 10-702 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND ("SECTION 10-702") REQUIRES THAT SELLERS OF SINGLE FAMILY RESIDENTIAL PROPERTY PROVIDE YOU, THE PURCHASER, ON OR BEFORE ENTERING INTO A CONTRACT OF SALE EITHER:

(A) A written property conditions "Disclosure Statement" listing all defects or information of which the Seller has actual knowledge in relation to the following:

1) Water and Sewer systems, including the source of household water, water treatment systems, and sprinkler systems; 2) Insulation; 3) Structural systems, including the roof, walls, floors, foundation, and any basement; 4) Plumbing, electrical, heating, and air conditions systems; 5) Infestation of wood-destroying insects; 6) Land use matters; 7) Hazardous or regulated materials, including asbestos, lead-based paint, radon, underground storage tanks, and licensed landfills; and 8) Any other material defects known to the seller; or

(B) A written "Disclaimer Statement" providing that: 1) The Seller makes no representations or warranties as to the condition of the real property or any improvements on the real property; and 2) the purchaser will be receiving the real property "as is", with all defects that may exist, except as otherwise provided in the contract of sale.

At the time the Disclosure or Disclaimer Statement is delivered to you, you are required to date and sign a written acknowledgement of receipt, which shall be included in or attached to the contract of sale.

You are hereby notified that, in certain circumstances, you have the right to rescind your contract of sale with the Seller, if the Seller fails to deliver to you the written "Property Condition Disclosure Statement". Section 10-702 provides that a purchaser who does not receive the "Disclosure Statement" on or before entering into the contract of sale has the unconditional right, upon written notice to the Seller or Seller's agent; 1) to rescind the contract of sale at any time before the receipt of the "Disclosure Statement" or within 5 days following receipt of the "Disclosure Statement", and 2) to the immediate return of any deposits made on account of the contract of sale.

If the "Disclosure Statement" is delivered to you later than 3 days after the Seller enters into a contract of sale with you, the contract of sale is void. Your right to rescind the contract of sale under Section 10-702 terminates if not exercised before making written application to lender for a

mortgage loan, if the lender discloses in writing at or before the time application is made that the right to rescind terminates on submission of the application.

Your rights as a purchaser under Section 10-702 may not be waived in the contract of sale, and any attempted waiver is void. Your rights as the purchaser to terminate the contract of sale under Section 10-702 are waived conclusively if not exercised before; 1) closing or occupancy by you, whichever occurs first, in the event of a sale; or 2) occupancy, in the event of a lease with option to purchase.

The information contained in the "Property Condition Disclosure Statement" is the representation of the Seller and not the representation of the real estate broker or salesperson, if any. The Seller is not required to undertake or provide an independent investigation or inspection of the real property in order to make the disclosures required by Section 10-702. The Seller is not liable for any error, inaccuracy, or omission in the "Disclosure Statement" if the error, inaccuracy or omission was based upon information that was not within the actual knowledge of the Seller, or was provided to the Seller by a third party.

You have the right to obtain professional advice about the real property or to obtain an independent inspection of the property by a certified or licensed inspection, and any disclosure or disclaimer is not a substitute for the same.

The undersigned purchaser(s) acknowledges receipt of this notice on the date indicated below and acknowledges that the real estate licensee named below has informed the purchaser of the purchaser's rights and obligations under section 10-702.

The above is to be considered part of the contract and of equal force and effect as all other terms and conditions which otherwise remain the same.

Date:

Witness

_____(SEAL)
Piotr Zielinski, Buyer

Witness

_____(SEAL)
Delia Zielinski, Buyer

DISCLAIMER STATEMENT

The Seller hereby represents that the Seller makes no representations or warranties as to the condition of the real property or any improvements on the real property and the purchase will be receiving the real property "as is", with all defects that may exist, except as otherwise provided in the contract of sale.

ATTEST:

THE CITY OF HAGERSTOWN, SELLER

Donna K. Spickler, City Clerk

By: _____(SEAL)
David S. Gysberts, Mayor

The Buyers hereby acknowledge receipt of the Disclaimer Statement herein on the ____ day of _____, 2016.

Witness

_____(SEAL)
Piotr Zielinski, Buyer

Witness

_____(SEAL)
Delia Zielinski, Buyer

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS REAL ESTATE TRANSFER DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN WASHINGTON COUNTY, STATE OF MARYLAND, DESCRIBED HEREINABOVE. THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE RIGHT TO FARM ORDINANCE FOR WASHINGTON COUNTY ("THE ORDINANCE") AS REQUIRED BY THE ORDINANCE.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

WASHINGTON COUNTY ALLOWS AGRICULTURAL OPERATIONS (as defined in the Ordinance) WITHIN THE COUNTY. You may be subject to inconveniences or discomfort arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24 hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Washington County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with the reasonable use and enjoyment of land, if such operations are conducted in accordance with Generally Accepted Agricultural Management Practices. Washington County has established a reconciliations board to assist in the resolution of disputes that might arise between persons in this County regarding whether agricultural operations conducted on Agricultural Lands are causing an interference with the reasonable use and enjoyment of land or personal wellbeing and whether those operations are being conducted in accordance with Generally Accepted Agricultural Practices. If you have any question concerning this policy or the reconciliation board, please contact the Washington County Planning Department for additional information.

City of Hagerstown, Seller

By: _____

Date _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer _____

Date _____

Buyer _____

Date _____

IF YOU DESIRE LEGAL ADVICE CONCERNING THE EFFECT OF THIS DISCLOSURE, PLEASE CONSULT YOUR ATTORNEY.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: Second Amendment to Long-Term User Agreement with the Hagerstown Fairgrounds Softball Association

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

HFSA_long_term_agreement.2016.pdf

Description

Approval of a Resolution:
Second Amendment to
Long-Term User Agreement
with the Hagerstown
Fairgrounds Softball
Association

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: Approval of a Resolution: Second Amendment to Long-Term User Agreement with the Hagerstown Fairgrounds Softball Association

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	<u> X </u>
Other	_____

MOTION: I hereby move for the approval of a Resolution to accept the Second Amendment to the User Agreement with the Hagerstown Fairgrounds Softball Association (HFSA) to allow the HFSA groups to play until 11:00 pm on Friday nights. The current User Agreement requires all events to be completed by 10:00 p.m. The HFSA will be responsible for locking the gates and restrooms on those nights.

DATE OF PASSAGE: 3/22/2016

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION APPROVING A SECOND AMENDMENT TO
SOFTBALL LONG-TERM USER AGREEMENT WITH THE
HAGERSTOWN FAIRGROUNDS SOFTBALL ASSOCIATION**

RECITALS

WHEREAS, the City of Hagerstown is currently a party to a Softball Long-Term User Agreement, and an Amendment thereto with the Hagerstown Fairgrounds Softball Association (hereinafter "HFSA") for certain premises located at Fairgrounds Park; and

WHEREAS, HFSA has requested that its Long Term User Agreement be amended to permit use of the field lights until 11:00 p.m. on Friday nights; and

WHEREAS, the Mayor and Council find it to be in the best interests of the citizens of the City of Hagerstown to do so;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, as its duly authorized legislative body, as follows:

1. That the foregoing recitals be and are incorporated herein as if restated verbatim.
2. That the Second Amendment to Softball Long-Term User Agreement, a copy of which is attached hereto and incorporated herein by reference, be and is hereby approved and adopted.
3. That the Mayor be and is hereby authorized to execute and deliver the attached Second Amendment to Softball Long-Term User Agreement, and any other documentation necessary to effectuate the purpose of this Resolution.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler, City Clerk

Date of Introduction: March 22, 2016
Date of Passage: March 22, 2016
Effective Date: March 22, 2016

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

By: _____
David S. Gysberts, Mayor

PREPARED BY:
SALVATORE & BOYER, CITY ATTORNEY

SECOND AMENDMENT TO SOFTBALL LONG-TERM USER AGREEMENT

This Amendment to the Softball Long-Term User Agreement is executed this _____ day of March, 2016 by and between the City of Hagerstown, a Maryland municipal corporation (hereinafter "City") and the Hagerstown Fairground Softball Association, a non-profit organization (hereinafter "HFSA" or "User").

RECITALS

WHEREAS, the City and HFSA have previously entered into a Softball Long-Term User Agreement for certain premises at Fairgrounds Park (the "Premises"), dated the 4th day of November, 2011 (hereinafter the "User Agreement"); and

WHEREAS, the parties thereafter entered into a Field Light Installation Agreement and Loan Agreement on the 1st of May, 2012 (hereinafter the "Field Light Agreements"); and

WHEREAS, the User Agreement requires HFSA to comply with all park rules and regulations applicable to Fairgrounds Park, including hours of operation; and

WHEREAS, the Field Light Agreements prohibit the operation of field lights after 10 p.m. without prior approval of the City; and

WHEREAS, the parties previously entered into an Amendment to Softball Long-Term User Agreement to permit HFSA to conduct two all night softball tournaments per year; and

WHEREAS, HFSA has requested that the City permit and approve the use of the field lights at the Premises until 11:00 p.m. on Friday nights; and

WHEREAS, the Mayor and Council find it to be in the best interests of the citizens of the City to do so;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals be and are hereby incorporated herein as if restated verbatim.

2. Approved Use. That the User Agreement be and is hereby amended to permit HFSA to use the field lights at the Premises until 11:00 p.m. on Friday nights during the term of the Agreement. This use is permitted on the condition that HFSA ensure everyone is out of Fairgrounds Park by 11:00 p.m., and that HFSA lock the bathroom facilities and gates at the park.

3. The City and HFSA hereby confirm and ratify all other terms of the aforementioned User Agreement, the previous Amendment thereto, and the Field Light

Agreements, the remaining terms of which shall continue in full force and effect except as modified herein, or in conflict herewith.

WHEREFORE the parties hereby execute this Second Amendment and represent that they have full authority to do so the date and year first above written.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler, City Clerk

MAYOR AND COUNCIL OF THE CITY
OF HAGERSTOWN, MARYLAND

By: _____
David S. Gysberts, Mayor

WITNESS:

THE HAGERSTOWN FAIRGROUNDS
SOFTBALL ASSOCIATION

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Grant Agreement for a Maryland Bikeways Grant with the Maryland Department of Transportation

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Maryland_Bikeways_Grant.2016.pdf

Bikeways_Memo.pdf

Description

Approval of a Grant Agreement with the Maryland Department of Transportation Grant Agreement

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: Approval of a Grant Agreement with the Maryland Department of Transportation

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move to authorize the City to enter into a Grant Agreement for a "Maryland Bikeways Grant" with the Maryland Department of Transportation. The grant is \$90,000 and has no cash match and will continue bicycling-related improvements in the City. The grant will be used for the items outlined on the attached work plan.

DATE OF PASSAGE: 3/22/2016

Attachment: Work Plan Letter 11/6/15



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 6, 2015

Maryland Department of Transportation
Office of Planning and Capital Programming
Attn: Kate Sylvester
7201 Corporate Center Drive
P.O. Box 548
Hanover, MD 21076

RE: Maryland Bikeways Grant

Dear Ms. Sylvester:

Thank you very much for the \$90,000 grant. We are very excited to have this opportunity to make bicycling in our community safer. Attached you will find our project work plan. Please review it and offer any comments you may have.

Our *Bicycle Advisory Committee* recommended spending the grant funds on the following:

- 1) \$50,000 – Final design of the Marsh Run Trail
- 2) \$8,000 - Bike box and bike detection on westbound Prospect Ave at Pennsylvania Ave;
- 3) \$8,000 - Bike box and bike detection on southbound Oak Hill Ave at Northern Ave
- 4) \$23,000- *Hub City Bike Loop* wayfarer pavement markings
- 5) \$1,000 – Bike rack, storm drain grate replacement and/or May Bike Month promotions

Please advise if this is an acceptable work plan. If you have any questions, please contact me at 301-739-8577 ext 128.

Sincerely,
CITY OF HAGERSTOWN

A handwritten signature in blue ink, appearing to read "Rodney Tissue".

Rodney Tissue
City Engineer

c: Bicycle Advisory Committee
Erik Kline
Eric Deike



CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

November 6, 2015

Maryland Department of Transportation
Office of Planning and Capital Programming
Attn: Kate Sylvester
7201 Corporate Center Drive
P.O. Box 548
Hanover, MD 21076

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- 4) \$23,000- *Hub City Bike Loop* wayfarer pavement markings
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Please advise if this is an acceptable work plan. If you have any questions, please contact me at 301-739-8577 ext 128.

Sincerely,
CITY OF HAGERSTOWN

Rodney Tissue
City Engineer

c: Bicycle Advisory Committee
Erik Kline
Eric Deike

Maryland Bikeways Program Project Work Plan and Status Update

Maryland Bikeways Program grantees must submit a completed Bikeways Program Project Work Plan within 30 days of notification of a Bikeways Grant Award and Quarterly Status Update every three months thereafter until the project is closed. Grantees may submit this form to MDOT via email at: MDBikeways@mdot.maryland.gov.

Project Name	Marsh Run Trail Final Design and Miscellaneous Bicycling Facility Improvements
Primary Project Contact	Name: Rodney Tissue, City Engineer Agency/Organization: City of Hagerstown Email: rtissue@hagerstownmd.org Phone: 301-739-8577 Ext 128
Project Description	Final design of the "Marsh Run Trail", bike boxes, wayfarer pavement markings, and miscellaneous bicycling facility improvements
Bikeways Award Amount	\$90,000
Project Category	X Minor Retrofit X Design <input type="checkbox"/> Construction
Technical Assistance	Is SHA technical assistance requested? X Yes <input type="checkbox"/> No If yes, please describe: Plan review and grant compliance

Work Plan Instructions: Fill-in the key tasks and proposed begin and end dates in the portion of the table highlighted in green on the next page. Include 30 day review periods for all submittals to MDOT. Additional rows may be added to the table, if needed.

Suggested key tasks by project type

- **Minor retrofit and construction projects:** Submit draft design plans or scope of work for MDOT comment; Public input; Finalize design; Execute Grant Agreement; Secure permits; Construction; Inspection; Project Closeout. Additional tasks may include procurement and milestones required for other funding sources being applied to the project.
- **Design project:** Submit scope of work for MDOT comment; Execute Grant Agreement; Assessment and design work; Public input; Finalize project deliverables; Project Closeout.

All Bikeways projects must be completed and closed out within 2 years of notification of grant award.

Quarterly Update Instructions: Each quarter, add to this form status updates for the previous 3 months in the appropriate quarterly update column.

- Fill in the total dollar amount of reimbursement requests submitted to date.
- Note if each task is Complete, Ongoing, or On Schedule. If adjustments to the proposed schedule are needed, include revised Begin and End Dates in the Quarterly Update column. Do

GRANT AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

THE CITY OF HAGERSTOWN, MARYLAND

THIS GRANT AGREEMENT executed in triplicate and entered into this _____ day of _____, 201_, by and between the Maryland Department of Transportation ("Department") and the City of Hagerstown, Maryland ("Grantee").

WITNESSETH:

WHEREAS, the Department has programmed in the FY 2015-2020 Consolidated Transportation Program State Report on Transportation a total of Fifteen Million Three-Hundred Sixty-Nine Thousand Dollars (\$15,369,000) for the Maryland Bikeways Program ("Program");

WHEREAS, the Department budgeted within the Program Ninety Thousand Dollars (\$90,000) for final design of the Marsh Run Trail, a shared use path between Municipal Stadium and City Park, and the construction of sharrow and bicycle lane pavement markings, bicycle racks, bicycle-friendly storm drain replacements, and wayfinding signage on various streets including Key Street and Memorial Boulevard.

WHEREAS, pursuant to Section 2-602 of the Transportation Article of the Annotated Code of Maryland, it is in the public interest for the State of Maryland to include enhanced transportation facilities for pedestrians and bicycle riders as an essential component of the State's transportation system;

WHEREAS, the Maryland Bikeways Program was established and approved by the General Assembly to provide state transportation funding to support and expedite projects that improve bicycle transportation in the State;

WHEREAS, matching funds for the Project include Ten Thousand Dollars (\$10,000) in Grantee in-kind contribution and a commitment of Two-Hundred Thousand Dollars (\$200,000) in third-party contributions from the Transportation Alternative Program;

WHEREAS, the Project will design a shared use path link in Hagerstown's core and connect three major parks, including City Park, Memorial Park, and Hager Park.

WHEREAS, the Grantee shall provide a CSX Railroad letter of approval for the design portion of the Project, prior to reimbursement of design funds.

WHEREAS, the Grantee will assume all maintenance and operating costs associated with the Project when it is completed;

WHEREAS, the Project is a valuable component of Maryland's transportation system;

WHEREAS, the Department has supported similar projects in various locations in the State;

WHEREAS, the Department and the Grantee agree that the Project will benefit the parties to this Agreement and will promote the safety, health, and general welfare of the citizens of the State of Maryland;

WHEREAS, Section 2-103(i) of the Transportation Article of the Annotated Code of Maryland (2015 Replacement Volume, as amended and supplemented), authorizes the Secretary of Transportation, to the extent permitted by the State budget, to make grants-in-aid to any person, including political subdivisions of the State of Maryland, for any transportation related purpose;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are re-affirmed and incorporated herein by reference.
2. The Department hereby grants to the Grantee a sum not to exceed Ninety Thousand Dollars (\$90,000) ("Grant") to be used by the Grantee for the completion of the Project. The Grantee shall be responsible for all work in connection with the Project, including the following:
 - a. Obtaining a letter of support for the Marsh Run Trail from CSX Railroad prior to incurring reimbursable design costs;
 - b. Completion of final design of the Marsh Run Trail between Key Street and Memorial Boulevard, contingent upon a CSX Railroad support letter;
 - c. Bicycle Improvements including sign fabrication, sign installation, sharrows pavement markings, bicycle lane pavement markings, bicycle racks, bicycle-friendly storm drain replacements, and wayfinding signage on Key Street and Memorial Boulevard.
 - d. Preparation of quarterly status reports and final reports, as requested by the Department; and
 - e. Monitoring and supervising the compliance of all provisions in this Agreement.
3. Notwithstanding anything to the contrary herein, the Grantee's matching funds contribution may be reduced, provided that the Grantee's share of the costs for the Marsh Run

trail design portion of the Project may not be reduced below 20% of the cost. No Grantee matching funds are required for the bicycle retrofit improvements noted in Section 2(c).

4. The Project shall be consistent with relevant design standards and guidelines, including 2012 American Association of State Highway and Transportation Officials (AASHTO) Bicycle Design Guidelines, the Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines, the Maryland Manual of Uniform Traffic Control Devices, and the Access Board Advance Notice of Proposed Rulemaking (ANPRM) on Accessibility Guideline for Shared Use Paths.

5. The Grantee shall engage a professional engineer, registered in the State of Maryland, for design services on the Project. The Grantee shall provide to the Department draft design plans for review and comment and final design plans for the Project record. Notwithstanding anything to the contrary herein, the Grantee shall have final rights of approval.

6. The Grantee shall require all contractors and subcontractors, prior to commencement of work on the Project, to secure and keep in force during the term of this Agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in Maryland, the following insurance coverages:

- a. commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence;
- b. automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence;
- c. workers compensation coverage meeting all statutory requirements.

This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The Grantee shall have the right to self-insure.

The Department and its agencies, officers, and employees shall be endorsed on the commercial general liability policies, including any excess policies (to the extent applicable), as an additional insured. Coverage will be primary and noncontributory with any other insurance and self-insurance. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice to the Department. Certificates of insurance shall be provided to the Department upon request. All endorsements shall be provided as soon as practicable. Failure to provide insurance as required in this Agreement is a material breach of contract entitling the Department to terminate this Agreement.

7. The Grant represents the maximum financial liability of the Department under this Agreement subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps, and notice requirements stated in the Maryland Torts Claims Act, currently found at Maryland Annotated Code, State Government, Section 12-101 ("MTCA").

8. The Grantee may use funds only for costs incurred in connection with the Project. Payment of the Grant by the Department shall be made on a reimbursable basis upon the Grantee's submission of invoices for such payment, subject to the following conditions.

All invoices for payment shall include:

- (a) actual expenditures incurred by the Grantee in connection with the Project;
- (b) a certification by the Grantee that all costs charged to the Project are in connection therewith and supported by properly executed records, vouchers, invoices or contracts evidencing the nature and propriety of the charges.

Invoices/requests for reimbursement will be submitted not more frequently than once per month (30 days). Invoices/requests for reimbursement will be reviewed by MDOT to determine (a) that the indicated costs are allowable hereunder and (b) that the invoiced work contributes directly to the accomplishment of the Project. Failure to meet these conditions will result in disallowed costs that will be deducted from the requested reimbursement amount. Payment shall be made by the Department to the Grantee within thirty (30) days of the Department's receipt and approval of the invoice and accompanying certifications. The final invoice may not be paid until the Final Report is submitted. No Project costs incurred prior to the execution of this Agreement will be reimbursed.

9. The Grantee shall comply with all applicable Federal, State and local laws in expending Grant funds and in carrying out the Project, including compliance with the Americans with Disabilities Act of 1990, particularly as it relates to public meetings held in connection with the Project.

10. The term of this Agreement shall commence upon the date first set forth above and shall terminate when all payments of the Grant have been made or on September 29, 2017, whichever is sooner. At its discretion, the Department may elect to extend the term of the Grant by up to six months in consideration of unforeseen project delays.

11. The Department reserves the right to suspend or terminate all or part of the financial assistance herein provided and to terminate this Agreement, in whole or in part, if:

- (a) the Grantee breaches or fails to fulfill any of the terms of this Agreement;
- (b) funds are not appropriated by the General Assembly of Maryland to fund this Grant.

The Grantee acknowledges and agrees that funding under this Agreement is expressly dependent upon the availability to the Department of funds appropriated by the General Assembly and that, except as otherwise provided for herein, the Department shall not be liable for any breach of this Agreement due to the absence of an appropriation. Termination of this Agreement will not invalidate obligations properly incurred by the Grantee prior to the date of termination if such obligations are unable to be canceled. If, upon termination of this Agreement, it is determined by the Department that funds are due to the Department, the Grantee shall promptly remit such amount to the Department within forty-five (45) days following written notification to the Grantee from the Department. The Grantee's agreement to remit any excess Grant funds to the Department shall survive the termination of this Agreement.

12. The Grantee shall maintain separate and complete accounting records which are consistent with generally accepted accounting procedures and accurately reflect all income and expenditures of Grant funds for the Project. Grantee accounting records shall be maintained for a period of three (3) years after the termination of this Agreement. The records of the Grantee must be in sufficient detail to determine the nature of the costs incurred and/or expenditures made by the Grantee for the Project.

13. The Department reserves the right to perform interim and final audits of the Grant provided for under this Agreement. Any final audit shall commence within three (3) years of the expiration or earlier termination of this Agreement. In connection with any audit undertaken hereunder, the Grantee shall provide access to all records with respect to the Project. Following the completion of any audit undertaken hereunder, the Grantee shall refund to the Department within forty-five (45) days following notification by the Department any Grant payments that are found to be unsupported by acceptable accounting records or not expended in accordance with the terms of this Agreement. The Grantee's covenant to repay any excess Grant payments shall survive the expiration or earlier termination of this Agreement.

14. This Agreement may be modified only by written instrument, executed by the Department and the Grantee.

15. It is understood and agreed that the sole obligation of the Department is the payment to the Grantee the sum of money specified in Section 2 of this Agreement.

16. All payments hereunder by the Department to the Grantee are subject to the budgetary and appropriation requirements of Section 3-216(d)(2) of the Transportation Article of the Annotated Code of Maryland, (2015 Replacement Volume, as amended and supplemented).

17. No right, benefit or advantage inuring to the Grantee under this Agreement may be assigned and no burden imposed on the Grantee hereunder may be delegated or assigned without the prior written approval of the Department.

18. The parties hereby agree that this Agreement shall be construed in accordance with the law of the State of Maryland.

19. The Department and the Grantee certify that they prohibit, and covenant that they will continue to prohibit, discrimination on the basis of:

- (a) age, ancestry, color, creed, marital status, national origin, race or religious or political affiliation, belief or opinion, or sexual orientation;
- (b) sex or age, except when age or sex constitutes a bona fide occupational qualification; or
- (c) the physical or mental disability of a qualified individual with a disability.

Upon the request of the other party, the Department and the Grantee will submit to the other party information relating to its operating policies and procedures with regard to age, ancestry, color, creed, marital status, mental or physical disability, national origin, race, religious or political affiliation, belief or opinion or sex or sexual orientation.

20. The Department and the Grantee shall comply with the State's policy concerning drug and alcohol free workplaces, as set forth in Executive Order 01.01.1989.18 and COMAR 21.11.08, and must remain in compliance throughout the term of this Agreement.

21. It is specifically agreed between the Department and the Grantee that it is not intended by any of the provisions of this Agreement to create in any public entity, or any member thereof, or in any private entity third party beneficiary status in connection with the performance of the obligations herein.

22. If any provisions of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction:

- (a) such provision shall be fully severable;
- (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and
- (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

23. This Agreement may be executed in a number of identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

24. This Agreement shall inure to and be binding upon the parties hereto, their agents, successors and, to the extent an assignment has been approved pursuant to Section 18 of this Agreement, their assigns.

25. Each notice, invoice, demand, request, consent, approval, disapproval, designation or other communications between the parties, to the extent required to be in writing shall be made by United States Mail to the following addressees:

In the case of MDOT:

Ms. Kate Sylvester
7201 Corporate Center Drive
P.O. Box 548
Hanover, MD 21076

In the case of the Grantee:

Mr. Rodney Tissue
Department of Parks and
Engineering
City of Hagerstown
1 East Franklin Street
Hagerstown, MD 21740

The next page is the signature page.

IN WITNESS WHEREOF, the parties here to have executed this Agreement as of the day and year first above written.

WITNESS:

**MARYLAND DEPARTMENT OF
TRANSPORTATION**

By: _____
Deputy Secretary
Maryland Department of Transportation

Date: _____

FUNDS AVAILABLE:

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

David L. Fleming, Chief Financial Officer
Office of Finance

Kenneth Hulsey, Assistant Attorney General
Maryland Department of Transportation

WITNESS:

CITY OF HAGERSTOWN, MARYLAND

By: _____

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Sister City Affiliation with Xinjin County, Chengdu, Sichuan, China

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Sister_City_Motion.pdf

Description

Motion

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: March 22, 2016

TOPIC: **Approval of a Sister City Affiliation with Xinjin County, Chengdu, Sichuan, China**

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move for Mayor and Council approval of a Sister City affiliation with Xinjin County, Chengdu, Sichuan, China. A Sister City relationship with Xinjin County will provide the opportunity for collaborations in education, tourism, the health industry, organic agriculture, and other possibilities.

DATE OF PASSAGE: 03/22/2016

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Engineering Consulting Services for the Wholesale Power Supply Procurement with GDS Associates, Inc.

Mayor and City Council Action Required:

Requested approval of Consulting Services with GDS Associates, LLC for Wholesale Power Procurement in the amount of \$240/hour per Principal, \$175/hour per Project Engineer and \$150/hour per Engineer

Discussion:

The Power Services Agreement between Allegheny Energy Supply Company, LLC and the City will conclude with an expiration date of May 31, 2017. The current contract was consummated in 2005 and effective July 1, 2006. Since this time, much of the language has become obsolete with the constantly evolving PJM Interconnection tariffs, business practices and specifically, the capacity markets.

To meet our goal and have a new Wholesale Power Supply Contract completed before November 2016, the Hagerstown Light Department will compose and advertise a RFP, review price comparisons, and negotiate a new contract for wholesale power. The City recently advertised P1603.16 to seek consulting services specific to power procurement. With their current experiences in wholesale power procurement RFP development and the PJM Market & Operation within the Allegheny Power Zone, GDS Associates, Inc is recommended to assist us in obtaining the lowest purchase power cost we can obtain for the citizens of Hagerstown.

Staff had requested a review of pricing for an additional contract extension and was informed that changes in the operating market would not allow for a decrease in our existing MWH charges. Even though out year pricing for energy has decreased, charges for capacity have increased to the point that they offset any energy price savings. The difference between energy and capacity involves power plants and how they are compensated because both are important to maintaining the electrical system in different ways. Historically, a power plant generated electricity that we purchased at wholesale rates and resold to HLD consumers at retail prices. PJM developed a capacity market, or "forward market," which directs investment a few years ahead of when electricity needs to be delivered. In theory since power plants are expensive and take time to construct, the additional risk that they may not be utilized fully could discourage investment. Once again, in theory the capacity market will create long-term price signal for all users.

Page 1

The basic idea is that power plants receive compensation for capacity (the power that they will provide at some point in the future). In PJM, there is an auction every year that has a defined delivery date three years in the future. This auction is called the Base Residual Auction and there are smaller balancing auctions every year leading up to the delivery date where bidders can buy or sell their commitments. These are called "Incremental Auctions" and occur just in case a power plant cannot

commitments. These are called incremental auctions, and occur just in case a power plant cannot meet its commitment and needs to purchase replacement capacity from another power plant. The capacity market is designed to directly encourage financial investments in different kinds of assets (clean energy, fossil fuels, or demand side resources).

Since all of these market changes have occurred, some of the risk that was assumed by our supplier may now fall to the HLD to assume. Our contract will more than likely contain fixed charges for energy and monthly pass through charges for Capacity, Network Integration Transmission Services, Ancillary Charges, etc. These charges will be captured in the monthly Purchase Power Adjustment and included in the monthly bills. The RFP will contain requests for mid-term and long term pricing provisions and we will more than likely request an initial agreement for a five year term. Currently, even when factoring in all of the extraneous charges discussed above, it does not appear as though the total price package for services will see a drastic increase in our customer charges.

Upon the requested approval of GDS Associates, Staff will work with Garrett Cole and Erin Shealy of GDS in addition to our FERC legal counsel Tom Rudebusch and Mark Boyer in the development of the RFP. The timeline is as follows:

- RFP development March/April
- RFP offering May 1
- RFP reviews June
- RFP short list development June
- Negotiations with bidders July/August
- Award WPS Contract September

Once the negotiations with the short list are nearing completion, I will make a formal request of the Mayor and Council, as I have done in the past, to allow for the opportunity to lock in on pricing when it is most advantageous. Staff will be available at the March 15 Work Session to discuss.

Financial Impact:

\$240/hour per Principal, \$175/hour per Project Engineer and \$150/hour per Engineer

Recommendation:

Staff recommended approval

Motion:

DATE: March 22, 2016

TOPIC: Approval of a Motion to approve GDS Associates, Inc. for Engineering Consulting Services for the Wholesale Power Supply Procurement Process

Charter Amendment	?
Code Amendment	?
Ordinance	?
Resolution	?
Other	!

MOTION: I hereby move that the Mayor and City Council approve GDS Associates, Inc. for Engineering Consulting Services for the Wholesale Power Supply Procurement Process. Their services will be utilized for the development and advertising of a RFP for wholesale power procurement and future contractual issues related to the forthcoming Wholesale Power Supply Contract.

Action Dates:

Regular Session 032216

ATTACHMENTS:

File Name

Description

Electric_Division_Motion_for_Wholesale_Power_Consultants_Services_032216.doc

Electric
Division
Motion for
Wholesale
Power
Consultants
Services
032216

Electric_Division_Consent_New_Business_Wholesale_Supply_Consultant_032216.pdf

Electric
Division
Consent
New
Business
Wholesale
Supply
Consultant
032216

Electric_Division_RFP_for_WPS_Procurement_Consultant_032216.docx

Electric
Division RFP
for WPS
Procurement
Consultant
032216

Electric_Division_Memo_for_Wholesale_Power_Consultants_Services_031516.doc

Consulting
Services
with GDS
Associates,
LLC for
Wholesale
Power
Procurement

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: March 22, 2016

TOPIC: **Approval of a Motion to approve GDS Associates, Inc. for Engineering Consulting Services for the Wholesale Power Supply Procurement**

Charter Amendment	<input type="checkbox"/>
Code Amendment	<input type="checkbox"/>
Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

MOTION: I hereby move that the Mayor and City Council approve GDS Associates, Inc. for Engineering Consulting Services for the Wholesale Power Supply Procurement process. Their services will be utilized for the development and advertising of a RFP for wholesale power procurement and future contractual issues related to the forthcoming Wholesale Power Supply Contract.

DATE OF INTRODUCTION: 3/22/2016
DATE OF PASSAGE: 3/22/2016
EFFECTIVE DATE: 3/22/2016

(1) DEPARTMENT MANAGER:

\$50,000 budget projection for FY16 and \$50,000 proposed for FY17

GDS recommended based on the diverse rates, up to date experience and knowledge in the PJM electric power markets and the Allegheny Power Zone.



2/29/2016

SIGNATURE/DATE

(2) PURCHASING AGENT:

SIGNATURE/DATE

(3) FINANCE MANAGER:

SIGNATURE/DATE

(4) CITY ADMINISTRATOR:

SIGNATURE/DATE

THE HAGERSTOWN LIGHT DEPARTMENT
WHOLESALE POWER SOLICITATION CONSULTANT
Request for Proposal

The Hagerstown Light Department (HLD) is issuing this Request for Proposal for engineering and consulting services to assist with the solicitation of a Full Requirements Wholesale Power Services Contract or a Hybrid Contract if Wholesale Market Indicators are favorable.

Background

As an enterprise fund of the City of Hagerstown, MD, the Hagerstown Light Department (HLD or City) is a municipal electric utility located within the PJM region serving approximately 17,500 end use customers within a nine square mile service territory regulated by The Code of Maryland (COMAR), Title 20 published by the Public Service Commission of Maryland. HLD owns and operates seven substations supplied by five metered points of delivery with recent peak loads reaching 68 MW. For further information, please visit our website, www.hagerstownlight.org.

The current full requirements wholesale power services contract will expire on May 31, 2017. With the exception of decreased cost adjustments in the years, 2010, 2013, 2014, and 2015, the contract language has not changed since June 1, 2005 inception.

Qualifications

- Expertise and knowledge of Federal, State, and local laws and rules applicable to the Hagerstown Light Department.
- Knowledge and experience in representing public power utilities in Maryland on generation, interconnection, distribution, and transmission issues, including development, construction, financing, and acquisition.

Roles and Responsibilities

- All tasks performed shall be to the best interest of the City of Hagerstown, MD.
- Assist in the development, design, review, and solicitation of a full requirements wholesale power services contract (Contract) and provide recommendations ensuring a competitive, open, and transparent process to ensure that the overall scope is not unnecessarily broad or too narrow so that all aspects are clearly understood and all bidders may effectively respond.
- Review the comprehensive bid evaluation criteria and methodologies and assess whether these are applied to all bids in a fair and non-discriminatory manner.
- Monitor the solicitation processes and promptly submit recommendations to HLD's management and legal counsel to ensure that no bidder has an information advantage and that all bidders or counterparties (if applicable) receive access to relevant communications in a non-discriminatory manner.
- Report on the outcome of the solicitation and provide final written assessment and/or testimony concerning whether or not the solicitation processes was open, transparent, and fair and whether any bidder received material information that gave them a competitive advantage or disadvantage relative to other bidders.

- Monitor the Contract negotiation processes with the recommended supplier and promptly submit recommendations to HLD's management and legal counsel.
- Perform other duties as may be further defined in subsequent relevant regulatory proceedings or required by HLD.

With the consent of both parties in writing, the term of these services may extend annually, but may not exceed five (5) years.

Schedule

The list below summarizes the estimated schedule for this Request for Proposal (RFP). The schedule is subject to change at HLD's sole discretion at any time. HLD will notify potential candidates of any schedule change in the form of an addendum.

Advertisement_____Thursday, January 14, 2016

Mandatory Pre-Bid Conference_____10 AM EST, Wednesday, February 3, 2016

Initial Answer Posting_____C.O.B., Friday, February 6, 2016

Final Questions Due_____4 PM EST, Friday, February 10, 2016

Outstanding Answer Posting_____C.O.B., Wednesday, February 12, 2016

Submittal Deadline_____2 PM EST, Wednesday, February 17, 2016

Candidate Interviews_____March 1, 2016 through March 4, 2016

Candidate Selection_____Tuesday, March 22, 2016

Pre-Submittal Communication

All questions must be submitted in the form of email to Jeffrey Lear at jlear@hagerstownmd.org with subject line *P1603.16 - Wholesale Power Solicitation*. With the exception of questions asked during the pre-bid conference, any questions asked through other forms of communication will not be answered. HLD may issue questions asked and answers throughout the solicitation period in the form of an addendum.

Perspective candidates are required to participate in a Pre-Bid Conference call that will be organized by HLD staff. All candidates must announce their intentions to participate on the conference by 12 PM EST the prior business day to jlear@hagerstownmd.org with subject line *P1603.16 - Wholesale Power Solicitation Conference*.

Proposals

Proposals must remain valid for a period of not less than ninety (90) days from the submission due date and shall include, without limitation all requested information and documents specified. Failure to follow instructions may be cause for disqualification without exception.

Proposals shall be submitted as one sealed package clearly labeled *P1603.16 - Wholesale Power Solicitation*. The qualifications, experience, and technical information shall be in a separate envelope from that of the hourly billing rates. Each envelope must be sealed and clearly labeled. Qualifications, experience, and technical information will be opened and evaluated by staff designated by the HLD to develop a list of five (5) Candidates. Of these Candidates, the hourly billing rates will be opened and evaluated. Remaining hourly billing rate envelopes will be returned unopened.

Qualifications, experience, and technical information shall be submitted in the form of three (3) hard copies and three (3) flash drives with either Microsoft Word or PDF files. Hourly billing rates must be submitted in the form of two (2) hard copies. All proposals must be submitted by the Submittal Deadline to:

The City of Hagerstown
Office of the City Clerk
1 E Franklin Street
Hagerstown, MD 21740

Candidates are to follow directions and submit the required information and documents as specified in this RFP and must be able to substantiate any data provided. The completeness and clarity of the proposal is critical and is part of the criteria being evaluated. The submitted information shall be an accurate reflection of the capabilities, offerings, and services offered. HLD may disqualify if inaccurate information is provided.

- Demonstrate analytical support and expertise in changes to market rules in the PJM regional transmission organizations, FERC rules and emerging policies that affect power supply, and best practices for the management of HLD's power supply portfolio.
- Provide information regarding recent consulting services in the areas of load research and analysis, forecasting, competitive analyses and market development, and cost of service.
- Describe the depth of staff and availability of resources to provide services in the scope of work area(s) proposed. Detail the number of staff in your firm and relevant expertise and experience for the work required within this RFP by professional and administrative classification.
- Provide a brief description of the ownership structure. Also include any significant developments, or organization, ownership or financial structure changes that have occurred in the last three years, or that you anticipate in the future.
- Identify the representative(s) that potentially would be assigned to handle matters under this RFP, provide their resumes and hourly rates that would be charged to the HLD.
- Supply the identities of other clients and describe previous experiences provided and in the electric utility industry and with public power authorities, investor-owned electric

companies, other utilities, and at least three (3) municipalities for services and matters required within this RFP.

- State all conflicts of interest with respect to previous or current involvement with the City and potential wholesale energy providers.
- Provide a general breakdown of the various hourly billing rates charged. Specifically state whether such hourly billing rates include all administrative and overhead costs and indicate what charges are not included in the identified hourly billing rates. Also indicate reimbursable rates and charges for photocopying and faxing.

RFP Evaluation Process

To evaluate the proposals, HLD will consider the following elements of the proposed documents and data (in no particular order):

- The Candidate's viability in terms of credit, risks, and financial stress. HLD will consider bankruptcies and pending lawsuits.
- Conflicts of interest.
- Demonstrated skill and knowledge in:
 - Electric energy products and processes
 - Turnkey services
 - Developing protocols and monitoring negotiation processes
 - Written and presentation ability
 - Differences of technologies (e.g. turbines and renewable technologies)
 - Standards and industry practices of energy products, processes, and power purchase agreements
- The competitiveness of offered hourly and unit pricing.
- Proposals will be evaluated to determine their completeness, clarity, and conformance to the instructions specified.

If it is difficult or overly time-consuming to evaluate potential Submittals, then the Candidate may be disadvantaged in the evaluation process and may be disqualified.

Proposals will be judged by relevant experience and background of key personnel and the competitiveness of offered pricing for Candidates submitting proposals that pass the pre-screening process.

HLD staff will conduct interviews with the top-qualifying Candidates at the discretion of HLD on a specific day or days. All top-qualifying Respondents will be notified of the exact interview date(s) in advance.

Final recommendations will be reviewed and approved by the City's Elected Officials.

Reservations

- The HLD reserves the right to accept bids individually or collectively, to accept or reject any or all proposals, waive any informality, and take whatever action is to the best interest of the City.

- The HLD reserves the right to verify the information in the proposal.
- If a Candidate knowingly and willfully submits false performance or other data, the HLD reserves the right to reject that proposal. If a contract is awarded as a result of false statements or other data submitted in response to this RFP, the HLD reserves the right to terminate that contract.
- Submission of a response to this RFP shall constitute acknowledgement and acceptance of the terms and conditions set forth herein. Candidates awarded a contract pursuant to this RFP shall be required to enter into a written contract with the HLD approved as to form with the HLD's attorney's. This RFP and the proposal, or any parts thereof, may be incorporated into and made part of the final contract. The HLD reserves the right to further negotiate the terms and conditions of the contract. The final contract offer may contain revised, deleted, or additional terms from those set forth.
- The HLD reserves the right to waive any informality in the process when to do so is in the best interest of the City.
- The HLD reserves the right to withdraw this RFP at any time without prior notice and the right to reject any and all proposals. The HLD makes no representation that any contract will be awarded to any Candidate responding to this RFP.
- A Candidate will not be recommended for contract award, regardless of the merits of responses submitted, if it has a history of contract noncompliance or poor past or current performance with the City.
- HLD will not provide reimbursement for any costs or expenses incurred in connection with this RFP, including the costs of preparing and submitting a proposal, providing any additional information or attending an interview. All material that is submitted in response to this RFP will become the sole property of the HLD. The HLD expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal patent or proprietary rights which must be clearly noted in the submission.
- All proposals received will be considered public records subject to disclosure. Candidates must identify any material claimed to be exempt from disclosure. In the event such exemption is claimed, the Candidate will be required to state in response that he or she will defend any action brought against the City for its refusal to disclose such material to any party making a request thereof. Failure to include such a statement shall constitute a waiver of Candidate's right to exemption from disclosure.
- The HLD may award a contract on the basis of proposals submitted, without discussions, or may negotiate further with those Candidates within a competitive range. Proposals should be submitted on the most favorable terms the Candidate can provide.

City of Hagerstown



Department of Utilities

425 East Baltimore Street
Hagerstown, MD 21740-6105

1 Clean Water Circle
Hagerstown, MD 21740-6848

March 15, 2016

TO: Valerie Means, City Administrator

FROM: Michael S. Spiker, Director of Utilities *MSSpiker*
Nathan Fridinger, Electric Operations Manager *Nathan Fridinger*

SUBJECT: Consulting Services with GDS Associates, LLC for Wholesale Power Procurement

ACTION: Discussion and March 22 Approval

The Power Services Agreement between Allegheny Energy Supply Company, LLC and the City will conclude with an expiration date of May 31, 2017. The current contract was consummated in 2005 and effective July 1, 2006. Since this time, much of the language has become obsolete with the constantly evolving PJM Interconnection tariffs, business practices and specifically, the capacity markets.

To meet our goal and have a new Wholesale Power Supply Contract completed before November 2016, the Hagerstown Light Department will compose and advertise a RFP, review price comparisons, and negotiate a new contract for wholesale power. The City recently advertised P1603.16 to seek consulting services specific to power procurement. With their current experiences in wholesale power procurement RFP development and the PJM Market & Operation within the Allegheny Power Zone, GDS Associates, Inc is recommended to assist us in obtaining the lowest purchase power cost we can obtain for the citizens of Hagerstown.

Staff had requested a review of pricing for an additional contract extension and was informed that changes in the operating market would not allow for a decrease in our existing MWH charges. Even though out year pricing for energy has decreased, charges for capacity have increased to the point that they offset any energy price savings. The difference between energy and capacity involves power plants and how they are compensated because both are important to maintaining the electrical system in different ways. Historically, a power plant generated electricity that we purchased at wholesale rates and resold to HLD consumers at retail prices. PJM developed a capacity market, or "forward market," which directs investment a few years ahead of when electricity needs to be delivered. In theory since power plants are expensive and take time to construct, the additional risk that they may not be utilized fully could discourage investment. Once again, in theory the capacity market will create long-term price signal for all users.

The basic idea is that power plants receive compensation for capacity (the power that they will provide at some point in the future). In PJM, there is an auction every year that has a defined delivery date three years in the future. This auction is called the Base Residual Auction and there are smaller balancing auctions every year leading up to the delivery date where bidders can buy or sell their commitments. These are called “Incremental Auctions,” and occur just in case a power plant cannot meet its commitment and needs to purchase replacement capacity from another power plant. The capacity market is designed to directly encourage financial investments in different kinds of assets (clean energy, fossil fuels, or demand side resources).

Since all of these market changes have occurred, some of the risk that was assumed by our supplier may now fall to the HLD to assume. Our contract will more than likely contain fixed charges for energy and monthly pass through charges for Capacity, Network Integration Transmission Services, Ancillary Charges, etc. These charges will be captured in the monthly Purchase Power Adjustment and included in the monthly bills. The RFP will contain requests for mid-term and long term pricing provisions and we will more than likely request an initial agreement for a five year term. Currently, even when factoring in all of the extraneous charges discussed above, it does not appear as though the total price package for services will see a drastic increase in our customer charges.

Upon the requested approval of GDS Associates, Staff will work with Garrett Cole and Erin Shealy of GDS in addition to our FERC legal counsel Tom Rudebusch and Mark Boyer in the development of the RFP. The timeline is as follows:

- RFP development March/April
- RFP offering May 1
- RFP reviews June
- RFP short list development June
- Negotiations with bidders July/August
- Award WPS Contract September

Once the negotiations with the short list are nearing completion, I will make a formal request of the Mayor and Council, as I have done in the past, to allow for the opportunity to lock in on pricing when it is most advantageous. Staff will be available at the March 15 Work Session to discuss.

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Appalachian Regional Commission (ARC) FY 17 Project Funding Requests

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

I hereby move that the Mayor and Council authorize the submission of the following projects to the County Commissioners for funding from the Fiscal Year 2017 Appalachian Regional Commission (ARC) grant:

- 1) Replenishment of City First-Third Grant Program – requesting \$250,000 in ARC funds
- 2) Phase II-A of the Hagerstown Cultural Trail – requesting \$85,000 in ARC funds
- 3) Phase II-B of the Hagerstown Cultural Trail – requesting \$125,000 in ARC funds

Action Dates:

ATTACHMENTS:

File Name

ARC_Motion___Project_Desc.pdf

Description

Motion Sheet & Project
Descriptions

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: **March 22, 2016**

TOPIC: **Appalachian Regional Commission (ARC) FY17 Project Funding Requests**

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u> X </u>

MOTION: I hereby move that the Mayor and Council authorize the submission of the following projects to the County Commissioners for funding from the Fiscal Year 2017 Appalachian Regional Commission (ARC) grant:

- 1) Replenishment of City First-Third Grant Program – requesting \$250,000 in ARC funds
- 2) Phase II-A of the Hagerstown Cultural Trail – requesting \$85,000 in ARC funds
- 3) Phase II-B of the Hagerstown Cultural Trail – requesting \$125,000 in ARC funds

DATE OF PASSAGE: 03/22/16

EFFECTIVE DATE: 03/22/16

ARC Preliminary Project Form

Project Name: Replenishment of City First-Third Grant Program

Applicant: City of Hagerstown

County: Washington

Contact Person: Jill Frick

Phone #: 301-739-8577 x195

Email: jfrick@hagerstownmd.org

Project Description:

Hagerstown's First-Third Program contributes to downtown revitalization by providing funding to offset the gap between cost to rehabilitate large downtown buildings and offset the expected lease income in this depressed market. The goals of the Program are to 1) Partner with private developers and investors; 2) Facilitate securing private financing for construction, 3) Inspire and enable significant redevelopment, both city-wide and in the urban core, reusing and re-purposing existing vacant and under-utilized properties, 4) Create the opportunity for new jobs throughout the City of Hagerstown and Washington County, and 5) Increase the value of Hagerstown's commercial and mixed use properties. The program, which was started in 2014, has seen great success – two of the largest downtown projects that resulted in an expected assessed value increase of nearly \$600,000, 8 new residents, 12 new commercial and office tenants, and 80 new employees in the downtown. Due to the success of this program as well as budget constraints, the First-Third Program needs funding replenishment to help keep the momentum of downtown revitalization going forward.

Goal 1: Economic Opportunities – Invest in entrepreneurial and business development strategies that strengthen Appalachia's economy

Objective 1.5: Continue to support business expansions, start-ups and entrepreneurship.

Strategy 1.5.4: Support programs that do not duplicate existing services but that fill gaps in the existing entrepreneur network.

Proposed Funding Sources and Amounts:

\$250,000 ARC Grant
+ <u>\$250,000 City Funds</u>
\$500,000 Total

ARC Preliminary Project Form

Project Name: Construction of Phase II-A of Hagerstown Cultural Trail

Applicant: City of Hagerstown

County: Washington

Contact Person: Rodney Tissue

Phone #: 301-739-8577 x128

Email: rtissue@hagerstownmd.org

Project Description:

Development of a trail that will eventually connect the city center Arts & Entertainment District/Farmers Market to City Park (Fine Arts Museum) and other cultural destinations has been identified as a catalyst project in the Hagerstown Community's City Center Plan. The ultimate goals are to increase economic activity in the downtown and attract market-rate housing along the trail. Construction of Phase I of the Trail is underway and is expected to be complete in fall 2016, which will connect City Park to West Antietam Street. Phase II-A Construction of 250 linear feet of a 10-foot wide trail including lighting, landscaping and signs, from Antietam Street (where it connects to the Phase I trail) to Alley 2-98.

Goal 1: Economic Opportunities – Invest in entrepreneurial and business development strategies that strengthen Appalachia's economy

Objective 1.4: Stimulate development of the central business districts of the region's municipalities and support projects, which will enhance the long-term development of the CBD areas.

Strategy 1.4.2: Provide the necessary infrastructure for reuse and/or redirect the use of downtown areas.

Proposed Funding Sources and Amounts:

\$85,000 ARC Grant
+ \$85,000 City Funds
\$170,000 Total

ARC Preliminary Project Form

Project Name: Construction of Phase II-B of Hagerstown Cultural Trail

Applicant: City of Hagerstown

County: Washington

Contact Person: Rodney Tissue

Phone #: 301-739-8577 x128

Email: rtissue@hagerstownmd.org

Project Description:

Development of a trail that will eventually connect the city center Arts & Entertainment District/Farmers Market to City Park (Fine Arts Museum) and other cultural destinations has been identified as a catalyst project in the Hagerstown Community's City Center Plan. The ultimate goals are to increase economic activity in the downtown and attract market-rate housing along the trail. Construction of Phase I of the Trail is underway and is expected to be complete in fall 2016, which will connect City Park to West Antietam Street. Construction of Phase II-B includes 250 linear feet of trail/walkway from Alley 2-98, through the property and building at 43/53 West Washington Street where it connects to the existing trail at Washington Street.

Goal 1: Economic Opportunities – Invest in entrepreneurial and business development strategies that strengthen Appalachia's economy

Objective 1.4: Stimulate development of the central business districts of the region's municipalities and support projects, which will enhance the long-term development of the CBD areas.

Strategy 1.4.2: Provide the necessary infrastructure for reuse and/or redirect the use of downtown areas.

Proposed Funding Sources and Amounts:

\$125,000 ARC Grant
+ \$125,000 City Funds
\$250,000 Total

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of Trash and Recycling Receptacle and Container Placement Policy

Mayor and City Council Action Required:

Approval of the attached Trash and Recycling Receptacle and Container Placement Policy to guide staff in assessing requests for approval of alternative locations for placement of receptacles and containers.

Discussion:

The attached policy reflects discussion at previous Mayor and City Council work sessions regarding the special circumstances that would warrant approval of alternative locations to those prescribed for placement of containers in the proposed amendments to Chapter 117. It also reflects discussions with representatives of the Historic Heights neighborhoods first group on the "front yard" and "side yard" interpretation issue. The process for reviewing requests for alternative locations was outlined by the City Attorney.

Financial Impact:

Recommendation:

Approval, with the policy taking effect on April 22, 2016 to coincide with the effective date of the amendments to Chapter 117 and Chapter 64-8.

Motion:

Action Dates:

ATTACHMENTS:

File Name

M_CC_Trash_Placement_Policy_Packet_3_22_16.pdf

Description

Trash and Recycling
Receptacle and Container
Placement Policy

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: March 22, 2016

TOPIC: **Trash and Recycling Receptacle and Container Placement
Policy**

Charter Amendment

Code Amendment

Ordinance

Resolution

Other X

MOTION: I hereby move that the Mayor and City Council approve the attached Trash and Recycling Receptacle and Container Placement Policy. This policy will guide staff as they assess special circumstances which justify location of receptacles and containers in locations alternative to what is prescribed in proposed amendments to Chapter 117, Recycling and Refuse Collection, and to interpret "front yard" and "side yard" for receptacle and container placement. This policy shall take effect on April 22, 2016 to coincide with the effective date of amendments to Chapter 117 and Chapter 64-8, Property Maintenance Code, related to trash and recycling.

DATE OF INTRODUCTION: 3/22/16

DATE OF PASSAGE: 3/22/16

Policy Title: **Trash and Recycling Receptacle and Container Placement Policy**

**Policy and
Procedure Number:**

Adoption Date: **March 22, 2016**

The City of Hagerstown regulates recycling and refuse collection at Chapter 117 of the City Code. It is a violation of Chapter 117 to store and set out trash and recycling containers in a manner which is contrary to what is permitted by the Code.

The City of Hagerstown recognizes that for some properties or residents, there may be special circumstances that make it infeasible or a hardship to comply with the placement conditions outlined in Chapter 117, Recycling and Refuse Collection. The Mayor and Council of the City of Hagerstown find it in the best interests of the citizens of the City to adopt a policy on special circumstances that would allow for the placement of trash and recycling receptacles and containers in alternative locations.

The City of Hagerstown recognizes that the determination of "front yard" and "side yard" could be open to interpretation and therefore a policy has been developed to guide staff in determining front and side yards for receptacle and container placement which meets the intent of minimizing the impact of trash and recycling storage on our neighborhoods streetscapes.

Therefore, the City of Hagerstown Planning and Code Administration Department will utilize the following policy to assess special circumstances which justify location of receptacles and containers in locations alternative to what is prescribed in Chapter 117 and to interpret "front yard" and "side yard" for receptacle and container placement. This is only a policy guide and does not constitute the law or code.

Special Circumstances for Alternative Trash and Recycling Receptacles and Containers Placement:

No trash or recycling receptacles or containers shall be stored in the front yard, on a front porch, in view of S. Prospect Street, in view of any other street so designated by the Mayor and City Council, or in a public way, unless Code Administration staff determine that one of the following occurs:

1. The property has zero setback from the street right-of-way and does not contain a side yard, internal storage capability or a front-loading garage to allow a reasonable storage solution apart from the public way; or
2. The property may have a front yard, but does not contain a side yard to allow access to a rear yard, to allow for side yard storage, or storage out of view or shielded from view of S. Prospect Street, *and* the property does not have internal storage capability or a garage; or
3. The sole occupant of the home is of poor permanent health or disability which makes compliance with the standard a hardship; or
4. The property contains severe topography which makes it infeasible to store receptacles or containers as prescribed in Chapter 117.

In cases where an exemption to the placement standards is granted, such exemption shall be subject to the following conditions:

1. The property shall otherwise maintain compliance with Chapter 117;
2. The property does not amount to a nuisance as defined in Chapter 185;
3. No trash or recycling receptacles may be stored in such a manner that they block the public right-of-way; and
4. The property maintains compliance with any other reasonable conditions requested by the Planning and Code Administration Department.

In order to obtain an exception, the resident or property owner must fill out and submit an application. The application will be reviewed by staff at the Planning and Code Administration Department. If applicable, the application will be granted subject to any conditions. A decision by the Planning and Code Administration Department may be appealed within 30 days of the date of the decision to the Board of Technical Appeals.

Interpretation of Front and Side Yard for Placement of Receptacles and Containers

Front Yard - Staff shall interpret "front yard" as that area of ground between the street right-of-way and the wall of the principal building which fronts the street. Since porches typically encroach into required setbacks from a zoning perspective, the depth of the porch shall be excluded from front yard determinations. Each street frontage constitutes a front yard from a zoning perspective. For double or triple frontage lots, screening or enclosures may be considered if location in the secondary front yard (side or rear of primary building) is the most practical location for the receptacles and containers.

Side Yard – Staff shall interpret "side yard" as that area of ground on the side of the primary building extending back towards the rear yard from the front wall of the principal building. As with front yards, porch depths are excluded from side yard determinations. To minimize visibility from the street, and where practical, receptacles and containers shall be set back at least 10 feet from the front wall of the primary building.

This Policy shall take effect on April 22, 2016.

Witness and Attest
As to Corporate Seal

Mayor and Council of the
City of Hagerstown, Maryland

Donna K. Spickler, City Clerk

Davis S. Gysberts, Mayor

Date of Passage: March 22, 2016