

# Mayor and Council

## 103rd Special Session and Work Session

### October 18, 2016

### Agenda

*"A diverse, business-friendly, and sustainable community with clean, safe and strong neighborhoods."  
"Providing the most efficient and highest-quality services as the municipal location of choice for all customers."*

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"I'm a success today because I had a friend who believed in me and I didn't have the heart to let him down."

Abraham Lincoln

#### 4:00 PM SPECIAL SESSION

1. Approval of a Resolution: Memorandum of Understanding with Howard County, Maryland to Participate in the Regional Automated Enforcement Center
2. Approval of a Resolution: Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera System and Services
3. Approval of a Resolution: First Addendum to the Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera Enforcement - Delinquent Collection Services

#### 4:00 PM WORK SESSION

1. Preliminary Agenda Review
- 4:25 PM** 2. 2016 Hagerstown Ice and Sports Complex Annual Report - *Rodney Tissue, City Engineer; Paul Sweeney, Chairman of Hagerstown Ice Amateur Athletic Association, Inc. (HIAAA)*
- 4:40 PM** 3. Recreation Update - *Rodney Tissue, City Engineer; Amy Riley, Recreation Promotion and Services Coordinator*
- 4:55 PM** 4. Catalytic Project #5: Linking Trail from AE District to City Park - Hagerstown Cultural Trail: Project Update - *Rodney Tissue, City Engineer*
- 5:10 PM** 5. Proposed Policy Change to Sidewalk Display Standards - *Kathleen Maher, Director of Planning and Code Administration; Amanda Whitmore, Downtown Coordinator*
- 5:25 PM** 6. 60 West Washington Street: BuroBox Membership Agreements - *Amanda Whitmore, Downtown Coordinator*
- 5:35 PM** 7. Washington County Coalition Update - *Mayor David S. Gysberts*  
(no packet material)

#### CITY ADMINISTRATOR'S COMMENTS

#### MAYOR AND COUNCIL COMMENTS

#### ADJOURN

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

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**Topic:**

Approval of a Resolution: Memorandum of Understanding with Howard County, Maryland to Participate in the Regional Automated Enforcement Center

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Motion\_-\_RAEC.pdf

**Description**

Motion

## REQUIRED MOTION

### MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

**Date:** October 18, 2016

**TOPIC:** Approval of a Resolution: Memorandum of Understanding with Howard County, Maryland to Participate in the Regional Automated Enforcement Center

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

**MOTION:** I hereby move for Mayor and Council approval of a Resolution authorizing a Memorandum of Understanding (MOU) with Howard County, Maryland, to join the Regional Automated Enforcement Center (RAEC). Membership in the RAEC provides assistance with installation, approval of locations, training, technical, and other support relating to the Red Light Camera System in the City of Hagerstown.

Under the MOU, the City of Hagerstown will pay Howard County a monthly fee established in accordance with the jurisdictional cost matrix.

DATE OF PASSAGE: 10/18/16  
EFFECTIVE DATE: 10/18/16



**CITY OF HAGERSTOWN, MARYLAND**

**A RESOLUTION AUTHORIZING  
THE EXECUTION AND DELIVERY OF  
MEMORANDUM OF UNDERSTANDING WITH  
HOWARD COUNTY, MARYLAND,  
FOR THE PURPOSE OF  
PARTICIPATING IN THE REGIONAL  
AUTOMATED ENFORCEMENT CENTER**

**RECITALS**

**WHEREAS**, Maryland Transportation Code Ann. §21-202.1 (“the Code”) authorizes the use of traffic control signal monitoring systems (“Red Light Camera Systems”); and

**WHEREAS**, the Mayor and City Council of the City of Hagerstown, hereinafter referred to as “the City,” believe it is in the best interest for the safety of its citizens that a Red Light Camera System be implemented within the City of Hagerstown, in accordance with the Code;

**WHEREAS**, American Traffic Solutions, Inc. (“ATS”), a corporation organized and existing under the laws of the State of Kansas, installs, operates, and provides technical and other support services for Red Light Camera Systems in the State of Maryland;

**WHEREAS**, Howard County, Maryland (“Howard County”) entered into a written agreement with ATS on or about January 6, 2016 for the provision of a Red Light Camera System in Howard County (“the January 6, 2016 Agreement”), after a competitive bid process;

**WHEREAS**, the Howard County can provide assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City through the City’s membership and participation in the Regional Automated Enforcement Center (“RAEC”);

**WHEREAS**, the City may enter into agreements with both ATS and Howard County which will provide for the benefits of the January 6, 2016 Agreement, as well as Howard County’s assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City, and the City’s use of the RAEC;

**WHEREAS**, by entering into agreements with both ATS and Howard County, the City may avoid the time involved in a competitive bid process and acquire the expertise of both ATS and Howard County at competitive fees;

**WHEREAS**, by separate resolution dated October 18, 2016, the City shall be authorized enter into an agreement with ATS which will provide for the benefits of the January 6, 2016 Agreement; and

**WHEREAS**, attached hereto and incorporated herein is a Memorandum of Understanding between the City and Howard County to secure Howard County's assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City and allowing the City's use of the RAEC.

**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 are incorporated herein as if fully set forth.
2. That the City of Hagerstown be and is hereby authorized to execute the Memorandum of Understanding between the City and Howard County, a copy of which is attached hereto, and to execute such other and further documents as are necessary to effectuate the same.

**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

By: \_\_\_\_\_  
David S. Gysberts, Mayor

Date of Introduction: October 18, 2016  
Date of Passage: October 18, 2016  
Effective Date: October 18, 2016

PREPARED BY:  
SALVATORE & BOYER, LLC  
CITY ATTORNEYS



## **DEPARTMENT OF POLICE**

*Chief Gary L. Gardner*

### **MEMORANDUM OF UNDERSTANDING**

#### **CITY OF HAGERSTOWN AND HOWARD COUNTY**

This document is designed to serve as a guideline for operations and for the implementation of the Regional Automated Enforcement Center's (RAEC) program.

THIS MEMORANDUM OF UNDERSTANDING is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Howard County, Maryland, and Hagerstown, Maryland, a municipality located in Washington County, each a body corporate and politic of the State of Maryland.

#### **1. Background**

In 1993, personnel in the Howard County Police Department began taking the actions necessary to establish the automated red light enforcement program in Howard County. Howard County personnel visited the sites of existing automated red light operations; conducted a four-month pilot test program; reviewed legal authority of other States; met extensively with Maryland State legislators to explain the automated program and the legislation necessary to implement it; testified in favor of the authorizing legislation passed in 1997; developed a request for proposals which required vendors to provide product options and, after extensive interviews and demonstrations, selected vendors ("Vendors") to operate the automated red light enforcement program.

Howard County operates a red light enforcement processing facility, known as the Regional Automated Enforcement Center (the "RAEC") at 9250 Bendix Road, Columbia, Maryland. Vendors have operations at the processing facility. Howard County allows Vendors to process work for jurisdictions in addition to Howard County, provided that the citations issued for the other jurisdiction are aggregated (where applicable) with those of Howard County (and other jurisdictions mutually agreed upon) to establish the unit price and each participating jurisdiction compensates Howard County for the additional costs incurred.

The City of Hagerstown is contracting with one or more of the Vendors and desires to conduct all or certain portions of its red light enforcement operations at the RAEC.

**2. Purpose of Memorandum of Understanding**

This Memorandum of Understanding sets forth the respective rights and responsibilities of Howard County and the City of Hagerstown with respect to the use of the RAEC in Howard County and provides for cooperative development of other similar projects.

**3. Facilities and Resources Provided by Howard County**

a. *Facilities.* Howard County will provide the facilities needed by the City of Hagerstown as follows:

- (1) office space for the use of the City of Hagerstown employees and vendors employees supporting the automated red light enforcement operation, with mutually agreed upon improvements;
- (2) MILES/NCIC access; and
- (3) electricity, HVAC, janitorial services, etc. for the use of the City of Hagerstown employees and vendors' employees supporting the City of Hagerstown's automated red light enforcement operation.

b. *Resources.* Howard County will, through the Howard County Automated Enforcement Commander, provide the following services and resources:

- (1) provide police management, support, and oversight of the Regional Automated Enforcement Center, to include, but not limited to; training of partner jurisdictions; providing quality assurance reviews of the Regional Automated Enforcement Center program operations; oversight of Vendors' operations; ensuring that MILES/NCIC requirements are not violated, image evidence are handled, logged and stored according to established and mutually agreed upon procedures, and maintain adequate records to establish a chain of custody; that vendors' personnel operate in a manner in which violation records cannot be manipulated; and research and development efforts to evaluate competing technologies. In addition, Howard County will maintain necessary relationships with State Highway Administration, the offices of the Chief Judge of the District Court of Maryland, the Maryland Motor Vehicle Administration, and provide legislative testimony as needed;
- (2) communicate regularly with the supervisor designated by the City of Hagerstown and report any observations about the sufficiency of staffing or other concerns (this does not include supervising the personnel within the RAEC);
- (3) facilitate discussions to initiate process improvements, to develop future strategies and to resolve any questions which may arise about the use of the facility;

- (4) provide samples of materials which may be used for a public awareness campaign and will share the insight gained from Howard County's experience implementing this program;
- (5) if requested, provide an appropriate individual to testify in Court about evidentiary matters or technical issues related to the program;
- (6) conduct background investigations for additional vendor employees working at the RAEC for the City of Hagerstown.

**4. Payment by the City of Hagerstown**

*Facilities.* The City of Hagerstown will pay Howard County a monthly fee established in accordance with the jurisdictional cost assessment matrix, an example of which is attached (see Attachment A). This matrix ensures equitable distribution of the operational costs of the Regional Automated Enforcement Center for facilities and services provided. The Matrix includes Howard County operational costs allocated based on the number of cameras in use by each jurisdiction. The Matrix will be adjusted as necessary for changes in actual costs, or number of cameras. Jurisdictions will be billed monthly for these expenses. In addition, the following expenses will be paid, if applicable:

- a. the cost of any mutually agreed upon improvements to the space;
- b. the actual cost of furniture provided to additional vendor employees assigned to work for the City of Hagerstown.
- c. the actual amount charged to Howard County by the State for MILES/NCIC access if required to support the work for the City of Hagerstown.

**5. Responsibilities of Each Jurisdiction**

The City of Hagerstown and Howard County shall each:

- a. supervise and control its own employees;
- b. maintain all insurance, such as workers compensation insurance, required to meet the County's statutory responsibilities;
- c. be responsible for all acts or omissions of its own employees;
- d. enter into a separate agreement with each of the vendors and be responsible, independently, for administering all aspects of the contract, including making payments to the Vendors;

- e. provide or reimburse Howard County for consumables used and items such as postage furnished; and
- f. conduct a background investigation for each public employee assigned to work at the RAEC
- g. abide by the policies and procedures outlined in the Regional Automated Enforcement Center's Uniform Standards Guide ("Uniform Standard's Guide") and allow Howard County access to program data to evaluate all components of the Regional Automated Enforcement Center's programs.

**6. Failure to Abide by the Uniform Standard's Guide or Permit Access to Data**

In order to maintain the integrity of the automated red light enforcement program and to provide credible supporting testimony in court, Howard County must be able to ensure that the Uniform Standard's Guide is followed. To do so, Howard County must have access to program data of all jurisdictions whose violations are processed at the RAEC, including data maintained by on site personnel of the jurisdiction and a vendor on behalf of the jurisdiction. If the City of Hagerstown or its vendor fails to adhere to the Uniform Standard's Guide or fails to allow Howard County personnel access to program data, Howard County has the right to: (1) terminate this Memorandum of Understanding; (2) direct the vendor to cease all work at the RAEC for the City of Hagerstown; (3) take any action necessary to terminate communication connections between the RAEC, MILES, and the City of Hagerstown. Howard County will provide written notice to a designated official of the City of Hagerstown that Howard County considers the City of Hagerstown to have violated the terms of this Section 6 and will exercise its rights under this section if the violation has not been cured within seven (7) calendar days of the date of the notice.

**7. Cooperation on Additional Projects**

Howard County will share the results of other research and development efforts to evaluate competing technologies to determine the most advantageous technology.

**8. Term of MOU**

This Memorandum of Understanding will be in effect from \_\_\_\_\_, 20\_\_ to December 31, 2016\_. This Memorandum of Understanding shall automatically renew each year unless cancelled. Each party has the right to terminate this Memorandum of Understanding by providing the other party with thirty (30) days written notice.

**REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

CITY OF HAGERSTOWN

\_\_\_\_\_  
Donna Spickler, City Clerk

BY: \_\_\_\_\_  
David S. Gysberts, Mayor Date

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_  
Lonnie Robbins  
Chief Administrative Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Allan H. Kittleman  
County Executive

\_\_\_\_\_  
Date

**APPROVED, HOWARD COUNTY POLICE DEPARTMENT**

\_\_\_\_\_  
Gary L. Gardner  
Chief of Police

\_\_\_\_\_  
Date

**Approved for Form and Legal Sufficiency:**

\_\_\_\_\_  
Gary W. Kuc  
County Solicitor

\_\_\_\_\_  
Date

**Reviewing Attorney:**

\_\_\_\_\_  
Cynthia Peltzman  
Senior Assistant County Solicitor

\_\_\_\_\_  
Date

# ATTACHMENT A

## Regional Automated Enforcement Center Equitable Distribution Matrix Example

June 2016

Jurisdiction	Active Cameras	Cost per Camera	Monthly Invoice
Bel Air	4	\$176.54	\$706.16
Charles County	18	\$176.54	\$3,177.72
Cheverly	4	\$176.54	\$706.16
Cottage City	2	\$176.54	\$353.08
Greenbelt	6	\$176.54	\$1,059.24
Howard County	28	\$176.54	\$4,943.12
Hyattsville	3	\$176.54	\$529.62
Landover Hills	3	\$176.54	\$529.62
Morningside	0	\$176.54	\$0
Westminster	1	\$176.54	\$176.54
<b>Totals</b>	<b>69</b>	<b>\$176.54</b>	

Formula		
<b>Total Expenses (A+B+C) Divided by Quantity of Cameras</b>		
(Updated Jan. 12, 2016)		
(A) 25% of LT, SGT and LT's Admin. Support Tech. Salaries	\$66,817.50	
(B) 10% of Red Light Support Staff Salaries	\$14,836.60	
(C) Annual Lease Value in Dorsey Building (2,518 sq. ft., class B office space, full service lease)	\$64,525.00	
<b>Annual Total</b>	<b>\$146,179.10</b>	
<i>divided by</i>	<i>12</i>	<i>Months</i>
<b>Monthly Total</b>	<b>\$12,181.59</b>	
<i>divided by</i>	<i>69</i>	<i>Cameras</i>
<b>Cost per camera per month</b>		<b>\$176.54</b>

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

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**Topic:**

Approval of a Resolution: Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera System and Services

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Motion\_-\_ATS.pdf

**Description**

Motion

## REQUIRED MOTION

### MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

**Date:** October 18, 2016

**TOPIC:** Approval of a Resolution: Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera System and Services

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

**MOTION:** I hereby move for Mayor and Council approval of an Agreement with American Traffic Solutions, Inc. (ATS) regarding the operations and implementation of the red light camera enforcement program.

ATS will provide the services to Hagerstown pursuant to the terms and conditions of the Howard County Agreement. Pricing and billing shall be as set forth in the Howard County Agreement.

DATE OF PASSAGE: 10/18/16

EFFECTIVE DATE: 10/18/16



**CITY OF HAGERSTOWN, MARYLAND**  
**THE EXECUTION AND DELIVERY**  
**OF AN AGREEMENT WITH**  
**AMERICAN TRAFFIC SOLUTIONS, INC.**  
**FOR THE PURPOSES OF**  
**PROVIDING A DIGITAL RED LIGHT CAMERA SYSTEM**  
**AND RELATED OFFICE SERVICES**

**RECITALS**

**WHEREAS**, Maryland Transportation Code Ann. §21-202.1 (“the Code”) authorizes the use of traffic control signal monitoring systems (“Red Light Camera Systems”); and

**WHEREAS**, the Mayor and City Council of the City of Hagerstown, hereinafter referred to as “the City,” believe it is in the best interest for the safety of its citizens that a Red Light Camera System be implemented within the City of Hagerstown, in accordance with the Code;

**WHEREAS**, American Traffic Solutions, Inc. (“ATS”), a corporation organized and existing under the laws of the State of Kansas, installs, operates, and provides technical and other support services for Red Light Camera Systems in the State of Maryland;

**WHEREAS**, Howard County, Maryland (“Howard County”) entered into a written agreement with ATS on or about January 6, 2016 for the provision of a Red Light Camera System in Howard County (“the January 6, 2016 Agreement”), after a competitive bid process;

**WHEREAS**, Howard County can provide assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City through the City’s membership and participation in the Regional Automated Enforcement Center (“RAEC”);

**WHEREAS**, the City may enter into agreements with both ATS and Howard County which will provide for the benefits of the January 6, 2016 Agreement, as well as Howard County’s assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City, and the City’s use of the RAEC;

**WHEREAS**, by entering into agreements with both ATS and Howard County City, the City may avoid the time involved in a competitive bid process and acquire the expertise of both ATS and Howard County at competitive fees;

**WHEREAS**, by separate resolution dated October 18, 2016, the City shall be authorized enter into a Memorandum of Understanding with Howard County to secure the County’s assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City and allowing the City’s use of the RAEC; and

**WHEREAS**, attached hereto and incorporated herein is an Agreement between the City and ATS to secure ATS's assistance with installation, approval of locations, training, technical and other support relating to Red Light Camera System in the City. The Agreement with ATS incorporates the terms of the January 6, 2016 Agreement.

**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 are incorporated herein as if fully set forth.
2. That the City of Hagerstown be and is hereby authorized to execute the Agreement between the City and ATS, a copy of which is attached hereto, and to execute such other and further documents as are necessary to effectuate the same.

**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

By: \_\_\_\_\_  
David S. Gysberts, Mayor

Date of Introduction: October 18, 2016  
Date of Passage: October 18, 2016  
Effective Date: October 18, 2016

PREPARED BY:  
SALVATORE & BOYER, LLC  
CITY ATTORNEYS

## AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the date of final execution hereof and effective (the "Effective Date") concurrently with that certain agreement entered into between American Traffic Solutions, Inc. ("ATS") and Howard County, Maryland (the "County") dated January 5, 2016 (the "Howard County Agreement"). This Agreement is entered into by and between the City of Hagerstown, a municipal corporation of the State of Maryland ("Municipality"), and American Traffic Solutions, Inc., a Kansas corporation ("ATS").

WHEREAS, ATS has entered into the Howard County Agreement which provides for ATS and its agents and subcontractors to provide certain systems and services related to the County's enforcement of traffic laws and ordinances, as further specified in the Howard County Agreement (collectively, the "Services"); and

WHEREAS, the Municipality and the County have entered into a Memorandum of Understanding ("MOU") regarding the operations and implementation of the Regional Automated Enforcement Center ("RAEC") Program; and

WHEREAS, the Municipality desires ATS to provide Services to the Municipality subject to the terms and conditions contained in the County Agreement and the provisions herein; and

NOW, THEREFORE, in consideration of the mutual covenants, warranties, representations, and conditions contained in the Howard County Agreement and in this Agreement, the parties hereto agree as follows:

1. Services. The parties agree that ATS will provide the Services to the Municipality pursuant to the terms and conditions of the Howard County Agreement.
2. Pricing and Billing. Pricing and invoicing shall be as set forth in the Howard County Agreement.
3. Term and Termination. This Agreement shall begin on the Effective Date. This Agreement shall terminate concurrently with the termination of the Howard County Agreement or upon the termination or expiration of the MOU.
4. Incorporations. ATS agrees to provide to the Municipality with all of the options, rights, protections, entitlements and indemnities afforded to the County in the Howard County Agreement.
5. Notice. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified, return receipt, overnight carrier, or hand delivered to the following address and individual or such other address and/or such other individual a party may identify as a writing to the other party:

For the Municipality: Hagerstown, City Administrator  
Room 202  
One Franklin Street  
Hagerstown, MD 21740

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For ATS: American Traffic Solutions, Inc.  
1150 N. Alma School Rd.  
Mesa, AZ 85201  
Attn: Legal Department

6. Miscellaneous. This Agreement and any disputes relating thereto shall be governed under and construed according to the laws of the State of Maryland without regard to choice of law rules. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

IN WITNESS WHEREOF, authorized representatives of the parties have set forth their signatures below, intending to be legally bound.

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF HAGERSTOWN

By: \_\_\_\_\_  
David M. Roberts Date  
President & Chief Operating  
Officer

By: \_\_\_\_\_  
Mayor Date

ATTEST:

By: \_\_\_\_\_  
City Clerk Date

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

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**Topic:**

Approval of a Resolution: First Addendum to the Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera Enforcement - Delinquent Collection Services

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Motion\_-\_ATS\_Addendum.pdf

**Description**

Motion

## REQUIRED MOTION

### MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

**Date:** October 18, 2016

**TOPIC:** Approval of a Resolution: First Addendum to the Agreement with American Traffic Solutions, Inc. (ATS) for Red Light Camera Enforcement - Delinquent Collection Services

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

**MOTION:** I hereby move for Mayor and Council approval of a Resolution authorizing the First Addendum to the agreement with American Traffic Solutions, Inc. (ATS) regarding the operations of the red light camera enforcement program and delinquent collection services.

The maximum Collection Services fee is a total of 30% for collection services, in addition to ATS' normal fee as set forth in the Agreement.

DATE OF PASSAGE: 10/18/16  
EFFECTIVE DATE: 10/18/16



**CITY OF HAGERSTOWN, MARYLAND**  
**THE EXECUTION AND DELIVERY**  
**OF AN ADDENDUM TO AGREEMENT WITH**  
**AMERICAN TRAFFIC SOLUTIONS, INC.**  
**FOR THE PURPOSES OF**  
**PROVIDING COLLECTIONS SERVICES**  
**IN CONNECTION WITH ITS**  
**DIGITAL RED LIGHT CAMERA SYSTEMS**

**RECITALS**

**WHEREAS**, Maryland Transportation Code Ann. §21-202.1 (“the Code”) authorizes the use of traffic control signal monitoring systems (“Red Light Camera Systems”); and

**WHEREAS**, the Mayor and City Council of the City of Hagerstown, hereinafter referred to as “the City,” believe it is in the best interest for the safety of its citizens that a Red Light Camera System be implemented within the City of Hagerstown, in accordance with the Code;

**WHEREAS**, American Traffic Solutions, Inc. (“ATS”), a corporation organized and existing under the laws of the State of Kansas, installs, operates, and provides technical and other support services for Red Light Camera Systems in the State of Maryland;

**WHEREAS**, by separate resolution dated October 18, 2016, the City shall be authorized enter into an agreement with ATS which will provide for installation, operation, and technical and other support services for a Red Light Camera System in the City;

**WHEREAS**, the City also desires to utilize the collections services offered by ATS to pursue payment of citations which are not timely paid; and

**WHEREAS**, attached hereto and incorporated herein is an Addendum to Agreement between the City and ATS to secure ATS’s assistance with collections services.

**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 are incorporated herein as if fully set forth.
2. That the City of Hagerstown be and is hereby authorized to execute the First Addendum to Agreement between the City and ATS, a copy of which is attached hereto, and to execute such other and further documents as are necessary to effectuate the same.

**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

By: \_\_\_\_\_  
David S. Gysberts, Mayor

Date of Introduction: October 18, 2016  
Date of Passage: October 18, 2016  
Effective Date: October 18, 2016

PREPARED BY:  
SALVATORE & BOYER, LLC  
CITY ATTORNEYS

**FIRST ADDENDUM TO AGREEMENT  
BETWEEN THE CITY OF HAGERSTOWN, MARYLAND  
AND AMERICAN TRAFFIC SOLUTIONS, INC.**

This First Addendum ("Addendum") is entered into as of the date of final execution hereof and effective ("Effective Date") contemporaneously with that certain Agreement entered into between the City of Hagerstown, a municipal corporation of the State of Maryland ("City"), and American Traffic Solutions, Inc., a Kansas corporation ("ATS").

WHEREAS, ATS has entered into the Howard County Agreement which provides for ATS and its agents and subcontractors to provide certain systems and services related to the County's enforcement of traffic laws and ordinances, as further specified in the Howard County Agreement (collectively, the "Services"); and

WHEREAS, the City and the County are, contemporaneously with this Addendum, entering into a Memorandum of Understanding ("MOU") regarding the operations and implementation of the Regional Automated Enforcement Center ("RAEC") Program; and

WHEREAS, the City desires ATS to provide Services to the Municipality subject to the terms and conditions contained in the Howard County Agreement and the provisions herein;

WHEREAS the City and ATS are contemporaneously with this Addendum entering into an Agreement, ("the Agreement") whereby ATS will provide red light enforcement and related services to the City in accordance with the terms and conditions of the Howard County Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, warranties, representations, and conditions contained in this Addendum, the parties hereto agree as follows:

1. The following service shall be added to the Agreement:

Collections Services. ATS shall initiate collections efforts of delinquent notices, or other debt as requested by City, so long as collection of said recovered revenue amounts does not conflict with state or federal debt collection laws. ATS shall indemnify and hold harmless the City as to any violations of debt collection laws by ATS, its agents or assigns. ATS shall be entitled to receive portions of the collected revenue as noted below:

<b>Delinquent Collections Services</b> (includes skip tracing services and collections services)	30% of recovered revenue in addition to ATS' normal fee as set forth in the Agreement
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The maximum Collection Services fee is a total of 30% for collection services. For those accounts in default that go to collections, the collections fee is in addition to ATS' normal Service Fee under the Agreement.

The City agrees that upon execution of this Addendum, the City shall not utilize another vendor for these collections services without prior written consent from ATS through another addendum to the Agreement.

2. The City agrees to collections services, contemporaneously with execution of this Addendum.
3. Except as expressly amended or modified by the terms of this Addendum, all terms of the Agreement shall remain in full force and effect. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall prevail and control.
4. The provisions of the Agreement, as amended by this Addendum, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with

respect to the subject matter hereof.

5. This Addendum may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.
6. Each party represents and warrants that the representative signing this Addendum on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Addendum.

IN WITNESS WHEREOF, authorized representatives of the parties have set forth their signatures below, intending to be legally bound.

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF HAGERSTOWN

By: David M. Roberts Date \_\_\_\_\_  
President & Chief Operating Officer

By: David G. Gysberts, Mayor Date \_\_\_\_\_

ATTEST:

By: Donna Spickler Date  
City Clerk

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

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**Topic:**

Preliminary Agenda Review

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

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

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**Topic:**

2016 Hagerstown Ice and Sports Complex Annual Report - *Rodney Tissue, City Engineer; Paul Sweeney, Chairman of Hagerstown Ice Amateur Athletic Association, Inc. (HIAAA)*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

2016\_Hagerstown\_Ice\_Rink.pdf

**Description**

2016 Hagerstown Ice &  
Sports Complex Annual  
Report



# CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

October 11, 2016

TO: Valerie Means, City Administrator  
FROM: Rodney Tissue, City Engineer *Rob*  
RE: 2016 Hagerstown Ice & Sports Complex Annual Report

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I request time on the October 18, 2016 Work Session to allow members of the Hagerstown Ice Amateur Athletic Association (HIAAA), who have managed the facility for us since April 2014, to present their annual report. I anticipate that Paul Sweeney (Board Chair), and others will attend and will review the attached PowerPoint presentation. Their presentation provides usage data, fiscal information, capital improvement information, and goals for the upcoming year.


As a reminder to Mayor & City Council, the City pays the utility bills at the rink. As the PowerPoint alludes to, we have lowered utility costs from a high of \$86,891 in FY 11/12 to \$77,111.59 for FY 15/16 (despite higher utility rates). We completed the energy audit of the facility this year and utilizing an MEA grant, the rink is now 100% LED lighting.

The HIAAA will begin to pay rent in April 2017. In the meantime, the intent was for the HIAAA to make improvements to the rink and complete the locker rooms which were successfully done.

Attachments: PowerPoint  
c: Paul Sweeney  
Mark Haddock  
Amy Riley

## Annual Review: Hagerstown Ice & Sports Complex

October 18, 2016




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### Who uses the HISC?





Washington County North Stars  
Hagerstown Adult Recreational League  
Mayhem Women's Hockey Team  
Hagerstown Kodiaks Sled Hockey Team  
Youth Recreational League





Rink is managed by the Hagerstown Ice Amateur Athletic Association

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### What is the HIAAA?

- ▶ HIAAA is a non-profit, 501(c)(3) organization
- ▶ Consortium of all major user groups
- ▶ Each group has a voting member on the HIAAA board
- ▶ 4 at-large members also hold voting rights
- ▶ Group was created in 2014 and formally took over operation of the rink on April 1, 2014 (just completed our second complete Fiscal year)

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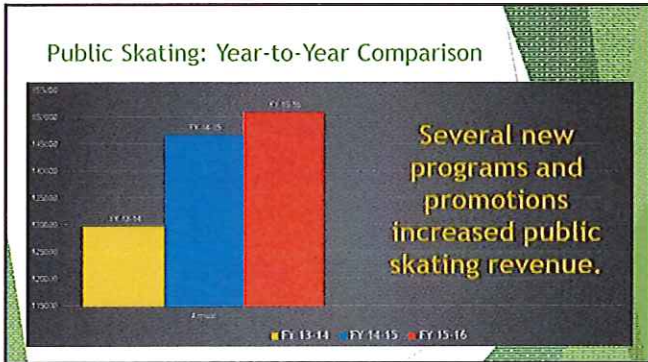
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- Adult Teams at the HISC
- ▶ **6** teams in upper adult hockey division
  - ▶ **10** teams in lower adult hockey division
  - ▶ **2** teams in developmental adult hockey division
  - ▶ **1** all-female travel adult team
  - ▶ **1** sled hockey team
  - ▶ **~200** adult hockey players

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- Amateur teams at the HISC
- ▶ **6** HYHA teams (Hagerstown Youth Hockey)
  - ▶ **2** High School Teams (NorthStars, WV Vipers)
  - ▶ **3** youth developmental programs
    - ▶ **Power Skating**
    - ▶ **Learn to Play Hockey**
    - ▶ **Youth Recreational League**
      - ▶ Washington Capitals partnership: 40 complete sets of equip. donated
  - ▶ **100+** youth hockey players

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### Figure Skating at the HISC

- ▶ 2 figure skating programs at the rink
  - ▶ Hagerstown Edge Learn to Skate
  - ▶ Hagerstown Edge Figure Skating Club
- ▶ ~100 figure skaters

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### HIAAA: Opportunities for Success

- ▶ Detailed analysis of separate rink functions continues to be examined by HIAAA board members (registrations, ice usage, concessions, advertising, maintenance)
- ▶ Recommendations made at monthly board meetings
- ▶ Hired Sales Professional to sell advertising for rink (dasher boards, signage, video, etc)
- ▶ SOPs are now in place. Productivity and Appearance continue to improve.
- ▶ Physical state of ice and boards in very good condition.
  - ▶ Ice was taken out and put back, in one week this summer, which allowed for maintenance and rink repairs.

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### Current State of HISC and HIAAA

- ▶ All bills (as of October 2016) are current
- ▶ New Lockers w/showers are complete and in use
- ▶ Currently a surplus in the rink account
- ▶ Hired Interim General Manager and full-time Maintenance Supervisor this fall
- ▶ Hired Program Director (develop Hockey programs) in 2015- significant program growth has occurred
- ▶ HISC account is in the black!

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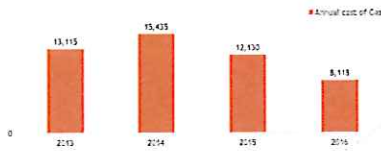
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### Example of HIAAA cost-saving measure

- ▶ Chart shows Gas usage for the past 4 years
- ▶ Comparison of Fiscal Years 2013 - 2016
- ▶ Approximately a 41% savings in Water/Sewer

HISC Utility Comparison

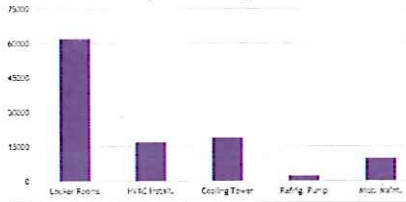


Nearly a 50% reduction in gas costs from last year

### Protecting the Rink via Reinvestments:

- ▶ Accurate reporting → predictable financial forecasting
- ▶ Proper forecasting → preventative maintenance

Examples of Recent Improvements



Preventative maintenance can save us from some future expenses

### Future Maintenance & Reinvestments

Targeted FY:	Task:	Estimated Cost:
2016-17	Replace rental skates	\$15,000
2016-17	Enhance sprinkler system by the bleachers (storage area)	\$10,000
2016-17	Upgrade computer network	\$16,000
	Total	\$41,000
2017-18	Add Freon to the cooling system	\$15,000
2017-18	Refrigerant Pump #2 retrofit	\$ 9,000
	Total	\$24,000
2018-19	Enhance current alarm system	\$30,000
2019-20	Replace Zamboni (used model)	\$80,000
2019-20	Cooling system conversion	\$30,000

#### Looking Back: Goals & Improvements from 2015

- ▶ Locker rooms: Finished additional locker rooms and showers (Summer 2016)
- ▶ Monitoring utilities: New thermostats installed; motion-detecting automatic lights installed in various rooms
- ▶ Asset protection: Upgrade security system (current system found to be adequate)
- ▶ Plant asset upgrade: New Cooling Tower Installed
- ▶ Schools Out Public Skates
- ▶ Star Community Landscaping
- ▶ ARC of Washington County, DJ Public Skates

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#### Looking Ahead: Vision for 2016 - 2018

- ▶ Community Partnerships: WCPS flyers, City of Hagerstown player discount, Parks & Rec Department program listings
- ▶ Upgrading Network Infrastructure: Security measure
- ▶ Sled Hockey: Continued growth for new program
- ▶ Travel Youth & Adult Tournaments: Partnering with local businesses to offer discounts for visitors
- ▶ Police Athletic League: Building a community partnership for city youth

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#### HIAAAA VISION: Taking the Facility to the Next Level

- ▶ Adding another sheet of ice: Additional ice time allows for more teams and individuals to participate in ice sports at reasonable hours
- ▶ Indoor soccer facility: Great opportunity for the area; project would be much more cost effective if the design was incorporated as another sheet of ice was added

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

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**Topic:**

Recreation Update - *Rodney Tissue, City Engineer; Amy Riley, Recreation Promotion and Services Coordinator*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Recreation\_Update.pdf

**Description**

Recreation Update



# CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

October 13, 2016

TO: Valerie Means, City Administrator

FROM: Amy Riley, Recreation Coordinator *ARR*

SUBJECT: **Recreation Update**

Recreation staff continues to build programming in the development of a more active and healthier community. We would like to take this opportunity to recap our most recent accomplishments and exciting programs planned for the upcoming season.

## **2016 Fall/Winter Parks and Recreation Guide**

15,000 copies of the 2016 Fall/Winter Parks & Recreation Guide have been printed and distributed. The seasonal guide promotes all of the wonderful amenities our parks and recreational facilities have to offer, and our new programs and annual events coming up this fall and winter.

## **Health Department Grant Success**

Recreation has been a two-year recipient of a \$10,000 grant from the Washington County Health Department to be used in the promotion of healthy lifestyles. Grant monies have aided us in the development of new recreation programs and new signage and banners in our parks and facilities to encourage program registration. The grant was a catalyst in the development of the new Parks and Recreation Guides in which we have increased distribution from 5,000 – 15,000!

Our most recent accomplishment with the grant money support has been the development of new Parks Fitness Signage. The Parks Fitness Signage will promote movement and fitness awareness in our parks. We contracted with Dave Ruff, Ruff Fitness, to identify ways in which beginner level fitness individuals can use ordinary park amenities like a park bench, a swing, and or a picnic table, to achieve a total body workout. We also expanded our walking trail signage to promote walking in our parks. The new signs are in production and will be posted in our parks spring 2016. The signs will feature QR codes that link to fitness video tutorials which will instruct beginner level exercises. There will be a total of 18 signs featured in 6 different parks.

## **Fit Room at Fairgrounds Park**

Beginning in November, we are excited to have indoor space to program new indoor recreation classes at Fairgrounds Park! With our recent 'Fit For You' branding campaign, we have decided to name the new room 'The Fit Room at Fairgrounds Park' because our programming has a 'fit for you'! Whether it be our new Dance Fitness Classes, CPR, Square Dancing, Fit Fido, Pilates, PiYo or Yoga, we are offering fun fitness classes and contracting with new instructors to teach programs for the City. Classes are scheduled to begin the week of November 7<sup>th</sup>. Registration is open now through our online registration system.

### **Parks and Recreation Division**

351 North Cleveland Avenue • Hagerstown, MD 21740  
Ph: 301.739.8577 Ext. 169 • Fax: 301.790.0171

### **Engineering Division**

1 East Franklin Street • Hagerstown, MD 21740-4817  
Ph: 301.739.8577 Ext. 125 • Fax: 301-733.2214

## **Upcoming Fall & Winter Event Highlights**

### **Hager House Ghost Tours - October 14, 15, 21 & 22, 7pm, 8pm, & 9pm tour times**

Special guest host volunteer group, "Oculus," will be co-hosting the Hager House Ghost Tours this year, equipped with all the modern-day ghost-tracking contraptions seen on TV. \$5/tour.

### **Anything But Golf - October 22, 3pm**

We are partnering with our City Wellness Committee to host a special event time for employees at 2pm! As with traditional golf, you will start on the tee and advance your ball to the hole, aiming to use as few shots as possible. But, you will not be striking the ball with a golf club or using a golf ball at all! \$20 adults/\$10 kids.

### **Ride-Along Weekend with Tommy 202 - October 22, 10am – 4pm & October 23, Noon – 5pm**

Climb aboard a real historic seam engine, explore caboose rail cars, and take a ride on Tommy 202 – our new children's train ride! Museum rates apply. Rent the Railroad Museum for birthday parties in 2017!

### **Howl-O-Ween Dog Costume Parade - October 29, 11am – 1pm**

Dress up Fido to parade around the Dog Park at Fairgrounds Park and win great prizes! Judging categories include Owner Pet Look Alike, Doggie Diva, Best Movie Character, Punniest Pup and more! Enjoy vendors, giveaways, and fun contests like a Trick-Off and Bobbing for Hot Dogs. \$5/pup.

### **The Turkey Cup - November 19, 12pm**

2 Man Scramble Golf Tournament features 18-holes played under a fun and creative setup! The first 9-holes will be a best ball format and the final 9-holes will be a normal two-man scramble. Get a FREE pumpkin pie with registration and compete for great prizes! \$35/per team.

### **Hagerstown Heating & Cooling City Park Tree Lighting - December 2, 6pm – 9pm**

A new Title Sponsor has been secured for this event – Hagerstown Heating & Cooling! Expanded activities will be featured and a new holiday light decoration will be unveiled! Free.

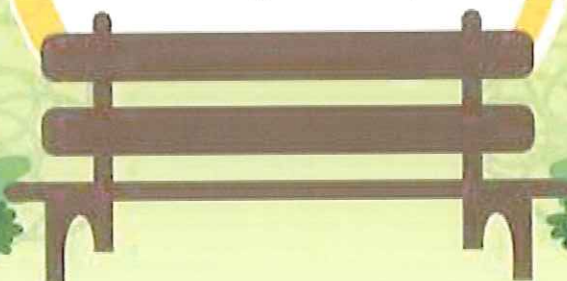
Attachments: 2016 Fall/Winter Program Guide  
Parks Fitness Signage  
Howl-O-Ween Dog Costume Parade/Anything But Golf

Cc: Mark Haddock  
Rodney Tissue

# FIND + YOUR FIT

**Don't Just Sit,  
Get Fit!**

Use an ordinary park bench  
to build strength and burn calories  
while having fun in the park!



SCAN this QR code to watch a video  
that demonstrates strength training  
exercises using park benches.



[www.hagerstownmd.org/parksandrec](http://www.hagerstownmd.org/parksandrec)



Sponsored in part by Washington County Health Department

HAGERSTOWN  
**FITFORYOU**



PARKS &  
RECREATION  
CITY OF HAGERSTOWN

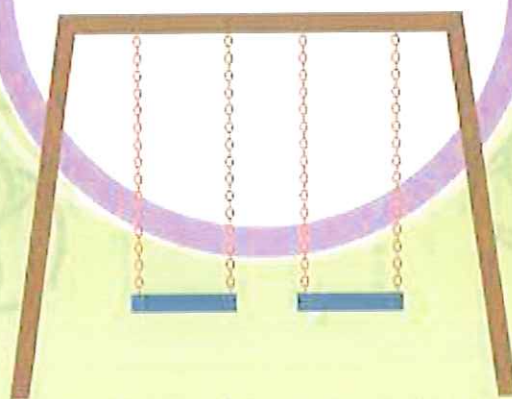


# FIND + YOUR FIT



## Swing into Fitness

Use a swing to exercise  
your entire body!



SCAN this QR code to watch a  
video that demonstrates exercises  
that can be done using a swing.



[www.hagerstownmd.org/parksandrec](http://www.hagerstownmd.org/parksandrec)



Sponsored in part by Washington County Health Department

HAGERSTOWN  
FIT FOR YOU



PARKS &  
RECREATION  
CITY OF HAGERSTOWN



**GREAT  
PRIZES!**



**4<sup>th</sup> Annual**

# HOWL-O-WEEN DOG COSTUME PARADE

**SATURDAY, OCTOBER 29, 2016**

11:00 am to 1:00 pm | Dog Park at Fairgrounds Park | 351 North Cleveland Ave, Hagerstown

## PRIZE CATEGORIES INCLUDE:

- Best Friends (Kids 12 & under)
- Best Handmade Costume
- Doggie Diva
- Mistaken Identity
- Most Appetizing
- Most Artistic
- Movie Character
- Owner/Pet Look Alike
- Punniest Pup
- Spookiest

## 10:30 AM – 11:15 AM

### Check-in for Parade Participants

\$5 pre-registration by October 27 is required to be eligible for prizes

\$7 on-site registration

The first 25 pre-registered receive a doggie goodie bag!

## 11:00 AM – 1:00 PM

### Vendors, giveaways, tricks and treats, photo booth, Parade, & fun contests!

Register for the Trick-off and Bobbing for Hot Dogs (space is limited)

Parade begins at 11:30 am—walk the red carpet and strut your stuff  
in front of our Judges!



**PARKS &  
RECREATION**  
CITY OF HAGERSTOWN

**RULES:** Each entry is for one dog and one owner. All dogs must be in costume and leashed to participate. Adults 18 and older must accompany any child who is presenting a dog. All dogs must be current on vaccinations. A rain or shine event!

**REGISTER ONLINE:** [www.hagerstownmd.org/dogcostumeparade](http://www.hagerstownmd.org/dogcostumeparade)  
301-739-8577 x170 • [parks&rec@hagerstownmd.org](mailto:parks&rec@hagerstownmd.org)



  
**The Greens**  
AT HAMILTON RUN

# anything But GOLF

Saturday, October 22 ★ 3:00pm - Dark

As with traditional golf, **YOU'LL START ON THE TEE** and advance your ball to the hole, aiming to use as few shots as possible.

However, **YOU WON'T BE STRIKING** the ball **WITH a GOLF CLUB**, and in many cases, you **WON'T BE USING A GOLF BALL AT ALL!**

**YOU HAVE CHOICES** for your first shot, including a lacrosse stick and ball, a football, a soccer ball, Frisbee, tennis ball with racket or something else from our cache of goodies. **Don't Miss the Fun!**

[www.hagerstownmd.org/anythingbutgolf](http://www.hagerstownmd.org/anythingbutgolf)

The Greens at Hamilton Run • 2 South Cleveland Ave., Hagerstown  
**HOLES #1, #7, #8 and #9**

Registration Questions?  
**301.739.8577 x170**

**PRE-REGISTERED**  
(Strongly recommended)

**\$20**

**ADULTS**  
(ages 15+)

**\$10**

**KIDS**  
(14 & under)

**\$60**

**FAMILIES**  
(up to 5 members)

**ON-SITE**  
(Space not guaranteed)

**\$25**

**ADULTS**  
(ages 15+)

**\$15**

**KIDS**  
(14 & under)

**\$65**

**FAMILIES**  
(up to 5 members)



**PARKS &  
RECREATION**  
CITY OF HAGERSTOWN

**FUN  
FOR  
All Ages!**

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

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**Topic:**

Catalytic Project #5: Linking Trail from AE District to City Park - Hagerstown Cultural Trail: Project Update - *Rodney Tissue, City Engineer*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

trail\_update.2016.pt\_1\_of\_2.pdf

trail\_update.2016.pt\_2\_of\_2.pdf

**Description**

Hagerstown Cultural Trail -  
Catalytic Project #5: Project  
Update

Hagerstown Cultural Trail -  
Catalytic Project #5: Project  
Update




# CITY OF HAGERSTOWN, MARYLAND

Department of Parks and Engineering

October 18, 2016

TO: Valerie Means, City Administrator

FROM: Rodney Tissue, City Engineer 

RE: Catalytic Project # 5: Linking Trail from AE District to City Park  
Hagerstown Cultural Trail: Project Update



## 1. Introduction

Staff is pleased to report that we are finalizing the Phase I construction and we wish to provide the Mayor and Council an update. The genesis of this project came from the *Community's City Center Plan* developed by Urban Partners in 2014 that was the result of broad community input.

The trail is the first step in this 10-year project with the following end goals:

- Creating market rate new townhomes along the trail
- Rehabilitation of several buildings on West Antietam Street
- Creating a destination-quality trail between our beautiful City Park and the City Center Arts and Entertainment District

## 2. M&C Action Requested

This is a general status up-date for the Mayor and Council's information. Two items that we request Council approval of are as follows:

- Contract with the muralist for the Mural of Unusual Size
- Easement agreement with the owner of Chics restaurant to allow photo murals to be installed on the wall adjacent to Lee Street.

These items will be described in more detail below.

## 3. Discussion

The following is a summary of all the various components of the project, in no particular order, for your information.

- Budget and Funding – The project will be completed within budget. With some savings, we have added irrigation at the Herald Mail park and the Housing Authority park area to ensure a quality aesthetic look all season long.

### Parks and Recreation Division

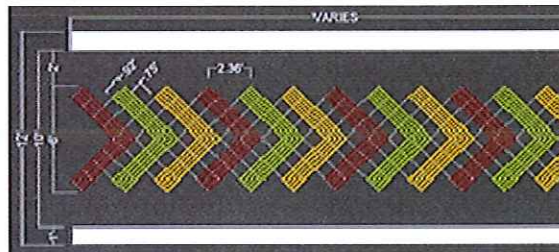
351 North Cleveland Avenue • Hagerstown, MD 21740  
Ph: 301.739.8577 Ext. 169 • Fax: 301.790.0171

### Engineering Division

1 East Franklin Street • Hagerstown, MD 21740-4817  
Ph: 301.739.8577 Ext. 125 • Fax: 301.733.2214

- Schedule

- *October 2016:* As anticipated, C. William Hetzer will be substantially complete their contract by the end of this month. Work remaining includes landscaping, light installation, and camera installation. The decorative crosswalks will be installed early next week. Trash cans, a couple benches and dog mitt stations will also be installed.
  - *Winter/Spring:* We will fabricate shade structures, install signs (see attached plan), and install interactive history displays, etc. The art will also be installed/completed in this period is per the approved Master Plan and the attached update.
  - *Suggested Ribbon Cutting:* Staff is suggesting we have a ribbon cutting event on Saturday June 10, 2017
- Pavers – All pavers are installed from Summit Avenue north (about 95% complete). The subcontractor was so efficient with their cutting that we will have about 14 pallets of pavers left. We will keep some for future repairs and hope to restock the rest back to the fabricator
- Granite Insets – These have NOT been installed to date...we are still working on a final design of the engraving and material selection. These will be added early next year.
- Signs – Alex Rohrbaugh secured a MHAA grant to provide for all the signs along the trail. Signs that will be provided along the trail are for wayfinding, highlighting points of interest and general guidance signs (see attached plan). The “entrance signs” will be ordered later this week and will be installed next month. We are finalizing the wayfinding signs and will install them this winter.
- Crosswalks – As mentioned above, the colorful crosswalk pavement markings at each of the mid-block crosswalks will be installed next week. These crosswalks, when coupled with the pedestrian detection systems and flashing beacons, will allow users of the trail to cross at the numerous mid-block crossings as safely as possible.



- Security Cameras – Installation of the fiber optic cable in the underground conduits installed by the general contractor commenced this week and the system will be operation in November. The overall project includes 10 camera locations and 20 cameras. If needed, more could be added in the future for little additional cost.
- Lighting – City Light selected, purchased and will be installing light poles as soon as the landscaping is complete. Below is a sample of one installed near West Antietam Street



- CSX Railroad –Staff has worked with CSX for approximately two years but has made little progress. At our request, the Maryland State Highway Administration (SHA) has agreed to completely update this crossing in the *second half of 2017* at their expense. Unfortunately this will create a temporary situation where the trail will narrow to cross the railroad until the SHA project is complete. We plan to install a sign at this location to advise trail users of this plan.



- Public Art Master Plan – Our art consultants William and Teresa Cochran from *Cochran Studios* in Frederick have done tremendous work, offering a lot of fresh thinking and innovative ideas. The Cochrans, along with the Council-appointed “Public Art Selection Committee”, have followed through on Phase I of the Master Plan and are bringing phase I art to reality within the budget previously approved by the City Council. Attached is the status of all the various components of public art along the Cultural Trail.

We are recommending the approval at the October Regular Session the following:

- As recommended by the Artist Selection Committee and the Cochrans, approve a contract with the muralist Alex Brewster (AKA “Hense”) for the “Mural of Unusual Size”. We are NOT requesting any additional funds, as this is funded in the original public art allocation approval. His work is internationally known and is recommended for artistic excellence, use of composition, originality, color, line, form, shape, how the various types of painting would contribute to the community over a long lifespan.
- Easement agreement with the owner of Chics restaurant to allow photo murals to be installed on the wall adjacent Lee Street. Per the attached simulation, this will allow portraits to be placed on the wall adjacent to the Trail at Lee Street. These photos will be taken by the Barbara Ingram School students and possibly others and selected by a jury process

We look forward to discussing this project with the Mayor and City Council.

Attachments:

- \* Phase I Public Art Status
- \* Sign Location Plan
- \* Contract with muralist
- \* Samples of Hense’s work
- \* Chics Easement Agreement

Cc: (memo only)

Kathy Maher  
Jill Frick  
Alex Rohrbaugh  
Mark Haddock  
Amy Riley  
Cochran Studio

## Samples of HENSE Past Projects



## **AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK**

THIS AGREEMENT, is entered into this 12th day of October, 2016, by and between the City of Hagerstown (hereinafter the "City"), acting by and through the Department of Parks and Engineering and HENSE LLC (hereinafter the "Artist") with offices at 272 Rio Circle, Decatur, Georgia 30030.

WHEREAS, the City has, as one of the initiatives of its City Center Plan, the construction of a multi-use trail linking City Park and the WCMFA with the Arts & Entertainment District ("the Cultural Trail"), with located artwork along the Cultural Trail consistent with the Public Art Master Plan approved by the City; and

WHEREAS, the City expects the Cultural Trail, and artwork located along the Cultural Trail, to promote the arts to the City's citizens and visitors; and

WHEREAS, authority lies with the City to make payments for the design and execution of artworks; and

WHEREAS, the City has arranged permission to create a mural on buildings at 67 West Baltimore Street, Hagerstown, Maryland (hereinafter the "Site"); and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create a mural of this scale and visibility (hereinafter the "Artwork"); and

WHEREAS, the Artist was selected by the City through an invitational competition process; and

WHEREAS, the Artist and City wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

### **Article 1 Scope of Services**

#### **1.1 Artist's Obligations**

- a. The Artist shall perform all services and furnish all supplies, material, labor, and/or equipment (except those itemized in Article 1.2 below) as necessary for the design and painting of the Artwork at the Site in accordance with the specified schedule. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, and dimensions of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed and approved by the City, the Artist Selection Committee, other applicable City departments such as Public Works or Hagerstown Police Department and, where appropriate, the project architect to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept and the corresponding budget described in Section 1.3 and 1.4 as well as Exhibit 2 of this Agreement. The design concept shall include a

description of all materials and products needed for the Artwork and the required routine care and upkeep.

- d. The Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with City, general contractor, architect and other parties, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.
- e. The Artist shall complete the painting of the Artwork by the scheduled date as provided in Section 1.4(b)(i) of this Agreement, and in consultation with the City.
- f. The Artist shall paint the mural himself and shall provide, personally supervise, and approve the work of any helpers.
- g. The Artist shall provide required insurance in amounts and limits specified in Article 6 and Exhibit 4.
- h. The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- i. The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- j. The Artist shall provide photographic documentation of the Artwork.
- k. The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

## **1.2 City's Obligations**

- a. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Artist.
- d. The City shall secure any and all required licenses, permits and similar legal authorizations at the City's expense as may be necessary for the installation and maintenance of the Artwork at the Site.
- e. The City shall prepare the Site. The City shall be responsible for all expenses, labor and equipment to prepare the Site for the timely installation of the Artwork. The City shall complete the Site preparations by the date when painting is scheduled to commence as provided in Section 1.4(b)(i) of this Agreement or shall contact the Artist in writing informing him of any delays.
- f. The City shall provide paint and one 85-foot lift for one month from the scheduled start date for painting. If the Artist requires other equipment or a lift for other than for that one-month period, the Artist will provide and/or pay for the equipment or for the extra time.
- g. The City will provide housing for the Artist and the equivalent of one, ground-level 40-hour/week helper for the duration of the onsite painting of the Artwork, up to 6 weeks.
- h. The City shall provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © Alex Brewer, 2017.
- i. The City shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.
- j. The City shall be responsible for leading the Artist through any required process. The City

shall be responsible for organizing and scheduling meetings with review entities, including the Department of Parks and Engineering, the jury convened for this Artwork, the Hagerstown Cultural Trail Advisory Committee, and the property owner, and for providing the Artist written instructions for the materials required at such meetings.

- k. The City shall reimburse the Artist for the mileage of one round trip between the Artist's Studio and the Mural site, based on the GSA mileage reimbursement rate for privately owned automobiles, or for one round trip airplane ticket for both the Artist and his helper.
- l. The City shall provide a serviceable mini refrigerator and indoor rest area located adjacent to or within the mural site, secure and accessible at all times to the Artist for the Artist's use.

### **1.3 Design**

#### **a. Mural Design**

- i. The Artist was selected pursuant to a competition organized for the procurement of an artist to design and fabricate an Artwork suitable for the current project. Within 30 days of the execution of this Agreement, the Artist shall submit to the City the design concept (the "Design") of the Artwork.
- ii. If needed, the Artist shall visit, examine, research and consider the Site and surrounding area. If applicable, the Artist shall also consult with representatives of the community and consider their input and concerns.
- iii. The Design will also include:
  - a. A description of the method by which the Artwork is to be created;
  - b. A list of all paint required. All pigments must be rated Lightfastness I and identified by their Color Index Number;
  - c. A description of any operational, maintenance and conservation requirements for the Artwork;
  - d. A description of the placement of the Artwork at the Site.
- iv. The Design must provide sufficient detail to permit the City to assure compliance with applicable local, state or federal laws, ordinances and/or regulations and for the City to be able to understand what the finished Artwork will look like.
- v. Attached to this Agreement is a detailed budget for the design, fabrication and installation of the Artwork, as described in Section 1.4(a) of this Agreement.
- vi. The Design must be for a Permanent Artwork (lifespan of 20+ years) that will:
  - a. Be durable, low maintenance and appropriate to the location;
  - b. Be easy to clean;
  - c. Be warranted by the Artist or their fabricators against damage from weathering and "inherent vice" for a period of two years;
  - d. Not create an "attractive nuisance";
  - e. Not present a special hazard, including a climbing hazard, with normal public interaction and handling;
  - f. Meet standard engineering and conservation criteria as delineated in the Hagerstown Cultural Trail Public Art Master Plan.
- vii. The Artist shall at the Artist's expense present the Design to a qualified conservator, who will make recommendations on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the City.

#### **b. Approval**

- i. Within 15 days after the Artist submits the Design, the City shall notify the Artist whether it approves or disapproves of the Design. The City shall have discretion in approving outright or with conditions, or rejecting the Design. The City shall notify the Artist of any revisions to the Design as are necessary for the Artwork to comply with any

applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Design.

- ii. If the City disapproves of the Design, the City will submit to the Artist in writing the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 15 days after the City has notified the Artist of its disapproval. The Artist will not be paid an additional fee for the Revised Design.
- c. Redesign
  - i. The Revised Design will reflect changes made to address the City's stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. The City shall notify the Artist in writing whether it approves or disapproves of the revised Design within 15 days after the Artist submits the revised design.
  - ii. If the Artist refuses to revise the Design pursuant to Section 1.3(b)(ii), or if the Artist fails to adequately revise the Design in the judgment of the City, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the City submits its written disapproval of the Revised Design to the Artist or the date on which the Artist refuses to revise the Design. The City shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Designs, Revised Designs and renderings thereof submitted hereunder.

#### **1.4 Budget, Payment Schedule, Construction Schedule and Progress Reports**

- a. Budget
  - i. The Artist shall prepare a budget, which shall include all goods, services and materials the Artist is providing, with such costs itemized. The Budget shall be furnished at the time of the submission of the design.
  - ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
  - iii. The Artist shall keep a log of the Artist's and any helper's project hours and shall retain all original receipts pertaining directly to the project for three years after the completion and payment for the Artwork.
  - iv. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist's own funds unless such costs were the result of actions or inaction of the City.
- b. Schedule
  - i. The Artist shall notify the City of the tentative schedule for the onsite creation of the Artwork, including a schedule for the submission of progress reports and inspections. The Schedule may be amended by written agreement. Completion of the Artwork shall be on or before June 1, 2017.
  - ii. A schedule for the payment of budget installments is attached to this Agreement as Exhibit 3.

### **1.5 Mural Painting Stage Discussion**

- a. The Artist shall paint the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the City.
- b. Artist must notify City of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with the City to ensure timely coordination with the City's construction team. Artist may not install the Artwork until authorized to do so by the City.
- c. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork and the surrounding area. The Artist shall avoid creating nuisance conditions arising out of the Artist's operations. The Artist shall take any necessary measures to avoid overspray in and around the vicinity of the Artwork. Prior to beginning work onsite, the Artist shall be required to provide the City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. Proof of insurance for all additional workers or subcontractors must be provided prior to entering the Site.
- d. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- e. If the City, upon review of the Artwork, determines that the Artwork does not conform to the Design or Revised Design, the City reserves the right to notify the Artist in writing of the deficiencies and that the City intends to withhold the next budget installment.
- f. The Artist will promptly cure the City's objections and will notify the City in writing of completion of the cure. The City shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the City's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the City within 5 days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the City.
- g. The City shall promptly notify the Artist of any delays impacting installation of the Artwork. The Artist shall be required to inspect the Site prior to the installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

### **1.6 Changes to Design**

- a. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to the City for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved Design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- b. If the City approves the changes, the City shall promptly notify the Artist in writing. The City will also make the required presentations to the approval bodies.
- c. If the City disapproves of the changes, the City shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.
- d. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.6(a). Any claim of the Artist for adjustment

under this paragraph must be asserted in writing within 5 days after the date of the revision by the Artist.

### **1.7 Completion, Approval and Acceptance**

- a. The Artist shall notify the City in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- b. With the written notice pursuant to paragraph (a) above, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Artwork.
- c. The City shall promptly notify the Artist of its final acceptance of the Artwork within 2 days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Design, and that the City confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork passes upon final acceptance and final payment.
- d. If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within 2 days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the City.
- e. If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within 2 days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
- f. Upon the resolution of any disputes that arise under paragraphs (d) and (e) of this section, the City shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).
- g. Upon written acceptance by the City, the Artwork shall be deemed to be in the custody of the City for purposes of Article 4 and Article 6 of this Agreement.
- h. Within 10 days after installation of the Artwork, the Artist shall furnish the City with:
  - i) Digital photographs of the Artwork as completed, 300 dpi or better, JPG or TIFF files:
    - a. Of the Artwork as a whole from all significant angles.
    - b. Detail shots adequate for conservation purposes.
    - c. Provided to the City on a CD Rom or thumb drive.
    - d. Each photo labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken.
  - ii) A full written narrative description of the Artwork.
- i. After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the City and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.
  - i. During such public presentations by the Artist, the Artist shall acknowledge the City's role in funding the Artwork.

- ii. The City shall be solely responsible for coordinating public information materials and activities related to public presentations.

## **Article 2 Taxes**

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The City shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

## **Article 3 Term of Agreement**

### **a. Duration**

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend, except as set forth in 5.1 and 5.2, below, until final acceptance by the City under Section 1.7(c), or submission of final payment to the Artist by the City under Exhibit 3, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule under section 1.4(b)(i).

### **b. Force Majeure**

The City shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

## **Article 4 Risk of Loss**

The Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork under Section 1.7(c). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The City shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the City or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

## **Article 5 Artist's Representations and Warranties**

### **5.1 Warranties of Title**

The Artist represents and warrants that:

- a) the Artwork is solely the result of the artistic effort of the Artist;
- b) except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;

- d) the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e) the Artwork is free and clear of any liens from any source whatsoever;
- f) all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- g) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i) these representations and warranties shall survive the termination or other extinction of this Agreement.

## 5.2 Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the City under Section 1.7(c).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(b).
- d. If within two years the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- e. If after two years the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within two years the City observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.]
- g. Acceptable Standard of Display. Artist represents and warrants that:
  - i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
  - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
  - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable

conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

- iv. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the City.

The foregoing warranties are conditional, and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards, which Artist shall provide to the City upon City's acceptance of the Artwork. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

## **Article 6 Insurance**

### **6.1 General**

- a. The Artist acknowledges that until final acceptance of the Artwork by the City under Section 1.7(c), any injury to property or persons caused by the Artist's Artwork, the creation of the Artwork, including but not limited to damages caused by overspray, or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit 4.
- c. Required insurance policies are described in Exhibit 4.

### **6.2 Indemnity**

- a. The Artist shall indemnify the City, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- b. The City shall indemnify the Artist, Artist's subcontractors, agents or employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the City, its respective officers, agents, and employees.
- c. Each Party shall immediately notify the other of any third-party claim resulting from or relating to a Party's obligations under this Agreement. . Unless a party contends that the other party is at fault for the third-party claim, then each party shall cooperate, assist and consult with the other in defense of or investigation of any such claim.
- d. The indemnification shall include reasonable attorneys' fees and costs.
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

## **Article 7 Ownership and Intellectual Property Rights**

### **7.1 Title**

Title to the Artwork shall pass to the City upon the City's written final acceptance and payment for the Artwork pursuant to Article 1 and Exhibit 5. Artist shall provide City with a Transfer of Title in substantially the form attached hereto as Exhibit 5.

## **7.2 Ownership of Documents**

One set of presentation materials prepared and submitted under this Agreement shall be retained by the City for possible exhibition and to hold for permanent safekeeping.

## **7.3 Copyright Ownership**

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

## **7.4 Reproduction Rights**

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two- or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- b. The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the City shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].
- d. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the City in substantially the following form: "an original Artwork commissioned by and in the public art collection of the City."
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright for the Artwork in the Artist's name.
- f. If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- g. Third Party Infringement. The City is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

## **Article 8 Artist's Rights**

### **8.1 General**

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The City agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the notice. No provision of this Agreement shall obligate the City to alter or remove any such attributive reference printed or published prior to the City's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

## **8.2 Alterations of Site or Removal of Artwork**

- a. The City shall notify the Artist in writing upon the adoption of a plan of construction or alteration of the Site which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the City, the Artist may disavow the Artwork or have the Artwork returned to the Artist at the Artist's expense.
- b. The Artwork may be removed or relocated or destroyed by the City should the Artist and the City not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the Artist. During the 90 day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.
- c. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the City may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, the City may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.
- d. If the City reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of the City's failure to maintain the Artwork as required under this Agreement, the City may authorize the removal of the Artwork without the prior approval of the Artist.
- e. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

## **Article 9 Permanent Record**

The City shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

## **Article 10 Artist as an Independent Contractor**

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the City with the power to bind in any manner.

The Artist shall provide the City with the Artist's Tax Identification Number and any proof of such number as requested by the City.

## **Article 11 Nondiscrimination**

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

## **Article 12 Assignment of Artwork**

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

## **Article 13 Termination**

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than 10 days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon 10 days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3 of this Agreement. .
- c. If either Party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying the grounds for termination. The defaulting Party shall have 10 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults for cause other than death or incapacitation, the Artist shall return to the City all funds provided by the City in excess of expenses already incurred. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The City shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. If the City defaults, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3. The Artist shall retain possession and title to the [studies, drawings, designs, maquettes and models already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- f. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

## **Article 14 Death or Incapacity**

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the City to accept the Artwork.

- a. In the event of incapacity, the Artist shall assign the Artist's obligations and services under

this contract to another artist provided that the City, in the City's sole discretion, approves of the new artist. Alternatively, the City may elect to terminate this Agreement. The Artist shall retain all rights under Article 7. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].

- b. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain all rights and fulfill the Artist's obligations under Article 6 and Article 7. The Artist's executor shall deliver to the City the Artwork in whatever form or degree of completion it may be at the time. Title to the Artwork shall then transfer to the City. However, the Artwork shall not be represented to be the completed Artwork of the Artist unless the City is otherwise directed by the Artist's estate.

### **Article 15 Notices and Documents**

Notices required under this Agreement shall be delivered personally or through registered or certified mail, return receipt requested, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the City: City of Hagerstown, ATTN: Engineering Department, One East Franklin Street, Hagerstown, Maryland, 21740

For the Artist: HENSE LLC, Alex Brewer, 272 Rio Circle, Decatur, Georgia 30030.

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after the postmarked date.

### **Article 16 Waiver**

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

### **Article 17 Audit**

The City shall maintain records of all documents, notices, checks, and other records required or produced under this Agreement or related thereto. The Artist agrees to the maintenance of such records for archival purposes. Such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Access to such records and documents shall also be granted to any Party authorized by the Artist, the Artist's representatives, or the Artist's successors-in-interest. The City will comply with any open records law applicable to these records.

### **Article 18 Conflict of Interest**

The Artist and the City shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

### Article 19 Dispute Resolution

This Agreement shall be construed, interpreted and enforced according to the Laws of the State of Maryland. The parties shall submit any unresolved dispute regarding this Agreement to Maryland State Courts located in Washington County, Maryland.

If a dispute arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to mediation, if both parties so agree to mediate.

Each Party agrees to be responsible for its own attorney's fees except as otherwise provided by this Agreement.

### Article 20 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

### Article 21 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Maryland, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

### Article 22 Choice of Law

This contract shall be governed by the laws of the State of Maryland both as to interpretation and performance, without regard to principles of conflicts of laws.

### Article 23 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations. THIS AGREEMENT IS CONTINGENT UPON APPROVAL BY THE MAYOR AND CITY COUNCIL AND SAID APPROVAL BECOMING LEGALLY EFFECTIVE.

For City:

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

For Artist:

Name Alex Brewer

Title Artist

Date 10/12/16

### **Exhibit 1 Description of the Artwork**

Exhibit 1 will be completed as part of the Mural Design Phase (1.3). It will include a detailed narrative describing the artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork. The Design created will become part of this exhibit, as well.

## **Exhibit 2 Artwork Budget**

A budget will be provided by the artist as part of the Mural Design phase (1.3) of the Artwork.

### **Exhibit 3 Payment Schedule**

#### **Payment Schedule**

The City shall pay the Artist a fixed fee of \$100,000, which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$10,000 deposit, upon the execution of this Agreement;
- b. \$10,000 within 30 days of the City's notification to the Artist of its approval of the Design as set forth under Section 1.3;
- c. \$40,000 at least 10 days before the Artist is scheduled to begin painting the Artwork onsite;
- d. \$5,000 within 30 days after the Artist provides the City with photographic documentation and written instructions for the maintenance and preservation of the Artwork as set forth under Section 1.7(e) and (f).
- e. \$35,000 within 30 days after final acceptance of the Artwork by the City as set forth under Section 1.8(e)

#### **Payment Schedule:**

Payment #	Amount	Percent of Total	Benchmark
1	\$10,000	10%	Execution of Agreement
2	\$10,000	10%	Approval of Design
3	\$40,000	40%	Commence painting
5	\$5,000	5%	Photographic Documentation & Maintenance Plan
5	\$35,000	35%	Final Acceptance of Mural
<b>Total not to exceed</b>	<b>\$100,000</b>	<b>100 %</b>	

Travel expenses (mileage reimbursement for one round trip only) can be billed in the month within which it is incurred at the current GSA rate.

## **Exhibit 4 Insurance**

### **Insurance – General**

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit 4 with insurance companies authorized to do business in Hagerstown, Maryland. The required insurance shall cover the Artist's employees, agents, contractors or subcontractors. The City, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The duration of the general liability insurance described in Exhibit 4 shall extend for 5 years after the termination of this Agreement.
- c. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractors' insurance and shall not contribute with the Artist's or the Artist's subcontractors' insurance. The coverage shall state that the Artist's or the Artist's subcontractors insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Prior to undertaking any Artwork under this Agreement, the Artist, at no expense to the City, shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in Exhibit 4. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount, and classification as specified in Exhibit 4 and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the City. Each certificate shall indicate that the subcontractors are additional insureds or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.
- e. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Artist shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of \$[2,000,000.00].
- f. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- g. Failure of the Artist to comply with any of the terms of this Article 6 shall be considered a material breach of this Agreement and cause for its immediate termination.
- h. Should the Artist not be able to secure acceptable insurance coverage, the City may place coverage at cost to the Artist on behalf of the Artist on a project basis.

### **Insurance Policies**

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverages known as:
  - i) premises / operations liability
  - ii) products / completed operations

- iii) personal / advertising injury
- iv) contractual liability
- v) broad-form property damage
- vi) independent contractor's liability

Said policy must provide the following minimum coverage:

- i) \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
  - ii) \$2,000,000 annual aggregate
- b. Automobile liability insurance policy, including coverage for owned, non-owned, leased or hired vehicles, providing the following minimum coverage:
- i) bodily injury liability of \$50,000 for each person,
  - ii) \$300,000 per occurrence,
  - iii) property damage liability of \$25,000 for each occurrence.
- The Artist agrees to keep in good standing a valid driver's license at all times, where appropriate, during the term of this Agreement.
- c. Transportation/Cartage insurance all-risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit 3.
- d. All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of the beginning of installation of the Artwork under Exhibit 3.
- e. Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of Maryland providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker's Compensation and Employers' Liability insurance shall be \$100,000. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover himself for Worker's Compensation, the Artist shall sign the following statement:

"I, do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage."

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(Artist's signature)

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(Print Artist's name)

**Exhibit 5 Transfer of Title**

STATE OF Maryland  
COUNTY OF Washington

**TRANSFER OF TITLE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the City, located in Hagerstown, Maryland, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement dated \_\_\_\_\_, 2016, and as described therein.

Title:\_\_\_\_\_.

Location:\_\_\_\_\_.

Artist:\_\_\_\_\_.

Address:\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, Artist has executed this written transfer of title on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOTARY PUBLIC My Commission Expires:  
(NOTARY SEAL)

## **DEED AND EASEMENT AGREEMENT**

THIS DEED AND EASEMENT AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between Ernest H. & Doris C. Schuhly, hereinafter referred to as "Grantor", and the City of Hagerstown, a Maryland Municipal Corporation, hereinafter referred to as "Grantee."

WHEREAS, by virtue of a deed dated September 30, 1983 and recorded among the land records for Washington County, Maryland at Liber 756, folio 905, Grantor is the owner of certain real estate known as 300 Summit Avenue, Hagerstown, Washington County, Maryland, said property being more particularly described and depicted in the attached Exhibit A, which exhibit is incorporated herein by reference (the "Property"); and

WHEREAS, the Property is improved with an existing concrete wall (hereinafter the "Wall"); and

WHEREAS, Grantor has agreed to permit Grantee to utilize the Wall to create and maintain photo murals on the Lee Street side thereof for the use, enjoyment, and benefit of the public in connection with the adjacent Hagerstown Cultural Trail developed by the Grantee; and

WHEREAS, in order to create and maintain the photo murals it is necessary for Grantee to acquire certain rights with respect to the Property, which rights are described hereinafter and the extent thereof further depicted on Exhibit "A"; and

WHEREAS, Grantor has agreed to grant the said easement;

NOW, THEREFORE, THIS DEED AND EASEMENT AGREEMENT WITNESSETH:

That the foregoing recitals be and are incorporated herein as if restated verbatim.

That for and in consideration of the above premises, One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the said Grantor does hereby grant and convey unto the said Grantee, its successors and assigns an easement as follows:

GRANTOR DOES GRANT unto Grantee, its successors, legal representatives and assigns, an easement in and the right to use that portion of Grantor's Property shown on and to the extent depicted in Exhibit "A", limited to the Lee Street side of the wall for the creation and maintenance of murals.

AND GRANTOR DOES FURTHER GRANT unto Grantee, its successors, legal representatives and assigns, an easement in and the right to use a certain area of Grantor's

Property adjacent to the aforementioned Wall (the "Access Area") in order to create, repair, access, maintain, and, if and as necessary, restore the mural or murals, which Access Area is more particularly shown on Exhibit "A" and is 366 square feet. The Grantor will maintain the Access Area.

AND GRANTEE AND GRANTOR do hereby covenant and agree that the granting of this easement is subject to the following additional rights and obligations:

1. Grantor will permit Grantee's contractors and artists to install murals on site in accordance with both the design and techniques approved by Grantor in advance, and to install succeeding murals at the Grantee's discretion.

2. Grantor will allow the murals to remain unchanged and unobstructed for its serviceable life span and will not allow new construction or other improvements on the property that will obstruct the view of the murals. The serviceable life span of each photo mural shall be four (4) years from the completion thereof or when significant degradation of the image compromises its aesthetic quality, whichever occurs first.

3. Grantee at its sole cost and expense, and upon reasonable notice to Grantor, shall ensure that the murals are cleaned periodically as needed. In addition, if necessary as a result of degradation, graffiti or damage to the murals, Grantee will provide for the removal, repair and replacement, all at the Grantee's sole cost and expense. All such work shall occur within the Access Area.

4. Grantee may power wash and repair the wall with in-kind materials to facilitate the installation of the murals per Exhibit B. Grantee will not make any repairs to the wall after the initial work

5. After forty (40) years from the date hereof, or sooner if agreed to by the Grantee, Grantor may, at its sole discretion, terminate this Agreement in writing with an appropriate recordation and termination hereof.

GRANTOR AND GRANTEE do both hereby further covenant and agree, on behalf of themselves, their successors and assigns, to abide by and respect each and every condition or restriction set forth in this instrument in writing. It is expressly understood and agreed that this easement shall run with the land and be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day, month and year first above-written.

ATTEST:

CITY OF HAGERSTOWN

\_\_\_\_\_  
DONNA SPICKLER, CITY CLERK

\_\_\_\_\_  
DAVID S. GYSBERTS, MAYOR (SEAL)

WITNESS:

Ernest H. & Doris C. Schuhly

\_\_\_\_\_  
BY: \_\_\_\_\_(SEAL)

STATE OF MARYLAND, COUNTY OF WASHINGTON, to wit:

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the subscriber, a notary public of the State of Maryland, in and for Washington County, personally appeared \_\_\_\_\_ of Ernest H. & Doris C. Schuhly party to the within Deed and Easement Agreement, and he/she acknowledged the same to be the act of said Grantor.

WITNESS my hand and seal:

NOTARY SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND, COUNTY OF WASHINGTON, to wit:

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the subscriber, a notary public of the State of Maryland, in and for Washington County, personally appeared David S. Gysberts, Mayor of the City of Hagerstown, Maryland, a Maryland Municipal Corporation, party to the within Deed and Easement Agreement, and he acknowledged the same to be the act of said Grantee.

WITNESS my hand and seal:

NOTARY SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

I certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland, but that the undersigned did not perform a title search, title examination or make any certification as to title.

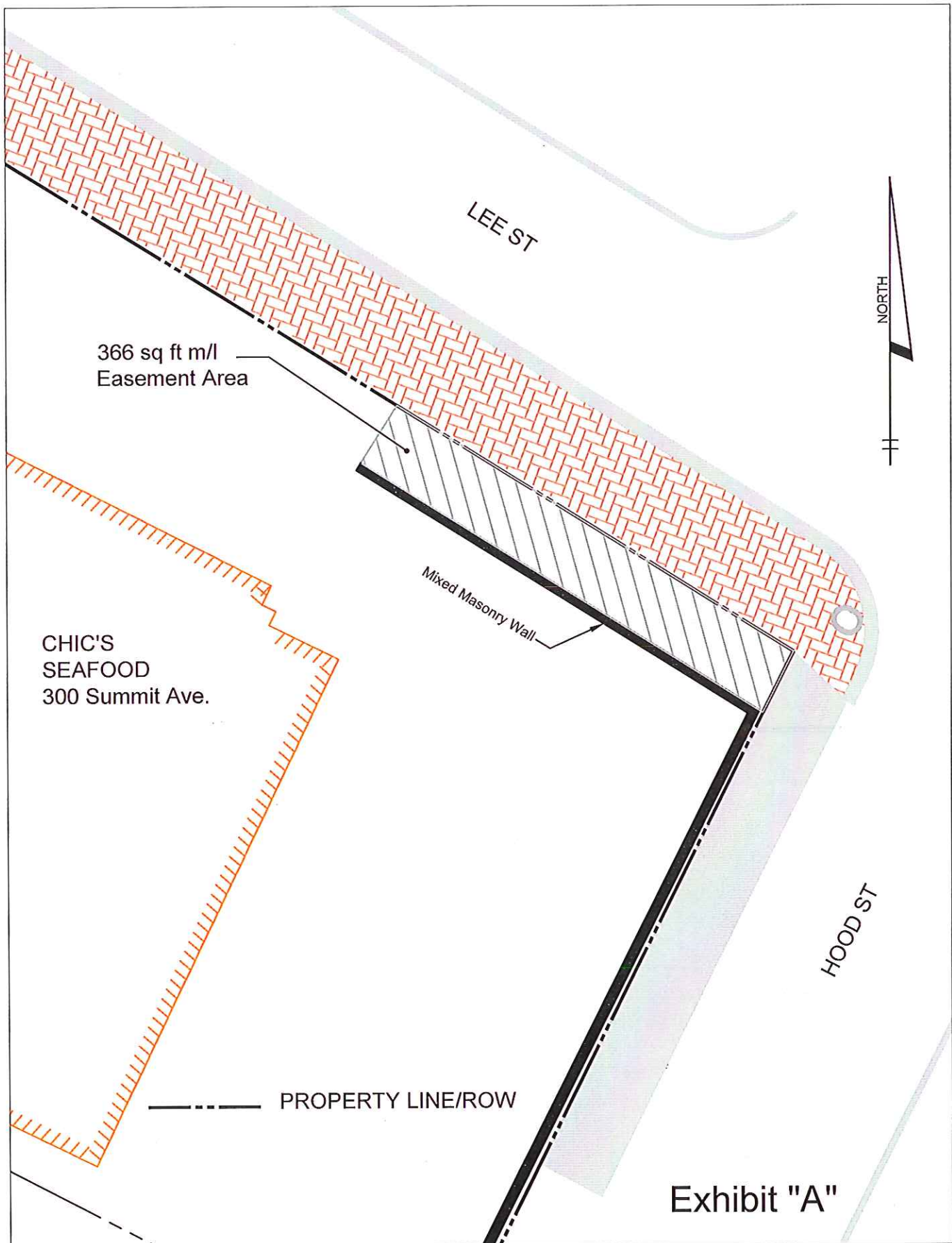
\_\_\_\_\_  
Mark K. Boyer

MAIL TO:


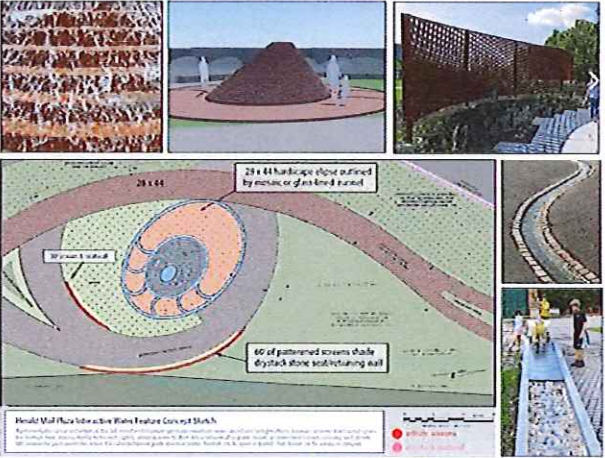


City of Hagerstown  
City Hall  
1 E. Franklin Street  
Hagerstown, MD 21740





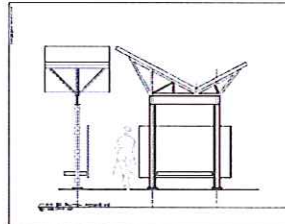




**EXHIBIT B: Photo Simulation of "Portraits of Hagerstown"**

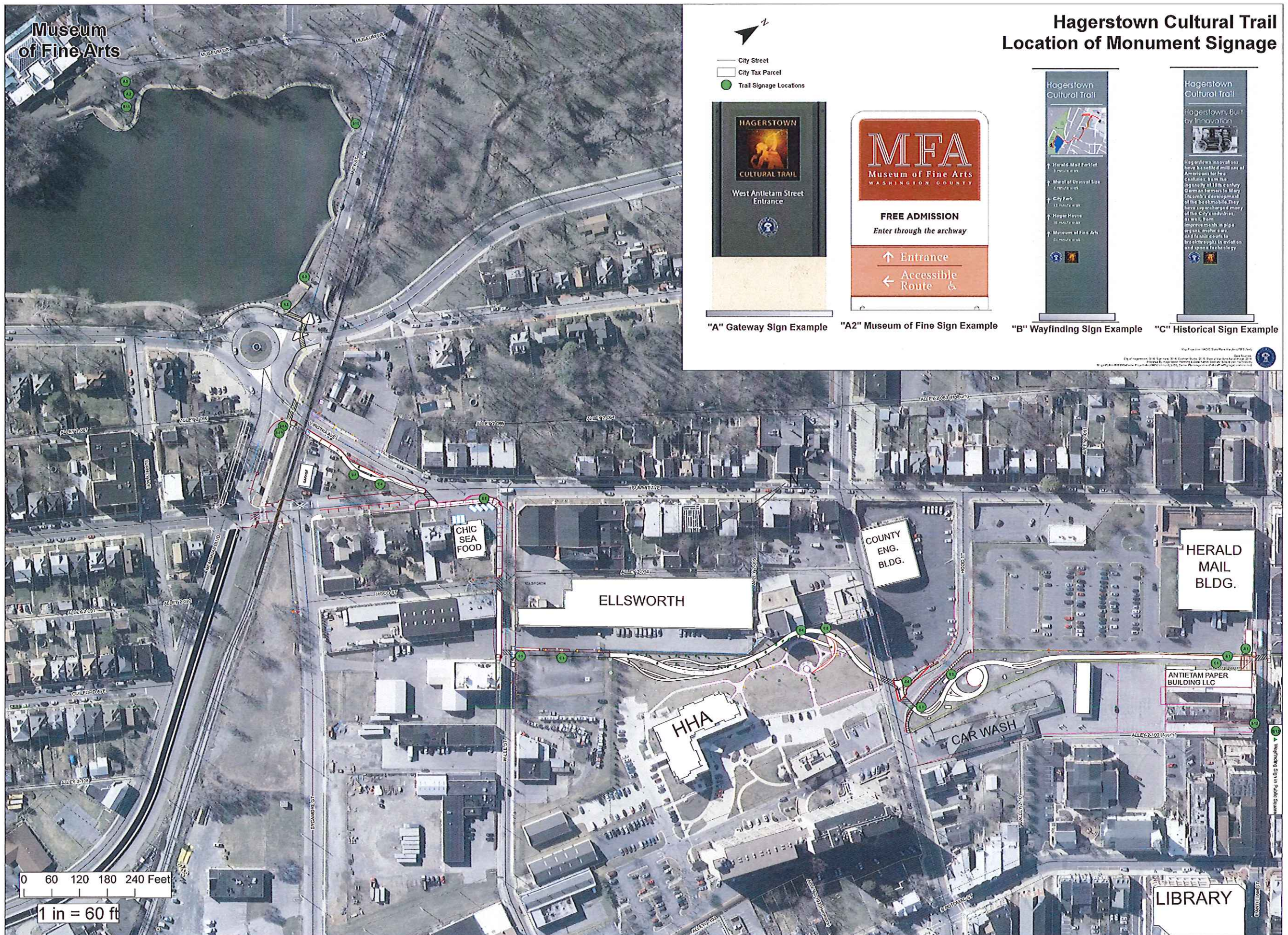


Hagerstown Cultural Trail  
Phase I Public Art Status

	Notes	Schedule	Image
Consulting (Cochran)	Art management, developing ideas, calls and contacts with artist, landscape design assistance, history development	Ongoing	N/A
Herald Mail Dock Area Fencing	Waterblast concrete wall and replace fence to mount photo murals (see below). Met with Herald Mail and reviewed project with them on 10/5/16 and got verbal approval to proceed.	Fence to be installed November 2016. Photo murals to be installed in May 2017	
Herald Mail Park	Considering fountain, sculpture or relocating donated art piece. Artistic screens will be a major feature to block commercial property to the east	Spring 2017	
Mural of Unusual Size	HEH Contracting began priming building Sept 12. Mural to start in Spring 2017, the recommended artist is Alex Brewer (aka HENSE)  Ellsworth is paying for paint, installed new roof and has made extensive masonry repairs to building.	Priming to be completed by end of October  Mural to be complete by June 2017	
Fencing between HHA and Ellsworth	Replaces ugly chain link fence between HHA and Ellsworth. Barr has verbally committed to cover a portion of the cost or assist with construction.	Spring 2017	

Housing Authority park area	Decided to invest in artistic screen/fence (above) and shade structures (below). Boulders in place for fountain. Investigating simple, low-cost items like mill wheels, natural items, etc. and another good possibility for donated art	Spring 2017	
Triangle Park (near Park Circle)	Create plinth for future art challenges.  Temporary art created at City Park <i>Fallfest</i> will be installed here	Temporary art will be installed this month	
Hidden Hagerstown	Working with local historians on the topics of 1) railroads, 2) milling, 3) industry/innovation, 4) medicine, 5) aircraft, and 6) library/bookmobile. Creating four videos that are accessed via QR codes and also history geocaching. Erin Wolfe is developing some of the stories	Spring 2017	 *C* Historical Sign Example
Artistic Screens	Design and fabricate artistic laser cut metal screens to screen out the car wash, dumpster, etc. Will be used primarily in Herald Mail park (above) and estimating will be 5-30' long screens	Spring 2017	
Shade structures	Designed by architect Jim Mills with laser cut panels. Current is plan is for Parks staff to fabricate and install. Planning two at herald mail park, two at the Housing Authority, and possibly one or two along the Ellsworth parking lot (without benches)	Spring 2017	
Photo Murals	Working with BISFA and possibly Herald Mail photographers to create images of City residents along Herald Mail dock area fence (see above) and Lee Street at Chic's Seafood	May 2017	

Lee Street utility pole wraps	Wrap three poles in trail with photo murals.	May 2017		
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**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Proposed Policy Change to Sidewalk Display Standards - *Kathleen Maher, Director of Planning and Code Administration; Amanda Whitmore, Downtown Coordinator*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Sidewalk\_Display\_Standards.pdf

**Description**

Sidewalk Displays  
Standards



# CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development

TO: Valerie Means, City Administrator

FROM: Kathleen A. Maher, Director of Planning & Code Administration  
Amanda Whitmore, Downtown Coordinator

DATE: October 13, 2016

SUBJECT: Proposed Policy Change to Sidewalk Display Standards

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## Mayor and City Council Action Requested

At the October 18, 2016 Mayor and City Council Work Session, review of staff proposal to address changes to the Sidewalk Display Standards and Conditions. These standards are utilized to guide review and approval of Sidewalk Business Licenses issued per Chapter 216, Streets and Sidewalks, of the City Code.

## Sidewalk Display Challenges

In recent years, the City received periodic complaints that merchants' sidewalk displays were crowding the sidewalks and prohibiting movement along the public-right-of-way as well as blocking sight lines for vehicular traffic on adjoining alleys. In response to these complaints, Chapter 216 of the City Code was amended to add provisions for sidewalk business licenses for display of merchandise in the City Center and the current Sidewalk Display Standards and Conditions were approved on January 27, 2015. The merchants that generated these complaints are no longer in business; however, the Sidewalk Display Standards and Conditions remain.

City Center has a few businesses that are displaying merchandise, in an orderly manner, but are displaying on a near daily basis. This does not comply with the current the Sidewalk Display Standards and Conditions and an effort to enforce these standards was met with pushback. Therefore, Staff met to review the Sidewalk Display Standards and also consulted with Main Street Hagerstown volunteers for their feedback on the current standards to develop the proposed changes that better support business.

## Current Sidewalk Display Standards and Conditions

The current standards and conditions states:

- Displays are for a specified time but business cannot have more than four events in a calendar year;
- Businesses must provide tentative schedule of events to the Engineering Division and must notify them prior to the event;
- Displays must be at least 15 feet from any adjoining street, alley or driveway;
- Displays are not permitted within two feet on either side of a building entrance, fire hydrant, or property line;

- Display fixtures are not to exceed 100 square feet; and
- Business must provide certificate of liability insurance name the City as additional insured.

### **Proposed Changes to Sidewalk Display Standards and Conditions**

Staff recommend the attached changes to the Sidewalk Display Standards and Conditions, which are summarized as follows:

- Permit displays year-round while a business is open and eliminate the four event frequency;
- Eliminate the requirement to provide a schedule of events to the Engineering Division and to notify them prior to displaying merchandise;
- Reduce the requirement displays must be 15 feet from any adjoining street, alley or driveway to 10 feet from an adjoining alley or driveway;
- Clarify that five foot width of unobstructed sidewalk space must be maintained between the display and any tree, treewell, parking meter, fire hydrant, street light, trash can, or other obstacle;
- Eliminate the requirement displays must be two feet from either side of a building entrance, fire hydrant or property line and change requirement to displays shall not obstruct access to building entrances, fire hydrants, street lights, telephone poles, mailboxes, or transit stops;
- Eliminate the 100 square foot requirement but include that displays shall be limited to a single row of merchandise against the wall of the business and not be hung from the building or awning;
- Remove the requirement that businesses have to name the City as additional insured on their liability insurance; and
- Clarifies one portable non-illuminated sign may be displayed on the sidewalk within the vicinity of the entry door of the first floor business.

### **Input from Main Street Hagerstown and Downtown Businesses**

Staff took the proposed changes to Main Street Hagerstown and the four businesses that are currently displaying merchandise on the sidewalk. Main Street Hagerstown indicated that allowing sidewalk displays year-round is beneficial to the downtown businesses. Staff received feedback from one business that the proposed prohibition on hanging merchandise from the awning would be a major problem for his business. Additional businesses expressed strongly that displaying every day as they have been is paramount for their business and would like to continue displaying merchandise on the sidewalk when they are open for business. The proposed revisions would require one of the businesses to stop displaying merchandise in the bump-out by the curb and attaching merchandise to the tree – we have not received input from this business to date. If staff receive additional input from downtown businesses prior to the meeting on October 18<sup>th</sup>, staff will forward the input to the Mayor and City Council.

### **Next Steps**

If the Mayor and City Council review is completed and there is the desire to amend the Standards, the item will be placed on the October 25<sup>th</sup> regular session agenda for approval.

### **Attachments**

c:

Jill Frick, Director of Community & Economic Development

Rodney Tissue, City Engineer

Paul Fulk, Inspections Manager

Blaine Mowen, Chief Code Official

Victor Brito, Police Chief

Duck's

Washington Street Pawnbrokers

James & Jess' House of Goods

Gotten from Grammy's

Junkworks Antiques

**Standards and Conditions**  
**for**  
**Sidewalk Business License**  
**Temporary Use of the Public Right-of-Way**  
**for Display of Merchandise**

***PROPOSED REVISIONS, OCTOBER 25, 2016***

Per Section 216-62 of the Code of the City of Hagerstown, merchandise shall only be displayed in public street rights of way in the City Center if a license is granted by the City ~~for a specified time~~. The City Center is defined as the City Center Mixed-Use (CC-MU) zoning district. Any ongoing and unlicensed merchandise display in public street rights-of-way shall be ordered removed by the City or removed at the Operator's cost.

Display of merchandise on public sidewalks shall ONLY be related to the principal use of the abutting *storefront* property. Placement for display and sale of merchandise upon any portion of the public right-of-way is regulated by these "Standards and Conditions":

1. **Application Process**: Applicant must submit a sidewalk business license application, a certificate of liability insurance ~~(naming City as additional insured), and a tentative schedule of events to the Engineering Division in City Hall, 1 East Franklin Street and a drawing of the planned display area.~~
2. **License Agreement**: The license agreement allows for temporary use of the public right-of-way for the display of merchandise on public sidewalks. This agreement will be administratively approved and can be revoked by the City with a five (5) business day notice. Appeals can be made to the Mayor and City Council. License agreements shall automatically renew for a one-year term (unless terminated by either party) and are not transferable. These agreements shall ONLY be related to the principal use of the abutting property. The holder of the license agreement is responsible for removing trash and litter from permitted sidewalk business area. ~~Enforcement of the standards associated with this license agreement shall be by Code Administration and the Police Department.~~
3. **Sidewalk clearance**: Sidewalk retail display shall be located in such a manner that promotes efficient and direct pedestrian movement. Operators must maintain sidewalk in clean safe condition for pedestrian travel and must immediately clear the sidewalk when ordered to do so by the City.

Operator must maintain a **minimum five foot** width of unobstructed sidewalk space for pedestrians *at all times between the merchandise display and any tree, treewell, parking meter, fire hydrant, street light, trash can or other obstacle*. ~~A waiver of this width~~

~~may be granted by the City if existing permanent obstructions in the sidewalk area do not permit a five foot width. Under no circumstances may this width be less than 3 feet of sidewalk.~~

No display *shall obstruct access to building entrances, fire hydrants, street lights, telephones, mailboxes, or transit stops and shall be located so it does not impede ingress or egress from buildings.* ~~is allowed in front of or two feet on either side of a building entrance, fire hydrant, or property line.~~ Display must be at least ~~15~~ **10** feet from any adjoining ~~street~~, alley or driveway to provide adequate sight distance

4. **Frequency Hours:** ~~This license is limited to four (4) events in a calendar year and each event can be no longer than three (3) consecutive business days.~~ Display is only permitted while business is open, and never between 10:00PM and 7:00AM. ~~Operator shall notify the Engineering Division prior to the events.~~
5. **Display:** ~~Merchandise and display fixtures are not to exceed 100 square feet for all outdoor displays. Display may be up to five feet high.~~ *Display on the sidewalk shall be limited to a single row of merchandise against the wall of the business and shall not be hung from the building or awning.* No permanent anchoring into sidewalk. Display shall not be anchored or affixed to a tree, post, sign, parking meter, or other structure.
6. **Insurance:** By applying for a sidewalk business license, any person owning or operating such use agrees to indemnify, defend, save and hold harmless the City of Hagerstown, its officers, agents, and employees, from any and all claims, liability, lawsuits, damages, and causes of action which may arise out of the operation of the sidewalk business. The Owner/Operator shall keep in full force and effect at its own expense, insurance as required by the City of Hagerstown. Failure to do so will automatically terminate this license.
7. **Other Conditions:**
  - The City may require the temporary removal of sidewalk retail items by the Owner/Operator when street, sidewalk, or utility repairs necessitate such action or in case of an emergency. The licensee agrees that they will not be entitled to any reimbursement for lost sales revenue nor is the City responsible for any costs associated with the removal of the merchandise from the sidewalk.
  - The sidewalk retail display shall be maintained in a neat and orderly appearance at all times.
  - ***Per the Land Management Code***, one ***portable non-illuminated*** sign may be displayed on the sidewalk ***within the vicinity of the entry door of the first floor business. Such signs are permitted*** only during operating hours of the abutting business. The sign shall not exceed six (6) square feet and shall be placed to maintain a five (5) foot clear pedestrian space.
  - Owner/Operator is responsible that all items stay in the approved areas.
  - No garbage may be stored on the sidewalk. Owner/Operator shall keep the sidewalk clean at all times.

8. **Enforcement:** *Enforcement of these standards shall be by Code Administration and the Police Department.*

*Approved by the Mayor and City Council on January 27, 2015. **Proposed Amendments,** October 25, 2016.*

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

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## **Topic:**

60 West Washington Street: BuroBox Membership Agreements - *Amanda Whitmore, Downtown Coordinator*

## **Mayor and City Council Action Required:**

Mayor and Council action is requested to review and approve the BuroBox membership license and lease agreements.

## **Discussion:**

At the October 18, 2016 Mayor and City Council Work Session, staff will review the proposed Membership License Agreement and Membership Lease Agreement for the BuroBox, an entrepreneurship resource center at 60 W. Washington Street. With the support of the Mayor and City Council at the Work Session, staff will seek approval of the Agreement documents at the October 25, 2016 Regular Session. The Agreement documents have been developed and reviewed by the City attorney. This is among a set of final steps in preparation for opening membership sign ups and launching services at the B?roBox.

## **License Agreements**

Members of the BüroBox signing up at the Basic membership (\$50 per month) will be required to sign a license agreement and associated exhibits (attached) prior to gaining access to the space. License agreements will:

- Permit licensee to access the co-working area, conference room, kitchenette, and restrooms;
- Continue on a month-to-month basis;
- Require a \$50 security deposit
- Be approved and signed by DCED staff and will not need to go before Mayor and Council for approval of each Basic Member.

## **Lease Agreements**

Members of the BüroBox leasing one of the two offices (\$100 per month) will be required to sign a lease agreement and associated exhibits (attached) prior to gaining access to the space. Lease agreements will:

- Permit licensee to access one lockable office, co-working area, conference room, kitchenette, and restrooms;
- Have a term for one year with the option to continue month-to-month after that term, with either party having the right to terminate that month-to-month tenancy by giving 30 days' written notice;
- Require a \$100 security deposit;

· Be approved by the City passing a Resolution approving the execution of the lease

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

**Description**

MCC\_Memo\_BuroBox\_Membership\_Agreements\_with\_Attachments.pdf

60 West Washington  
Street: B?roBox  
Membership  
Agreements



# CITY OF HAGERSTOWN, MARYLAND

Department of Community & Economic Development

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TO: Valerie Means, City Administrator

FROM: Amanda Whitmore, Downtown Coordinator

DATE: October 12, 2016

RE: 60 West Washington Street: BüroBox Membership Agreements

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At the October 18, 2016 Mayor and City Council Work Session, staff will review the proposed Membership License Agreement and Membership Lease Agreement for the BüroBox, an entrepreneurship resource center at 60 W. Washington Street. With the support of the Mayor and City Council at the Work Session, staff will seek approval of the Agreement documents at the October 25, 2016 Regular Session. The Agreement documents have been developed and reviewed by the City attorney. This is among a set of final steps in preparation for opening membership sign ups and launching services at the BüroBox.

## **Mayor and Council Action Requested**

Mayor and Council action is requested to review and approve the BüroBox membership license and lease agreements.

## **License Agreements**

Members of the BüroBox signing up at the Basic membership (\$50 per month) will be required to sign a license agreement and associated exhibits (attached) prior to gaining access to the space. License agreements will:

- Permit licensee to access the co-working area, conference room, kitchenette, and restrooms;
- Continue on a month-to-month basis;
- Require a \$50 security deposit
- Be approved and signed by DCED staff and will not need to go before Mayor and Council for approval of each Basic Member.

## **Lease Agreements**

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- Permit licensee to access one lockable office, co-working area, conference room, kitchenette, and restrooms;

- Have a term for one year with the option to continue month-to-month after that term, with either party having the right to terminate that month-to-month tenancy by giving 30 days' written notice;
- Require a \$100 security deposit;
- Be approved by the City passing a Resolution approving the execution of the lease

Cc: Jill Frick, Director DCED  
Jason Morton, City Attorney

Attachments: BüroBox License Agreement with Exhibits  
BüroBox Lease Agreement with Exhibits

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, between The City of Hagerstown, Maryland, a municipal corporation existing under and by virtue of the laws of the State of Maryland, hereinafter called "City," and \_\_\_\_\_, hereinafter called "Licensee" or "Member."

### **SECTION I** **LICENSE FOR PREMISES**

City, for and in consideration of the payment of the license fee and performance of the covenants and agreements hereinafter mentioned, grants the Licensee the non-exclusive privilege of using a portion of the space located on the first floor of 60 West Washington Street, Hagerstown, Maryland ("the Burobox"), together with all improvements thereon. The portion of the Burobox licensed hereby is particularly described in and/or shown as on Exhibit A attached hereto and made part hereof, the said real property and improvements being hereinafter referred to as the "Premises."

### **SECTION 2** **TERM**

The term of this License shall commence on the 1st day of \_\_\_\_\_, 2016, and continue on a month-to-month basis thereafter, unless or unless terminated by one or both parties as set forth below.

### **SECTION 3** **LICENSE FEE**

A. DURING THE PERIOD OF THIS LICENSE AGREEMENT, LICENSE FEE SHALL BE PAID BY MEMBER AS FOLLOWS:

For the period beginning XXXXXXXX \_\_\_\_\_, 2016, the license fee shall be Fifty and 00/100 (\$50.00) Dollars per month, which Member shall pay in advance on the first day of each month, with the first month's license fee due on or before \_\_\_\_\_, 2016. The City reserves the right to increase the license fee, upon thirty (30) days' written notice to the Licensee.

B. LATE FEES. In the event the license fee hereunder shall not be received by the City within five (5) days of its due date, a late charge of TEN DOLLARS and 00/100 (\$10.00) shall be added thereto.

C. SECURITY DEPOSIT. Contemporaneously with the execution of this License Agreement, Member shall deposit the sum of one month's license fee (\$50.00) with City as a security deposit. The security deposit shall be held by the City in a non-interest bearing account as security for the faithful performance by the Member of all Member's obligations under this License Agreement.

D. Payment of license fee invoices may be made by check, money order, or credit card (if made in person) at City Hall at 1 East Franklin Street, Hagerstown, MD 21740. In addition, payments can be made online at <https://mycity.hagerstownmd.org>. No cash will be accepted. Should the Member designate to pay by check or money order, payment shall be made to: City of Hagerstown. A \$30 fee shall be assessed for all returned checks. After a second returned check, all payments shall be made by money order or credit card.

**SECTION 4**  
**USE FEES; UTILITIES**

City shall be responsible for paying water, sewer, electricity, gas, heating, internet, and trash collection. Member shall be responsible for any other applicable taxes or fees.

**SECTION 5**  
**COMPLIANCE TO MAINTAIN INSURANCE**

Member covenants that it will not do nor permit to be done, nor keep nor permit to be kept upon the Premises, anything which will contravene the policy or policies of insurance against loss by fire or other causes, or which will increase the rate of fire or other insurance on the building beyond the initial rate. Should any act of Member so increase the rate, then, in addition to the license fee hereinabove provided for, Member shall be liable for such additional premium, which shall be payable when billed as additional license fee, collectible in the same manner as the monthly license fee payments. Member covenants that under no circumstances will it keep or permit to be kept, do or permit to be done, in or about the Premises, anything of character so hazardous as to render it difficult, impracticable, or impossible to secure such insurance in companies acceptable to City. Member further covenants, immediately upon notice, to remove from the Premises and/or to desist from any practice deemed by the insurance companies or the Association of Fire Underwriters as so affecting the insurance risk.

**SECTION 6**  
**MAINTENANCE**

Member agrees to keep the Premises in neat and orderly condition. City shall maintain the Premises in good repair and will make all ordinary and replacement repairs at its expense, including but not limited to lighting fixtures; however, Member shall pay for all repairs necessitated by the willful or negligent acts of itself, its agents, employees, licensees or invitees. City shall be responsible and pay for all janitorial and cleaning services as may be necessitated or required in the licensed area. City agrees to keep and maintain in good order and repair the exterior, the roof and all structural parts of the Premises and the building, as well as the electrical, heating, cooling and plumbing systems.

**SECTION 7**  
**ALTERATIONS**

Member further covenants that it will not make any alterations, additions, or changes of any kind to the Premises, without first securing the written consent of City, after submission of the plans therefor to City for review and prior approval. Any alterations, additions, or changes as City shall permit in writing shall be made at Member's expense. Member agrees that all improvements to the Premises shall become the property of the City at the time of installation.

**SECTION 8**  
**COMMENCEMENT OF OCCUPANCY**

This License shall become effective upon the execution by the duly authorized signatories of the City and Member as same may be applicable.

**SECTION 9**  
**USE**

The Premises shall be used by the Member solely for the purpose of a \_\_\_\_\_ business and any related business activities. **No retail activities are permitted on the Premises, except by written permission of the City.** No other use may be made of the premises unless same is approved in writing by the City.

**SECTION 10**  
**COMMON AREAS;**  
**KEY ACCESS**

The Member shall have access to the restrooms, kitchenette, hallways, co-working area and conference room (which is available by reservation) and such other areas as may be designated common areas on the Premises on a shared basis as depicted on Exhibit A, and in accordance with the rules and regulations of the City, which rules and regulations may be amended at the City's sole discretion from time to time. A copy of the current rules and regulations is attached hereto as Exhibit B, and incorporated herein. Member shall comply with all such rules and regulations as published, revised and promulgated from time to time. The City will provide the Member with keys with which to access to the Premises in accordance with the attached "Key Agreement," a copy of which is attached hereto as Exhibit C. The City reserves the right to change locks and provide new keys to Member on an as needed basis when locks are changed. In the event Member loses or misplaces keys, then Member shall pay Licensor an amount sufficient to cover the cost of changing locks and obtaining and providing replacement keys. Members are permitted access to the Premises seven days per week, during the hours of 8:00 a.m. – 7:00 p.m.

**SECTION 11**  
**FURNITURE**

All furniture and equipment provided in the BüroBox is the property of the City and shall not be removed from the Premises. Member shall promptly report any and all damages incurred to the Premises and/or furniture and equipment to the City. Member shall pay for all repairs/replacements of furniture and/or equipment necessitated by the willful or negligent acts of itself, its agents, employees, licensees or invitees. The Member shall not install or place any furniture or equipment on the Premises, without the written consent of the City.

**SECTION 12**  
**WIRELESS NETWORK USER AGREEMENT**

Member shall abide by the terms of the Wireless Network User Agreement, attached hereto as Exhibit D, and as may be amended in writing by the City from time to time.

**SECTION 13**  
**SIGNS**

Member may not erect or place any signs on the exterior or visible to the exterior of the building, except by written permission of the City. Member may not erect or place any signs in the interior of the building.

**SECTION 14**  
**ASSIGNMENT**

Member shall not assign its rights under this License Agreement to any person or entity, without the express written consent of the City.

**SECTION 15**  
**INDEMNITY**

Member shall save and keep harmless and indemnify City, its agents, servants, employees, officers or representatives from any and all claims of whatsoever nature or kind arising directly or indirectly from the use of the premises and Member agrees to save and hold harmless and indemnify City from any suits, demands, claims or fines of whatsoever nature or kind including personal injuries arising directly or indirectly under any circumstances by the exercise of the Member in the use of the premises. City shall not be responsible for any loss, theft or damage to Member's belongings. Member is strongly encouraged to obtain its own insurance policy for protection of its belongings.

**SECTION 16**  
**FIRE DAMAGE**

In the event the Premises are damaged by fire, storm, the elements, acts of God, unavoidable accident and/or the public enemy, to such an extent as to render it partially unusable, City may, at its discretion, restore such portion of the premises so injured or damaged as speedily as possible. City may also declare this License Agreement null and void. In the event City declares the License Agreement null and void, it shall not be responsible for relocation costs and/or loss of business or income to Member.

**SECTION 17**  
**DEFAULT OF MEMBER; REMEDIES OF CITY**

This License is of a temporary nature, and the City may cancel this License (1) immediately should Licensee fail to fulfill any of the conditions set forth in this License Agreement, upon written notice to the Licensee; or (2) at any time and for any reason, upon fifteen (15) days' written notice to Licensee; at the expiration of the fifteen (15) days, Licensee shall immediately cease all use of the Burobox. The City, its agents or attorneys, shall have the absolute right to re-enter said premises, using force if necessary, to dispossess Member and all other occupants from the Demised Premises and to remove any or all of Member's property at the Demised Premises. In any action or proceeding brought to enforce this License or any provision thereof, City shall be entitled to an award of reasonable attorney's fees to be paid by the Member.

**SECTION 18**

Unless extended by agreement of the parties, this License Agreement shall terminate automatically upon the expiration of the term, or earlier in accordance with this License Agreement, as the case may be. HOWEVER, if Member does not immediately surrender use of the Premises, it shall continue to pay the license fee for each month during which it continues to use the Premises. License fees shall be for a full month, and not pro-rated.

**SECTION 19**  
**SMOKING; ALCOHOL**

No smoking or vaping shall be permitted on the Premises. No alcohol shall be permitted on the Premises.

**SECTION 20**

Unless another address shall have been substituted for such address by notice in writing, all notices or demands of any kind which either party may be required or may desire to serve on the other under the

terms of this License may be served on the other: (1) by hand delivery by leaving a copy of such demand or notice for the party at the party's address set forth below, (2) by sending via nationally recognized commercial overnight courier a copy of such demand or notice to the party at the party's address set forth below, (3) by mailing, certified or registered US mail, return receipt requested, first class postage prepaid, a copy of such demand or notice to the party at its address set forth below, or (4) by sending a copy of such demand or notice via email, with a confirmatory copy by first class mail, to the party's e-mail and address, set forth below (**Member's address must be other than 60 West Washington Street, Hagerstown**):

City of Hagerstown:

City Administrator  
City of Hagerstown  
City Hall  
Hagerstown, Maryland 21740

Member:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e-mail)

#### **SECTION 21** **ADDITIONAL DOCUMENTS**

The parties agree to execute, acknowledge and deliver any and all further documents and instruments that may be required or necessary to carry out and effectuate the purposes of this License or any provisions contained herein.

#### **SECTION 22** **PARTIAL INVALIDITY**

If any term, covenant or condition of this License shall be deemed invalid or unenforceable, then the remainder of this License shall not be affected and same shall remain in full force and effect.

#### **SECTION 23** **GOVERNING LAW**

This License Agreement shall be construed, interpreted and enforced according to the Laws of the State of Maryland, without regard to principles of conflict of law.

#### **SECTION 24** **PERMITS**

In the event that it becomes necessary for any permits, licenses or anything that may be requisite for the Member to occupy and use the Premises for the purposes set forth herein or as hereinafter may be agreed upon, then in said event, Member shall be responsible for the application and payment of any such permit or license fee if required.

**SECTION 25**  
**MISCELLANEOUS**

The headings in the License are solely for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement, nor affect the interpretation thereof.

All references made, and nouns and pronouns used herein shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

This License shall inure to the benefit of and be binding upon the parties hereto, their grantees, successors and assigns, if applicable.

This License contains the final and entire agreement between the parties and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. Any subsequent amendment to the contract shall be valid only if executed in writing by the parties or their grantees, successors or assigns, if applicable.

THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE CITY AND/OR THE MEMBER MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LICENSE AGREEMENT OR ANY PROVISION THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LICENSE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

WITNESS

CITY OF HAGERSTOWN

\_\_\_\_\_

BY: \_\_\_\_\_  
XXXXXX, DCED, Title

WITNESS:

MEMBER: \_\_\_\_\_, Inc.,

\_\_\_\_\_

BY: \_\_\_\_\_  
[Name], [Title]

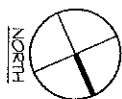
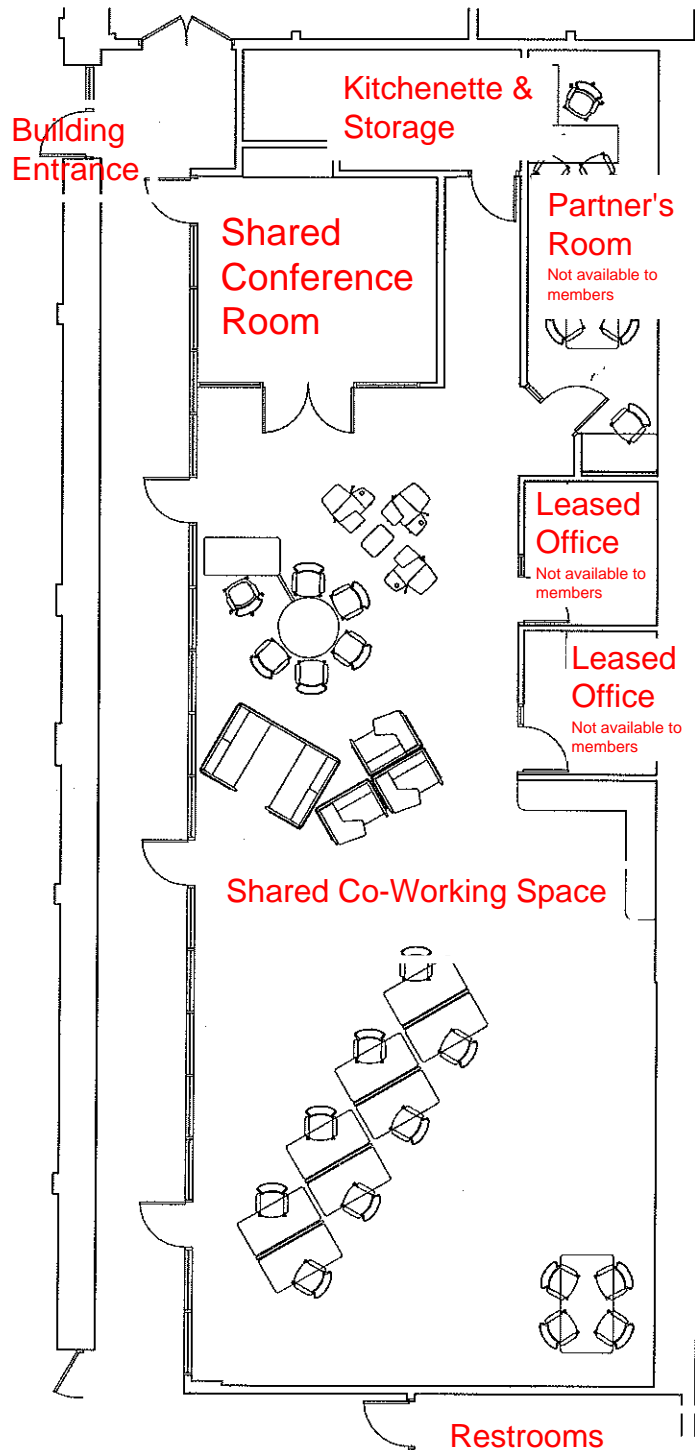


EXHIBIT A  
Building Sketch

## EXHIBIT B

### **RULES AND REGULATIONS OF THE BÜROBOX**

#### General Facilities

1. Member shall not suffer or permit the obstruction of any Common Areas, including hallways, lobbies, or walkways.
2. Members shall not bring or keep bicycles, motorcycles, scooters or other vehicles into portions of the building. Bicycles can be locked in University Plaza. Motorcycles and scooters must be parked in appropriate parking spaces.
3. Member shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
4. Member shall not alter any lock or install new or additional locks or bolts.
5. Member shall not deface walls, partitions or other surfaces of the Premises or the Building. Items can be hung on the walls within the offices using adhesive hooks.
6. Member shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
7. No window coverings, shades, awnings shall be installed or used by Member. Signs may not be permanently adhered to any wall. Signs are permitted in the windows of the office provided they are temporary, removable and do not leave any resemblance of residue.
8. No Member, employee or invitee shall go into the basement or upon the roof the Building.
9. Member shall not suffer or permit smoking or carrying of lighted cigar, cigarette or electronic cigarette within the premises or the Building.
10. Member shall not use any method of heating or air conditioning other than as provided by City or any dedicated system approved by City.
11. Member shall comply with all safety, fire protection and evacuation regulations established by City or any applicable governmental agency.
12. Short term, hourly street parking is available for a fee between the hours of 8am and 5pm. Long term, hourly garage parking for a fee is also available. Parking is the responsibility of the Member. No permits will be provided to Members or clients.
13. Member agrees to abide by the maximum occupancy requirement set by the Fire Marshal.

#### Services and Amenities

14. Hours for entry are: 24 hours, 7 days a week for offices. General membership may use the facilities from 8am – 7pm, 7 days per week.
15. Equipment is not to be removed, damaged, or tampered with in any way. If there is an issue with any equipment, please call 301-739-8577 ext 111.
16. Late Fees: \$15 after 3<sup>rd</sup> late occurrence. After the 5<sup>th</sup> late payment, membership will be terminated.

17. Returned Checks: \$30 returned check fee. After the 2<sup>nd</sup> occurrence, no check will be accepted.
18. Animals are not permitted with the exception of properly registered service and therapy animals. If you intend to utilize a service or therapy animal, you must complete the required form. In addition, certification and a doctors prescription is required to be submitted with the form. Form will be verified by a staff member of the City.
19. Alcohol is not permitted on the premises.
20. Member is required to label and date any food items in the refrigerator. It is also requested that food items be removed by day 5. Unlabeled or expired items may be disposed without permission.
21. Members are responsible for placing the trash in the collection location.
22. Office members receive 250 black & white copies and 25 color copies per month. General members receive 200 black & white copies and 20 color per month. Member should be mindful of the number of copies they are printing as member will be billed for the overages which will be due the following month. Overages will be billed for both office members and licensee members at the following rates: \$0.15 per black & white and \$0.25 per color.
23. No hot plates are permitted on the premises. A microwave will be provided and food may be heated. Hot and cold drinks may be prepared using the Keurig or the water cooler.
24. The conference room is available on a first come first serve basis. Member will be required to reserve the room through the reservation system. Members are not required to pay a fee. Non-members will pay a fee of \_\_\_\_\_ per hour for the conference room and/or video conferencing equipment.
25. Lockers are available for day use only and may only be used by members. The lockers are on a time limit of 8 hours. Please see How To manual on procedures.
26. No materials may be left in the lockers overnight as the lockers will automatically open after the time limit.
27. Limited office supplies are provided (ie, stapler, three hole punch, etc.) and Member agrees to use moderately.
28. Member acknowledges that no one will be available to sign for deliveries. The City takes no responsibility for lost or stolen packages.
29. Furniture may be moved within the premises, but must be returned to its original position. No furniture or equipment may be removed from the premises.
30. Member shall not make or permit any noise that annoy or interfere with other Members or persons having business within the building.
31. Member agrees to have no more than 3 guests in the areas at any given time. If you have an employee, he/she must also have a membership. Guests are defined as clients, customers or other invitees who spend less than three hours at the space.

### Cleanliness

32. Member agrees to clean up after themselves and keep the premises in a neat and orderly condition.
33. Member agrees to eat any and all food items at a desk and not a chair with a swivel desk. This is to keep the upholstered chairs clean.

### Internet Usages

34. Any unlawful use of the wireless internet is strictly prohibited.

### Miscellaneous

35. City reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary. City shall provide Member with copies of any new and/or modified rules or regulations prior to the effective date thereof. Member agrees to abide by these and such other rules and regulations.
36. City reserves the right to waive any of these rules or regulations, and/or, as to any particular Member, and such waiver shall not constitute a waiver of any other rule or regulation subsequent application thereof to such Member.

## EXHIBIT C

### MEMBER KEY ISSUANCE AND RETURN CERTIFICATE

The undersigned Member hereby acknowledges:

1. That the City of Hagerstown is designated as the City for the agreed BüroBox property referred to herein;
2. That the Member named below accepts the Keys listed below for the BüroBox;
3. If a key is lost, stolen or damaged, a fee of \$30 for office and \$6 for keyless fob/card will be assessed to Member for replacement.
4. That upon termination of this Agreement, all Keys will be returned to the City.

Issued to: \_\_\_\_\_ Date: \_\_\_\_\_

Member Identity: \_\_\_\_\_ Office/Suite Number: \_\_\_\_\_

Number of Office/Suite Keys Issued: \_\_\_\_\_

Key FOB/Card #: \_\_\_\_\_

I accept custody of this Key(s) and I agree to abide by the terms and conditions itemized below:

Member will immediately report lost or stolen Keys, to the City of Hagerstown Department of Community and Economic Development at 14 N. Potomac St, Ste 200A, Hagerstown, MD 21740, or call (301) 739-8577 ext 111, or e-mail Burobox@hagerstownmd.org. In case of lost or stolen Keys, Member assumes financial responsibility to have the Key replaced, as deemed appropriate by the City of Hagerstown.

Under no circumstances is this Key to be duplicated and that unauthorized Key duplication subjects Member to immediate Agreement termination. Member agrees not to loan Keys, nor to provide to unauthorized individuals, under penalty of immediate Agreement termination. Member agrees to use the Keys provided to enter only those areas where Member is allowed access under Member Agreement provisions. Upon expiration or termination of the Lease Agreement, Member shall return all Keys to the City of Hagerstown Department of Community and Economic Development.

\_\_\_\_\_  
Signature of person(s) authorized to receive/return Keys      Date

Key Return:

\_\_\_\_\_  
Signature of person(s) authorized to receive/return Keys      Date

## EXHIBIT C

## EXHIBIT D

### Wireless Network User Agreement

*All users of the BüroBox wireless connectivity agree to the following:*

#### **Terms of Use**

Failure to follow the terms of use listed below may result in the patron being asked to sever his/her connections and termination of the Lease Agreement or License Agreement, at the City's discretion.

1. Wireless users must not attempt to access or damage the network.
2. While using the BüroBox connection, wireless users may not use the Internet in any way that violates a Federal or State Law.
3. Wireless users must not behave in a manner that is disruptive to other BüroBox Members or staff.
4. Earphones must be used if sound is to be activated through a wireless unit.
5. Wireless users may not use the BüroBox internet services to display or disseminate sexually explicit materials.
6. Wireless users must not impersonate another person online.
7. Wireless network will required log-in information that is not to be shared with anyone. All users must have a valid Lease Agreement or License Agreement with the City.

- BüroBox staff members will not be available to assist in troubleshooting any network difficulty.
- BüroBox cannot guarantee that users equipment will be able to connect to the wireless network.
- BüroBox assumes no responsibility for any loss or damages done directly or indirectly to personal data or equipment, or for any damage or injury arising from loss of privacy while using the wireless connection.
- The wireless network is secure but it is still recommended to exercise caution when sending or receiving personal data over wireless connections.

I Agree to the Terms of Use set forth above:

Printed Member Name: \_\_\_\_\_ Member ID# \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

## EXHIBIT D

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, between The City of Hagerstown, Maryland, a municipal corporation existing under and by virtue of the laws of the State of Maryland, hereinafter called "City," and \_\_\_\_\_, hereinafter called "Tenant" or "Member."

### **SECTION I** **DEMISE OF PREMISES**

City, for and in consideration of the payment of the rent and performance of the covenants and agreements hereinafter mentioned, hereby leases to Tenant and tenant hereby leases from City a portion of the space located on the first floor of 60 West Washington Street, Hagerstown, Maryland ("the Burobox"), together with all improvements thereon. The portion of the Burobox leased hereby is particularly described in and/or shown as on Exhibit A attached hereto and made part hereof, the said real property and improvements being hereinafter referred to as the "Premises."

### **SECTION 2** **TERM**

The term of this Lease shall commence on the 1st day of \_\_\_\_\_, 2016, and end on the last day of \_\_\_\_\_, 2017, at 11:59 p.m., unless extended by written agreement between the parties or extended as otherwise set forth herein.

### **SECTION 3** **RENT**

A. DURING THE PERIOD OF THIS LEASE, RENTAL SHALL BE PAID BY TENANT AS FOLLOWS:

For the period of November \_\_\_\_\_, 2016 to \_\_\_\_\_, 2017, rental shall be One Hundred and 00/100 (\$100.00) Dollars per month, which Tenant shall pay in advance on the first day of each month, with the first month's rent due on or before \_\_\_\_\_, 2016.

B. LATE FEES. In the event the Rent and/or Additional Rent hereunder shall not be received by the City within five (5) days of its due date, a late charge of TEN DOLLARS and 00/100 (\$10.00) shall be added thereto. After three (3) late fees have been assessed, this Lease Agreement is terminable at the option of the Landlord.

C. SECURITY DEPOSIT. Contemporaneously with the execution of this Lease Agreement, Tenant shall deposit the sum of one month's rent (\$100.00) with City as a security deposit. The security deposit shall be held by the City in a non-interest bearing account as security for the faithful performance by the Tenant of all Tenant's obligations under this Lease.

D. Payment of rental invoices may be made by check, money order, or credit card (if made in person) at City Hall at 1 East Franklin Street, Hagerstown, MD 21740. In addition, payments can be made online at <https://mycity.hagerstownmd.org>. No cash will be accepted. Should the Tenant designate to pay by check or money order, payment shall be made to: City of Hagerstown. A \$30 fee shall be assessed for all returned checks. After a second returned check, all payments shall be made by money order or credit card.

**SECTION 4**  
**USE FEES; UTILITIES**

City shall be responsible for paying water, sewer, electricity, gas, heating, internet, and trash collection.

TENANT SHALL NOT BE RESPONSIBLE FOR OR PAY REAL ESTATE PROPERTY TAXES. Tenant shall be responsible for any other applicable taxes or fees.

**SECTION 5**  
**COMPLIANCE TO MAINTAIN INSURANCE**

Tenant covenants that it will not do nor permit to be done, nor keep nor permit to be kept upon the Premises, anything which will contravene the policy or policies of insurance against loss by fire or other causes, or which will increase the rate of fire or other insurance on the building beyond the initial rate. Should any act of Tenant so increase the rate, then, in addition to the rent hereinabove provided for, Tenant shall be liable for such additional premium, which shall be payable when billed as additional rent, collectible in the same manner as the monthly rental payments. Tenant covenants that under no circumstances will it keep or permit to be kept, do or permit to be done, in or about the Premises, anything of character so hazardous as to render it difficult, impracticable, or impossible to secure such insurance in companies acceptable to City. Tenant further covenants, immediately upon notice, to remove from the Premises and/or to desist from any practice deemed by the insurance companies or the Association of Fire Underwriters as so affecting the insurance risk.

**SECTION 6**  
**MAINTENANCE**

Tenant agrees to keep the Premises in neat and orderly condition. City shall maintain the Premises in good repair and will make all ordinary and replacement repairs at its expense, including but not limited to lighting fixtures; however, Tenant shall pay for all repairs necessitated by the willful or negligent acts of itself, its agents, employees, licensees or invitees. City shall be responsible and pay for all janitorial and cleaning services as may be necessitated or required in the leased area. City agrees to keep and maintain in good order and repair the exterior, the roof and all structural parts of the Premises and the building, as well as the electrical, heating, cooling and plumbing systems.

**SECTION 7**  
**ALTERATIONS**

Tenant further covenants that it will not make any alterations, additions, or changes of any kind to the Premises, without first securing the written consent of City, after submission of the plans therefor to City for review and prior approval. Any alterations, additions, or changes as City shall permit in writing shall be made at Tenant's expense. Tenant agrees that all improvements to the Premises shall become the property of the City at the time of installation.

**SECTION 8**  
**COMMENCEMENT OF TERM/OCCUPANCY**

This Lease shall become effective upon the execution by the duly authorized signatories of the City and Tenant as same may be applicable.

## **SECTION 9**

### **USE**

The Premises shall be used by the Tenant solely for the purpose of a \_\_\_\_\_ business and any related business activities. **No retail activities are permitted on the Premises, except by written permission of the City.** No other use may be made of the premises unless same is approved in writing by the City.

## **SECTION 10**

### **COMMON AREAS;**

### **KEY ACCESS**

The Tenant shall have access to the restrooms, kitchenette, hallways, co-working area and conference room (which is available by reservation) and such other areas as may be designated common areas on the Premises on a shared basis as depicted on Exhibit A, and in accordance with the rules and regulations of the Landlord, which rules and regulations may be amended at the Landlord's sole discretion from time to time. A copy of the current rules and regulations is attached hereto as Exhibit B, and incorporated herein. Tenant shall comply with all such rules and regulations as published, revised and promulgated from time to time. The City will provide the Tenant with keys with which to access to the Premises in accordance with the attached "Key Agreement," a copy of which is attached hereto as Exhibit C. The City reserves the right to change locks and provide new keys to Tenant on an as needed basis when locks are changed. In the event Tenant loses or misplaces keys, then Tenant shall pay Landlord an amount sufficient to cover the cost of changing locks and obtaining and providing replacement keys. Tenants are permitted access to the Premises at any time.

## **SECTION 11**

### **FURNITURE**

All furniture and equipment provided in the BüroBox is the property of the City and shall not be removed from the Premises. Tenant shall promptly report any and all damages incurred to the Premises and/or furniture and equipment to the City. Tenant shall pay for all repairs/replacements of furniture and/or equipment necessitated by the willful or negligent acts of itself, its agents, employees, licensees or invitees. The Tenant shall not install or place any furniture or equipment on the Premises, without the written consent of the City.

## **SECTION 12**

### **WIRELESS NETWORK USER AGREEMENT**

Tenant shall abide by the terms of the Wireless Network User Agreement, attached hereto as Exhibit D, and as may be amended in writing by the City from time to time.

## **SECTION 13**

### **SIGNS**

Tenant shall be permitted to install the name of Tenant and its affiliated operation upon the written approval of City. The Tenant may not erect or place any signs on the exterior or visible to the exterior of the building, except by written permission of the City.

**SECTION 14**  
**ASSIGNMENT AND SUBLEASE**

Tenant shall not assign this Lease nor sublet all or any portion of the Premises to any person or entity.

**SECTION 15**  
**INDEMNITY AND LIABILITY INSURANCE**

Tenant shall save and keep harmless and indemnify City, its agents, servants, employees, officers or representatives from any and all claims of whatsoever nature or kind arising directly or indirectly from the use of the premises and Tenant agrees to save and hold harmless and indemnify City from any suits, demands, claims or fines of whatsoever nature or kind including personal injuries arising directly or indirectly under any circumstances by the exercise of the Tenant in the use of the premises. City shall not be responsible for any loss, theft or damage to Tenant's belongings. Tenant is strongly encouraged to obtain its own rental insurance policy for protection of its belongings.

**SECTION 16**  
**INSPECTION OF PREMISES**

Tenant agrees that City shall have the right to inspect the Premises at all reasonable times during business hours, at any time during the term of this Lease. City shall have the right to show the Premises to prospective tenants or purchasers.

**SECTION 16**  
**FIRE DAMAGE**

In the event the Premises are damaged by fire, storm, the elements, acts of God, unavoidable accident and/or the public enemy, to such an extent as to render it partially untenable, City shall restore such portion of the premises so injured or damaged as speedily as possible. The annual rent shall abate proportionately on such part of the premises as may have been rendered untenable until such time as such part shall be fit for occupancy, and after which time, the full amount of annual rent reserved in this Lease shall be payable as hereinabove set forth. If the premises is injured or damaged by any of the aforesaid causes to such an extent as to render the same wholly untenable, then this Lease shall thereupon become null and void, and all liability of tenant shall terminate upon payment of all annual rent and additional rent due and payable to the date of such happening.

In the event of untenability, City shall not be responsible for relocation costs and/or loss of business or income to Tenant. The term untenable shall be defined as meaning the premises are unable to be used for the Tenant's ordinary business purposes.

**SECTION 17**  
**DEFAULT OF TENANT; REMEDIES OF CITY**

It is further agreed and understood that if any default is made in the payment of the rental or any provisions as herein agreed by the Tenant, then the relationship of City and Tenant at the option of the City shall wholly cease and terminate, and the City, its agents or attorneys, shall have the absolute right to re-enter said premises, using force if necessary, to dispossess Tenant and all other occupants from the Demised Premises and to remove any or all of Tenant's property at the Demised Premises, and assume

and take possession of the same, and the said Tenant waives service of any Notice of Intention to Re-enter, Notice to Terminate Tenancy, or Notice to quit or Demand for Possession.

Tenant shall have breached this Lease and shall be considered in default hereunder if (a) Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy or insolvency law or act, or makes an assignment for the benefit of creditors; (b) involuntary proceedings are instituted against Tenant under any bankruptcy or insolvency law or act and not dismissed within ninety (90) days; or (c) Tenant ceases to maintain good standing status with the Maryland State Department of Assessments and Taxation.

In the event that there is a default or a violation of any other provisions of this Lease other than non-payment of rent, then and in said event, the City shall give the Tenant fifteen (15) days' notice in which to correct said violation. If same is not corrected within fifteen (15) days, the relationship of City and Tenant, within the absolute discretion and option of the City shall cease and terminate without further notice.

No entry or re-entry by City, whether resulting from summary proceedings or otherwise, nor any letting or reletting shall absolve or discharge Tenant from liability hereunder. Tenant's liability hereunder, even if there be no letting or reletting shall survive the issuance of any dispossess warrant, order of court terminating this Lease, or any other termination based upon Tenant's default. The words "enter," "re-enter," and "re-entry" as used in this Article and elsewhere in this Lease are not restricted to their technical legal meanings.

In any action or proceeding brought to enforce this Lease or any provision thereof, City shall be entitled to an award of reasonable attorney's fees to be paid by the Tenant.

#### **SECTION 18** **TENANT HOLDING OVER**

This Lease shall terminate automatically upon the expiration of the term, or renewal term as the case may be. HOWEVER, if Tenant does not immediately surrender possession of the Premises upon the termination, and there is a holding over by Tenant, then and in said event, the tenancy of this lease shall be considered on a month-to-month basis (terminable by either party upon thirty (30) day's written notice).

#### **SECTION 19** **CONTINGENCY**

It is recognized by and between the parties that it is necessary for the City to pass a Resolution approving the execution of this Lease and the provisions hereof. In the event that said Resolution should not become effective by virtue of a referendum or some other methodology or by operation of law, then in said event, this Lease is null and void and of no effect.

It is agreed that the necessary Resolution required by the City shall be introduced simultaneously with the execution of this agreement or as expeditiously thereafter as possible.

#### **SECTION 20** **SMOKING; ALCOHOL**

No smoking shall be permitted on the Premises. No alcohol shall be permitted on the Premises.

**SECTION 21**  
**APPROVALS**

Any approvals required under the provisions of this Lease by City shall be as duly authorized by the Mayor and Council as its duly constituted legislative body.

**SECTION 22**  
**NOTICES**

Unless another address shall have been substituted for such address by notice in writing, all notices or demands of any kind which either party may be required or may desire to serve on the other under the terms of this Lease may be served on the other: (1) by hand delivery by leaving a copy of such demand or notice for the party at the party's address set forth below, (2) by sending via nationally recognized commercial overnight courier a copy of such demand or notice to the party at the party's address set forth below, (3) by mailing, certified or registered US mail, return receipt requested, first class postage prepaid, a copy of such demand or notice to the party at its address set forth below, or (4) by sending a copy of such demand or notice via email, with a confirmatory copy by first class mail, to the party's e-mail and address, set forth below (**Tenant's address must be other than 60 West Washington Street, Hagerstown**):

City of Hagerstown:	City Administrator City of Hagerstown City Hall Hagerstown, Maryland 21740
---------------------	---

Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e-mail)

**SECTION 23**  
**ADDITIONAL DOCUMENTS**

The parties agree to execute, acknowledge and deliver any and all further documents and instruments that may be required or necessary to carry out and effectuate the purposes of this Lease or any provisions contained herein.

**SECTION 24**  
**PARTIAL INVALIDITY**

If any term, covenant or condition of this Lease shall be deemed invalid or unenforceable, then the remainder of this Lease shall not be affected and same shall remain in full force and effect.

**SECTION 25**  
**GOVERNING LAW**

This Lease shall be construed, interpreted and enforced according to the Laws of the State of Maryland, without regard to principles of conflict of law.

**SECTION 26**  
**PERMITS**

In the event that it becomes necessary for any permits, licenses or anything that may be requisite for the Tenant to occupy and use the Premises for the purposes set forth herein or as hereinafter may be agreed upon, then in said event, Tenant shall be responsible for the application and payment of any such permit or license fee if required.

**SECTION 27**  
**MISCELLANEOUS**

The headings in the Lease are solely for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement, nor affect the interpretation thereof.

All references made, and nouns and pronouns used herein shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

This Lease shall inure to the benefit of and be binding upon the parties hereto, their grantees, successors and assigns, if applicable.

This Lease is subject to and contingent on the passage of any Resolutions required as indicated, and upon adoption of this Agreement by formal action of the Mayor and Council.

This Lease contains the final and entire agreement between the parties and they shall not be bound by any terms, conditions, statements, or representations, oral or written, not herein contained. Any subsequent amendment to the contract shall be valid only if executed in writing by the parties or their grantees, successors or assigns, if applicable.

Tenant covenants and agrees that during the term of this Lease, neither Tenant nor any of Tenant's agents, employees, contractors, invitees, assignees, or sublessees shall cause any hazardous material to be brought upon, kept, or used in, on, or about the Premises or the Building or transported to or from the Premises or Building without the prior written consent of City.

This Lease is considered to be and shall be construed as a commercial lease.

THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE CITY AND/OR THE TENANT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE OR ANY PROVISION THEREOF. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS LEASE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the date and year first above written.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

CITY OF HAGERSTOWN

\_\_\_\_\_  
Donna Spickler, City Clerk

BY: \_\_\_\_\_  
David S. Gysberts, Mayor

WITNESS:

TENANT: \_\_\_\_\_, Inc.,

\_\_\_\_\_

BY: \_\_\_\_\_  
[Name], [Title]

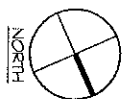
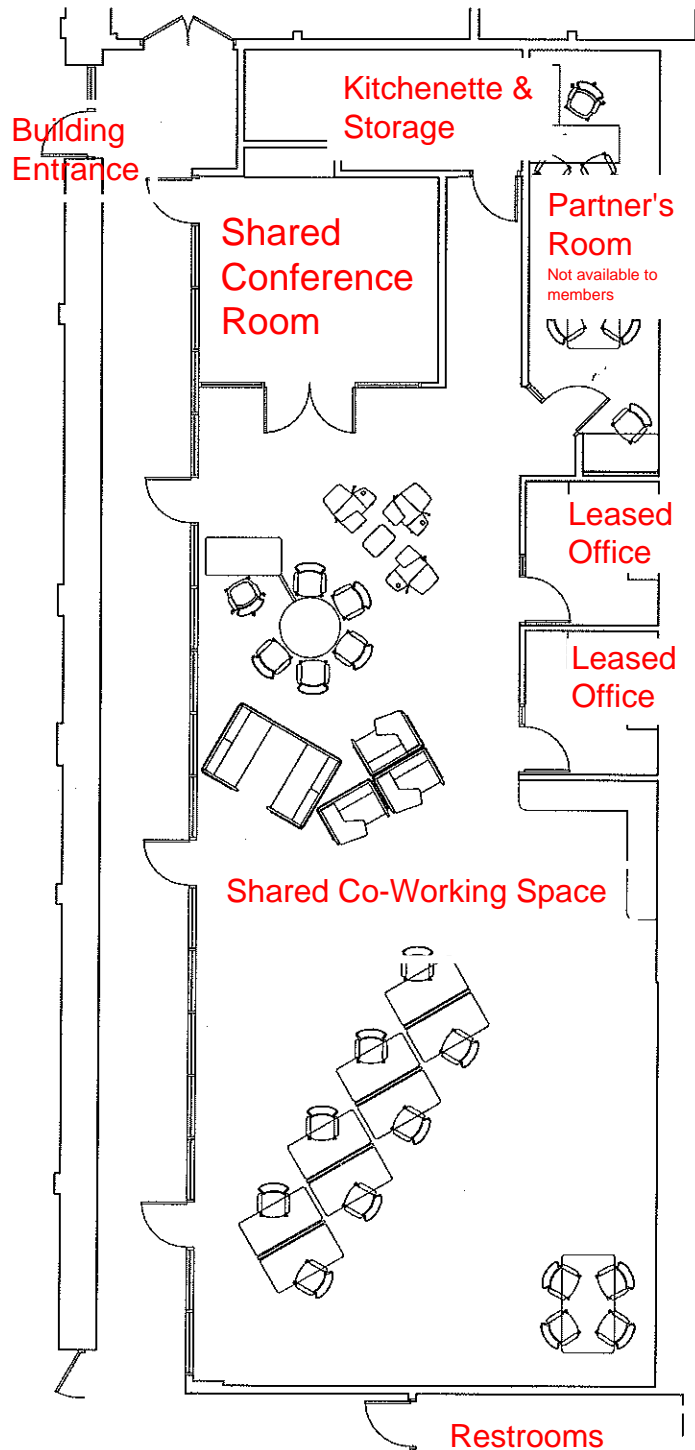


EXHIBIT A  
Building Sketch

## EXHIBIT B

### **RULES AND REGULATIONS OF THE BÜROBOX**

#### General Facilities

1. Tenant shall not suffer or permit the obstruction of any Common Areas, including hallways, lobbies, or walkways.
2. Tenants shall not bring or keep bicycles, motorcycles, scooters or other vehicles into portions of the building. Bicycles can be locked in University Plaza. Motorcycles and scooters must be parked in appropriate parking spaces.
3. Tenant shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
4. Tenant shall not alter any lock or install new or additional locks or bolts.
5. Tenant shall not deface walls, partitions or other surfaces of the Premises or the Building. Items can be hung on the walls within the offices using adhesive hooks.
6. Tenant shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
7. No window coverings, shades, awnings shall be installed or used by Tenant. Signs may not be permanently adhered to any wall. Signs are permitted in the windows of the office provided they are temporary, removable and do not leave any resemblance of residue.
8. No Tenant, employee or invitee shall go into the basement or upon the roof the Building.
9. Tenant shall not suffer or permit smoking or carrying of lighted cigar, cigarette or electronic cigarette within the premises or the Building.
10. Tenant shall not use any method of heating or air conditioning other than as provided by Landlord or any dedicated system approved by Landlord.
11. Tenant shall comply with all safety, fire protection and evacuation regulations established by Landlord or any applicable governmental agency.
12. Short term, hourly street parking is available for a fee between the hours of 8am and 5pm. Long term, hourly garage parking for a fee is also available. Parking is the responsibility of the Tenant. No permits will be provided to Tenants or clients.
13. Tenant agrees to abide by the maximum occupancy requirement set by the Fire Marshal.

#### Services and Amenities

14. Hours for entry are: 24 hours, 7 days a week for offices. General Tenantship may use the facilities from 8am – 7pm, 7 days per week.
15. Equipment is not to be removed, damaged, or tampered with in any way. If there is an issue with any equipment, please call 301-739-8577 ext 111.
16. Late Fees: \$15 after 3<sup>rd</sup> late occurrence. After the 5<sup>th</sup> late payment, Tenantship will be terminated.

17. Returned Checks: \$30 returned check fee. After the 2<sup>nd</sup> occurrence, no check will be accepted.
18. Animals are not permitted with the exception of properly registered service and therapy animals. If you intend to utilize a service or therapy animal, you must complete the required form. In addition, certification and a doctors prescription is required to be submitted with the form. Form will be verified by a staff Tenant of the Landlord.
19. Alcohol is not permitted on the premises.
20. Tenant is required to label and date any food items in the refrigerator. It is also requested that food items be removed by day 5. Unlabeled or expired items may be disposed without permission.
21. Tenants are responsible for placing the trash in the collection location.
22. Office Tenants receive 250 black & white copies and 25 color copies per month. General Tenants receive 200 black & white copies and 20 color per month. Tenant should be mindful of the number of copies they are printing as Tenant will be billed for the overages which will be due the following month. Overages will be billed for both office Tenants and licensee Tenants at the following rates: \$0.15 per black & white and \$0.25 per color.
23. No hot plates are permitted on the premises. A microwave will be provided and food may be heated. Hot and cold drinks may be prepared using the Keurig or the water cooler.
24. The conference room is available on a first come first serve basis. Tenant will be required to reserve the room through the reservation system. Tenants are not required to pay a fee. Non-Tenants will pay a fee of \_\_\_\_\_ per hour for the conference room and/or video conferencing equipment.
25. Lockers are available for day use only and may only be used by Tenants. The lockers are on a time limit of 8 hours. Please see How To manual on procedures.
26. No materials may be left in the lockers overnight as the lockers will automatically open after the time limit.
27. Limited office supplies are provided (ie, stapler, three hole punch, etc.) and Tenant agrees to use moderately.
28. Tenant acknowledges that no one will be available to sign for deliveries. The Landlord takes no responsibility for lost or stolen packages.
29. Furniture may be moved within the premises, but must be returned to its original position. No furniture or equipment may be removed from the premises.
30. Tenant shall not make or permit any noise that annoy or interfere with other Tenants or persons having business within the building.
31. Tenant agrees to have no more than 3 guests in the areas at any given time. If you have an employee, he/she must also have a Tenantship. Guests are defined as clients, customers or other invitees who spend less than three hours at the space.

### Cleanliness

32. Tenant agrees to clean up after themselves and keep the premises in a neat and orderly condition.
33. Tenant agrees to eat any and all food items at a desk and not a chair with a swivel desk. This is to keep the upholstered chairs clean.

### Internet Usages

34. Any unlawful use of the wireless internet is strictly prohibited.

### Miscellaneous

35. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary. Landlord shall provide Tenant with copies of any new and/or modified rules or regulations prior to the effective date thereof. Tenant agrees to abide by these and such other rules and regulations.
36. Landlord reserves the right to waive any of these rules or regulations, and/or, as to any particular Tenant, and such waiver shall not constitute a waiver of any other rule or regulation subsequent application thereof to such Tenant.

## EXHIBIT C

### TENANT KEY ISSUANCE AND RETURN CERTIFICATE

The undersigned Tenant hereby acknowledges:

1. That the City of Hagerstown is designated as the Landlord for the agreed BüroBox property referred to herein;
2. That the Tenant named below accepts the Keys listed below for the BüroBox;
3. If a key is lost, stolen or damaged, a fee of \$30 for office and \$6 for keyless fob/card will be assessed to Tenant for replacement.
4. That upon termination of this Agreement, all Keys will be returned to the Landlord.

Issued to: \_\_\_\_\_ Date: \_\_\_\_\_  
Tenant Identity: \_\_\_\_\_ Office/Suite Number: \_\_\_\_\_  
Number of Office/Suite Keys Issued: \_\_\_\_\_  
Key FOB/Card #: \_\_\_\_\_

I accept custody of this Key(s) and I agree to abide by the terms and conditions itemized below:

Tenant will immediately report lost or stolen Keys, to the City of Hagerstown Department of Community and Economic Development at 14 N. Potomac St, Ste 200A, Hagerstown, MD 21740, or call (301) 739-8577 ext 111, or e-mail Burobox@hagerstownmd.org. In case of lost or stolen Keys, Tenant assumes financial responsibility to have the Key replaced, as deemed appropriate by the City of Hagerstown.

Under no circumstances is this Key to be duplicated and that unauthorized Key duplication subjects Tenant to immediate Agreement termination. Tenant agrees not to loan Keys, nor to provide to unauthorized individuals, under penalty of immediate Agreement termination. Tenant agrees to use the Keys provided to enter only those areas where Tenant is allowed access under Tenant Agreement provisions. Upon expiration or termination of the Lease Agreement, Tenant shall return all Keys to the City of Hagerstown Department of Community and Economic Development.

\_\_\_\_\_  
Signature of person(s) authorized to receive/return Keys                      Date

Key Return:

\_\_\_\_\_  
Signature of person(s) authorized to receive/return Keys                      Date

## EXHIBIT C

## EXHIBIT D

### Wireless Network User Agreement

*All users of the BüroBox wireless connectivity agree to the following:*

#### **Terms of Use**

Failure to follow the terms of use listed below may result in the patron being asked to sever his/her connections and termination of the Lease Agreement or License Agreement, at the Landlord's discretion.

1. Wireless users must not attempt to access or damage the network.
2. While using the BüroBox connection, wireless users may not use the Internet in any way that violates a Federal or State Law.
3. Wireless users must not behave in a manner that is disruptive to other BüroBox Tenants or staff.
4. Earphones must be used if sound is to be activated through a wireless unit.
5. Wireless users may not use the BüroBox internet services to display or disseminate sexually explicit materials.
6. Wireless users must not impersonate another person online.
7. Wireless network will required log-in information that is not to be shared with anyone. All users must have a valid Lease Agreement or License Agreement with the Landlord.

- BüroBox staff Tenants will not be available to assist in troubleshooting any network difficulty.
- BüroBox cannot guarantee that users equipment will be able to connect to the wireless network.
- BüroBox assumes no responsibility for any loss or damages done directly or indirectly to personal data or equipment, or for any damage or injury arising from loss of privacy while using the wireless connection.
- The wireless network is secure but it is still recommended to exercise caution when sending or receiving personal data over wireless connections.

I Agree to the Terms of Use set forth above:

Printed Tenant Name: \_\_\_\_\_ Tenant ID# \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

## EXHIBIT D

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

---

**Topic:**

Washington County Coalition Update - *Mayor David S. Gysberts*  
(no packet material)

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**