

Mayor and Council Executive Session, Special Session (79th Voting Session) and Work Session November 7, 2023 Agenda

"The City of Hagerstown will inspire an inclusive, business-friendly, and sustainable community with clean, safe, and vibrant neighborhoods."

"The City of Hagerstown shall be a community focused municipality"

**The agenda and meeting packet is available at
www.hagerstownmd.org/government/agenda**

“There is a certain enthusiasm in liberty, that makes human nature rise above itself, in acts of bravery and heroism” – *Alexander Hamilton*

EXECUTIVE SESSION

3:00 PM 1. The Mayor and Council will meet in Open Session only for the purpose of voting to close its meeting to discuss matters that the Open Meetings Act permits it to discuss in Executive/Closed Session.

3:00 PM 2. Executive Session

4:00 PM SPECIAL SESSION

4:00 PM 1. Approval of Appointments: Hagerstown Youth Council (Terms to Expire September 26, 2025)
Allen Anderson
Crystal Dominguez
Naomi Kandrick
Joanna Leedy
Torin Malott
Brianna Mathews
Olivia Yamashita

2. Approval of the Addition of Part Time Police Officers

4:00 PM WORK SESSION

4:00 PM 1. Artist Selection for Hub City Parking Garage - *Brittany Arizmendi, Community Engagement Officer*

4:15 PM 2. FY25 Budget - Agency Contributions - *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

4:30 PM 3. American Rescue Plan Act of 2021 (ARPA) Allocations and Update - *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

4:50 PM 4. American Rescue Plan Act (ARPA) Nonprofit Funding Recommendations – *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

CITY ADMINISTRATOR'S COMMENTS

MAYOR AND COUNCIL COMMENTS

ADJOURN

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

Topic:

The Mayor and Council will meet in Open Session only for the purpose of voting to close its meeting to discuss matters that the Open Meetings Act permits it to discuss in Executive/Closed Session.

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

October_10__2023_Executive_Session.pdf

Description

Executive Session Agenda



MAYOR AND CITY COUNCIL EXECUTIVE SESSION OCTOBER 10, 2023 AGENDA

Vision Statement:

The City of Hagerstown will inspire an inclusive, business-friendly, and sustainable community with clean, safe and vibrant neighborhoods.”

Mission Statement:

“The City of Hagerstown shall be a community focused municipality.”

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3:30 p.m. EXECUTIVE SESSION

1. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process; (#14)

**Purchase offer for City of Hagerstown owned property*

***AUTHORITY: Annotated Code of Maryland, General Provisions Article: Section 3-305(b)
(Subsection is noted in parentheses)**

*City Hall • Council Chamber • 1 East Franklin Street • Hagerstown, MD 21740
301.739.8577, Ext. 113 • Telephone for the Hearing Impaired 301.797.6617*

CITY OF HAGERSTOWN, MARYLAND

PUBLIC BODY: Mayor & City Council

DATE: October 10, 2023

PLACE: Council Chamber, 2nd floor, City Hall

TIME: 3:30 p.m.

AUTHORITY: **ANNOTATED CODE OF MARYLAND, GENERAL PROVISIONS ARTICLE:** **Section 3-305 (b) :**

1. To discuss:
 - ☐ (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - ☐ (ii) any other personnel matter that affects one or more specific individuals;
- ☐ 2. To protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- ☐ 3. To consider the acquisition of real property for a public purpose and matters directly related thereto;
- ☐ 4. To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- ☐ 5. To consider the investment of public funds;
- ☐ 6. To consider the marketing of public securities;
- ☐ 7. To consult with counsel to obtain legal advice;
- ☐ 8. To consult with staff, consultants, or other individuals about pending or potential litigation;
- ☐ 9. To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- ☐ 10. To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
 - (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans;
- ☐ 11. To prepare, administer or grade a scholastic, licensing, or qualifying examination;
- ☐ 12. To conduct or discuss an investigative proceeding on actual or possible criminal conduct; or
- ☐ 13. To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- ☒ 14. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- ☐ 15. Administrative Function

EXECUTIVE SESSION AGENDA

City Hall • Council Chamber • 1 East Franklin Street • Hagerstown, MD 21740
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**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Executive Session

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

November_7__2023_Executive_Session.doc

Description

Executive Session Agenda



MAYOR AND CITY COUNCIL EXECUTIVE SESSION NOVEMBER 7, 2023 AGENDA

Vision Statement:

The City of Hagerstown will inspire an inclusive, business-friendly, and sustainable community with clean, safe and vibrant neighborhoods.”

Mission Statement:

“The City of Hagerstown shall be a community focused municipality.”

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3:00 p.m. EXECUTIVE SESSION

1. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process; (#14)

**Purchase offer for City of Hagerstown owned property*

2. To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; (#1)

** Board Membership –*

*Code Appeals, Historic District Commission, Board of Zoning Appeals &
Ethics Commission*

** Council Vacancy*

***AUTHORITY: Annotated Code of Maryland, General Provisions Article: Section 3-305(b)
(Subsection is noted in parentheses)**

CITY OF HAGERSTOWN, MARYLAND

PUBLIC BODY: Mayor & City Council

DATE: November 7, 2023

PLACE: Council Chamber, 2nd floor, City Hall

TIME: 3:00 p.m.

AUTHORITY: **ANNOTATED CODE OF MARYLAND, GENERAL PROVISIONS ARTICLE:** **Section 3-305(b) :**

1. To discuss:
 - ☒ (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - ☐ (ii) any other personnel matter that affects one or more specific individuals;
- ☐ 2. To protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- ☐ 3. To consider the acquisition of real property for a public purpose and matters directly related thereto;
- ☐ 4. To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- ☐ 5. To consider the investment of public funds;
- ☐ 6. To consider the marketing of public securities;
- ☐ 7. To consult with counsel to obtain legal advice;
- ☐ 8. To consult with staff, consultants, or other individuals about pending or potential litigation;
- ☐ 9. To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- ☐ 10. To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
 - (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans;
- ☐ 11. To prepare, administer or grade a scholastic, licensing, or qualifying examination;
- ☐ 12. To conduct or discuss an investigative proceeding on actual or possible criminal conduct; or
- ☐ 13. To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- ☒ 14. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- ☐ 15. Administrative Function

EXECUTIVE SESSION AGENDA

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

Topic:

Approval of Appointments: Hagerstown Youth Council (Terms to Expire September 26, 2025)

Allen Anderson

Crystal Dominguez

Naomi Kandrick

Joanna Leedy

Torin Malott

Brianna Mathews

Olivia Yamashita

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

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

Topic:

Approval of the Addition of Part Time Police Officers

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Motion_-_Part-Time_Police_Officers.pdf

Description

Approval of the Addition of
Part Time Police Officers

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 7, 2023

TOPIC: Approval of the Addition of Part-Time Police Officers

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

MOTION: I hereby move for Mayor and Council approval to hire up to four (4) part-time police officers.

These part-time officers would be hired immediately and used to augment patrol operations, targeting juvenile and disorder crimes in the parks and downtown area.

This is a clarification from the Motion previously approved on October 24, 2023, stating that these are “contractual part-time police officers”.

DATE OF PASSAGE: November 7, 2023

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

Topic:

Artist Selection for Hub City Parking Garage - *Brittany Arizmendi, Community Engagement Officer*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Hub_City_Garage_Public_Art.pdf

Description

Artist Selection for Hub City
Parking Garage



CITY OF HAGERSTOWN, MARYLAND

Office of Community Engagement
1 E Franklin Street, Suite 210A, Hagerstown, MD 21740

TO: Scott Nicewarner

FROM: Brittany Arizmendi, Community Engagement Officer

DATE: November 2, 2023

SUBJECT: Artist Selection for Hub City Parking Garage

The Office of Community Engagement and Engineering Department will present the artist selection for the Hub City Parking Garage Public Art project. The Public Art and Design group received 10 submissions from the call for artists. Two artists were interviewed by the group, and Nigel Sussman was unanimously selected as the artist for this public art project.

Attachments:

- Motion Sheet
- Resolution
- Agreement with Nigel Sussman Illustration, LLC
- Draft of proposed artwork

REQUIRED MOTION

MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

Date: November 21, 2023

TOPIC: Resolution for Approval of Agreement for Public Art

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

MOTION: I hereby move for Mayor and Council approval of a Resolution authorizing an Agreement for public art between the City of Hagerstown and Nigel Sussman Illustration, LLC for a digital design applied as a vinyl covering on the windows in the stairwells of the Hub City Parking Garage that face the Hagerstown Cultural Trail. Funding for the project is \$4,500 from the Capital Improvement Project for the Hub City Parking Garage.

DATE OF PASSAGE: 11/1/2023

CITY OF HAGERSTOWN, MARYLAND

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT
FOR THE COMMISSION OF PUBLIC ARTWORK, BY AND BETWEEN THE CITY OF
HAGERSTOWN AND NIGEL SUSSMAN ILLUSTRATION, LLC**

RECITALS

WHEREAS, the City of Hagerstown, Maryland (“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 Washington County Museum of Fine Arts with the Arts and Entertainment District (“the Cultural Trail”), with located artwork along the Cultural Trail consistent with the Public Art Master Plan approved and funded by the City;

WHEREAS, the Cultural Trail extends for distance approximately 4000 feet (0.8 miles) from West Washington Street to City Park exclusively within the boundary of the City, and includes “public art and cultural amenities;”

WHEREAS, the Hub City Parking Garage is being erected on Antietam Street directly along the boundary of the Cultural Trail;

WHEREAS, the artist Nigel Sussman, is a designer of acclaim and was selected for this work in September 2023 by the Public Art and Design Work Group;

WHEREAS, Nigel Sussman has agreed to create two digital assets that will be located on the windows inside the new parking garage facing the Cultural Trail, and in keeping with the Public Art Master Plan;

WHEREAS, attached hereto and incorporated herein is an Agreement for Commission of Public Artwork with Nigel Sussman Illustration, LLC to design and create two separate digital assets for each stairwell facing the Cultural Trail;

WHEREAS, Mr. Sussman’s fee will be paid in fully by the City; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the City and citizenry to enter into this Agreement for Commission of Public Artwork with Nigel Sussman Illustration, LLC.

NOW THERE, 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 hereby authorized to executive the Agreement for Commission of Public Artwork with Nigel Sussman, a copy of which is attached hereto, and City Staff is authorized 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: _____
Tekesha A. Martinez, Mayor

Date of Introduction: November 21, 2023
Date of Passage: November 21, 2023
Effective Date: November 21, 2023

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEY

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT, is entered into this ____ day of November 2023, by and between the City of Hagerstown (hereinafter the “City”), acting by and through the Engineering Department and **Nigel Sussman Illustration, LLC** (hereinafter the “Artist”) whose place of business is located at 2019 Hearst Avenue, Berkeley, CA 94709 to design permanent public art at two locations on the proposed Hub City Garage adjacent the Hagerstown Cultural Trail at 50 West Antietam Street.

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 as necessary for the design 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 to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept and the corresponding budget described in Section 1.3 as well as Exhibit 1 of this Agreement.
- d. The Artist shall complete the Artwork by the scheduled date as provided in Section 1.4 of this Agreement, and in consultation with the City.
- e. The Artist shall provide required insurance in amounts and limits specified in Article 6 and Exhibit 3.

1.2 City’s Obligations

The City’s parking deck contractor shall hire subcontractor(s) to fabricate and install the art in the east-facing windows of the Hub City Garage. The City shall be responsible for all expenses, labor and equipment to install the Artwork.

1.3 Design

a. Artwork Design

The Design must be for a Permanent Artwork (lifespan of 20+ years) that will:

- a. Be of adequate translucency to allow natural light into stair towers but dense enough that design is easily discernable to the outside observer. Image should be visible day and night (from backlighting in stair tower);
- b. Be durable, low maintenance and appropriate to the location;
- c. Not create an “attractive nuisance”;
- d. Meet standard engineering and conservation criteria as delineated in the Hagerstown Cultural Trail Public Art Master Plan.

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 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.

1.4 Construction Schedule and Progress Reports

Installation of the Artwork shall be on or **before April 30, 2024** unless actual construction of the Garage delays the installation.

1.5 Fabrication

Since a third party is doing the installation:

- a. The Artist shall work closely with the fabricator to ensure the quality and compliance with the approved design without written approval of the City.
- b. Artist must notify City of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- c. The City shall take reasonable measures to protect or preserve the integrity of the Artwork and the surrounding area.
- d. The City and Artist 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 any Revised Design, the City reserves the right to notify the Artist in writing of the deficiencies.
- f. The Artist will promptly cure the City's objections and will notify the City in writing of completion of the cure.

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 and project Architect 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 already approved

Design.

1.7 Completion, Approval and Acceptance

- a. The Artist shall notify the City in writing when he has completed all services as required of him by this Agreement
- 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. This shall include information such as a listing of all materials used, fabrication techniques and a recommended cleaning schedule, any special qualifications of maintenance personnel, etc..
- 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. 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.

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 2, 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 and signed by both parties,
- 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

Not applicable

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) 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;
- f) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- g) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- h) 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 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.
- f. 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 review the warranties provided to the City.

Article 6 Insurance

6.1 General

- a. Terms for the procurement and duration of insurance are provided in Exhibit 3.
- b. Required insurance policies are described in Exhibit 3.

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 4. Artist shall provide City with a Transfer of Title in substantially the form attached hereto as Exhibit 4.

7.2 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.

7.3 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 any 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 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 10 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 11 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 12 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 2 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 2. 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 13 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: Brittany Arizmendi, Community Engagement Officer, One East Franklin Street, Hagerstown, Maryland, 21740

For the Artist: Nigel Sussman Illustration, LLC ATTN: Nigel Sussman, Member, 2019 Hearst Avenue, Berkeley, California 94709

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

Article 14 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 15 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 16 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 17 Partial Invalidity

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 contrary to 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 18 Governing 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 19 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. AFTER EXECUTION, the CITY MAY APPOINT COMMUNITY ENGAGEMENT OFFICER BRITTANY ARIZMENDI OR A MEMBER OF THE PARKS DEPARTMENT TO BE ITS CONTACT PERSON AND TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS AGREEMENT, WITHOUT ADDITIONAL ACTION BY THE MAYOR AND CITY COUNCIL.

For City:

Name _____

Title _____

Date _____

For Artist:

Name _____

Title _____

Date _____

Attachments:

Exhibit 1 Description of the Artwork
Exhibit 2 Payment Schedule
Exhibit 3 Insurance Requirements
Exhibit 4 Transfer of Title
Artist's Proposal and Concept Renderings

Exhibit 1 Description of the Artwork

Artist's proposed work is an array of multi-level colorful digital images of sports, performances and Hagerstown community.

On the stair tower windows in the southeast corner of the deck (pointing east toward the Cultural Trail), approximately 45' high and 15' wide, create art for a transparent surface-applied film. City's contractor will install. This art will reflect stadium sports or activities related to the stadium and the "HUB CITY GARAGE" lettering must be included as shown below in a font that matches other signs on the building.

On the stair tower windows in the northeast corner of the deck (pointing east toward the Cultural Trail), approximately 45' high and 15' wide, create art for a transparent surface-applied film. City's contractor will install. This art will reflect the arts, celebrations and performances.

Please see the attached proposal for sketches of the concept.

The Scope of Work includes the following:

1. Design, incorporate "Hagerstown themes" and public art commission input
2. Design review and finalize design
3. Submit digital files to City and fabricator
4. Consultation with fabricator and deck architect
5. Final inspection

Exhibit 2 Payment Schedule

Payment Schedule

The Artist shall receive a fixed fee of \$4,500 which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. At the approval of the City Engineer, 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. \$1,500 deposit from the City, upon the execution of this Agreement;
- b. \$2,000 progress payment due when design is completed.
- c. \$1,000 upon the complete and satisfactory installation of the art and transfer of title signed.

Exhibit 3 Insurance Requirements

Insurance – General

- a. The Artist shall procure and maintain insurance for the duration of this Agreement. 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.

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. 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 2.
- 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 under Exhibit 2 .
- 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."

BY: _____ Nigel Sussman, Member

NIGEL SUSSMAN ILLUSTRATION, LLC

Exhibit 4 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 _____, 2023, and as described therein.

Title: _____.

Location: _____.

Artist: NIGEL SUSSMAN ILLUSTRATION, LLC.

Address: 2019 Hearst Avenue, Berkeley, CA 94709

BY: _____
Nigel Sussman, Member

IN WITNESS WHEREOF, NIGEL SUSSMAN ILLUSTRATION, LLC, by and through Member Nigel Sussman, has executed this written transfer of title on this the ____ day of _____, 2023.

NOTARY PUBLIC My Commission Expires:
(NOTARY SEAL)

Hub City Garage Art proposal

Nigel Sussman

NIGEL SUSSMAN.COM

Southeast Corner: *Sport*

Focusing on baseball,
this celebration of
stadium sport highlights
the crowd and the joy of
the collective
experience of attending
a sporting event

*With approved
signage
(font TBD)
And window
positioning*



*Full-bleed
Illustration
Concept
sketch*



*Black and
white
colorway
option*



Northeast Corner: *Arts*

Focusing on performing arts, this celebration of theatre, dance, and music, depicts a performance complete with audience, orchestra, and stagehands behind the scenes.

*With window
positioning*



*Full-bleed
Illustration
Concept
sketch*



*Black and
white
colorway
option*















WELCOME

TO

WEST
BERKELEY

© NIGEL SUSSMAN
2020

Thank You!

NIGEL SUSMAN.com

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

Topic:

FY25 Budget - Agency Contributions - *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

11.07.23_Agency_Contribution_Memo_FY25_Bud.pdf

Description

FY25 Budget - Agency
Contributions



CITY OF HAGERSTOWN, MARYLAND

Finance & Accounting Department

One East Franklin Street • Hagerstown, MD 21740

Telephone: 301.766.4142 • Website: www.hagerstownmd.org

To: Scott Nicewarner, City Administrator

From: Michelle Hepburn, Chief Financial Officer

Date: November 7, 2023

Subject: FY25 Preliminary Budget for General Fund Agency Contributions

Per the attached General Fund Agency Contribution policy, the November 7th Work Session provides the opportunity for Mayor and Council to discuss any adjustments to be included in the FY2024/25 budget for General Fund agency contributions.

As outlined in the policy, any changes to total funding levels or any changes to the agencies guaranteed to receive funding from the City will be considered by Mayor and Council by the end of October. The charts below summarize the agencies that will receive funding per the current policy and the total funding amounts:

8 agencies that will receive General Fund Agency Contributions:

Community Rescue Services
Hagerstown Municipal Band
Hagerstown Neighborhood Development Partnership (HNDP)
Maryland Symphony Orchestra
The Maryland Theatre
Washington County Historical Society
Washington County Museum of Fine Arts
Washington County Free Library

Total Funding for General Fund Agency Contributions:

Total for 8 agencies identified	195,000.00
Mayor and Council contingency	10,000.00
	\$ 205,000.00

Mayor and Council direction is requested to address two questions:

1. Are there any changes to the agencies identified that will receive General Fund contributions in FY2024/25? In FY2023/24, funding was subsequently provided to Heart of the Civil War Heritage Area in the amount of \$7,500 for the third year in a row.
2. Are there any changes requested in the funding levels established in the policy for FY2024/25?

Staff will be present for discussion at the November 7th Work Session.



City of Hagerstown
General Fund Agency Contribution Policy

Purpose:

The City of Hagerstown for many years has funded grants to local community agencies using annual appropriations in the General Fund as the source of this financial support. The purpose of this policy is the following:

- 1) To establish the level of General Fund funding support for agency contributions.
- 2) To define the City's timeline for this process.
- 3) To specify the City's requirements for the information to be provided by agencies seeking funding.
- 4) To outline the schedule for the City's distribution of funds to agencies receiving a grant of more than \$5,000.

Funding:

- 1) The Mayor and Council have established funding to be allocated toward 8 recipients identified by the City as core agencies. These agencies include the following:
 - a) Washington County Free Library
 - b) Washington County Museum of Fine Arts
 - c) Maryland Theatre
 - d) Maryland Symphony Orchestra
 - e) Hagerstown Municipal Band
 - f) Community Rescue Services
 - g) Hagerstown Neighborhood Development Partnership
 - h) Washington County Historical Society
- 2) The Mayor and Council have established a \$0 contingency for General Fund Agency Contributions.
- 3) The Mayor and Council have established that the total funding level range for General Fund Agency Contributions is between \$205,000 - \$272,100 to include funding all current obligations.

Timeline:

- 1) If needed, the Mayor and Council will consider changes to these funding levels for General Fund Agency Contributions in future fiscal years by the end of October.
- 2) The City will distribute application packets to community agencies in November.
- 3) Applications from agencies are due no later than the 2nd Friday of January. Submission of funding requests will not be received after this date.
- 4) The Mayor and Council will approve Community Agency funding from the General Fund by the end of May.
- 5) Agencies will be notified of the Mayor and Council's funding decision by mid-June for contributions to be available beginning July 1.

Application: The City of Hagerstown will consider a number of factors/criteria in approving funding requests. Agencies requesting more than \$5,000 in funding should include the following in their applications for funding:

- 1) A full description of how the requested grant from the City would be used to support agency operations, services, and capital improvements.
- 2) A summary of other local government funding sources and amounts including any grants received from Washington County or other municipalities.
- 3) A copy of the agency's most recent budget.
- 4) A copy of the agency's most recent financial report or audit prepared by an independent auditing firm.
- 5) A description of how the agency supports the goals of the City for downtown revitalization, expansion of the arts, culture, and education, neighborhood vitality, quality of life.
- 6) Agency service data related specifically to providing service and assistance to residents of the City of Hagerstown.

As part of the application and approval process an agency may be requested to make a presentation of their funding request and service information to Mayor and Council during a public work session.

Distribution of Funds:

- 1) The City will distribute grant funds to the agencies on a quarterly reimbursement basis beginning on October 1 of each year for those organizations receiving a grant of more than \$5,000. Other agencies can receive the full amount of their grant in July, the first month of the City's fiscal year.

Mayor and Council and City staff will review this policy at a minimum of every five years and update as necessary.

Approved by Mayor and Council November 25, 2014

Revised October 20, 2015

Revised October 18, 2019

Revised October 13, 2020

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

Topic:

American Rescue Plan Act of 2021 (ARPA) Allocations and Update - *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

11.07.23_ARPA_Allocations_and_Quarterly_Update_Memo.pdf

Description

American Rescue Plan Act
Allocations and Quarterly
Update 11.7.23



CITY OF HAGERSTOWN, MARYLAND

Finance & Accounting Department

One East Franklin Street • Hagerstown, MD 21740

Telephone: 301.766.4142 • Website: www.hagerstownmd.org

To: Scott Nicewarner, City Administrator

From: Michelle Hepburn, Chief Financial Officer
Brooke Garver, Accounting & Budget Manager

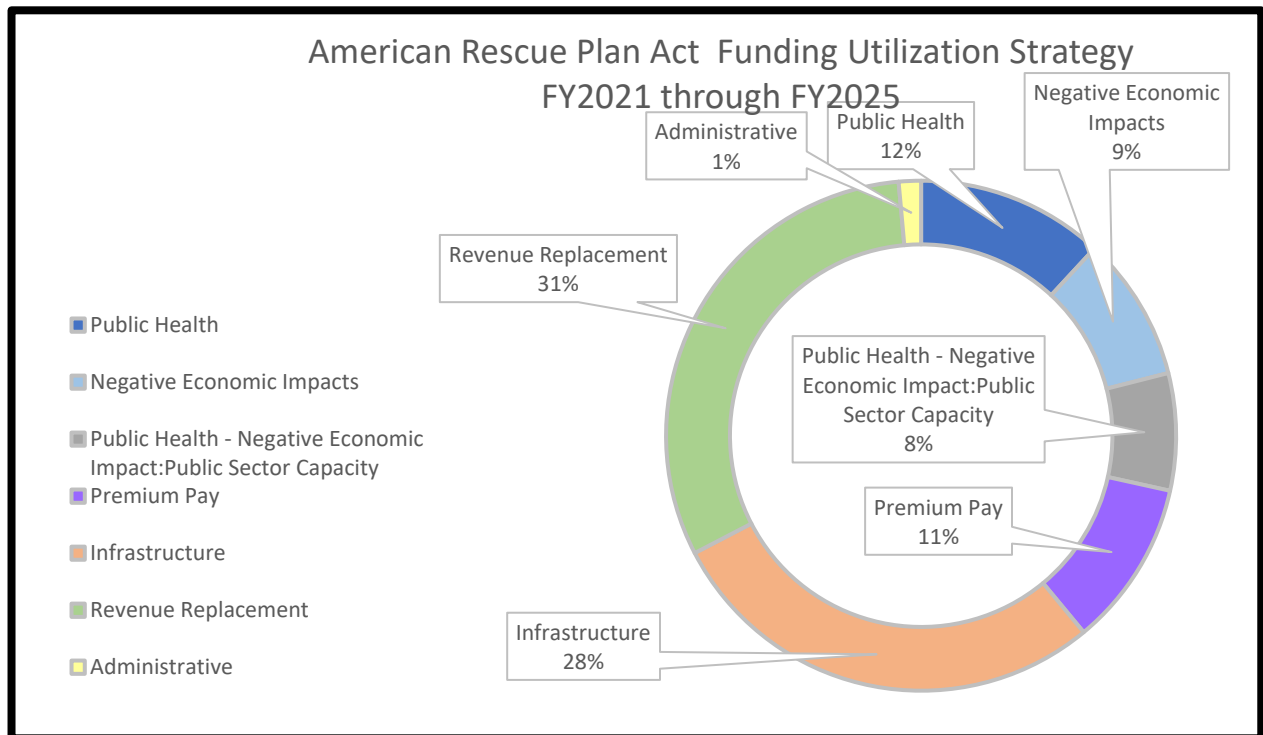
Date: November 7, 2023

Subject: American Rescue Plan Act of 2021 (ARPA) Allocations and Update

ARPA funding provided to the City totals \$20.4 million dollars. The City has spent \$7.5 million or approximately 37.0% of that total funding as of October 31, 2023. The totals below do not include amounts that are obligated and encumbered on open purchase orders:

- FY21 - \$2.15 million
- FY22 - \$2.11 million
- FY23 - \$1.96 million
- FY24 through October 31 - \$1.33 million

As a reminder, the IRS defined seven different eligible categories in which this funding can be spent. Each category has specifications on eligibility criteria. The seven categories include the following: Public Health, Negative Economic Impacts, Negative Economic Impact: Public Sector, Premium Pay, Infrastructure, Revenue Replacement, and Administrative. The chart below reflects the current allocation and strategy of how the City plans to spend the \$20.4 million.



City staff will review the attached ARPA Funding charts and status of the overall allocation plan.



City of Hagerstown

ARPA Funding Summary as of October 2023: Completed Projects

Public Health	Negative Economic Impact	Negative Economic Impact: Public Sector	Infrastructure	Revenue Replacement	Premium Pay/Administrative
Hagerstown Ice Rink Description: Required upgrades to air intake dehumidification system	FSU HUB @USMH Description: Provide temporary funding to maintain early childhood learning program, plus legal fees	2-Factor Authentication Software Description: Additional security for the City's network		Backhoe Purchase Description: For service and maintenance in Public Works and Parks/Rec Dept	Premium Pay (city employees) Description: Pandemic compensation for essential employees
\$190,425	\$20,250	\$26,675		\$128,414	\$2,153,000
Goodwill Community Outreach Description: Recruit/Hire 2 Outreach Coordinators for homeless coordinated entry services (includes legal fees)		Public Facility Emergency Equipment Description: For the purchase of Automated External Defibrillators (AEDs), carbon monoxide detectors, and Stop the Bleed® trauma kits for large public facilities, including CPR/AED training		Camera Truck Description: Replacement of camera rig for pipe system maintenance	
\$13,150		\$117,098		\$415,137	
				HPD Firing Range Target System Description: Upgrade for the existing firearms system and modernization of training facility	
				\$23,900	
				PAL Roof Description: Fairgrounds Park Police Athletic League roof replacement	
				\$424,332	
				Drones Description: Purchase of drones for HPD	
				\$140,371	
				HFD Ladder Truck Description: Purchase of additional ladder truck for fire department	
				\$1,200,000	
				Community Outreach Vehicle Description: Purchase of a vehicle for the Community Outreach Coordinator position	
				\$43,200	
				HFD Natural Gas Generator Description: Replacement of the natural gas powered diesel generator at fire station 3.	
				\$132,533	
\$203,575	\$20,250	\$143,773	\$0	\$2,507,887	\$2,153,000

Total Spent on Completed Projects:

\$5,028,485

Total Spent on Allocated and Started Projects:

\$2,524,688

Grand Total Spent to Date:.

\$7,553,173

37.0%

City of Hagerstown

ARPA Funding Summary as of October 2023: Projects Allocated and Started

Public Health	Negative Economic Impact	Negative Economic Impact: Public Sector	Infrastructure	Revenue Replacement	Premium Pay/Administrative
32 N. Potomac Purchase and Renovation Description: Purchase and renovation costs for the relocation of Customer Service/Billing Spent to Date: \$1,481,635 \$2,200,000 \$0	Convention and Visitor's Bureau (CVB) Description: Aid to assist with marketing, advertising and sponsorships for tourism industry impacted by COVID-19 (includes legal fees) Spent to Date: \$122,945 \$125,350 \$0	Outreach Coordinator Position Description: New position to be a liaison between the city and social service agencies. Includes estimated salary/benefits and administrative costs Spent to Date: \$107,770 \$90,000 \$0	Pump Station #13 Description: Will address service demands from flow transfer area Spent to Date: \$0 \$2,420,000 -\$324,670	HPD Body-Worn Cameras Description: Purchase of Cameras/Taser/Virtual Training Program Spent to Date: \$347,781 \$522,796 \$0	Grant Coordinator Description: Estimated annual salary/benefits and administrative costs for 3-year temporary position Spent to Date: \$190,902 \$288,000 Reallocated
\$2,200,000	\$125,350	\$90,000	\$2,095,330	\$522,796	Revised Allocation
	Support Local Artists & Bands Description: Provide incentives and support to local artists - Heart of Art Grant Program Spent to Date: \$5,800 \$25,000 \$0	Office 365 Implementation Description: Purchase of software for upgrade and standardization of all city employee workstation systems, stabilizing operational environment. Spent to Date: \$88,237 \$155,000 \$7,560	Pump Station #9/#33 Description: Will address service demands from flow transfer area Spent to Date: \$0 \$3,000,000 \$0	Solid Waste Collection Totes Description: For the purchase of new totes for residents Spent to Date: \$46,302 \$1,000,000 \$0	Reallocated
	\$25,000	\$162,560	\$3,000,000	\$1,000,000	Revised Allocation
	City-Wide Restaurant Ready Grant Program Description: New incentive program to assist with opening a restaurant within the City Spent to Date: \$0 \$250,000	Trash Truck Description: Replacement of trash truck servicing trash collection customers, City events and general maintenance Spent to Date: \$0 \$121,875	Stormwater Project Description: Stormwater retention area at municipal stadium site Spent to Date: \$0 \$700,000	Professional Court Extension Description: Costs shared with the County for development of new road access beyond the eastern edge of the City to Robinwood/hospital area. Spent to Date: \$0 \$1,150,000	
	Blight Eradication/Operation Takeback Initiative Description: Acquire, demolish/renovate blighted buildings, work with landlords to rehab rental properties or non-profit facilities; fund Operation Takeback projects to improve community safety Spent to Date: \$122,019 \$500,000	City Hall Elevator Replacement Description: Design and replacement of second elevator in City Hall due to unavailability of required repair parts Spent to Date: \$11,300 \$591,780			
		Arctic Wolf Software Description: Purchase of Information Technology cybersecurity application and monitoring system Spent to Date: \$0 \$100,000			
\$2,200,000	\$900,350	\$1,066,215	\$5,795,330	\$2,672,796	\$288,000

Total ARPA Funds Received: \$20,421,010

Total Allocated and Started Projects: \$12,922,691

Total Allocated and Completed Projects: \$5,028,485

Remaining Unallocated Funds: \$2,469,834

City of Hagerstown

ARPA Funding Summary as of October 2023: Projects Proposed and Not Started

Remaining Unallocated Funds: \$2,469,834

Public Health	Negative Economic Impact	Negative Economic Impact: Public Sector	Infrastructure	Revenue Replacement	Premium Pay/Administrative
Behavioral and Mental Health Description: Community Health and Rehabilitation Resources, ie. 24-Hour Crisis Center, accreditation costs for service providers, expanding availability of counselors, bridge the funding gap for treatment, rehab referrals and assistance, peer recovery support	Negative Economic Impact: Assistance to Nonprofits Description: Project funding assistance to nonprofits to address negative social and economic impacts exacerbated by the pandemic, i.e. increase career education/training assistance, employment transportation for City residents, Affordable daycare programs for students and job seekers; Increase community health, counseling and rehabilitation services and resources, assistance for seniors, children, families, or neighborhoods; youth violence prevention	Citywide Phone System Upgrade Description: Upgrade of phone system to streamline and stabilize operations.		Traffic Signal Upgrade Description: Funding to upgrade two traffic signals at Antietam & Summit and Salem & West Side	
\$500,000	\$0	\$75,000		\$722,915	
<i>-\$500,000</i>	<i>\$924,670</i>	<i>\$0</i>		<i>\$277,085</i>	<i>Reallocated</i>
\$0	\$924,670	\$75,000		\$1,000,000	Revised Allocation
Youth Violence Prevention Description: Funding to develop a youth violence prevention program.	Brothers United Who Care Speak Up! Community News Description: Funding to support summer internships for youth within the City	Public Safety Radios & In-Station Alerting Description: To supplement Washington County grant funding for the purchase of portable radios, accessories and dispatch system improvements		Fuel Station Dispensing Units Description: Replacement of city fuel station dispensers	
\$25,000	\$25,000	\$187,500		\$35,000	
<i>-\$25,000</i>	<i>\$0</i>	<i>\$0</i>		<i>-\$35,000</i>	<i>Reallocated</i>
\$0	\$25,000	\$187,500		\$0	Revised Allocation
ENVY Initiatives Description: Funding to develop a youth violence prevention program and other programs to help support the youth in collaboration with multiple external partners.	Negative Economic Impact Description: Increase educational/training opportunities for City residents, Expand transit for employment, HCC and USMH Scholarships, Affordable daycare program for students and new job seekers, Downtown Training Space	HPD Firing Range Security Gate Description: Purchase of security gate system and improvements at firing range		Placeholder for other eligible projects or costs	
\$0	\$425,000	\$50,000		\$40,005	
<i>\$25,000</i>	<i>-\$425,000</i>	<i>-\$8,200</i>		<i>\$150,859</i>	<i>Reallocated</i>
\$25,000	\$0	\$41,800		\$190,864	Revised Allocation
		HFD Community Risk Reduction Boards Description: Purchase electronic sign boards to provide fire prevention and life safety information to citizens			
		\$150,000			
		<i>-\$150,000</i>			<i>Reallocated</i>
		\$0			Revised Allocation
\$25,000	\$949,670	\$304,300	\$0	\$1,190,864	\$0

Remaining Unallocated Funds \$2,469,834
 Proposed Not Started Projects \$2,469,834
 Remaining Available ARPA Funds \$0

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

Topic:

American Rescue Plan Act (ARPA) Nonprofit Funding Recommendations – *Michelle Hepburn, Chief Financial Officer and Brooke Garver, Accounting and Budget Manager*

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

11.07.23_ARPA_Nonprofit_Recommendations.pdf

Nonprofit_Awards.pptx

Description

American Rescue Plan Act
Nonprofit Funding
Recommendations

ARPA Nonprofit Funding



CITY OF HAGERSTOWN, MARYLAND

Finance & Accounting Department

One East Franklin Street • Hagerstown, MD 21740

Telephone: 301.766.4142 • Website: www.hagerstownmd.org

To: Scott Nicewarner, City Administrator

From: Michelle Hepburn, Chief Financial Officer
Brooke Garver, Accounting & Budget Manager

Date: November 7, 2023

Subject: American Rescue Plan Act (ARPA) – Nonprofit Funding Recommendations

Staff members will be present at the November 7th Work Session to review the scoring matrix, nonprofit applications received, and provide recommendations on awardees.

As a reminder, a Nonprofit Funding Request Program and Funding Guidelines were approved in July 2023. In addition to the application, other required documentation included: IRS designation letter, current certificate of good standing with the State of Maryland, project budget, and evidence of an active SAM.gov registration. Applications were received through 4:00 pm on September 1, 2023. As outlined in the application document, an internal staff subcommittee was established that reviewed the applications through October and prepared the attached spreadsheet to reflect a summary of all applications received. Many thanks and appreciation to each member of the subcommittee who helped in this important process. There was a total of fifty-five applications submitted. Of that total, forty-two met the overall eligibility requirements as outlined in the nonprofit guidelines.

The proposals are meant to respond to the negative economic impact nonprofit organizations experienced due to COVID-19 pandemic and help provide support to the community to better serve the citizens of Hagerstown that fall within the categories outlined in the application: Children & Families, Seniors, Economic Recovery, Health/Health Disparities, Transportation, Mental Health, and Education.

Staff were provided a total not to exceed \$600,000 for the nonprofit program with a maximum amount of \$50,000 per category that grant recipients could receive. Due to the overwhelming responses received, the subcommittee's recommendation includes a request for additional ARPA reallocation in the amount of \$324,670 to fund eighteen organizations that scored a total of forty points or more. All organizations were scored utilizing the same matrix that was discussed in July and that was included in the application. The scoring matrix, summary of applications received, and more information on the eighteen recommended awardees are attached.

Staff seek direction and approval to move forward with notifying all organizations that applied, prepare subrecipient agreements for the organizations that will receive funding, and reallocate existing ARPA funding from another category.



Appendix A: Project Evaluation Matrix

Grading Criteria	Not Demonstrated	Below Expectations	Meets Expectations	Exceeds Expectations
Clearly describes project intentions and resulting community benefits	No clear intention was provided for usage of funds	Intent is unclear or anticipated benefits are unknown	Intent is clear and presents resulting project benefits	Intent is clear, presents resulting benefits, and aligns with the City's ARPA priorities
	0	3	5	10
Project responds to COVID-19 public health emergency or its negative economic impacts	No direct or indirect connection to COVID-19 pandemic	Indirect connection to COVID-19 pandemic, but project has limited response to the public health emergency	Direct or indirect connection to COVID-19 pandemic, and project provides response to mitigating its impact	Direct connection to COVID-19 pandemic and clearly provides mitigating response that correlates with ARPA priorities
	0	3	5	10
Identifies and analyzes project and organizational risks	No risks identified or organization does not have the capacity to handle project and funding requirements as-is	Limited risks identified or organizational capacity is insufficient and additional resources are needed	Risks are identified and organizational capacity is evident to meet anticipated grant requirements	Risks are identified with plan for mitigation and organizational capacity is not in question
	0	3	5	10
Describes success and provides valid performance measures	Success not adequately described or goal-based	Success described, performance measures not supported or do not tie to an outcome	Success is goal-based, performance measures are valid	Success is outcome-oriented, performance measures identified, sourced, accessible, and linked to outcome
	0	3	5	10
Explains how project incorporates, advances and measures equity	No evidence that equity is addressed with project	Limited evidence that equity is addressed with project	Equity is incorporated into the project and can be measured	Equity is a central tenet of the project and easily measured
	0	3	5	10
Outlines project funding needs	Project requires on-going funding with no identified funding source beyond ARPA grant funds to sustain things	Project requires on-going funding with limited information available on how to sustain initiative	Project uses either one-time funding or demonstrates a funding source for sustaining project beyond ARPA	Project clearly outlines current funding need with the ability to sustain its efforts well beyond ARPA grant funding
	0	3	5	10
Leverages community and/or County government collaboration/partnership(s)	No evidence of any project collaboration or community partnership(s)	Limited evidence of project collaboration or community partnership(s)	Project partner(s) identified with clear expectations/rolls outlined for each party.	Multiple collaborators and external funding (or enhancement of existing funding) identified
	0	3	5	10

Maximum Possible Points - 70

Note: A successful evaluation and/or recommendation to Mayor & Council by the ARPA Grant Review Committee alone does not constitute a commitment by the City of Hagerstown to fund a project.

City of Hagerstown: ARPA Nonprofit Funding Applications

					Scenario 1	Scenario 2
	Organization Name	Final Score	Requested Amount	Project Budget	Fully fund applications with scores of 40 and above; Gatekeepers reduced to \$60,000	Fully fund top 12 applications; Gatekeepers reduced to \$60,000
1	Potomac Case Management Services, Inc.	70	\$50,000	\$50,000	\$50,000	\$50,000
2	Children In Need, Inc.	65	\$50,000	\$106,000	\$50,000	\$50,000
3	United Way of Washington County	65	\$100,000	\$100,000	\$100,000	\$100,000
4	Washington County Free Library	63	\$12,000	\$45,500	\$12,000	\$12,000
5	Apples for Children, Inc.	60	\$50,000	\$435,547	\$50,000	\$50,000
6	Girls Inc. of Washington County: Education (1/2)	60	\$50,000	\$85,000	\$50,000	\$50,000
7	Girls Inc. of Washington County: Mental Health (2/2)	60	\$45,000	\$67,590	\$45,000	\$45,000
8	Boys & Girls Club of Washington County	55	\$100,000	\$749,506	\$100,000	\$100,000
9	Brooke's House	55	\$50,000	\$232,000	\$50,000	\$50,000
10	Community Rescue Service, Inc.	55	\$49,000	\$49,000	\$49,000	\$49,000
11	Head Start of Washington County, Inc.	51.5	\$29,220	\$29,220	\$29,220	\$29,220
12	Gatekeepers Corporation	50.5	\$119,260	\$119,260	\$60,000	\$60,000
13	Hagerstown Housing Authority: HUD REAC Standards Project (1/2)	48	\$25,000	\$25,000	\$25,000	
14	Hagerstown Housing Authority: Transportation (2/2)	48	\$15,000	\$15,000	\$15,000	
15	Hagerstown Children's School Association	43	\$50,000	\$68,317	\$50,000	
16	Community Free Clinic, Inc.: Core Programming (1/2)	41	\$50,000	\$200,000	\$50,000	
17	Discovery Station at Hagerstown, Inc.	40.5	\$89,450	\$89,450	\$89,450	
18	Arc of Washington County, Inc.: Walking Path (1/2)	40	\$50,000	\$56,995	\$50,000	
			\$983,930	\$2,523,385	\$924,670	\$645,220

Applications not awarded:

19	Easter Seals Serving DC/MD/VA, Inc.	38.5	\$50,000	\$1,251,402	\$600,000 (\$324,670) \$600,000 (\$45,220) *Increased amount needed in ARPA Nonprofit funding*
20	Beacon House, Inc.	37.5	\$250,000	\$748,000	
21	Brook Lane Health Services, Inc.	37.5	\$147,000	\$147,000	
22	CASA of Western Maryland	37.5	\$50,000	\$96,750	
23	Community Free Clinic, Inc.: Mental Health (2/2)	37.5	\$50,000	\$600,000	
24	Arc of Washington County, Inc.: Transportation (2/2)	36	\$50,000	\$62,980	
25	Washington County Museum of Fine Arts	32	\$150,000	\$451,390	
26	CASA, Inc.	31	\$27,825	\$98,550	
27	Heavy Metal Playground (HMP Traing, Inc.)	30.5	\$105,000	\$331,500	
28	Robert W. Johnson Community Center	27.5	\$100,000	\$100,000	
29	Kiwanis Foundation: Kiwanis Cares (1/2)	26	\$5,000	\$10,000	
30	Maryland Symphony Orchestra: Music for Everyone (1/2)	24	\$50,000	\$169,807	
31	New Start Foundation, Inc.	23.5	\$100,000	\$141,700	
32	SanMar Family & Community Services	22.5	\$50,000	\$738,259	
33	Authentic Community Theatre, Inc.	19.5	\$50,000	\$90,000	
34	Washington County Historical Society	18	\$150,000		
35	Doleman Black Heritage Museum, Inc.	15	\$62,749	\$62,749	
36	Maryland Symphony Orchestra: Ensembles in the Community (2/2)	15	\$50,000	\$162,260	
37	Kiwanis Foundation: Scholarships (2/2)	13.5	\$8,000	\$12,000	
38	Ladders to Leaders	9.5	\$33,360	\$79,440	
39	The Housing Authority of Washington County: Economic Recovery (1/2)	6	\$50,000	\$50,000	
40	Washington County Junior Football League, Inc.	6	\$50,000	\$60,000	
41	Hagerstown Neighborhood Development Partnerships, Inc.	3	\$50,000	\$50,000	
42	The Housing Authority of Washington County: Senior Security (2/2)	3	\$48,500	\$48,500	
			\$1,737,434	\$5,562,287	

Ineligible applications:

43	Hagerstown Area Religious Council (1/2)
44	Hagerstown Area Religious Council (2/2)
45	Horizon Goodwill
46	Home Sweet Home Foundation
47	Meritus Healthcare Foundation
48	SoDo Arts
49	TruNorth
50	USMH
51	ValorExcel
52	Yachaka Omniism
53	Washington County Community Action Council
54	REACH of Washington County
55	Senior Living Alternatives, dba Holly Place

Reason for Ineligibility:

\$100,000	Religious organization
\$50,000	Religious organization
\$200,000	Conflict of interest- elected official
\$5,000	Received after application deadline
\$150,000	Private foundation
\$100,000	Application incomplete
\$42,100	Application incomplete
\$39,591	Private foundation
\$50,000	Application incomplete; conflict of interest
\$350,000	Application incomplete
\$50,000	Rent relief and public utility payments
\$50,000	Rent relief and public utility payments
\$200,000	Premium Pay is an ineligible nonprofit category

\$1,386,691

Total funding amount requests

\$4,108,054



American Rescue Plan Act

State and Local Fiscal Recovery Funds

NONPROFIT AWARDS

Potomac Case Management Services, Inc.
dba Potomac Community Services
\$50,000

Project Name:

Homeless Outreach Program

Purpose:

Construction of a bathroom/showering facility, laundry room with commercial grade washer/dryer unit, HVAC installation, internet access point, storefront window frosting, and signage for the existing Homeless Outreach Program office at 29 W. Washington Street



Children in Need, Inc.

\$50,000

Project Name:

Client and Extended Services Programs

Purpose:

Provide essential items such as clothing, shoes, hygiene products, and school supplies to children experiencing homelessness, abuse, or domestic violence



United Way of Washington County

\$100,000

Project Name:

Ride United

Purpose:

Provide safe and reliable transportation solutions for essential workers who cannot afford basic living costs

(Asset Limited, Income Constrained, yet Employed – ALICE households)



Washington County Free Library

\$12,000

Project Name:

Creating Equitable Healthcare Access:
Telehealth at the Library

Purpose:

Gap funding to purchase an ADA-accessible Telehealth Pod and health-related books and brochures

APPLES for Children, Inc.

\$50,000

Project Name:

Infant and Early Childhood Mental Health
Support Services Program

Purpose:

Behavior Support Specialist to increase services
provided to children with developmental,
social, emotional, or behavioral concerns

Girls Incorporated of Washington County

\$50,000

Project Name:

Growing Stronger, Smarter, Bolder

Purpose:

Addition of Lexia Core5 tutoring program focusing on healthy living skills, academic achievement, and social emotional development



Girls Incorporated of Washington County

\$45,000

Project Name:

Social Emotional Learning

Purpose:

A behavioral health specialist will provide an intervention model focused on social and emotional support



Boys & Girls Club of Washington Co.

\$100,000

Project Name:

After-School Youth Program

Purpose:

Expansion of existing after-school programs that include Project Learn, Power Hour, DIY STEM, SMART Girls, Passport to Manhood, Money Matters, and My.Future



Brooke's House

\$50,000

Project Name:

Brooke's House Counseling Center

Purpose:

Funding to support outpatient counseling services for women with substance use disorders



Community Rescue Service, Inc.

\$49,000

Project Name:

Equipment Acquisition

Purpose:

Purchase 2 Automatic Chest Compression Devices and a Power Stair Chair



Head Start of Washington County, Inc.

\$29,220

Project Name:

Martin Luther King Head Start Program

Purpose:

Provide funding for a summer program at the Martin Luther King Head Start Center

Gatekeepers

\$60,000

Project Name:

Gatekeepers Business of Living ARPA-Funded Projects

Purpose:

Enhance re-entry programs and services with parenting classes, mental health services, juvenile detention center curriculum, and basketball program

Hagerstown Revitalization Corporation

(affiliate of Hagerstown Housing Authority)

\$25,000

Project Name:

HUD Real Estate Assessment Center (REAC)
Standards Project

Purpose:

Provide services to residents living in public housing units to meet HUD internal inspection requirements and achieve self-sufficiency

Hagerstown Revitalization Corporation

(affiliate of Hagerstown Housing Authority)

\$15,000

Project Name:

McCleary Hill Transportation Assistance
Program

Purpose:

Assist residents of McCleary Hill with
transportation to employment, training, and
health care services

Hagerstown Children's School Association

\$50,000

Project Name:

Classroom Expansion

Purpose:

Construction of an additional classroom and bathroom that will serve an additional 12-18 2-year-old children



Community Free Clinic

\$50,000

Project Name:

Community Mental Health Care Program

Purpose:

Enhance core services for the uninsured population such as chronic disease management and health services for youth/young adults

Discovery Station at Hagerstown, Inc.

\$89,450

Project Name:

Discovery Station

Purpose:

Provide monthly/quarterly free admission events and low-cost annual memberships for low-income families/Title I schools



The Arc of Washington County, Inc.

\$50,000

Project Name:

Pave the Fitness Path

Purpose:

Paving the existing on-site fitness path to increase safety and accessibility for the population and demographic supported which is primarily those with intellectual and developmental disabilities.

