| MAYOR | COUNCIL |
|---|---|
| Brian K. Grim | Seth D. Bernard |
| | David Caporale |
| **CITY ADMINISTRATOR** | Richard J. "Rock" Cioni |
| Jeff Rhodes | Eugene T. Frazier |
| **CITY SOLICITOR** | **CITY CLERK** |
| Michael Scott Cohen | Marjorie A. Woodring |

# AGENDA

**Mayor and City Council of Cumberland**
**City Hall Council Chambers**
**Room 212**
**6:15 P.M.**

DATE 5/16/2017

***Pledge of Allegiance**

## I. ROLL CALL

## II. CERTIFICATES, AWARDS AND PRESENTATIONS

(A) Presentation of the Tree City USA Arbor Day Award for 20 years of participation in the program

## III. DIRECTOR'S REPORT

(A) Police

1. Police Department monthly report for April, 2017

(B) Fire

1. Fire Department monthly report for April, 2017

(C) Public Works

1. Maintenance Division monthly report for April, 2017

## IV. APPROVAL OF MINUTES

(A) Routine

1. Approval of the Regular Session Minutes of March 21, 2017 and April 4, 2017

## V. UNFINISHED BUSINESS

(A) Ordinances

1. Ordinance *(2nd and 3rd readings)* - to establish the Citizen Advisory Commission on Salary and Benefits

## VI. NEW BUSINESS

(A) Resolutions

1. Resolution approving the application and receipt of funding for 2017 Community Legacy Projects through a grant or loan in the amount of up to $355,000

2. Resolution authorizing the issuance and sale of a General Obligation Installment Bond in the principal amount not to exceed $300,000 to be designated as **"Mayor and City Council of Cumberland Water Quality Bond, Series 2017A"** to finance or reimburse costs of Phase III of the Evitts Creek CSO Upgrades and related costs

3. Resolution authorizing the issuance and sale of a General Obligation Installment Bond in the principal amount not to exceed $2,992,819 to be designated **"Mayor and City Council of Cumberland Water Quality Bond, Series 2017B,"** to be used to finance or reimburse costs of the Combined Sewer Overflow (CSO) Storage Facility Project and related costs

(B) Orders (Consent Agenda)

1. Order authorizing the execution of a Billing Agreement renewal with Carter Professional Services, Inc. dba/Medical Claim-Aid to continue to perform billing and claims service on behalf of the City related to EMS transports, fire and rescue incidents and fire department inspection and permit fees for a period of 8 years, renewable for an additional 5 years upon mutual agreement

2. Order rescinding Order No. 26,124 to re-award the bid amounts for the Combined Chemical Bid FY18 (05-17-UTIL) to UNIVAR, USALCO, SAL Chemical, Shannon Chemical Corporation, and Schmidt Supply to correct an error in the bid award for Liquid Caustic Soda (25%)

3. Order approving the execution of a Lease Agreement with The Dapper Dan Club of Allegany County, Inc. for the use of the former Police Firing Range in Constitution Park for the operation of batting cages for a ten (10) year term effective May 1, 2017 - April 30, 2027

4. Order approving an Historic District Tax Incentive Application for property at 2 Howard Street, owned by Footer Building Development LLC, to provide a property tax credit in the amount of $124,060.19 for a total of five years and a 10-year property tax assessment freeze equaling $232,067, effective with the 2015-16 tax year

## VII. PUBLIC COMMENTS

All public comments are limited to 5 minutes per person

## VIII. ADJOURNMENT

Regular Council Agenda
May 16, 2017

---

**Description**
Presentation of the Tree City USA Arbor Day Award for 20 years of participation in the program

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

Regular Council Agenda
May 16, 2017

---

**Description**
Police Department monthly report for April, 2017

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# City of Cumberland Department of Police

**Monthly Report**

## April 2017

Item # 2

# City of Cumberland Department of Police

## Monthly Report

## April 2017

### Part 1 Crimes for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Aggravated Assaults | 7 | 9 | B & E (All) | 15 | 34 | Murder | 0 | 0 | Rape | 0 | 0 |
| Robbery | 2 | 3 | Theft - Felony | 4 | 2 | Theft - Vehicle | 2 | 1 | | | |

### Selected Criminal Complaints for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Theft - Misdemeanor | 26 | 28 | Theft - Petty | 37 | 57 | Domestic Assaults | 34 | 20 | CDS | 55 | 80 |
| Disturbances | 188 | 228 | DOP/Vandalism | 52 | 32 | Indecent Exposure | 2 | 0 | Sex Off - Other | 2 | 5 |
| Suicide | 0 | 1 | Suicide - Attmpt. | 2 | 1 | Tampering M/V | 0 | 0 | Abuse - Child | 1 | 3 |
| Trespassing | 15 | 28 | Assault on Police | 0 | 4 | Assault Other | 49 | 36 | | | |

### Selected Miscellenous Incidents for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alcohol Volations | 6 | 2 | Juvenile Compl. | 34 | 24 | Missing Persons | 11 | 11 | School Resource | 87 | 57 |
| School Threat | 1 | 1 | Sex Off. Regist. | 30 | 14 | Truancy | 4 | 9 | Death Investigation | 4 | 3 |

### Selected Traffic Incidents for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| DWI | 12 | 9 | Hit & Run | 28 | 31 | M/V Crash | 77 | 79 | Traffic Stop | 356 | 314 |

### Selected Service Calls for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alarms | 45 | 47 | Assist Motorist | 28 | 28 | Check Well-Being | 84 | 119 | Foot Patrol | 22 | 72 |
| Assist Other Agency | 60 | 46 | Bike Patrol | 0 | 1 | Special Events | 6 | 13 | Suspicious Activity | 93 | 102 |

### Arrests Totals for the Month

| | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 | | 2016 | 2017 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| M/V Citations | 77 | 56 | M/V Warnings | 250 | 255 | Adult Criminal | 156 | 162 | Juvenile Arrests | 25 | 22 |

| | 2016 | 2017 |
|---|---|---|
| **Total Incidents Reported :** | **2,144** | **2,271** |

**Charles Hinnant - Chief of Police**

Item # 2

# CUMBERLAND POLICE DEPARTMENT

## MONTHLY REPORT

## APRIL 2017

### SWORN PERSONNEL: 47 SWORN OFFICERS

| | |
|---|---|
| Administration | 5 officers |
| Squad 1A | 9 officers |
| Squad 1B | 9 officers |
| Squad 2A | 8 officers |
| Squad 2B | 8 officers |
| C3I/C3IN | 5 officers |
| School Resource | 2 officers |
| Academy | 1 officer |

### CIVILIAN EMPLOYEES: 7 full time, 7 part time

| | |
|---|---|
| CPD Office Associate | 1 full time |
| CPD Records Clerk | 1 full time |
| Safe Streets Coordinator | 1 full time* |
| CPD Crime Analyst | 1 full time* |
| CPD Drug Coordinator | 1 full time* |
| CPD Maintenance | 1 part time |
| C3I Office Associate | 1 full time |
| C3IN Office Associate | 1 part time** |
| C3I Office Associate | 1 part time ** |
| MPA Supervisor | 1 part time |
| Parking Meter Supervisor | 1 full time |
| Parking Enforcement | 2 part time |
| MPA Garage Attendants | 2 part time |
| Code Enforcement | 2 part time |

* = Grant funded ** = Shared costs with other agencies

### LEAVE REPORT

VACATION TAKEN: 717 HOURS — YEAR TO DATE (beginning 7/1/16): 7.568 HOURS

COMP TIME USED: 293 HOURS — YEAR TO DATE (beginning 7/1/16): 2,655 HOURS

SICK TIME USED: 84 HOURS — YEAR TO DATE (beginning 7/1/16): 2,624 HOURS

### OVERTIME REPORT

OVERTIME WORKED: 83 HOURS — YEAR TO DATE (beginning 7/1/16): 3,534 HOURS

HOSPITAL SECURITY: 49 HOURS — YEAR TO DATE (beginning 7/1/16): 1,220 HOURS

COURT TIME WORKED: 42 HOURS — YEAR TO DATE (beginning 7/1/16): 867 HOURS

### TRAINING REPORT

37 OFFICERS TRAINED FOR 449 HOURS — YEAR TO DATE (beginning 7/1/15) 7,913 HOURS

Regular Council Agenda
May 16, 2017

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**Description**
Fire Department monthly report for April, 2017

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

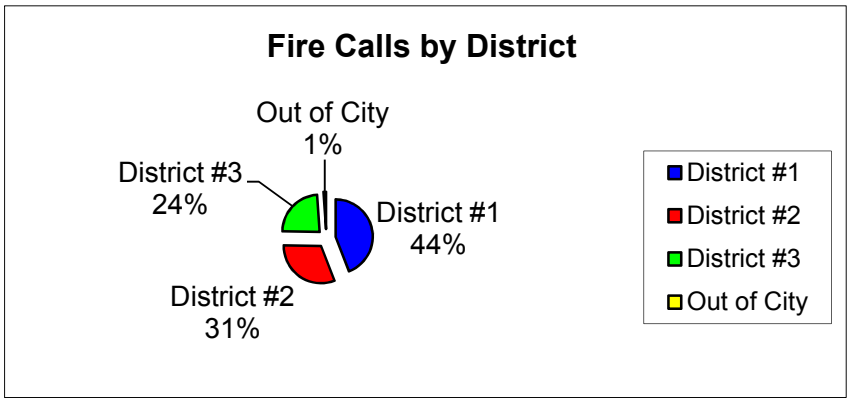
**Source of Funding (if applicable)**

**REPORT OF THE FIRE CHIEF FOR THE MONTH OF APRIL 2017**
**Prepared for the Honorable Mayor and City Council and City Administrator**

**Cumberland Fire Department Responded to 93 Fire Alarms:**

Responses by District:

| | |
|---|---|
| District #1 | 41 |
| District #2 | 29 |
| District #3 | 22 |
| Out of City | 1 |
| | 93 |




Number of Alarms:

| | |
|---|---|
| First Alarms Answered | 93 |

Calls Listed Below:

Property Use:

| | |
|---|---|
| Public Assembly | 1 |
| Educational | 0 |
| Institutional | 4 |
| Residential | 49 |
| Storage | 1 |
| Stores and Offices | 4 |
| Special Properties | 32 |
| Undetermined | 2 |
| | 93 |

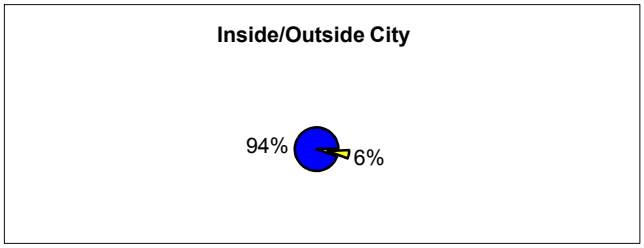
Type of Situation:

| | |
|---|---|
| Fire or Explosion | 10 |
| Overpressure, Rupture | 1 |
| Rescue Calls | 52 |
| Hazardous Conditions | 7 |
| Service Calls | 4 |
| Good Intent Calls | 9 |
| False Calls | 10 |
| | 93 |

| | |
|---|---|
| Total Fire Service Fees for Fire Calls Billed by Medical Claim-Aid in April: | $3,270.00 |
| Total Fire Service Fees for Fire Calls Billed by Medical Claim-Aid Fiscal Year to Date: | $32,210.00 |
| Fire Service Fees for Fire Calls Paid in April: | $2,281.12 |
| Total Fire Service Fees for Fire Calls Paid Fiscal Year to Date: | $12,185.75 |
| | |
| Fire Service Fees for Inspections and Permits Billed in April: | $150.00 |
| Fire Service Fees for Inspections and Permits Paid in April: | $100.00 |
| Total Fire Service Fees for Inspections and Permits Paid Fiscal Year to Date: | $1,550.00 |

**Cumberland Fire Department Responded to 430 Emergency Medical Calls:**

| | |
|---|---|
| In City Calls | 404 |
| Out of City Calls | 26 |
| Total | 430 |




| | |
|---|---|
| Total Ambulance Fees Billed by Medical Claim-Aid in April: | $134,600.01 |
| Ambulance Fees Billed Fiscal Year to Date: | $1,355,053.44 |

Ambulance Fees Paid:

| | |
|---|---|
| Revenue Paid in April: | $76,958.49 |
| FY2017 Fees Paid in FY2017: | $774,936.45 |
| Total Ambulance Fees Paid in FY2017: | $920,059.30 |

(Includes all ambulance fees, previous and current fiscal years, paid in FY2017.)

Cumberland Fire Department provided 12 Mutual Aid Calls:

| | |
|---|---|
| 12 | Mutual Aid calls inside Allegany County |
| 0 | Mutual Aid calls outside of Allegany County |
| 12 | |

| | |
|---|---|
| Bowman's Addition VFD | 4 |
| Cresaptown VFD | 5 |
| District #16 VFD | 1 |
| Flintstone VFD | 1 |
| LaVale Vol. Rescue Squad | 1 |
| | 12 |

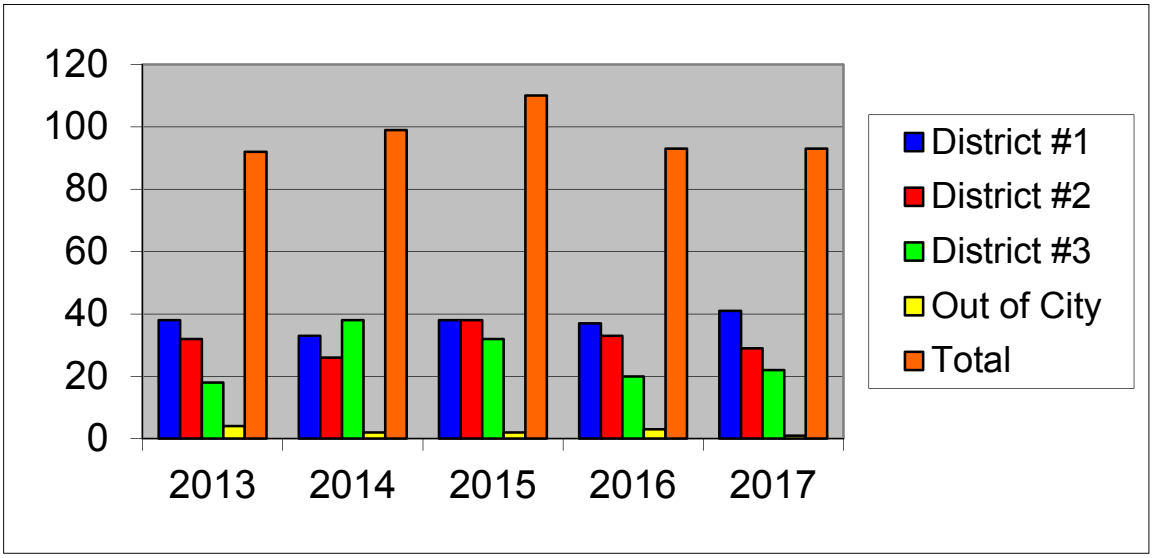
Cumberland Fire Department provided 14 Paramedic Assist Calls:

| | |
|---|---|
| 11 | Paramedic Assist calls inside Allegany County |
| 3 | Paramedic Assist calls outside of Allegany County |
| 14 | |

| | |
|---|---|
| Bowman's Addition VFD | 1 |
| Corriganville VFD | 2 |
| Cresaptown VFD | 6 |
| Flintstone VFD | 1 |
| LaVale Vol. Rescue Squad | 1 |
| | 11 |
| Hyndman Area Rescue, PA | 1 |
| Ridgeley VFD, WV | 2 |
| | 14 |

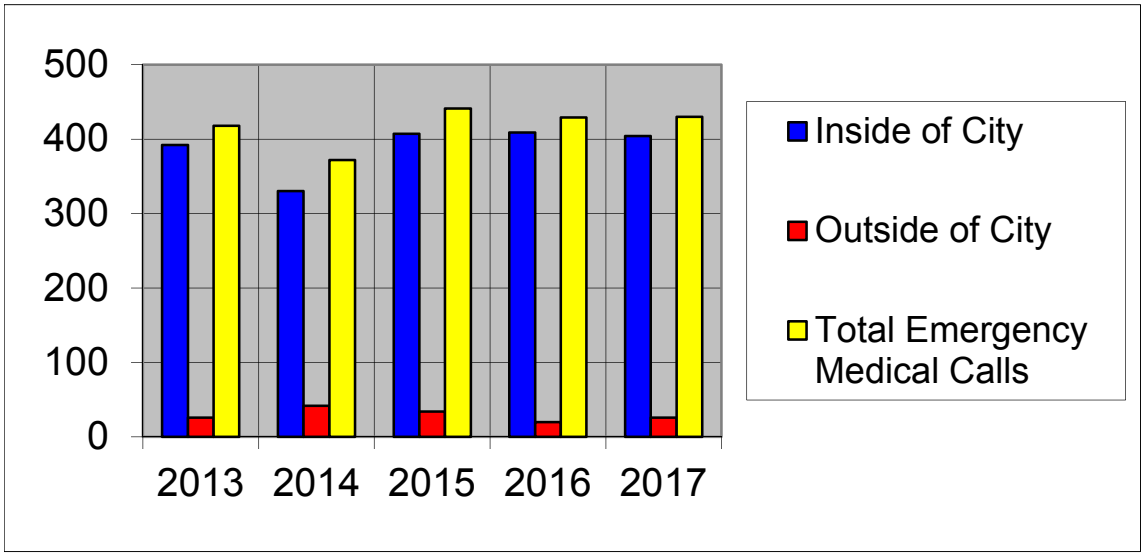
**Fire Calls in the Month of April for a Five-Year Period**

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| District #1 | 38 | 33 | 38 | 37 | 41 |
| District #2 | 32 | 26 | 38 | 33 | 29 |
| District #3 | 18 | 38 | 32 | 20 | 22 |
| Out of City | 4 | 2 | 2 | 3 | 1 |
| Total | 92 | 99 | 110 | 93 | 93 |



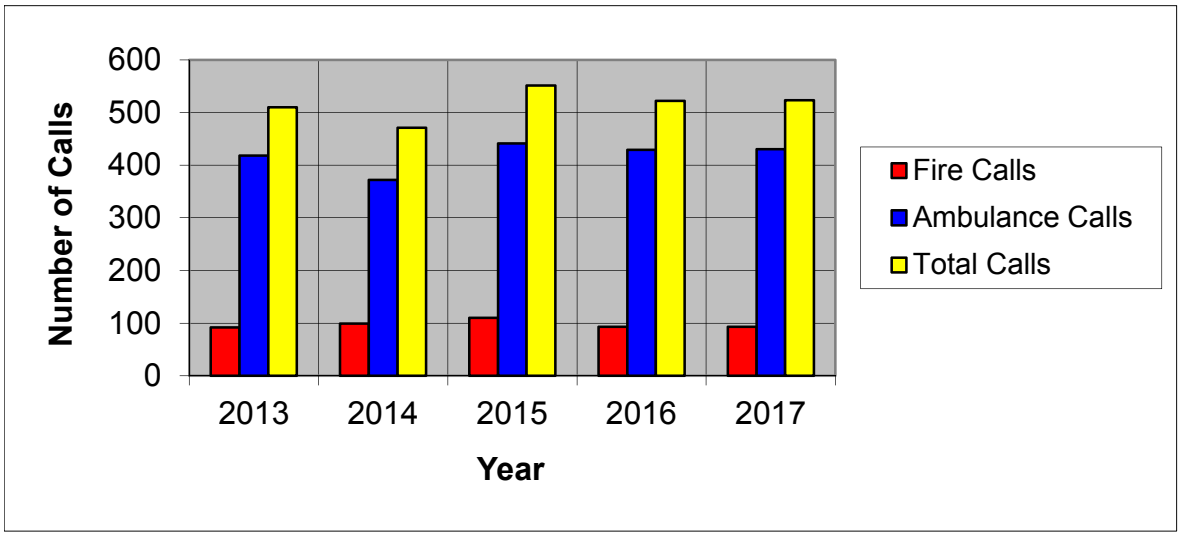

**Ambulance Calls in the Month of April for a Five-Year Period**

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Inside of City | 392 | 330 | 407 | 409 | 404 |
| Outside of City | 26 | 42 | 34 | 20 | 26 |
| Total Emergency Medical Calls | 418 | 372 | 441 | 429 | 430 |



**Fire and Ambulance Calls in the Month of April for a Five-Year Period**

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Fire Calls | 92 | 99 | 110 | 93 | 93 |
| Ambulance Calls | 418 | 372 | 441 | 429 | 430 |
| Total Calls | 510 | 471 | 551 | 522 | 523 |




**Training**

| | | |
|---|---|---|
| Training Man Hours: | **143.30** | |
| Training Listed Below: | | |
| Duties and Responsibilities | | 9.50 |
| Hose Operations | | 50.80 |
| Apparatus Check Procedures | | 20.00 |
| Apparatus Inventory | | 27.50 |
| Strategic and Tactical Operations | | 16.50 |
| Street Location | | 9.00 |
| Physical Fitness | | 10.00 |
| | | 143.30 |

**Fire Prevention Bureau**

| | |
|---|---|
| Complaints Received | 1 |
| Conferences Held | 68 |
| Correspondence | 14 |
| Inspections Performed | 4 |
| Investigations Conducted | 8 |
| Plan Reviews | 5 |

**Personnel**

Nothing to report.

Statistics Compiled by Julie A. Davis, Fire Administrative Officer

Regular Council Agenda
May 16, 2017

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**Description**
Maintenance Division monthly report for April, 2017

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# MAINTENANCE DIVISION REPORT
# April 2017

**Street Maintenance Report**

**Parks & Recreation Maintenance Report**

**Fleet Maintenance Report**

# PUBLIC WORKS/MAINTENANCE
# STREET BRANCH
# MONTHLY REPORT
# APRIL 2017

- POTHOLES AND COMPLAINTS
  - Potholed 29 Streets and 9 Alleys using approximately 39 tons of HMA.

- UTILITY HOLE REPAIR
  - Completed 6 Water Utility Hole Repairs using 5 CY of concrete.

- STREET SWEEPING
  - Swept 383 curb miles (approx. 84 cubic yards of debris).
  - Hauled 19 ton of sweeper dumps to landfill.

- MISCELLANOUS
  - Completed 32 Service Request.

| STREET MAINTENANCE - APRIL 2017 | | 4/2-4/8 | 4/9-4/15 | 4/16-4/22 | 4/23-4/29 | TOTAL |
|---|---|---|---|---|---|---|
| SERVICE REQUEST COMPLETED | | 5 | 8 | 8 | 11 | 32 |
| PAVING PERFORMED | TONS | | | | | 0 |
| CONCRETE WORK | CY | | | 2 | 1 | 3 |
| UTILITY HOLES REPAIRED | WATER | 1 | 5 | | | 6 |
| | SEWER | | | | | 0 |
| | CY | 0.75 | 4.50 | | | 5 |
| | TONS | | | | | 0 |
| POTHOLES FILLED | STREETS | 7 | 6 | 5 | 11 | 29 |
| | ALLEYS | | 3 | 5 | 1 | 9 |
| | DAYS | 4 | | | | 4 |
| | Cold Mix | X | | | | 0 |
| | TONS | | 10.5 | 15.0 | 13.0 | 39 |
| PERMANENT PATCH | CY | | | | | 0 |
| | TONS | | | | | 0 |
| COMPLAINTS COMPLETED | | | | | | 0 |
| | CY | | | | | 0 |
| | TONS | | | | | 0 |
| TRAFFIC CONTROL SIGNS REPAIRED/INSTALLED | | | 2 | | | 2 |
| STREET NAME SIGNS REPAIRED/INSTALLED | | | | | | 0 |
| HANDICAPPED SIGNS REPAIRED/INSTALLED/REMOVED | | | | | | 0 |
| | | | | | | 0 |
| | | | 3 | | | 3 |
| PAINTING PERFORMED | BLUE | | | | | 0 |
| | YELLOW | | | | | 0 |
| | RED | 2 | 3 | | | 5 |
| PAVEMENT MARKINGS INSTALLED | No. | | | | | 0 |
| STREET CLEANING | LOADS | 11 | 10 | | | 21 |
| | MILES | 219 | 164 | | | 383 |
| SWEEPER DUMPS HAULED TO LANDFILL | TONS | 4.8 | | 14.2 | | 19 |
| SALT BARRELLS - PICK UP | DAYS | | | | | 0 |
| CLEANED BALTIMORE ST. UNDERPASS | | | | | | 0 |
| CLEAN SNOW EQUIPMENT | Days | | | | | 0 |
| BRUSH REMOVAL/TREE WORK | Days | | | 1 | | 1 |
| Check Drains/Clean Debris | DAYS | | | 1 | 1 | 2 |
| LEAF PICK UP | Loads | 2 | | | | 2 |

Clean boat ramp

Place stone in Alley off Swick

Ditch Repair Camden Ave

Ditch work between Valentine/Welch

Guardrail replacement along Seton Drive 4/20, 4/21

Sidewalk repair on Cleveland Ave 1.5 cy 4/20, 1cy 4/26

Item # 4

# PUBLIC WORKS/MAINTENANCE
# PARKS & RECREATION
# MONTHLY REPORT
# APRIL 2017

- Constitution Park
  - Cleaned up garbage, bathrooms and pavilions 3 time/week.
  - Cut grass in Park and Long Field.
  - Hauled garbage from Park to Landfill.
  - Re-installed ball wall for tennis courts.
  - Cleaned up pool area for painting, etc.
  - Painted dugouts @ Long.
  - Worked OT for Easter Egg Hunt.

- Mason Complex
  - Cleaned up garbage 3 time/week.
  - Lined Fields as per schedule.
  - Cut grass.

- Abrams, Cavanaugh and JC
  - Cleaned up garbage and bathrooms 3 time/week.
  - Cut grass.
  - Began field work at Abrams and JC.
  - Painted dugouts @ Abrams and JC.
  - Repaired window at JC.

- Miscellaneous Work
  - Continue to maintain, cut grass and pick up garbage at Parklets and other areas.
  - Began installing new field name sign and no smoking signs.
  - Performed maintenance @ Washington HQ's.

| Parks and Recreation | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Field Work | | | | | | | | |
| April 2017 | | | | | | | | |
| | | Line | | Spike | | Drag | | General Cleanup Prior to Season |
| Flynn | | 4 | | 1 | | 4 | | |
| | | | | | | | | |
| Nonnennmann | | 4 | | | | 4 | | |
| | | | | | | | | |
| Northcraft | | 5 | | | | 4 | | |
| | | | | | | | | |
| Bowers | | | | | | | | |
| | | | | | | | | |
| Galaxy | | 2 | | | | | | |
| | | | | | | | | |
| United | | | | | | | | |
| | | | | | | | | |
| Nonnennmann SF | | | | | | | | |
| | | | | | | | | |
| Bowers FB | | | | | | | | |
| | | | | | | | | |
| Tigers Practice | | | | | | | | |
| | | | | | | | | |
| Long | | | | 1 | | 1 | | Rolled out field, general cleanup |
| | | | | | | | | |
| Cavanaugh | | | | | | | | |
| | | | | | | | | |
| JC | | 1 | | | | 2 | | |
| | | | | | | | | |
| Abrams | | | | | | 2 | | Rolled out field |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

| Parks and Recreation Department | | |
|---|---|---|
| Grass Cutting | | |
| April 2017 | | |
| | | |
| LOCATION | | DATES CUT |
| Fairmont | | April 18 |
| Ridgedale | | April 18 |
| Springdale | | April 5, 18 |
| Mason | | April 5, 10, 12, 13, 18, 19, 25, 28 |
| Park | | April 5, 12, 18, 21, 25, 27 |
| Long | | April 3, 12, 18, 21, 25, 27 |
| Cavanaugh | | April 10, 18, 29, 25 |
| Smith Park | | April 5, 18, 26 |
| Vets Park | | April 10, 26 |
| Pine Ave | | April 18, 26 |
| JC | | April 5, 13, 25 |
| Valley St Parklet | | April 5, 25 |
| Abrams | | April 3, 12, 25 |
| Washington HQ | | April 10, 26 |
| Sundial | | April 10, 26 |
| Lucys Park | | |
| MCS | | April 19 |
| Evitts Creek | | April 19 |
| Boat Ramp | | April 26 |
| Davidson 332-334 | | April 27 |
| Mullen | | April 27 |
| 500 Block of Maryland Ave. | | April 27 |
| 14 Somerville in Rear | | April 27 |
| Old HRDC | | April 27 |
| Rolling Mills Parklet | | April 27 |
| East Side School | | |
| Goethe | | |
| Pistol Range | | April 26 (Flood) |
| Pear St. | | April 5 |
| Louisiana Ave. (Hartley's) | | April 19 |
| 404/406, 414 Park St. | | April 28 |
| 513, 529 Maryland Ave. | | April 28 |
| | | |
| | | |
| | | |
| | | |
| | | |

| Parks and Recreation Department |
|---|
| **Miscellaneous Work** |
| **April 2017** |
| |
| |
| Tree removal at JC |
| General clean up in Park (pavilions) |
| Get pool ready for painting |
| Get Washington HQ's ready for Google picture |
| Repair window at JC |
| Paint dugouts |
| Worked Easter Egg Hunt on Good Friday |
| Installed new field signs |
| Cleaned up brush at Ridgedale (old playground) |
| Complete fence repairs at Amphitheater |
| Repaired blacktop stage floor with new blacktop |
| |
| |
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| |
| |

# Fleet Maintenance
## April 2017

| | |
|---|---|
| **Total Fleet Maintenance Projects** | **129** |
| Street Maintenance | 31 |
| Snow Removal | 0 |
| DDC | 1 |
| CPD | 28 |
| Water Distribution | 4 |
| P & R Maintenance | 6 |
| CFD | 13 |
| Sewer | 6 |
| Code Enforcement | 2 |
| Flood | 2 |
| PIP | 0 |
| WWTP | 0 |
| Engineering | 0 |
| Facility Maintenance | 0 |
| Fleet Maintenance | 1 |
| Central Services | 0 |
| Municipal Parking | 2 |
| Public Works | 0 |
| Water Filtration | 0 |
| Small Engine Repairs | 0 |
| Scheduled Preventive Maintenance | 26 |
| Field Service Calls | 7 |
| **Total Work Orders Submitted** | **31** |
| **Risk Management Claims** | **1** |
| **Fork Lift Inspections** | **0** |

Regular Council Agenda
May 16, 2017

---

**Description**
Approval of the Regular Session Minutes of March 21, 2017 and April 4, 2017

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

**MAYOR**
Brian K. Grim

**CITY ADMINISTRATOR**
Jeffrey D. Rhodes

**COUNCIL**
Seth D. Bernard
David J. Caporale
Richard J. Cioni, Jr.
Eugene T. Frazier

**CITY SOLICITOR**
Michael Scott Cohen

**CITY CLERK**
Marjorie A. Woodring

# MINUTES

**MAYOR AND CITY COUNCIL OF CUMBERLAND**
**City Hall Council Chambers**
**Room 212**
**6:15 p.m.**

DATE: 3/21/17

***Pledge of Allegiance**

## I. ROLL CALL

The meeting convened at 6:35 p.m.

PRESENT: Brian K. Grim, President; Council Members Seth Bernard, David Caporale, Richard J. Cioni, and Eugene T. Frazier

ALSO PRESENT: Jeffrey D. Rhodes, City Administrator; Michael S. Cohen, City Solicitor; Charles Hinnant, Chief of Police; Donald Dunn, Fire Chief; Marjorie Woodring, City Clerk

## II. PROCLAMATIONS

(A) Proclamation declaring the month of April, 2017 as Fair Housing Month

Mayor Grim read the proclamation and presented it to Kathleen Breighner, Chairwoman of the Human Relations Commission, and representatives of the Commission who were in attendance.

## III. CERTIFICATES, AWARDS AND PRESENTATIONS

(A) Recognition of Police Officers James Hott, David Broadwater, and Gregory Leake on the occasion of their retirement from the Cumberland Police Department

Mayor Grim and Police Chief Hinnant congratulated each officer on their retirement from the Cumberland Police Department and spoke on the accomplishments of each officer, the impact they have made in the community, and the commitment they have shown to the Department.

(B) Update on the progress and activities of the Cumberland Economic Development Corporation from Executive Director Shawn Hershberger

Mr. Hershberger provided a mid-year update on the accomplishments of the Cumberland

Economic Development Commission for the period of July 1, 2016 through June 30, 2017. He provided details on organizational and regulatory enhancements, marketing and outreach, and market and asset development goals.

Mr. Hershberger noted that this would be his last presentation to Council, expressed his appreciation for Council's support, and urged the City to continue to push the CEDC to be aggressive in their approach to economic development for Cumberland. Mayor Grim highlighted Mr. Hershberger's accomplishments and Council voiced their appreciation of his work and efforts during his tenure.

(C) Update from Hayden Ort-Ulm, Parks & Recreation Board Representative, on plans to establish a children's Interactive Sound Garden in Constitution Park

Mr. Ort-Ulm discussed plans for the establishment of an Interactive Sound Park in the area of Constitution Park that once housed the fire engine and caboose. Initial site plans had been presented to the Recreation Board and cost would be minimal. He discussed options for using volunteers for the work and soliciting donations from the community to lower the cost. Councilman Cioni voiced his support of moving out the old equipment and replacing with something new and Mayor Grim commented on the strides the Recreation Board was making given limited resources.

## IV. DIRECTOR'S REPORT

(A) Police

1. Police Department monthly report for February, 2017

**Item Action:** Approved

Motion to approve the report was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

(B) Fire

1. Fire Department monthly report for February, 2017

**Item Action:** Approved

Motion to approve the report was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

(C) Public Works

1. Utilities Division monthly report for February, 2017

**Item Action:** Approved

Motion to approve the report was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

2. Maintenance Division monthly report for February, 2017

**Item Action:** Approved

Motion to approve the report was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

## V. APPROVAL OF MINUTES

(A) Administrative / Executive

1. Closed Meeting Announcement - March 21, 2017

Mayor Grim announced that a Closed Session had been held on Marsh 21, 2017 at 5:00 p.m. and read into the record a summary of that session, which is attached hereto and made a part of these minutes as required under Section 3-3-6(c)(2) of the General Provisions Article of the Annotated Code of Maryland.

2. Approval of the Closed Session Minutes of December 28, 2016 and January 17, 2017

Motion to approve the minutes was made by Caporale, seconded by Bernard, and passed on a vote of 5-0.

## VI. NEW BUSINESS

(A) Ordinances

1. Ordinance to repeal and reenact with amendments Section 16-1 through 16-6 of the City Code to update employee pay grades

Mr. Rhodes advised that the proposed Ordinance would eliminate old positions and update position grades by 5% to accommodate recent COLA adjustments. The provisions would not provide an increase to employees, but would adjust the pay table to match the COLA adjustment.

FIRST READING: The Ordinance was presented in title only for its first reading. Motion to approve the first reading and table for two weeks was made by Caporale, seconded by Bernard, and passed on a vote of 5-0.

(B) Orders (Consent Agenda)

**Item Action:** Approved

Mr. Rhodes reviewed each item on the Consent Agenda and Mayor Grim called for questions or comments. Motion to approve Consent Agenda Item Nos. 1-7 was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

1. Order rescinding the current Employee Handbook and adopting a Handbook for Full-Time Non-Union Employees

ORDER NO. 26,107

2. Order lifting the provisions of Section 11-113 of the Code, entitled "Open Containers of Alcohol" in a designated area of the downtown mall, from 5:00 p.m. until 10:00 p.m. on each Friday evening from June 2 through August 25, with the exception of June 9; notwithstanding that open glass containers shall not be permitted in said area

ORDER NO. 26,108

3. Order accepting the bid of Dynamic Advantage, Inc. to provide support, maintenance, and supplies for six copiers for three (3) years for a total amount not to exceed $15,696

ORDER NO. 26,109

4. Order accepting the bid of Document Solutions, Inc., to supply ten (10) new multifunctional copiers for the amount not to exceed $1,040.00 per month through a five (5) year $1 buyout government

lease

ORDER NO. 26,110

5. Order accepting the proposal from Queen City Motors for a 2012 Chevy Silverado pick-up truck in the not-to-exceed amount of $25,900.00

ORDER NO. 26,111

6. Order approving the execution of a Subordination Agreement in favor of The Progress Fund regarding a Promissory Note and Deed of Trust, both dated February 23, 2006, pertaining to property at 108 Decatur St. owned by Gail and Steve Hall

ORDER NO. 26,112

7. Order authorizing the execution of an Amendment to a Programmatic Agreement with the MD State Historic Preservation Office regarding federal Section 106 reviews related to CDBG projects, to extend the current agreement set to expire May 9, 2017 for an additional five years

ORDER NO. 26,113

(C) Letters, Petitions

1. Letter from Pastor Fred Timbrook from CityReach Church asking permission to hold this year's Easter Egg Hunt at the old Memorial Hospital grounds on April 15, 2017 from 1:00 - 3:00 p.m.

The letter was acknowledged and entered into public record. It was the consensus of the Mayor and Council to approve the event.

## VII. PUBLIC COMMENTS

All public comments are limited to 5 minutes per person

No public comments were offered at this time.

## VIII. ADJOURNMENT

With no further business at hand, the meeting adjourned at 7:35 p.m.

Minutes approved on _____

Brian K. Grim, Mayor _____

ATTEST: Marjorie A. Woodring, City Clerk _____

# Mayor and City Council of Cumberland

## Closed Session Summary

Tuesday, March 21, 2017 at 5:00 p.m.

Second Floor Conference Room, City Hall

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On Tuesday, March 21, 2017, the Mayor and City Council met in closed session at 5:00 p.m. in the second floor conference room of City Hall to receive an update on economic development initiatives and to confer with legal counsel regarding smoking regulations.

Persons in attendance included Mayor Brian Grim; Council Members Seth Bernard, David Caporale, Richard Cioni, and Eugene Frazier; City Administrator Jeff Rhodes, City Solicitor Mike Cohen, CEDC Executive Director Shawn Hershberger, CEDC Board Member Jonathan Hutcherson, CEDC staff Matt Miller and Tabitha Barbarito, and City Clerk Marjorie Woodring.

On a motion made by Caporale and seconded by Frazier, Council voted 5-0 to close the session. No actions were voted upon and the meeting was adjourned at 6:30 p.m.

Authority to close the session was provided by the General Provisions Article of the Annotated Code of Maryland, Sections 3-305 (b) (4) and (7).

Brian K. Grim, Mayor

Entered into the public record on March 21, 2017.

**MAYOR**
Brian K. Grim

**CITY ADMINISTRATOR**
Jeffrey D. Rhodes

**COUNCIL**
Seth D. Bernard
David J. Caporale
Richard J. Cioni, Jr.
Eugene T. Frazier

**CITY SOLICITOR**
Michael Scott Cohen

**CITY CLERK**
Marjorie A. Woodring

# MINUTES

**MAYOR AND CITY COUNCIL OF CUMBERLAND**
**City Hall Council Chambers**
**Room 212**
**6:15 p.m.**

DATE: 4/4/17

***Pledge of Allegiance**

## I. ROLL CALL

The meeting convened at 6:15 p.m.

PRESENT: Brian K. Grim, President; Council Members David Caporale, Richard J. Cioni, Eugene T. Frazier

ABSENT: Councilman Seth Bernard

ALSO PRESENT: Jeffrey D. Rhodes, City Administrator; Michael S. Cohen, City Solicitor; Charles Hinnant, Chief of Police; Shannon Adams, Fire Marshall; Marjorie Woodring, City Clerk

Mayor Grim recognized Mark Widmyer, The Governor's Office Western Maryland Representative, who provided greeting and a message from Governor Hogan. He urged any members of Council who may be attending this year's Maryland Municipal League (MML) yearly conference in Ocean City to attend the State Secretaries Roundtable to discuss problems that Cumberland may be experiencing and look for solution. Additionally, Governor Hogan would be in town on May 18th and would be available to meet with City representatives during his visit if there was a desire to do so.

## II. PROCLAMATIONS

(A) Proclaiming Thursday, April 27, 2017 as Cumberland Arbor Day

Mayor Grim read the proclamation and presented it to Paul Eriksson, Natural Resource Technician, along with Dennis Bittinger and Christine Bridges, representatives of the Shade Tree Commission. Mr. Eriksson thanked the Mayor and Council for their continued support of the Commission and invited Council to attend this year's Arbor Day celebration at Bishop Walsh School on April 27, 2017 at 1:00 p.m.

## III. DIRECTOR'S REPORT

(A) Administrative Services

1. Administrative Services monthly report for February, 2017

**Item Action:** Approved

Motion to approve the report was made by Caporale, seconded by Cioni, and was passed on a vote of 4-0.

## IV. APPROVAL OF MINUTES

(A) Routine

1. Approval of the Regular Session Minutes of February 21 and March 7, 2017

**Item Action:** Approved

Motion to approve the minutes was made by Caporale, seconded by Cioni, and was passed on a vote of 4-0.

(B) Administrative / Executive

1. Closed Meeting Announcement - April 4, 2017

Mayor Grim announced that a Closed Session had been held on Tuesday, April 4, 2017 at 5:30 p.m. and read into the record a summary of that session, which is attached hereto and made a part of these minutes as required under Section 3-306(c)(2) of the General Provisions Article of the Annotated Code of Maryland.

## V. PUBLIC HEARINGS

(A) Public Hearing to discuss recommendations for the award of an estimated $700,000 in funding through the 2017 Annual CDBG Plan

Mayor Grim convened the public hearing at 6:26 p.m.

Lee Borror, Community Development Specialist, provided an overview of this year's process to award Community Development Block Grant (CDBG) funding. She stated this year's anticipated award was unknown at this time, but staff had prepared the recommendations based on an estimated award of $700,000. Thirty-three applications were received this year totaling over $1.3M in requested funding. Ms. Borror reviewed details of the Consolidated 5-Year Plan and this year's action plan, timeline and review process. A review of each project by category was provided and the recommended funding for each project. Public comments would be accepted through April 18, 2017 and the Mayor and Council would be scheduled to vote on the recommendations during the April 18, 2017 public meeting.

Mayor Grim opened the floor for public comment. Being none, the public hearing was adjourned at 6:31 p.m.

## VI. UNFINISHED BUSINESS

(A) Ordinances

1. Ordinance *(Second & Third Readings)* - to repeal and reenact with amendments Section 16-1 through 16-6 of the City Code to update employee pay grades

Mr. Rhodes advised that the proposed Ordinance would eliminate old positions and adjust

the position grades by 5% to bring them within the COLA adjustment recently made.

SECOND READING: The Ordinance was presented in title only for its second reading. The reading was interrupted and motion to suspend the second reading and move to the third after comment was made by Caporale, seconded by Frazier, and was passed on a vote of 4-0.

Mayor Grim opened the floor to accept questions or comments. Being none, the Ordinance proceeded to its third reading.

THIRD READING: The Ordinance was presented in title only for its third reading and was adopted on a vote of 4-0.

ORDINANCE NO. 3818

## VII. NEW BUSINESS

(A) Orders (Consent Agenda)

**Item Action:**

Mr. Rhodes reviewed each item on the Consent Agenda. John DiFonzo, City Engineer, provided additional comments on Item No. 4, as noted below. Mayor Grim opened the floor for questions or comments.

Motion to approve Consent Agenda Item Nos. 1-7 was made by Caporale, seconded by Cioni, and was passed on a vote of 4-0.

1. Order authorizing the Chief of Police to enter into a Memorandum of Understanding with agencies of the Sexual Assault Response Team (SART) committing to certain policies and procedures regarding the handling of evidence in Jane Doe sexual assault cases

   ORDER NO. 26,114

2. Order authorizing the execution of a contract with Burgmeier's Hauling Inc. for the transportation and disposal of grit, scum and screenings from the Wastewater Treatment Plant (City Project 4-17-WWTP) for a lump sum per month amount of $2,225 for service starting 7/1/17 through 6/30/20

   ORDER NO. 26,115

3. Order declaring a 1997 Chevrolet Truck (#1GBHC34FXVE180337) as a surplus vehicle and authorizing it for sale or trade-in

   ORDER NO. 26,116

4. Order accepting the sole source proposal of RenoSys to provide installation of a liner for the wading pool and floor of the bathhouse at Constitution Park Pool for the total bundled pricing amount of $44,079, to be funded through a Community Parks and Playground Grant

   Mr. John DiFonzo, City Engineer, provided an update on the extensive work that was currently being undertaken on the Constitution Park Pool. Last year, the City had received a grant through the Community Parks and Playground initiative that would help support several upgrades, including a new pool liner and a water line replacement. It had been found that the filters also needed repaired due to sand infiltration, which could be covered under the grant as well, though the grant funding could not be increased. Much of the work had been done by City crews, thus reducing the cost to the City. The money that had been saved was being put back into a liner for the baby pool and new partitions around the toilets, but

there would be a tight schedule to get all the work done in time to be open for Memorial Day weekend. Mr. DiFonzo noted that the one remaining large project at the pool would be to address the concession stand, but that may come at an extensive cost because the second floor was not ADA compliant.

ORDER NO. 26,117

5. Order authorizing the Chief of Police to execute a M.O.U. with the State's Attorney's Office for overtime conducting of drug interdiction and warrant sweeps, provided by the SAO's Byrne Justice Assistance Grant in the amount of $19,760.00

   ORDER NO. 26,118

6. Order authorizing execution of a Parking Lease with the State of MD for use of 47 parking spaces in the George Street Garage for $31,020 yearly for a term of three (3) years retroactive to November 1, 2016, and renewable for 1 additional 3-year term

   ORDER NO. 26,119

7. Order authorizing the execution of Lease Agreements with Mark's Daily Grind, Inc., The New Creamery LLC, and Mezzo's for use of the public right of way for outdoor dining and entertainment purposes for the period of April 1, 2017 through March 31, 2018

   ORDER NO. 26,120

## VIII. PUBLIC COMMENTS

All public comments are limited to 5 minutes per person

David Kauffman, 227 Saratoga Street, Cumberland, discussed concerns regarding the significant excess supply of properties in the city as compared to the limited demand for that same inventory. He stated there was critical need to reduce the inventory of property to right-size the city's property imbalance between supply and lack of demand in order to promote an environment where capital investment is rewarded by a reasonable return on that investment.

## IX. ADJOURNMENT

With no further business at hand, the meeting adjourned at approximately 7:00 p.m.

Minutes approved on _____

Brian K. Grim, Mayor _____

ATTEST: Marjorie A. Woodring, City Clerk _____

# Mayor and City Council of Cumberland

## Closed Session Summary

Tuesday, April 4, 2017 at 5:30 p.m.

Second Floor Conference Room, City Hall

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On Tuesday, April 4, 2017, the Mayor and City Council met in closed session at 5:30 p.m. in the second floor conference room of City Hall to discuss issues concerning negotiations with the IAFF #1715 bargaining unit.

Persons in attendance included Mayor Brian Grim; Council Members, David Caporale, Richard Cioni, and Eugene Frazier; City Administrator Jeff Rhodes, City Solicitor Mike Cohen, and City Clerk Marjorie Woodring.

On a motion made by Frazier and seconded by Caporale, Council voted 4-0 to close the session. No actions were voted upon and the meeting was adjourned at 6:10 p.m.

Authority to close the session was provided by the General Provisions Article of the Annotated Code of Maryland, Sections 3-305 (b) (9).

Brian K. Grim, Mayor

Entered into the public record on April 4, 2017

Regular Council Agenda
May 16, 2017

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**Description**

Ordinance *(2nd and 3rd readings)* - to establish the Citizen Advisory Commission on Salary and Benefits

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☑ 2nd Reading
☑ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

**ORDINANCE NO. _____**

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO ESTABLISH THE CITIZENS ADVISORY COMMISSION ON SALARIES AND BENEFITS."

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND:

**SECTION 1: Title.**

This ordinance shall be known as the Citizen's Advisory Commission on Salaries and Benefits Ordinance.

**SECTION 2: Establishment.**

The Citizens Advisory Commission on Salaries and Benefits (hereinafter referred to as the "commission") is hereby established.

**SECTION 3: Composition; terms of service; officers.**

(a) *Members of commission.* The commission shall consist of five (5) members, all of whom shall be appointed by the mayor and city council from the public at large. The members of the commission must be residents of the city. The mayor and city council shall endeavor to appoint persons to the commission who have work experience and/or professional qualifications which relate to the purposes the commission is intended to serve.

(b) *Term of service.* The members of the commission shall serve at the will of the mayor and city council until such time as they resign or are removed.

(c) *Appointment of officers.*

(1) *Chairperson.* The members of the commission shall annually elect a chairperson from among their members. The chairperson shall preside over meetings. In the event the chairperson is absent from a particular meeting, the members in attendance may select an acting chairperson from those present to preside over that meeting.

(2) *Secretary.* The members of the commission shall appoint a secretary. The secretary need not be a member of the commission.

**SECTION 4: By-laws; quorum.**

(a) *By-laws.* The commission may but is not required to adopt by-laws for the efficient conduct of its affairs.

(b) *Quorum.* Three (3) members of the commission shall constitute a quorum. The commission may not conduct its business unless a quorum is present.

**SECTION 5: Compensation; expense reimbursement.**

Members of the commission shall not be compensated, but they shall be entitled to reimbursement for expenses as authorized by the mayor and city council.

**SECTION 6: General purpose.**

The general purpose of the commission shall be to study the salaries and benefits of the city's full-time employees and the mayor and city councilpersons in order to ascertain and report whether they are competitive in relation to the salaries and benefits of similarly situated government employees.

**SECTION 7. Parameters applicable to study.**

The following parameters shall apply with respect to the work to be performed by the commission.

(a) *Local government comparisons.* To the extent practicable, the commission shall focus on the manner in which similar local governments in Maryland compensate their employees. In that the city primarily draws its employees from geographically proximate markets, the commission may also focus on the manner in which local government employees are compensated in Allegany, Garrett and Washington Counties in Maryland, Bedford County in Pennsylvania and Mineral County in West Virginia. The local government entities to be considered shall include county and municipal governments and county sheriffs' offices.

(b) *Salary & benefits.* In comparing the salary and benefits of other local government employees to those of city employees, the commission may consider: (i) whether health insurance is provided and, if so, the percentage of the premiums employees are required to pay, the dollar amounts of the premiums which are paid by the employers, deductible amounts and the quality of the coverage provided; (ii) whether retirement benefits are provided and the dollar amount of employer contributions; (iii) holiday, vacation and sick leave; (iv) holiday, vacation and sick leave buy back provisions; (v) the dollar amounts of any clothing, equipment or eyeglass purchase allowances and uniform cleaning allowances; (vi)

the amounts budgeted for compensation in addition to statutorily required amounts which are paid to employees who are off work on workers' compensation; and (vii) such other benefits as the commission deems relevant. To the extent possible, dollar values should be assigned to those benefits.

(c) *Cost of living*. The commission may consider the extent to which the cost of living in the markets it uses for comparison purposes differs from that of the city.

**SECTION 8: Order of work, recommendations.**

The commission shall conduct its work as to particular departments and groups of employees in the order directed by the mayor and city council. Upon completing the study as to a particular department or group of employees, the commission shall present the mayor and city council with written findings regarding the competitiveness of those employees' salaries and benefits. The commission's findings shall be strictly advisory in nature and the mayor and city council shall not be obligated to take any action pursuant thereto. The findings shall be available for public inspection.

**SECTION 9: Outside influences, city staff assistance**

(a) *Outside influences*. The commission shall perform its work free from the involvement of parties seeking to influence its outcome. It shall not be subject to lobbying for particular outcomes by the mayor and city council, city officials, management employees, collective bargaining units

or employees, the general public, or by any other parties. Consistent with the foregoing, commission members are discouraged from discussing their work with persons other than their fellow commission members except to the extent such communications are necessary for the purpose of gathering the information they need to perform their duties.

(b) *City staff assistance*. It is expected that the commission will require assistance gathering the data its members need to perform their duties. Upon request made to either the city administrator or city clerk, such assistance shall be provided. Further, to the extent the commissioners require assistance regarding how this ordinance should be interpreted or the manner in which it should be implemented, they may request assistance from either the city administrator, the city clerk or the city solicitor. However, in providing assistance, those officials may not direct the commission as to what its findings must be.

(c) *Closed session meetings*. In order to limit the opportunities for outside parties to influence the commission's findings, as permitted under section 3-305(b)(1) of the General Provisions Article of the Annotated Code of Maryland, it shall meet in closed session when discussing matters that pertain to the substance of its work but not as to purely administrative matters. The commission shall comply with sections 3-305(d)

and 3-306 of the General Provisions Article and its secretary shall oversee compliance issues.

**SECTION 10: Termination date.**

This ordinance shall not be included in the city code as it is a temporary measure which shall be of no further force and effect as of February 28, 2019, unless said date is extended by order of the mayor and city council.

**SECTION 11:** This Ordinance shall take effect from the date of its passage.

Passed this _____ day of _____, 2017.

_____
Brian K. Grim, Mayor

ATTEST:

_____
Marjorie A. Woodring, City Clerk

Regular Council Agenda
May 16, 2017

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**Description**

Resolution approving the application and receipt of funding for 2017 Community Legacy Projects through a grant or loan in the amount of up to $355,000

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# City of Cumberland

## - Maryland -

## RESOLUTION

**NO. _____**

**Resolution of the Mayor and City Council of Cumberland, Maryland approving the application and receipt of financing for Community Legacy Project(s) (the "Project") further described in the Community Legacy Application ("The Application"), to be financed either directly by the Department of Housing and Community Development (the "Department") of the State of Maryland or through other departments or agencies of the State of Maryland.**

WHEREAS, the Mayor and City Council of Cumberland, Maryland recognizes that there is a significant need for reinvestment and revitalization of the communities in Allegany County; and,

WHEREAS, the Department, either through Community Legacy or through other Programs of the Department, or in cooperation with other State departments or agencies, may provide some or all of the financing for the Project (the "Project Financing") in order to assist in making it financially feasible; and

WHEREAS, the Project is located within a priority funding area under Section 5-7B-02 of the Smart Growth Act and the Project will conform to the local zoning code; and

WHEREAS, the applicable law and regulations require approval of the Community Legacy Project and the Project Financing by the Mayor and City Council of Cumberland, Maryland and, where appropriate, by the chief elected executive official of the local subdivision;

NOW, THEREFORE BE IT RESOLVED THAT, the Mayor and City Council of Cumberland, Maryland hereby endorses the Project; and, HEREBY approves the request for financial assistance in the form of a grant or loan, up to the amount of $355,000; and

BE IT FURTHER RESOLVED THAT, the chief elected executive official be, and is hereby requested to endorse this Resolution, thereby indicating his approval thereof; and,

BE IT FURTHER RESOLVED THAT, the City Administrator is hereby authorized to execute documents and take any action necessary to carry out the intent of these resolutions; and,

BE IT FURTHER RESOLVED THAT, copies of this Resolution are sent to the Secretary of the Department of Housing and Community Development of the State of Maryland.

**GIVEN UNDER OUR HANDS AND SEALS THIS 16TH DAY OF MAY, 2017,**
**WITH THE CORPORATE SEAL OF THE CITY OF CUMBERLAND HERETO ATTACHED,**
**DULY ATTESTED BY THE CITY CLERK**

| Attest: | Mayor and City Council<br>Of Cumberland |
|---|---|
| _____ | _____ |
| Marjorie A. Woodring<br>City Clerk | Brian K. Grim<br>Mayor |

# 2017 Community Legacy Prioritization

_1_ **Cumberland Theatre Rehabilitation Project $100,000**

The Cumberland Theatre is in need of interior and exterior repairs in order to continue to provide affordable and professional theatrical performances for the residents of and visitors to the community. Critical improvements are needed to the interior and exterior of the structure. Some funding will be provided by Allegany County but additional funds are needed to complete the project.

_2_ **Leasehold Redevelopment Program $80,000**

Due to the success of the first Leasehold Improvement Program which was introduced to the Central Business District in 2016, funding is being requested to provide additional incentives for new or expanding small business to invest in the Central Business District. Funds would be provided to the lessee of commercial space to offset the costs for such expenses as drywall, electrical improvements, flooring, HVAC/mechanical, interior demolition, lighting painting, plumbing, signs, and accessibility improvements. At least four new/expanding businesses would be assisted through a grant of up to $20,000.

_3_ **George Street Parking Garage $100,000**

City of Cumberland and Downtown Development Commission staff have developed a plan to improve the appearance and usage of the George Street Parking Garage. Located in the Central Business District, few improvements have taken place at this facility since its construction in the mid1970s. is currently undergoing a construction project for the Centre Street parklet. The improvements will make the garage more accessible and user friendly for residents, employees and visitors in Downtown Cumberland. Improvements include the addition

of new signage, improved ADA accessibility, façade rehabilitation, and new entrance/exit kiosks and gates.

**_4_ Neighborhoods Matter – Gateway Corridor $75,000**

The City of Cumberland has been using a neighborhood approach to target and address noncompliance to the Property Maintenance Code. The current targeted area is the Gateway Corridor, also known as the Canada Viaduct district, a district that was recently included within the expanded Certified Heritage Area. The program will be modeled after a recently completed program in the Baltimore Street/Goethe Street neighborhood. Funds would be targeted to homeowner occupied structures within the target area but will also be available for commercial structures once all requests from homeowners have been addressed. There would be at least ten properties assisted with the maximum grant award allocation of up to $7,500. Funds would be for exterior use with a scope of work that is consistent with the Secretary of the Interior's Standards for Rehabilitation. Eligible activities will include exterior property maintenance issues, particularly chipping and peeling paint, as well as junk/trash removal.

Regular Council Agenda
May 16, 2017

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**Description**

Resolution authorizing the issuance and sale of a General Obligation Installment Bond in the principal amount not to exceed $300,000 to be designated as **"Mayor and City Council of Cumberland Water Quality Bond, Series 2017A"** to finance or reimburse costs of Phase III of the Evitts Creek CSO Upgrades and related costs

**Approval, Acceptance / Recommendation**

Ordinance No. 3809 was passed on July 19, 2016 and became effective August 18, 2016 to authorize this borrowing.

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

RESOLUTION NO. R2017-_____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY"), PURSUANT TO THE AUTHORITY OF SECTIONS 19-301 TO 19-309, INCLUSIVE, OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, SECTIONS 9-1601 TO 9-1622, INCLUSIVE, OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, SECTIONS 81 AND 82A OF THE CHARTER OF THE CITY OF CUMBERLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, AND ORDINANCE NO. 3809, PASSED BY THE MAYOR AND CITY COUNCIL OF THE CITY ON JULY 19, 2016 AND EFFECTIVE ON AUGUST 18, 2016, TO ISSUE AND SELL, UPON ITS FULL FAITH AND CREDIT, A GENERAL OBLIGATION INSTALLMENT BOND IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS ($300,000) TO BE DESIGNATED "MAYOR AND CITY COUNCIL OF CUMBERLAND WATER QUALITY BOND, SERIES 2017A" OR AS OTHERWISE PROVIDED HEREIN, THE BOND TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING OR REIMBURSING COSTS OF A PROJECT THAT THE CITY GENERALLY REFERS TO AS PHASE III OF THE EVITTS CREEK CSO UPGRADES AND RELATED COSTS AS PROVIDED HEREIN; PRESCRIBING, APPROVING AND ADOPTING THE FORM AND TENOR OF THE BOND, THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE OF THE BOND BY

PRIVATE SALE, WITHOUT PUBLIC BIDDING, TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION (THE "ADMINISTRATION"), AND ALL OTHER DETAILS INCIDENT THERETO, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ADJUST AND/OR FIX CERTAIN DETAILS OF THE BOND; APPROVING, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF, A LOAN AGREEMENT WITH THE ADMINISTRATION PURSUANT TO WHICH ADVANCES WILL BE MADE UNDER THE BOND; AUTHORIZING EACH OF THE MAYOR, THE CITY ADMINISTRATOR AND THE COMPTROLLER TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE LOAN AGREEMENT, AND DESIGNATING EACH OF THE MAYOR, THE CITY ADMINISTRATOR AND THE COMPTROLLER AS AN "AUTHORIZED OFFICER" FOR PURPOSES OF THE LOAN AGREEMENT; PROVIDING FOR THE DISBURSEMENT OF ADVANCES OF THE BOND; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BOND WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM SERVING THE CITY AND SURROUNDING AREAS, INCLUDING CHARGES FOR THE USE OF OR CONNECTION TO SUCH SYSTEM; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF THE INSTALLMENTS OF PRINCIPAL OF AND INTEREST ON THE BOND; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BOND; PROVIDING THAT THE PRINCIPAL OF AND

INTEREST ON THE BOND ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BOND; PROVIDING THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ORDINANCE NO. 3809 OR THIS RESOLUTION, THE CITY SHALL USE AND APPLY PROCEEDS OF THE BOND ONLY AS PERMITTED BY THE LOAN AGREEMENT, THE CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENT) AND THE ACT (AS DEFINED IN THE LOAN AGREEMENT); PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BOND.

## RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland and a municipality within the meaning of the Enabling Act identified below (the "City"), is authorized and empowered by Sections 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "MWQFA Act"), and Sections 81 and 82A of the Charter of the City of Cumberland, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds.

2. Pursuant to Ordinance No. 3809, passed pursuant to the authority of the Enabling Act, the MWQFA Act and Sections 81 and 82A of the Charter by the Mayor and City Council of the City (the "Mayor and City Council") on July 19, 2016 and effective on August 18, 2016 (the "Ordinance"), the City authorized the issuance and sale to the Maryland Water Quality Financing Administration (the "Administration") from time to time, upon the City's full faith and credit, of one or more series of general obligation bonds in an aggregate principal amount not to exceed Four Hundred Seventy-seven Thousand Dollars ($477,000) (the "Authorized Bonds"), and the Ordinance provides that any such series may consist of one or more bonds and that any bond may be issued in installment form and/or draw-down form.

3. The Ordinance provides that the proceeds of the Authorized Bonds are to be used and applied for the public purpose of financing, reimbursing or refinancing costs incurred in connection with activities relating to Phase III of a project that the City generally refers to as the Evitts Creek CSO Upgrades, which phase involves various pre-construction activities, and which activities include planning, design, engineering, evaluation, investigation, surveying, permitting and bid work relating to making a determination to rehabilitate or replace a combined sewer overflow line that passes under the CSX rail yard, and the related costs of which include, without limitation, costs of permits, training, insurance, flagging required by CSX and review fees, and related administrative, financial and legal expenses and costs of issuance (collectively, the "Project"), all to the extent permitted by the Administration.

4. The City has determined that it is in the best interest of the City and its citizens to issue and sell to the Administration at this time a single series of general obligation bonds in the form of a single general obligation installment bond, in a portion of the maximum aggregate principal amount of the Authorized Bonds, in order to finance or reimburse costs of the Project in

accordance with, and pursuant to, the authority contained in the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, and upon the terms and conditions set forth in this Resolution, the proceeds of which general obligation installment bond are to be used and applied as herein set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

SECTION 1. (a) The Recitals to this Resolution are deemed a substantive part of this Resolution and incorporated by reference herein. Capitalized terms used in this Resolution and not otherwise defined in the Sections of this Resolution shall have the meanings given to such terms in the Recitals.

(b) References in this Resolution to any official by title shall be deemed to refer (i) to any official authorized under the Charter, the code of City ordinances (the "City Code") or other applicable law or authority to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter, the City Code or other applicable law or authority, (iii) to any person who serves in a "deputy", "associate" or "assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy, associate or assistant in accordance with the Charter, the City Code or other applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein. The titles of the officials of the City referred to in this Resolution correspond to the titles of such officials as provided for in the Charter.

SECTION 2. (a) Pursuant to the authority of the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, the City hereby determines to issue and sell, upon its full faith and credit, a general obligation installment bond for the public purpose of financing or reimbursing costs of components of the Project, all to the extent permitted by the Administration. Such bond shall be issued in the original principal amount not to exceed Three Hundred Thousand Dollars ($300,000) and shall be designated as the "Mayor and City Council of Cumberland Water Quality Bond, Series 2017A" or by such additional or different designation as may be required by the Administration (the "Bond"). The Mayor of the City (the "Mayor"), on behalf of the City, with the advice of the City Administrator of the City (the "City Administrator") and the Comptroller of the City (the "Comptroller"), is hereby authorized and directed to determine and approve the final original principal amount of the Bond, provided that the final original principal amount of the Bond shall not exceed Three Hundred Thousand Dollars ($300,000), such determination and approval to be evidenced conclusively by the Mayor's execution and delivery of the Bond reflecting such finally determined original principal amount pursuant to Sections 5 and 7 hereof.

(b) Proceeds of the Bond shall be applied to costs of the Project only as permitted by the Administration.

(c) The proceeds of the Bond are hereby appropriated for the purposes set forth in this Resolution.

(d) The Bond evidences a loan from the Administration that has been given a project name of "Evitts Creek CSO Phase 3 – Gravity Sewer – Site Evaluation" by the Administration.

SECTION 3. (a) The Bond shall be issued and sold upon the full faith and credit of the City, shall be dated the date of its delivery, shall be numbered RA-1 and shall be issued in the form of a single, fully-registered installment bond, without coupons attached.

(b) Subject to the provisions of subsections (d) and (e) below and the further provisions of this subsection (b), the principal amount of the Bond advanced under the Loan Agreement (as defined in Section 8(b) hereof) shall be paid in thirty (30) installments on February 1 in each of the years 2018 to 2047, inclusive, in such amounts as shall be determined by the Administration to achieve roughly level debt service payments (on an annualized basis, and exclusive of any periods in which interest only is payable) after giving effect to the interest rate provided for in subsection (c) of this Section 3. The Mayor, on behalf of the City, is hereby authorized and empowered to approve the amortization schedule for the Bond, calculated as described in this subsection (b), but subject to the further provisions of subsection (d) below, provided that the final original principal amount of the Bond does not exceed Three Hundred Thousand Dollars ($300,000), such approval to be evidenced conclusively by the Mayor's execution and delivery of the Bond in final form in accordance with the provisions of Sections 5 and 7 of this Resolution.

(c) Subject to the provisions of subsections (d) and (e) below, the Bond, or so much of the principal amount thereof as shall have been advanced from time to time under the terms of the Loan Agreement, shall bear interest from its dated date at an annual rate of interest equal to 25% of the average of the Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Bond is delivered, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year

from the dates of the respective advances of such principal amount, and shall be paid on August 1, 2017, and semiannually thereafter on the 1st day February and August in each year until the principal amount of the Bond has been paid.

(d) The payment dates provided for in the foregoing subsections (b) and (c) are based on an anticipated date of delivery for the Bond in May 2017 and an estimated completion date for the Project in December 2017. Notwithstanding the foregoing, in the event the Bond, for whatever reason, is not delivered in May 2017 or the estimated completion date for the Project is determined prior to the date of delivery of the Bond to be earlier or later than December 2017, the Mayor, on behalf of the City, is hereby authorized and directed to adjust and change such principal and/or interest payment dates provided for or contemplated in subsections (b) and (c) above (including, without limitation, by providing for a first minimum principal payment amount and/or by adjusting the dates on which principal and/or interest will commence and otherwise be due) and to approve the amortization schedule for the Bond prepared by the Administration on a roughly level debt service basis (on an annualized basis, and exclusive of any interest only payments or any first minimum principal payment due on the Bond specified by the Administration) and reflecting any such adjustment in payment dates, all as required by the Administration in order to meet the requirements of Section 9-1605(d)(1)(ii) of the MWQFA Act or to meet other requirements of the Administration, such approval and adjustment to be evidenced conclusively by the Mayor's execution and delivery of the Bond in final form in accordance with the provisions of Sections 5 and 7 of this Resolution. In addition, the Mayor, on behalf of the City, is hereby authorized and directed to approve any adjustments to the amortization schedule for the Bond that are determined to be required by applicable law or are necessary to meet requirements of the Administration (including, without limitation, by adjusting principal and/or interest payment dates and/or the maturity date).

(e) If the Administration determines at any time following delivery of the Bond to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) relating to the Bond in accordance with the provisions of Section 3.08 of the Loan Agreement, the Maximum Principal Amount (as defined in the Bond) of the Bond shall be reduced accordingly and such Maximum Principal Amount as so reduced shall be amortized as provided in the Loan Agreement. In such event, as determined by the Administration, the City may execute and deliver (in the manner provided in Sections 5 and 7 hereof for the original delivery of the Bond) a new Bond evidencing such reduction in the Loan Commitment and/or the Mayor, on behalf of the City, may execute and delivery any certificates, documents or instruments acknowledging and providing for such reduction, as required by the Administration pursuant to Section 3.08 of the Loan Agreement.

(f) The City shall pay (i) a late charge for any payment of principal of or interest on the Bond that is received later than the tenth (10th) day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate provided for in the Loan Agreement, which Default Rate shall be equal to 100% of the average of the Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Bond is delivered, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Amounts payable pursuant to this subsection (f) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(g) Both the principal of and interest on the Bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by

electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the City Clerk of the City (the "City Clerk").

(h) Notwithstanding the foregoing provisions of this Section 3, in the event of a discrepancy between the provisions of the Bond or the Loan Agreement and this Section 3, the provisions of the Bond or the Loan Agreement, as applicable, shall control.

SECTION 4. The Bond shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the United States Environmental Protection Agency's (and its successors) State Revolving Fund Program Regulations. Otherwise, the Bond may be prepaid by the City, in whole or in part, only at such times and in such amounts, and upon payment by the City of such prepayment premium or penalty, as the Director of the Administration, in his or her discretion, may specify and approve.

SECTION 5. The Bond shall be executed in the name of the City and on its behalf by the Mayor. The corporate seal of the City shall be affixed to the Bond and attested by the signature of the City Clerk. In the event any official whose signature shall appear on the Bond shall cease to be such official prior to the delivery of the Bond, or, in the event any such official whose signature shall appear on the Bond shall have become such after the date of delivery thereof, the Bond shall nevertheless be a valid and binding obligation of the City in accordance with its terms.

SECTION 6. The Bond shall be transferable only after the first principal payment date as set forth in the Bond or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the City at the office of the City Clerk, by the

registered owner in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the City Clerk, duly executed by such registered owner or his duly authorized attorney. The City shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the City shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The City may deem and treat the party in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof and interest due thereon and for all other purposes. References in this Resolution to the Bond shall be deemed to refer to any bond or bonds transferred in accordance with the provisions of this Section 6, and references in this Resolution to the registered owner of the Bond shall be deemed to refer to all such registered owners contemplated by this Section 6, as applicable.

SECTION 7. Except as provided hereinafter, the Bond shall be issued in substantially the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement that is attached hereto as Exhibit A. Appropriate variations and insertions may be made by the Mayor to the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement

attached hereto as Exhibit A to provide dates, numbers and amounts, including, without limitation, to reflect matters determined in accordance with the provisions of Sections 2 and 3 hereof, and other modifications not altering the substance of such form may be made by the Mayor. All of the covenants contained in the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement attached hereto as Exhibit A, as the same may be finally completed as provided in this Section 7, are hereby adopted by the City as and for the form of obligation to be incurred by the City, and the covenants and conditions are hereby made binding upon the City, including the promise to pay therein contained.

SECTION 8. (a) As authorized by the MWQFA Act, the City hereby determines to sell the Bond to the Administration by private sale, without public bidding, which sale by private sale is hereby deemed by the City to be in its best interest and in the interest of its citizens due, in part, to the benefit of the structure of the Bond as a draw-down obligation and the beneficial interest rate offered by the Administration. Therefore, and pursuant to the authority of the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, the Bond shall be sold to the Administration by private sale, without public bidding, for a price of the par amount of the Bond or so much of the par amount of the Bond as is advanced to the City in accordance with the provisions of the Loan Agreement. The Bond is referred to in the Loan Agreement as the "Note".

(b) The Bond shall be sold to the Administration and the purchase price of the Bond shall be advanced to the City in accordance with the provisions of the Loan Agreement relating to the Bond (the "Loan Agreement"), the substantially final form of which is attached hereto as Exhibit A.

(c) The substantially final form of the Loan Agreement attached hereto as Exhibit A reflects the expectation, as of the date of introduction of this Resolution, that the final

principal amount of the Bond will be Three Hundred Thousand Dollars ($300,000). The Mayor, on behalf of the City, is hereby authorized and directed to complete, execute and deliver the Loan Agreement for and in the name of the City with such changes, insertions and deletions as are approved by the Mayor to reflect matters determined in accordance with Sections 2, 3 and 8 hereof, to comply with program requirements of the Administration, to complete the exhibits to the substantially final form of the Loan Agreement attached hereto as Exhibit A, or as are determined by the Mayor not to be materially adverse to the interests of the City; the Mayor's approval of any such changes, insertions and deletions shall be evidenced conclusively by the Mayor's execution and delivery of the final form of the Loan Agreement containing the same.

(d) Notwithstanding anything to the contrary contained in this Resolution, advances under the Loan Agreement or the Bond, payment or prepayment of the principal of and interest on the Bond, and transfer or exchange of the Bond shall be made in accordance with the provisions of the Loan Agreement. In the event of a discrepancy between the provisions of this Resolution and the Loan Agreement, the provisions of the Loan Agreement shall control. The City agrees to abide by and perform the covenants and agreements set forth in the Loan Agreement as finally executed and delivered in accordance with the provisions of this Section 8 as though such covenants and agreements were set forth in full in this Resolution.

(e) The City hereby reconfirms the provisions of Section 9 of the Ordinance, which authorized and directed the City to pay any fees or costs provided for in the Loan Agreement which are not payable from Bond proceeds, including, without limitation, any administrative fees and ongoing fees or costs, and acknowledges that its obligation to pay such amounts shall be absolute and unconditional as provided in the Loan Agreement.

(f) The City hereby reconfirms the provisions of Section 6(b) of the Ordinance, which acknowledged that the provisions of the Loan Agreement allow for, among other remedies, all payments on the Bond to be declared immediately due and payable upon the occurrence of any event of default provided for in the Loan Agreement.

(g) As security for payment of the Bond and the other amounts due under the Loan Agreement, the City hereby acknowledges, confirms and agrees that the pledge of moneys that the City is entitled to receive from the State of Maryland, including the City's share of the State income tax, as authorized by Section 9-1606(d) of the MWQFA Act and provided for in Section 7 of the Ordinance, is set forth in Section 3.05(c) of the Loan Agreement.

SECTION 9. (a) As soon as may be practicable after the adoption of this Resolution, the Bond shall be suitably prepared in definitive form, executed and delivered to the Administration on a date mutually satisfactory to the Administration and the City Administrator. The Mayor, the City Administrator, the Treasurer of the City (the "Treasurer"), the Comptroller, the City Clerk and all other appropriate officials and employees of the City are hereby expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bond to the Administration and to negotiate, approve, execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith, to the extent such actions are within the spheres of their respective responsibilities.

(b) Each of the Mayor, the City Administrator and the Comptroller is hereby expressly authorized to take any necessary actions under the Loan Agreement or the Bond in order to requisition advances on behalf of the City. Each of the Mayor, the City Administrator and the Comptroller is hereby expressly designated as an "Authorized Officer" for purposes of the Loan Agreement.

SECTION 10. Each advance of the proceeds of the Bond shall be paid directly to the City and shall be deposited by the Treasurer or other appropriate City official in the proper municipal accounts, or shall be paid at the direction of the Authorized Officer, or shall be paid as otherwise required by the Administration. Advances under the Bond shall be used and applied by the City exclusively and solely for the public purpose described in Section 2 hereof. Nothing in this Resolution shall be construed to authorize the expenditure of any moneys except for a proper public purpose.

SECTION 11. (a) The full faith and credit and unlimited taxing power of the City are hereby pledged to the prompt payment of the principal of and interest on the Bond as and when the same are payable and to the levy and collection of the taxes hereinbelow described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The City shall levy or cause to be levied, for each and every fiscal year during which the Bond may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on the Bond payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency. The City hereby covenants with the registered owner of the Bond to take any action that lawfully may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(b) Notwithstanding the provisions of subsection (a) above, the principal of and interest on the Bond will be payable in the first instance from revenues received in connection with

the operation of the wastewater system serving the City and surrounding areas, including charges for the use of or connection to such system, all to the extent such revenues are lawfully available for such purpose. To the extent of any such revenues received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(c) The foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on the Bond from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on the Bond any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if such funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project or projects which the Bond is issued to finance or are otherwise available for such purpose, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(d) Wastewater system revenues are intended to be the dedicated source of revenues with respect to the Bond required by Section 9-1605(d)(1)(iii) of the MWQFA Act. Such revenues may be referred to by similar, but not exact, references on any applicable exhibits to the Loan Agreement.

(e) References to the levying of taxes provided for in this Section 11 are intended to mean the imposition of taxes as provided for in the Enabling Act.

SECTION 12. Notwithstanding anything to the contrary contained in the Ordinance or this Resolution, the City shall use and apply proceeds of the Bond only as permitted by the Loan Agreement, the Clean Water Act (as defined in the Loan Agreement) and the Act (as defined in the Loan Agreement).

SECTION 13. The provisions of this Resolution shall be liberally construed in order to effectuate the transactions contemplated by this Resolution.

[CONTINUED ON FOLLOWING PAGE]

SECTION 14. This Resolution shall become effective upon its adoption.

MAYOR AND CITY COUNCIL
OF CUMBERLAND

(SEAL)

_____
Brian K. Grim, Mayor

ATTEST:

_____
Marjorie A. Woodring, City Clerk

Introduced: _____, 2017

Adopted: _____, 2017

Effective: _____, 2017

#195920;10002.063

# EXHIBIT A

## FORM OF LOAN AGREEMENT

[See Attached]

# LOAN AGREEMENT

By and Between

MARYLAND WATER QUALITY
FINANCING ADMINISTRATION

and

MAYOR AND CITY COUNCIL OF CUMBERLAND

Dated as of May __, 2017

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# LOAN AGREEMENT

THIS LOAN AGREEMENT, made this __th day of May, 2017, between the Maryland Water Quality Financing Administration (the "Administration"), a unit of the Department of the Environment (the "Department") of the State of Maryland (the "State"), and Mayor and City Council of Cumberland, a municipal corporation of the State (the "Borrower").

## RECITALS

Title VI of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), as amended by the Water Quality Act of 1987 ("Title VI"), authorizes the Environmental Protection Agency ("EPA") to award grants to qualifying States to establish and capitalize State water pollution control revolving funds ("SRFs") for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of the State at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended (the "Act"), establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a "local government" (as defined in the Act) for the purpose of financing all or a portion of the cost of a "wastewater facility" project (as defined in the Act).

The Borrower, which is a "local government" within the meaning of the Act, has applied to the Administration for a loan from the Fund to assist in the financing of a certain project or projects of the Borrower (the "Project," as defined herein) which constitutes a "wastewater facility" within the meaning of the Act. The Project is one designated for funding in an Intended Use Plan promulgated by the Administration in accordance with regulations issued by the EPA pursuant to Title VI, and the Project conforms to the applicable "county plan" adopted pursuant to the requirements of Subtitle 5 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended.

The Director of the Administration has determined that the making of a loan to the Borrower for the purpose of assisting the financing of the Project, on the terms and conditions hereinafter set forth, is necessary and desirable in the public interest, will promote the health, safety and welfare of the inhabitants of the State and the United States by assisting in the prevention of pollution of the environment, and will further the purposes of Title VI and the Act.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the Borrower and the Administration, each intending to be legally bound, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Act" means the Maryland Water Quality Financing Administration Act, Sections 9-1601 through 9-1622 of the Environment Article, Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof.

"Administration" means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

"Administrative Fee" means the fee payable by the Borrower pursuant to this Agreement for the general administrative services and other functions and expenses of the Administration.

"Agreement" means this Loan Agreement, including the Exhibits attached hereto and any amendments hereto.

"Application" means the application for the Loan submitted by the Borrower to the Administration, together with any amendments thereto.

"Authorized Officer" means, in the case of the Borrower, any person authorized by law or by a resolution of the governing body of the Borrower to perform any act or execute any document.

"Board" means the Board of Public Works of the State.

"Bonds" means any series of revenue bonds issued by the Administration under the Act.

"Borrower" means the local government (as defined in the Act) that is identified in the first paragraph of this Agreement, and its successors and assigns.

"Business Day" means a day other than a Saturday, Sunday, or day on which the offices of the Administration or commercial banks in the State are authorized or obligated to remain closed.

"Change Orders" means any amendments or modifications to any Plans and Specifications or any general construction contract for the Project.

"Clean Water Act" means the Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. § 1251 et seq., and rules and regulations promulgated thereunder.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

"Department" means the Maryland Department of the Environment, and its successors.

"Director" means the Director of the Administration.

"Eligible Project Costs" means all those costs of the Project permitted by the Act to be funded by a loan from the Fund and which have been approved by the Director.

"EPA" means the United States Environmental Protection Agency, and its successors.

"Event of Default" means any occurrence or event specified in Section 4.01 hereof.

"Fiscal Year" means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

"Fund" means the Maryland Water Quality Revolving Loan Fund.

"Governmental Authority" means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and including EPA, the Department, the Board and the Administration.

"Independent Counsel" means any attorney or attorneys duly admitted to practice law before the highest court of any state who have regularly engaged in the practice of law as their primary occupation for at least five years. Independent Counsel may also serve as Bond Counsel if it qualifies as Bond Counsel.

"Independent Public Accountant" means an individual, partnership or corporation engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Maryland and in fact independent.

"Loan" means the aggregate amounts which are advanced from time to time by the Administration to the Borrower pursuant to the terms and provisions of this Agreement.

"Loan Closing Date" means the date on which the Note is executed and delivered to the Administration.

"Loan Commitment" means that amount which the Administration is obligated to lend to the Borrower pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

"Loan Year" means the period beginning on the first February 1 on which principal of the Loan is payable and each February 1 thereafter and ending on the immediately succeeding January 31.

"Note" means the bond, note or other obligation executed and delivered by the Borrower to the Administration to evidence the Loan, such Note to be substantially in the form attached hereto as Exhibit F.

"Plans and Specifications" means the final plans and specifications for the construction of the Project prepared by the architect or engineer and approved by the Department.

"Project" means the project or projects of the Borrower described in Exhibit B to this Agreement.

"Project Budget" means the budget for the Project as set forth in Exhibit C to this Agreement, as revised in accordance with Section 2.02(d).

"Related Financing" means any bond, note, agreement or other instrument or transaction (other than this Agreement or the Note) pursuant to which the Borrower obtains any monies that may be expended to pay costs of the Project.

"Requirement" means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System ("NPDES") permit or in a construction permit issued by the Department.

"State" means the State of Maryland.

"Trustee" means the trustee for the Bonds.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms "agree" and "agreement" shall include and mean "covenant", and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

## ARTICLE II

## REPRESENTATIONS AND COVENANTS OF BORROWER

Section 2.01. Representations of Borrower. The Borrower represents for the benefit of the Administration as follows:

(a) Corporate Organization and Authority. The Borrower:

(i) is a "local government" as defined in the Act; and

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Note, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Administration in writing that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower, or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(d) Borrowing Legal and Authorized. The consummation of the transactions provided for in this Agreement and the Note and compliance by the Borrower with the provisions of this Agreement and the Note:

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Borrower; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Borrower pursuant to, any indenture, loan agreement or other instrument (other than this Agreement and the Note) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Borrower or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement and the Note or receipt of the Loan, would constitute a Default hereunder. The Borrower is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(f) Governmental Consent; Project Consistency.

(i) The Borrower has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Borrower of its obligations under this Agreement and the Note or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Borrower as a condition to the execution and delivery of this Agreement and the Note or the consummation of any transaction herein contemplated.

(ii) The Project is consistent with (A) the local plan of the Borrower as contemplated under Section 5-7A-02 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; (B) the State Economic Growth, Resource Protection, and Planning Policy established in Section 5-7A-01 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; and (C) all applicable provisions of *Subtitle 7B*; "*Priority Funding Areas*" of Title 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended.

(g) No Conflicts. No member, officer, or employee of the Borrower, or its designees, or agents, no consultant, no member of the governing body of the Borrower or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person's tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or benefit therefrom, which is part of the Project.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the Administration as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Eligible Project Costs; and (ii) to reimburse the Borrower for all or a portion of the Eligible Project Costs paid or incurred prior to the date hereof in anticipation of reimbursement by the Administration. Except as provided in Section 3.03(c) of this Agreement, before each and every advance of the proceeds of the Loan to the Borrower, the Borrower shall submit to the Administration a requisition meeting the requirements of Section 3.03 of this Agreement.

(i) Loan Closing Submissions. On or before the Loan Closing Date, the Borrower will cause to be delivered to the Administration each of the following items:

(i) an opinion of Independent Counsel, acceptable to the Administration, dated as of the Loan Closing Date, substantially in the form set forth in Exhibit D to this Agreement;

(ii) fully executed counterparts of this Agreement, the Note;

(iii) copies of the ordinance, resolution or other official action of the governing body of the Borrower authorizing the execution and delivery of this Agreement and the Note, certified by an appropriate officer of the Borrower;

(iv) a certificate, dated as of the Loan Closing Date, signed by an Authorized Officer of the Borrower and in form satisfactory to the Administration, confirming the Borrower's obligations under and representations in the Loan Agreement as of such date;

(v) such other certificates, documents, opinions and information as the Administration may require.

Section 2.02. Particular Covenants of the Borrower.

(a) Maintenance of Project; Insurance. The Borrower shall (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are

operated by persons operating a first-class facility of a similar nature. The Borrower shall maintain or cause to be maintained at its sole cost and expense insurance with respect to the Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by governmental entities similarly situated and as are consistent with sound governmental practice.

(b) Sale or Disposition of Project. The Borrower reasonably expects that no portion of the Project will be sold prior to the final maturity date of the Loan. In the event that the Borrower shall sell or otherwise dispose of any portion of the Project prior to the final maturity date of the Loan, the Borrower shall apply the net proceeds thereof to the prepayment of the Loan or as the Administration shall otherwise direct unless the Borrower shall have obtained the prior written consent of the Administration to some other proposed application of such net proceeds.

(c) Inspections; Information. The Borrower shall permit the Administration or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to attend all construction progress meetings relating to the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the financing thereof, and shall supply such reports and information as the Administration may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Borrower shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to loans made by the Administration from the Fund, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Loan, the total cost of the activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All such books, records and other documents shall be maintained at the offices of the Borrower, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All such books, records and other documents shall be maintained until the completion of an audit of the Project by the EPA or notification from the State or the EPA that no audit is required.

(d) Completion of the Project; Payment of Excess Costs of the Project. The Borrower shall proceed diligently to complete the Project in accordance with the Plans and Specifications, and in accordance with any requirements set forth in the construction and NPDES permits. The Borrower shall satisfy all applicable Requirements for operation of the Project by the completion of the Project, and shall commence operation of the Project promptly upon its completion. No substantial changes may be made to the Plans and Specifications, the general construction contract or the Project Budget, or in the construction of the Project without the prior written approval of the Administration in its discretion. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Project in excess of the amount available to be loaned to the Borrower hereunder. Upon the completion of the Project, the

Borrower shall deliver to the Administration a certificate of the Borrower certifying that the Project was completed as of the date set forth in such certificate.

(e) Cancellation of Loan. As provided by Section 9-1606(e) of the Act, the Borrower acknowledges and agrees that its obligation to make the payments due hereunder and under the Note is cancelable only upon repayment in full of the Loan, and that neither the Administration, the Secretary of the Department, nor the Board is authorized to forgive the repayment of all or any portion of the Loan.

(f) Dedicated Source of Revenue. Pursuant to the Clean Water Act, the Borrower has established one or more dedicated sources of revenue for repayment of the Loan, as described in Exhibit E attached hereto as a part hereof.

(g) Indemnification. To the extent permitted by law, the Borrower releases the Administration, the Fund, the Department, the Board and the State from, agrees that the Administration, the Fund, the Department, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Administration, the Fund, the Department, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Administration, the Fund, the Department, the Board or the State, as a result of or in connection with the Project or the financing thereof. To the extent permitted by law, all money expended by the Administration, the Fund, the Department, the Board or the State as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate provided in the Note from the date of such payment, shall constitute an additional indebtedness of the Borrower and shall be immediately and without notice due and payable by the Borrower to the Administration.

(h) Non-discrimination. The Borrower certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. At such times as the Administration requests, the Borrower shall submit to the Administration information relating to the Borrower's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Administration.

(i) Compliance with Requirements. The Borrower acknowledges that the Loan and this Agreement are subject to, and the Borrower agrees to comply with, all Requirements applicable to the Project and the financing thereof, including (without limiting the generality of the foregoing) the Clean Water Act, the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the EPA, the Board, the Department, the Administration, or other Governmental Authority.

(j) Annual Audit. Within nine (9) months of the end of each Fiscal Year (unless such period is changed to comply with terms of the Administration's financings, or a Requirement, in which case the Administration shall notify the Borrower in writing), the Borrower shall cause financial statements of the Borrower to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, applicable to governmental units, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Public Accountant. Such financial statements and report shall be delivered upon completion to the Administration within the nine (9) month period or within thirty (30) days from receipt of a report from the auditor, whichever period is shorter.

(k) Additional Disclosure Information. The Borrower agrees to provide the Administration with such information regarding the Borrower and its finances as the Administration may from time to time request. The Borrower further acknowledges that the Administration may issue one or more series of Bonds pursuant to the Indenture, and that any or all of such Bonds may be secured in part by repayments of the Borrower with respect to the Loan. The Borrower accordingly agrees to provide to the Administration such information regarding the Borrower and its finances as the Administration may from time to time request for inclusion in the official statements or other offering documents to be distributed in connection with the sale of any such Bonds or any annual disclosure document or other informational document prepared from time to time by the Administration to be made available to prospective purchasers or holders of any of such Bonds. The Borrower shall also furnish to the Administration at its request a certificate of an Authorized Officer of the Borrower to the effect that any information so provided or included contains no material inaccuracy or omission in light of the purposes for which such information is provided or included. The Borrower agrees to notify the Administration promptly in writing of (a) any changes in the condition or affairs of the Borrower (financial or other) that would cause any information regarding the Borrower so provided or included in an official statement or any subsequent offering document, annual disclosure document or other informational document of the Administration that the Borrower has had an opportunity to review and certify as to its accuracy, to contain a material inaccuracy or omission in light of the purposes for which such information is so included, and (b) any event set forth in Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as such rule may be amended and supplemented.

(l) Related Financing. The Borrower agrees that the proceeds of any Related Financing shall be expended to pay costs of the Project on a monthly basis proportionately with the proceeds of the Loan, taking into account the total amount of the proceeds of such Related Financing available to pay costs of the Project and the maximum amount of the Loan Commitment. The Borrower agrees to provide the Administration upon its request with such information as the Administration deems reasonably necessary to determine whether the Borrower is in compliance with the provisions of this Section 2.02(l).

# ARTICLE III

## LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

Section 3.01. The Loan. Subject to the provisions of Sections 3.02, 3.03 and 3.08 hereof, the Administration hereby agrees to advance amounts under this Agreement to the Borrower, and the Borrower agrees to borrow and accept from the Administration amounts advanced under this Agreement, in an aggregate principal amount not to exceed the maximum amount of the Loan Commitment set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Administration expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Borrower in accordance with the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Borrower recognizes, however, that the Administration is a governmental entity with limited financial resources and that the Administration's ability to make such advances may be adversely affected by events or circumstances beyond the Administration's control. The Borrower accordingly assumes the risk that monies may not be available to make advances of the Loan to the Borrower, and, in such event, the Borrower specifically agrees that the Administration shall have no obligation to lend any amounts to the Borrower in excess of the amount theretofore advanced to the Borrower.

Section 3.03. (a) Requisitions and Disbursements. Amounts shall be loaned from time to time to pay, or reimburse the Borrower for the payment of, Eligible Project Costs, upon receipt of requisitions of the Borrower. Each such requisition shall (i) state the names of the payees, (ii) describe in reasonable detail the purpose of each payment, (iii) state the amount of each payment (supported by appropriate paid invoices or other evidence satisfactory to the Administration that the amount requisitioned has been paid or has been incurred by the Borrower and is then due), (iv) state that the amount so requisitioned constitutes a part of the Eligible Project Costs and (v) state that no Default or Event of Default under this Agreement has occurred and is continuing; provided, that this section shall not apply to advances made or deemed to have been made as provided in Section 3.03(c) hereof. In no event shall the Administration be obligated to advance to the Borrower any amount so long as any Default or Event of Default under this Agreement shall have occurred and be continuing. The Administration shall not be required to advance monies on more than one day in each month, and the Administration shall not be required to advance monies for the Project sooner than, or in an amount greater than, the schedule of disbursements for the Project shown on the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Administration may require the Borrower to submit requisitions in advance of each such disbursement date in such manner as shall be reasonably acceptable to the Administration.

(b) Conditions Precedent. Before making the first advance of Loan proceeds, the Administration shall receive the following in form and content satisfactory to the Administration:

(i) copies of the Plans and Specifications and of any Change Orders issued through the date of such advance, the general construction contract, and the Project Budget;

(ii) a survey showing the location of existing and proposed easements, rights-of-way and improvements, and the perimeter boundaries of the land upon which the Project will be located, if any Loan proceeds are to be used for acquisition of the land;

(iii) copies of all building permits, if any, pertaining to the Project;

(iv) cost breakdown in trade form showing all subcontracts which represent at least 10 percent of the costs of the Project, and indicating use of the proceeds of the Loan therefor;

(v) a fully executed copy of any contract for the purchase of real property constituting a portion of the Eligible Project Costs described in Exhibit C; and

(vi) evidence satisfactory to the Administration that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Administration's obligation to make any advance of Loan proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

(c) Interest During Construction. In the event that the Administration has consented to permit the Borrower to pay interest on the Loan from proceeds of the Loan during all or a portion of the period of time related to construction of the Project (as itemized in Exhibit C) ("Construction Period Interest"), the Administration shall on each February 1 and August 1 during such period advance to the Borrower an amount equal to the interest on the Loan due on such February 1 or August 1 and not theretofore paid by the Borrower. Any such amount of Construction Period Interest advanced by the Administration shall constitute part of the principal amount of the Loan hereunder immediately upon its advance to the Borrower in accordance with this paragraph. Notwithstanding the advance of any Construction Period Interest to the Borrower in accordance with this Section, the Borrower shall pay directly to the Administration the Administrative Fee on the dates and in the amounts set forth in Section 3.04(c), and no amounts shall be advanced under the Loan for the payment of the Administrative Fee.

Section 3.04. (a) Amounts Payable. The Borrower shall punctually repay the Loan in installments on the dates, in the amounts, and in the manner specified in the Note. The outstanding amount of the Loan shall bear interest at a rate per annum equal to the rate or rates of interest set forth in Exhibit B, and shall be payable in accordance with the amortization schedule as specified in Exhibit B attached hereto and more particularly set out in the Note (which amortization schedule is subject to adjustment in accordance with this Agreement and the Note).

On or prior to the Loan Closing Date, the Borrower shall execute the Note to evidence such obligation. In addition, the Borrower shall pay to the Administration an Administrative Fee in accordance with paragraph (c) of this Section.

(b) Late Charges. In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Borrower shall pay (i) a late charge for any payment of principal or interest on the Loan that is received later than the tenth day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate set forth in Exhibit B. Amounts payable pursuant to this paragraph (b) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(c) Administrative Fee. (i) On the date specified in Exhibit B for the first payment of the Administrative Fee and on each August 1 thereafter that the Note remains outstanding and unpaid to and including the date of final maturity of the Note (each such date, an "Administrative Fee Payment Date"), the Borrower shall pay to the Administration an Administrative Fee. Subject to paragraph (iv) below, the Administrative Fee for any Administrative Fee Payment Date shall be the (A) Administrative Fee set forth in Exhibit B or (B) after any date on which the outstanding principal amount of the Loan Commitment is reduced by the Administration by a notice in writing to the Borrower in accordance with this Agreement (other than by reason of the repayment of the principal of the Loan) the Administrative Fee set forth in a notice from the Administration to the Borrower in connection with such reduction. Any adjustment of the Administrative Fee in accordance with the foregoing shall be prospective only, and the Administration shall in no event be obligated to refund any portion of any Administrative Fee payment theretofore received from the Borrower.

(ii) In prescribing the Administrative Fee for a loan with a term of thirty years for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: the Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by the total number of scheduled Administrative Fee Payment Dates. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were $5,000,000 and the Percentage Rate were 5%, and the total number of scheduled Administrative Fee Payment Dates were 31, the Administrative Fee to be paid each year would equal:

$$\frac{\$5{,}000{,}000 \times .05}{31} = \$8{,}064.52$$

(iii) In prescribing the Administrative Fee for a loan with a term of less than thirty years for purposes of paragraph (i) above, the Administration shall employ the

following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: The Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by 30. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were $4,000,000 and the Percentage Rate were 5%, the Administrative Fee to be paid each year would equal:

$$\frac{\$4{,}000{,}000 \times .05}{30} = \$6{,}666.67$$

(iv) The Percentage Rate for each Fiscal Year shall be fixed as a uniform rate for all borrowers receiving loans from the Fund in order to provide sufficient revenues to pay the expenses of the Administration, as approved in the operating budget of the State by the General Assembly of the State; provided, however, that in no event shall the Percentage Rate exceed five percent (5%). In each Fiscal Year the Administration shall review the Percentage Rate then in effect and adjust it for the immediately succeeding Fiscal Year to reflect its approved budget for the immediately succeeding Fiscal Year, a retainage of not more than ten percent (10%) for an operating reserve within the Administration's general account, and other factors as reasonably determined by the Secretary. No later than June 1 following the end of the Session of the General Assembly in each Fiscal Year, the Administration shall notify the Borrower of the newly established Percentage Rate, which shall be the Percentage Rate applicable to the immediately succeeding Fiscal Year, and of any change in the amount of the Administrative Fee payable by the Borrower in such Fiscal Year as a result of the application of such Percentage Rate.

Section 3.05. Sources of Payment. (a) Dedicated Revenues. In accordance with Section 2.02(f) hereof, the principal of and interest on the Note, and any other amounts due from time to time under this Agreement, shall be payable in the first instance from the dedicated source of revenues described in Exhibit E attached hereto.

(b) General Obligation. In addition, the Note constitutes a general obligation of the Borrower, to the payment of which the full faith and credit and taxing power of the Borrower are pledged.

(c) State Withholding. As further security for the payment of the Note and any other amounts due hereunder, the Borrower hereby pledges the following to the Administration and grants a security interest therein to the Administration: (i) as authorized by Section 9-1606(d) of the Act, the Borrower's share of any and all income tax revenues collected by the State from time to time that would otherwise be payable to the Borrower, and (ii) to the maximum extent permitted by law, any and all other tax revenues, grants, and other monies that the Borrower is or may from time to time be entitled to receive from the State or that may at any time be due from the State, or any department, agency, or instrumentality of the State, to the Borrower. The Borrower further agrees that, upon the occurrence of an Event of Default, among

other things, the State Comptroller and the State Treasurer may (i) withhold any such amounts that the Borrower is then or may thereafter be entitled to receive and (ii) at the direction of the Administration, apply the amounts so withheld to the payment of any amounts then due or thereafter becoming due hereunder (including, without limitation, payments under the Note) until the Borrower's obligations hereunder have been fully paid and discharged.

Section 3.06. Unconditional Obligations. The obligations of the Borrower to make payments under the Note as and when due and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any Governmental Authority, any failure of the Administration, the Department or the State to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Agreement, or otherwise or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Administration, the Department or the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

Section 3.07. Loan Commitment. The Borrower acknowledges and agrees that the monies attributable to the Borrower's Loan Commitment are the property of the Administration and are held by the Administration to provide for advances to be made to the Borrower in accordance with this Agreement, or to be otherwise disposed of by the Administration in accordance with this Agreement.

Section 3.08. Reduction of Loan Commitment. The Loan Commitment is subject to reduction in accordance with the provisions of this Section 3.08.

(a) Any portion of the Loan Commitment not advanced to the Borrower under Section 3.03 of this Agreement at the later of (1) two years from the date of this Agreement and (2) the earlier of one year following (i) actual completion of construction of the Project or (ii) the estimated completion date specified on Exhibit B attached hereto, shall no longer be available to be advanced to the Borrower and the amount of the Loan Commitment shall be reduced by an amount equal to the portion of the Loan Commitment not advanced, unless otherwise agreed to by the Administration in writing.

(b) The Administration may, by a notice in writing delivered to the Borrower, reduce the amount of the Loan Commitment if the Administration should for any reason determine that it will be unable to fund the full amount of the Loan Commitment (including, without limitation, a determination that the Eligible Project Costs to be paid with proceeds of the Loan are expected to be less than the maximum amount of the Loan Commitment), or if it determines that the Borrower is not proceeding satisfactorily and expeditiously with the Project

in accordance with schedules and plans provided to the Administration, or if it determines that the Borrower is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions. Such notice shall specify the reason for and the amount of the reduction.

(c) Any reduction in the amount of the Loan Commitment shall not affect the obligation of the Borrower to repay the Loan in accordance with the provisions of this Agreement and the Note.

(d) The Administration shall advise the Borrower in writing of any reduction in the amount of the Loan Commitment. In the event of any such reduction, the Borrower shall repay the Loan in accordance with such revised principal amortization schedule (prepared by applying such amount to reduce the installments of principal due under the Note in inverse order of payment, such that any such reduction is applied first to the last installment of principal due under the Note) as may be prescribed by the Administration in accordance with the provisions of the Note executed in connection therewith. The Administration may require, and the Borrower shall deliver, such certificates, documents, opinions and other evidence as the Administration may deem necessary or advisable in connection with any such reduction in the Loan Commitment. If a new Note is delivered in connection with any such reduction, the Administration shall cancel the Note initially delivered to the Administration by the Borrower pursuant to this Agreement.

Section 3.09. Disclaimer of Warranties. The Administration makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the Administration be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 3.10. Prepayments. The Loan shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the EPA's State Revolving Fund Program Regulations. Otherwise, the Loan may be prepaid by the Borrower, in whole or in part, only at such times and in such amounts, and upon the payment by the Borrower of such prepayment premium or penalty, as the Director, in his or her discretion, may specify and approve.

Section 3.11. Assignment. Neither this Agreement nor the Note may be assigned by the Borrower for any reason without the prior written consent of the Administration. The Administration may transfer, pledge or assign the Note and any or all rights or interests of the Administration under this Agreement without the prior consent of the Borrower.

# ARTICLE IV

# EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Borrower to pay any amount required to be paid hereunder or under the Note when due, which failure shall continue for a period of 20 days;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Administration, unless the Administration shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Administration will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) if (i) at any time any representation made by the Borrower in Section 2.01(f)(ii) is incorrect, or (ii) any other representation made by or on behalf of the Borrower contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Loan Commitment or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Borrower; (ii) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (iii) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Borrower (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Borrower by any court of competent jurisdiction under any law for the relief of debtors .

Section 4.02. Notice of Default. The Borrower shall give the Administration prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Administration shall have the right to take one or more of the following remedial steps:

(a) declare all amounts due hereunder (including, without limitation, payments under the Note) to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

Section 4.04. Attorneys' Fees and Other Expenses. The Borrower shall on demand pay to the Administration the reasonable fees and expenses of attorneys and the Trustee and other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Borrower upon an Event of Default.

Section 4.05. Application of Monies. Any monies collected by the Administration pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

Section 4.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Administration is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administration to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

# ARTICLE V

## MISCELLANEOUS

Section 5.01. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit B attached hereto and to the Administration at Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Administration and the Borrower and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Borrower shall, at the request of the Administration, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement and the Note.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Loan. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only if and to the extent permitted by the

Indenture and by an instrument in writing jointly executed by the Administration and the Borrower.

Section 5.10. Disclaimer of Relationships. The Borrower acknowledges that the obligation of the Administration is limited to making the Loan in the manner and on the terms set forth in this Agreement. Nothing in this Agreement nor any act of either the Administration or of the Borrower shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Borrower and the Administration.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Administration's execution.

Section 5.12. Term of this Agreement. Unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Borrower and the Administration, this Agreement shall continue and remain in full force and effect until the Loan, together with interest and all other sums due and owing in connection with this Agreement or the Loan, have been paid in full to the satisfaction of the Administration. Upon payment in full of the Loan together with interest and all other sums due and owing in connection with this Agreement or the Loan from any source whatsoever, this Agreement shall be terminated.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Borrower of the planning, construction or carrying out of the Project shall not relieve the Borrower of any obligations under this Agreement and any other documents executed in connection with the Loan.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto.

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

(SEAL)

WITNESS:

MARYLAND WATER QUALITY FINANCING ADMINISTRATION

_____

_____
Jag Khuman
Director

(SEAL)

ATTEST:

_____

BORROWER:

_____
Name:
Title:

By:_____
Name:
Title:

Approved for form and legal sufficiency

this ____ day of _____, 2017

_____
Local Attorney for
Borrower

Approved for form and legal sufficiency

this ____ day of _____, 2017

_____
Mary R. Sheppard-Walker
Assistant Attorney General

EXHIBIT A
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

**CONDITIONS TO INITIAL ADVANCE UNDER SECTION 3.03(b)(vi) OF LOAN AGREEMENT:**

NONE

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT:**

The provisions of this Exhibit A shall be deemed to be a part of the foregoing Agreement as if set forth in full therein. In the case of any conflict between this Exhibit A and any provision thereof, the provisions of this Exhibit A shall be controlling, notwithstanding any other provisions contained in the Agreement.

1. The first regularly scheduled payment of interest on the Loan shall be due on August 1, 2017.

2. The Borrower agrees to comply with the Davis-Bacon Act requirements of Section 513 of the Federal Water Pollution Control Act for the entirety of construction contract costs of the Project, and shall include specific language regarding compliance in its contracts and subcontracts.

3. The Borrower agrees to comply with the Use of American Iron and Steel requirement of federal law, which provides that all of the iron and steel products used in the Project are produced in the United States, unless a waiver is granted.

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EXHIBIT A
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT (CONT.):**

4. The Borrower agrees to comply with EPA's Interim Financial Assistance Conflict of Interest Policy, and report any instances of actual or potential conflicts of interest in the award, administration, or monitoring of subawards arising from procurements or other actions. Any conflicts of interest must be immediately disclosed to the Administration for further guidance.
The EPA's Interim Financial Assistance Conflict of Interest Policy is found at: http://www.epa.gov/ogd/epa_interim_financial_assistance_coi_policy.htm

5. If this Project is financed with the use of federal funds under CFDA #: 66.458, the Borrower may be subject to a single audit to be undertaken by an independent auditor in accordance with uniform administrative requirements, cost principles, and audit requirements for federal awards, 2 C.F.R. § 200.501. The Borrower hereby agrees to obtain such single audit, if required by the Single Audit Act.

DRAFT

EXHIBIT B
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

**DESCRIPTION OF THE LOAN**

(1) Project Name(s): Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

(2) Maximum Principal Amount of Loan Commitment: $300,000

(3) Rate of Interest: ___% (*Based upon 25% of the April, 2017 average of the Bond Buyer 11-Bond Index*)

(4) Amortization Schedule:

(a) 30 Years
$1,000 Mini Principal Payment Date: N/A
Date of First of 30 Amortizing Principal Payments: February 1, 2018

(b) Level Principal ____; or
Level Debt Service ___X___; or
Other _____

(5) Annual Administrative Fee: $_____, beginning August 1, 2017.

(6) Estimated Completion Date of Project(s): December 31, 2017

(7) Default Rate: ___% (*Based upon the April, 2017 average of the Bond Buyer 11-Bond Index*)

(8) Description of Project:

The project involves improvements to the existing Cumberland sanitary and combined sewer infrastructure. Specifically, the project consists of the planning, design, and construction of gravity and pressure sewers, replacement and rehabilitation of existing sewer lines, and upgrades of pumping stations, and other related improvements to prevent combined sewer overflows (CSO). The project will help to improve the water quality in the Potomac River, a tributary to the Chesapeake Bay. This funding request is for site evaluation costs only.

DRAFT

EXHIBIT C
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

**PROJECT BUDGET**

Breakdown of Eligible Project Costs:

A. Portion of Eligible Project Costs to be directly financed:

| Description | Allocated Amount of Loan* |
|---|---|
| Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/ inspection fees and contingencies | |
| **Subtotal Loan:** | $217,299 |

B. Portion of Eligible Project Costs for which Borrower will be reimbursed at closing, which the Borrower hereby certifies were paid or incurred prior to the date of the Agreement, in anticipation of being reimbursed through a loan from the Administration (and subject to compliance with Section 3.03(a) of the Agreement):

| Description | Allocated Amount of Loan |
|---|---|
| Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/ inspection fees and contingencies | |
| **Total Reimbursement at Closing:** | $ 82,701 |
| **Total Loan:** | $300,000 |

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EXHIBIT C
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

C. Construction Cash Draw Schedule*

| Federal Quarter | Cash Disbursements* |
|---|---|
| FFY 17 Q3 (Apr 17 – June 17) | $100,000 |
| FFY 17 Q4 (Jul 17 – Sep 17) | $150,000 |
| FFY 18 Q1 (Oct 17 – Dec 17) | $ 50,000 |
| **Total Disbursements:** | $300,000 |

* SUBJECT TO CHANGE WITH CONSENT OF THE ADMINISTRATION IN ITS DISCRETION UNDER SECTION 2.02(d) OF THIS AGREEMENT

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EXHIBIT D
to Loan Agreement

OPINION OF BORROWER'S COUNSEL

[LETTERHEAD OF COUNSEL TO BORROWER]

[CLOSING DATE]

DRAFT

Maryland Water Quality
Financing Administration
1800 Washington Blvd.
Baltimore, Maryland 21230-1718

Ladies and Gentlemen:

We are counsel to [NAME OF BORROWER], a [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower") in connection with the loan (the "Loan") by Maryland Water Quality Financing Administration (the "Administration") to the Borrower of funds to finance all or a portion of the costs of a project (the "Project") described in Exhibit B to the Loan Agreement dated as of _____, 2017 (the "Agreement") by and between the Administration and the Borrower.

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the Agreement and the Borrower's $ Water Quality Bond, Series 2017, dated _____, 2017 (the "Note"). The Agreement and the Note are referred to herein collectively as the "Loan Documents". Based on such review, and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a validly created and existing [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland, possessing authority to acquire, construct and operate the Project and to enter into the Loan Documents and perform its obligations thereunder.

(b) The Borrower has duly authorized, executed and delivered the Loan Documents and, assuming due authorization, execution and delivery of the Agreement by the Administration, the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

(c) The Note is a general obligation of the Borrower to which its full faith and credit is pledged, payable if and to the extent not paid from other sources as described in the Agreement from ad valorem taxes, unlimited as to rate and amount, which the Borrower is empowered to levy on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation by the Borrower.

(d) The Loan Documents and the enforceability thereof are subject to bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity.

(e) To the best of our knowledge after reasonable investigation, the Borrower has all necessary licenses, approvals and permits required to date under federal, state and local law to own, construct and acquire the Project.

(f) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, the acquisition and construction of the Project nor the fulfillment of or compliance with the terms and conditions of the Loan Documents conflicts with or results in a breach of or default under any of the terms, conditions or provisions of the charter or laws governing the Borrower (including any limit on indebtedness) or, to the best of our knowledge after reasonable investigation, any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or by which the Borrower or its properties are otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Documents.

(g) To the best of our knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or threatened against or affecting the Borrower that, if adversely determined, would materially affect the ability of the Borrower to perform its obligations under the Loan Documents, which has not been disclosed in writing to the Administration.

We hereby authorize Bond Counsel to the Administration to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

DRAFT

EXHIBIT E
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Evitts Creek CSO Phase3 – Gravity Sewer – Site Evaluation

**DESCRIPTION OF DEDICATED REVENUES***

Sewer user charges, including any and all fees for use of the public sewer system or connection to it.

* The identification of the dedicated source or sources of revenues above is intended to specify a source or sources of revenues available in sufficient amount to provide for the payment of the costs of operating and maintaining the Project as well as the payment of the costs of debt service of any borrowing incurred to finance the Project. The specification of a dedicated source or sources of revenues above is not intended to constitute an undertaking by the Borrower to pledge, segregate or otherwise set aside any specific funds of the Borrower with the expectation that such funds would be used to pay the debt service on the Loan.

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EXHIBIT F
to Loan Agreement

$[MAX. AMT.] R-1

REGISTERED

UNITED STATES OF AMERICA
STATE OF MARYLAND

[NAME OF BORROWER]
WATER QUALITY BOND, SERIES 2017
Dated _____, 2017

PAYMENTS OF PRINCIPAL AND INTEREST ON THIS BOND ARE MADE BY CHECK, DRAFT OR ELECTRONIC FUNDS TRANSFER TO THE REGISTERED OWNER AND IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

REGISTERED OWNER: Maryland Water Quality Financing Administration

_____, a [body politic and corporate] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower"), hereby acknowledges itself obligated to pay to the Registered Owner shown above, the principal amount of $_____ (the "Maximum Principal Amount") or so much thereof as shall have been advanced from time to time under the terms of the Loan Agreement dated as of _____, 2017 (the "Loan Agreement") by and between the Borrower and the Maryland Water Quality Financing Administration (the "Administration"), plus interest on the unpaid principal advanced under the terms of the Loan Agreement at the rate of _____ per centum (___%) per annum.

The principal advanced under the Loan Agreement shall be paid in installments on the dates and in the amounts as set forth in the following schedule, as such schedule may be amended in accordance with the terms hereof:

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| Due [February 1] | Principal Amount | Due [February 1] | Principal Amount |
|---|---|---|---|
| 2018 | | 2027 | |
| 2019 | | 2028 | |
| 2020 | | 2029 | |
| 2021 | | 2030 | |
| 2022 | | 2031 | |
| 2023 | | 2032 | |
| 2024 | | 2033 | |
| 2025 | | 2034 | |
| 2026 | | 2035 | |

If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) in accordance with Section 3.08 of the Loan Agreement, the Maximum Principal Amount shall be reduced accordingly and the Maximum Principal Amount as so reduced shall be amortized in accordance with Section 3.08 of the Loan Agreement. The Administration shall deliver, and the Borrower shall acknowledge in writing, a certificate setting forth such reamortized payment schedule, which shall be attached hereto and shall replace and supersede for all purposes the foregoing payment schedule. Any such reduction shall not affect the obligation of the Borrower to pay the principal of and interest on this bond as and when the same shall become due.

Notwithstanding the foregoing, all outstanding unpaid principal amounts advanced under the Loan Agreement, if not previously due hereunder, shall be due on that date which is 20 years after the date of completion of the Project (as defined in the Loan Agreement), as certified by the Borrower to the Administration pursuant to Section 2.02(d) of the Loan Agreement.

Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the date of the respective advances of such principal amount, and shall be paid on _____, 20___, and semiannually thereafter on the 1st day of _____ and _____ in each year until the principal amount hereof has been paid.

This bond is subject to prepayment only in accordance with Section 3.10 of the Loan Agreement.

Both the principal of and interest on this bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mails before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the [INSERT BORROWER'S AUTHORIZED OFFICER].

DRAFT

This bond is issued pursuant to and in full conformity with the provisions of [INSERT BORROWER'S LOCAL ACT(S)] and the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as amended), and by virtue of due proceedings had and taken by the Borrower, particularly [AN ORDINANCE AND OR A RESOLUTION] (numbered ____) [INSERT BORROWER'S AUTHORIZING ORDINANCE OR RESOLUTION] (collectively, the "Resolution") adopted by Borrower.

This bond, together with the Loan Agreement, evidences the Loan (as defined in the Loan Agreement) to the Borrower from the Maryland Water Quality Financing Administration. In accordance with the Loan Agreement, the principal amount of the Loan, being the amount denominated as principal under this bond, is subject to reduction or adjustment by the Administration in accordance with the Loan Agreement.

The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the prompt payment of the principal of and interest on this bond according to its terms, and the Borrower does hereby covenant and agree to pay the principal of and interest on this bond at the dates and in the manner prescribed herein.

This bond is transferable only after the first principal payment date as set forth above or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the Borrower at the office of the [INSERT BORROWER'S AUTHORIZED OFFICERS] by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the [INSERT BORROWER'S AUTHORIZED OFFICER], duly executed by the registered owner or his duly authorized attorney. The Borrower shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Borrower may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Maryland and the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution or statutes.

DRAFT

IN WITNESS WHEREOF, this bond has been executed by the manual signature of the [INSERT AUTHORIZED OFFICERS] and the seal of the Borrower has been affixed hereto, attested by the manual signature of the [INSERT AUTHORIZED OFFICER], all as of the __ day of ____, 2017.

(SEAL)

ATTEST:

_____ By: _____

[OFFICER] [OFFICER]

DRAFT

Regular Council Agenda
May 16, 2017

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**Description**

Resolution authorizing the issuance and sale of a General Obligation Installment Bond in the principal amount not to exceed $2,992,819 to be designated **"Mayor and City Council of Cumberland Water Quality Bond, Series 2017B,"** to be used to finance or reimburse costs of the Combined Sewer Overflow (CSO) Storage Facility Project and related costs

**Approval, Acceptance / Recommendation**

Ordinance No. 3808 was previously passed on July 19, 2016 to be effective August 18, 2016 to authorize this borrowing.

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

RESOLUTION NO. R2017-_____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY"), PURSUANT TO THE AUTHORITY OF SECTIONS 19-301 TO 19-309, INCLUSIVE, OF THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, SECTIONS 9-1601 TO 9-1622, INCLUSIVE, OF THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, SECTIONS 81 AND 82A OF THE CHARTER OF THE CITY OF CUMBERLAND, AS REPLACED, SUPPLEMENTED OR AMENDED, AND ORDINANCE NO. 3808, PASSED BY THE MAYOR AND CITY COUNCIL OF THE CITY ON JULY 19, 2016 AND EFFECTIVE ON AUGUST 18, 2016, TO ISSUE AND SELL, UPON ITS FULL FAITH AND CREDIT, A GENERAL OBLIGATION INSTALLMENT BOND IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION NINE HUNDRED NINETY-TWO THOUSAND EIGHT HUNDRED NINETEEN DOLLARS ($2,992,819) TO BE DESIGNATED "MAYOR AND CITY COUNCIL OF CUMBERLAND WATER QUALITY BOND, SERIES 2017B" OR AS OTHERWISE PROVIDED HEREIN, THE BOND TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING OR REIMBURSING COSTS OF A PROJECT THAT THE CITY GENERALLY REFERS TO AS THE COMBINED SEWER OVERFLOW (CSO) STORAGE FACILITY PROJECT AND RELATED COSTS AS PROVIDED HEREIN; PRESCRIBING, APPROVING AND ADOPTING THE FORM AND TENOR OF THE

BOND, THE TERMS AND CONDITIONS FOR THE ISSUANCE AND SALE OF THE BOND BY PRIVATE SALE, WITHOUT PUBLIC BIDDING, TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION (THE "ADMINISTRATION"), AND ALL OTHER DETAILS INCIDENT THERETO, AND AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ADJUST AND/OR FIX CERTAIN DETAILS OF THE BOND; APPROVING, AND AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF, A LOAN AGREEMENT WITH THE ADMINISTRATION PURSUANT TO WHICH ADVANCES WILL BE MADE UNDER THE BOND; AUTHORIZING EACH OF THE MAYOR, THE CITY ADMINISTRATOR AND THE COMPTROLLER TO TAKE CERTAIN ACTIONS WITH RESPECT TO THE LOAN AGREEMENT, AND DESIGNATING EACH OF THE MAYOR, THE CITY ADMINISTRATOR AND THE COMPTROLLER AS AN "AUTHORIZED OFFICER" FOR PURPOSES OF THE LOAN AGREEMENT; PROVIDING FOR THE DISBURSEMENT OF ADVANCES OF THE BOND; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BOND WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM SERVING THE CITY AND SURROUNDING AREAS, INCLUDING CHARGES FOR THE USE OF OR CONNECTION TO SUCH SYSTEM; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR THE PROMPT PAYMENT OF THE INSTALLMENTS OF PRINCIPAL OF AND INTEREST ON THE BOND; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND

INTEREST ON THE BOND; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE BOND ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BOND; MAKING OR PROVIDING FOR THE MAKING OF CERTAIN REPRESENTATIONS, COVENANTS OR DESIGNATIONS RELATING TO THE TAX-EXEMPT STATUS OF INTEREST PAYABLE ON THE BOND; PROVIDING THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ORDINANCE NO. 3808 OR THIS RESOLUTION, THE CITY SHALL USE AND APPLY PROCEEDS OF THE BOND ONLY AS PERMITTED BY THE LOAN AGREEMENT, THE CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENT) AND THE ACT (AS DEFINED IN THE LOAN AGREEMENT); PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BOND.

RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland and a municipality within the meaning of the Enabling Act identified below (the "City"), is authorized and empowered by Sections 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "MWQFA Act"), and Sections 81 and 82A

of the Charter of the City of Cumberland, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds.

2. Pursuant to Ordinance No. 3808, passed pursuant to the authority of the Enabling Act, the MWQFA Act and Sections 81 and 82A of the Charter by the Mayor and City Council of the City (the "Mayor and City Council") on July 19, 2016 and effective on August 18, 2016 (the "Ordinance"), the City authorized the issuance and sale to the Maryland Water Quality Financing Administration (the "Administration") from time to time, upon the City's full faith and credit, of one or more series of general obligation bonds in an aggregate principal amount not to exceed Five Million Three Hundred Eighty-eight Thousand Dollars ($5,388,000) (the "Authorized Bonds"), and the Ordinance provides that any such series may consist of one or more bonds and that any bond may be issued in installment form and/or draw-down form.

3. The Ordinance provides that the proceeds of the Authorized Bonds are to be used and applied for the public purpose of financing, reimbursing or refinancing costs incurred in connection with a project that the City generally refers to as the Combined Sewer Overflow (CSO) Storage Facility Project, which project activities include, as applicable, the acquisition or payment of necessary property rights and equipment, related site and utility improvements and related architectural, engineering, planning, design, bidding, acquisition, construction, improvement, installation, modification, demolition, removal, renovation, reconstruction, rehabilitation, equipping, inspection, construction management and permitting expenses, costs of related activities, improvements and appurtenances, and related administrative, financial and legal expenses and costs of issuance (collectively, the "Project"), all to the extent permitted by the Administration.

4. The City has determined that it is in the best interest of the City and its citizens to issue and sell to the Administration at this time a single series of general obligation bonds in the form of a single general obligation installment bond, in a portion of the maximum aggregate principal amount of the Authorized Bonds, in order to finance or reimburse costs of the Project in accordance with, and pursuant to, the authority contained in the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, and upon the terms and conditions set forth in this Resolution, the proceeds of which general obligation installment bond are to be used and applied as herein set forth.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

SECTION 1. (a) The Recitals to this Resolution are deemed a substantive part of this Resolution and incorporated by reference herein. Capitalized terms used in this Resolution and not otherwise defined in the Sections of this Resolution shall have the meanings given to such terms in the Recitals.

(b) References in this Resolution to any official by title shall be deemed to refer (i) to any official authorized under the Charter, the code of City ordinances (the "City Code") or other applicable law or authority to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter, the City Code or other applicable law or authority, (iii) to any person who serves in a "deputy", "associate" or "assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy, associate or assistant in accordance with the Charter, the City Code or other applicable law or authority, and/or (iv) to the extent an identified official commonly uses another

title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein. The titles of the officials of the City referred to in this Resolution correspond to the titles of such officials as provided for in the Charter.

SECTION 2. (a) Pursuant to the authority of the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, the City hereby determines to issue and sell, upon its full faith and credit, a general obligation installment bond for the public purpose of financing or reimbursing costs of components of the Project, all to the extent permitted by the Administration. Such bond shall be issued in the original principal amount not to exceed Two Million Nine Hundred Ninety-two Thousand Eight Hundred Nineteen Dollars ($2,992,819) and shall be designated as the "Mayor and City Council of Cumberland Water Quality Bond, Series 2017B" or by such additional or different designation as may be required by the Administration (the "Bond"). The Mayor of the City (the "Mayor"), on behalf of the City, with the advice of the City Administrator of the City (the "City Administrator") and the Comptroller of the City (the "Comptroller"), is hereby authorized and directed to determine and approve the final original principal amount of the Bond, provided that the final original principal amount of the Bond shall not exceed Two Million Nine Hundred Ninety-two Thousand Eight Hundred Nineteen Dollars ($2,992,819), such determination and approval to be evidenced conclusively by the Mayor's execution and delivery of the Bond reflecting such finally determined original principal amount pursuant to Sections 5 and 7 hereof.

(b) Proceeds of the Bond shall be applied to costs of the Project only as permitted by the Administration.

(c) The proceeds of the Bond are hereby appropriated for the purposes set forth in this Resolution.

(d) The Bond evidences a loan from the Administration that has been given a project name of "Cumberland CSO Storage Facility (01-10-WWTP)" by the Administration.

SECTION 3. (a) The Bond shall be issued and sold upon the full faith and credit of the City, shall be dated the date of its delivery, shall be numbered RB-1 and shall be issued in the form of a single, fully-registered installment bond, without coupons attached.

(b) Subject to the provisions of subsections (d) and (e) below and the further provisions of this subsection (b), the principal amount of the Bond advanced under the Loan Agreement (as defined in Section 8(b) hereof) shall be paid in thirty (30) installments on February 1 in each of the years 2020 to 2049, inclusive, in such amounts as shall be determined by the Administration to achieve roughly level debt service payments (on an annualized basis, and exclusive of any periods in which interest only is payable) after giving effect to the interest rate provided for in subsection (c) of this Section 3. The Mayor, on behalf of the City, is hereby authorized and empowered to approve the amortization schedule for the Bond, calculated as described in this subsection (b), but subject to the further provisions of subsection (d) below, provided that the final original principal amount of the Bond does not exceed Two Million Nine Hundred Ninety-two Thousand Eight Hundred Nineteen Dollars ($2,992,819), such approval to be evidenced conclusively by the Mayor's execution and delivery of the Bond in final form in accordance with the provisions of Sections 5 and 7 of this Resolution.

(c) Subject to the provisions of subsections (d) and (e) below, the Bond, or so much of the principal amount thereof as shall have been advanced from time to time under the terms of the Loan Agreement, shall bear interest from its dated date at an annual rate of interest equal to

25% of the average of the Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Bond is delivered, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the dates of the respective advances of such principal amount, and shall be paid on August 1, 2017, and semiannually thereafter on the 1st day February and August in each year until the principal amount of the Bond has been paid.

(d) The payment dates provided for in the foregoing subsections (b) and (c) are based on an anticipated date of delivery for the Bond in May 2017 and an estimated completion date for the Project in June 2019. Notwithstanding the foregoing, in the event the Bond, for whatever reason, is not delivered in May 2017 or the estimated completion date for the Project is determined prior to the date of delivery of the Bond to be earlier or later than June 2019, the Mayor, on behalf of the City, is hereby authorized and directed to adjust and change such principal and/or interest payment dates provided for or contemplated in subsections (b) and (c) above (including, without limitation, by providing for a first minimum principal payment amount and/or by adjusting the dates on which principal and/or interest will commence and otherwise be due) and to approve the amortization schedule for the Bond prepared by the Administration on a roughly level debt service basis (on an annualized basis, and exclusive of any interest only payments or any first minimum principal payment due on the Bond specified by the Administration) and reflecting any such adjustment in payment dates, all as required by the Administration in order to meet the requirements of Section 9-1605(d)(1)(ii) of the MWQFA Act or to meet other requirements of the Administration, such approval and adjustment to be evidenced conclusively by the Mayor's execution and delivery of the Bond in final form in accordance with the provisions of Sections 5 and

7 of this Resolution. In addition, the Mayor, on behalf of the City, is hereby authorized and directed to approve any adjustments to the amortization schedule for the Bond that are determined to be required by applicable law or are necessary to meet requirements of the Administration (including, without limitation, by adjusting principal and/or interest payment dates and/or the maturity date).

(e) If the Administration determines at any time following delivery of the Bond to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) relating to the Bond in accordance with the provisions of Section 3.08 of the Loan Agreement, the Maximum Principal Amount (as defined in the Bond) of the Bond shall be reduced accordingly and such Maximum Principal Amount as so reduced shall be amortized as provided in the Loan Agreement. In such event, as determined by the Administration, the City may execute and deliver (in the manner provided in Sections 5 and 7 hereof for the original delivery of the Bond) a new Bond evidencing such reduction in the Loan Commitment and/or the Mayor, on behalf of the City, may execute and delivery any certificates, documents or instruments acknowledging and providing for such reduction, as required by the Administration pursuant to Section 3.08 of the Loan Agreement.

(f) The City shall pay (i) a late charge for any payment of principal of or interest on the Bond that is received later than the tenth (10th) day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate provided for in the Loan Agreement, which Default Rate shall be equal to 100% of the average of the Bond Buyer 11-Bond Index for the calendar month prior to the month in which the Bond is delivered, provided that the rate determined by such calculation may be rounded down by the Administration in its sole discretion. Amounts payable pursuant to this subsection (f) shall be immediately due and payable to the Administration,

and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(g) Both the principal of and interest on the Bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the City Clerk of the City (the "City Clerk").

(h) Notwithstanding the foregoing provisions of this Section 3, in the event of a discrepancy between the provisions of the Bond or the Loan Agreement and this Section 3, the provisions of the Bond or the Loan Agreement, as applicable, shall control.

SECTION 4. The Bond shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the United States Environmental Protection Agency's (and its successors) State Revolving Fund Program Regulations. Otherwise, the Bond may be prepaid by the City, in whole or in part, only at such times and in such amounts, and upon payment by the City of such prepayment premium or penalty, as the Director of the Administration, in his or her discretion, may specify and approve.

SECTION 5. The Bond shall be executed in the name of the City and on its behalf by the Mayor. The corporate seal of the City shall be affixed to the Bond and attested by the signature of the City Clerk. In the event any official whose signature shall appear on the Bond shall cease to be such official prior to the delivery of the Bond, or, in the event any such official whose signature shall appear on the Bond shall have become such after the date of delivery

thereof, the Bond shall nevertheless be a valid and binding obligation of the City in accordance with its terms.

SECTION 6. The Bond shall be transferable only after the first principal payment date as set forth in the Bond or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the City at the office of the City Clerk, by the registered owner in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the City Clerk, duly executed by such registered owner or his duly authorized attorney. The City shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the City shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The City may deem and treat the party in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof and interest due thereon and for all other purposes. References in this Resolution to the Bond shall be deemed to refer to any bond or bonds transferred in accordance with the provisions of this Section 6, and references in this Resolution to the

registered owner of the Bond shall be deemed to refer to all such registered owners contemplated by this Section 6, as applicable.

SECTION 7. Except as provided hereinafter, the Bond shall be issued in substantially the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement that is attached hereto as Exhibit A. Appropriate variations and insertions may be made by the Mayor to the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement attached hereto as Exhibit A to provide dates, numbers and amounts, including, without limitation, to reflect matters determined in accordance with the provisions of Sections 2 and 3 hereof, and other modifications not altering the substance of such form may be made by the Mayor. All of the covenants contained in the form of bond set forth as Exhibit F to the substantially final form of the Loan Agreement attached hereto as Exhibit A, as the same may be finally completed as provided in this Section 7, are hereby adopted by the City as and for the form of obligation to be incurred by the City, and the covenants and conditions are hereby made binding upon the City, including the promise to pay therein contained.

SECTION 8. (a) As authorized by the MWQFA Act, the City hereby determines to sell the Bond to the Administration by private sale, without public bidding, which sale by private sale is hereby deemed by the City to be in its best interest and in the interest of its citizens due, in part, to the benefit of the structure of the Bond as a draw-down obligation and the beneficial interest rate offered by the Administration. Therefore, and pursuant to the authority of the Enabling Act, the MWQFA Act, Sections 81 and 82A of the Charter and the Ordinance, the Bond shall be sold to the Administration by private sale, without public bidding, for a price of the par amount of the Bond or so much of the par amount of the Bond as is advanced to the City in accordance with the provisions of the Loan Agreement. The Bond is referred to in the Loan Agreement as the "Note".

(b) The Bond shall be sold to the Administration and the purchase price of the Bond shall be advanced to the City in accordance with the provisions of the Loan Agreement relating to the Bond (the "Loan Agreement"), the substantially final form of which is attached hereto as Exhibit A.

(c) The substantially final form of the Loan Agreement attached hereto as Exhibit A reflects the expectation, as of the date of introduction of this Resolution, that the final principal amount of the Bond will be Two Million Nine Hundred Ninety-two Thousand Eight Hundred Nineteen Dollars ($2,992,819). The Mayor, on behalf of the City, is hereby authorized and directed to complete, execute and deliver the Loan Agreement for and in the name of the City with such changes, insertions and deletions as are approved by the Mayor to reflect matters determined in accordance with Sections 2, 3 and 8 hereof, to comply with program requirements of the Administration, to complete the exhibits to the substantially final form of the Loan Agreement attached hereto as Exhibit A, or as are determined by the Mayor not to be materially adverse to the interests of the City; the Mayor's approval of any such changes, insertions and deletions shall be evidenced conclusively by the Mayor's execution and delivery of the final form of the Loan Agreement containing the same.

(d) Notwithstanding anything to the contrary contained in this Resolution, advances under the Loan Agreement or the Bond, payment or prepayment of the principal of and interest on the Bond, and transfer or exchange of the Bond shall be made in accordance with the provisions of the Loan Agreement. In the event of a discrepancy between the provisions of this Resolution and the Loan Agreement, the provisions of the Loan Agreement shall control. The City agrees to abide by and perform the covenants and agreements set forth in the Loan Agreement as

finally executed and delivered in accordance with the provisions of this Section 8 as though such covenants and agreements were set forth in full in this Resolution.

(e) The City hereby reconfirms the provisions of Section 9 of the Ordinance, which authorized and directed the City to pay any fees or costs provided for in the Loan Agreement which are not payable from Bond proceeds, including, without limitation, any administrative fees and ongoing fees or costs, and acknowledges that its obligation to pay such amounts shall be absolute and unconditional as provided in the Loan Agreement.

(f) The City hereby reconfirms the provisions of Section 6(b) of the Ordinance, which acknowledged that the provisions of the Loan Agreement allow for, among other remedies, all payments on the Bond to be declared immediately due and payable upon the occurrence of any event of default provided for in the Loan Agreement.

(g) As security for payment of the Bond and the other amounts due under the Loan Agreement, the City hereby acknowledges, confirms and agrees that the pledge of moneys that the City is entitled to receive from the State of Maryland, including the City's share of the State income tax, as authorized by Section 9-1606(d) of the MWQFA Act and provided for in Section 7 of the Ordinance, is set forth in Section 3.05(c) of the Loan Agreement.

SECTION 9. (a) As soon as may be practicable after the adoption of this Resolution, the Bond shall be suitably prepared in definitive form, executed and delivered to the Administration on a date mutually satisfactory to the Administration and the City Administrator. The Mayor, the City Administrator, the Treasurer of the City (the "Treasurer"), the Comptroller, the City Clerk and all other appropriate officials and employees of the City are hereby expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bond to the Administration and to negotiate, approve, execute and

deliver all documents, certificates and instruments necessary or appropriate in connection therewith, to the extent such actions are within the spheres of their respective responsibilities.

(b) Each of the Mayor, the City Administrator and the Comptroller is hereby expressly authorized to take any necessary actions under the Loan Agreement or the Bond in order to requisition advances on behalf of the City. Each of the Mayor, the City Administrator and the Comptroller is hereby expressly designated as an "Authorized Officer" for purposes of the Loan Agreement.

SECTION 10. Each advance of the proceeds of the Bond shall be paid directly to the City and shall be deposited by the Treasurer or other appropriate City official in the proper municipal accounts, or shall be paid at the direction of the Authorized Officer, or shall be paid as otherwise required by the Administration. Advances under the Bond shall be used and applied by the City exclusively and solely for the public purpose described in Section 2 hereof. Nothing in this Resolution shall be construed to authorize the expenditure of any moneys except for a proper public purpose.

SECTION 11. (a) The full faith and credit and unlimited taxing power of the City are hereby pledged to the prompt payment of the principal of and interest on the Bond as and when the same are payable and to the levy and collection of the taxes hereinbelow described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The City shall levy or cause to be levied, for each and every fiscal year during which the Bond may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the payment, when due, of the principal of and interest on the Bond payable in each such fiscal year and, in the event the proceeds from the collection of the taxes

so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency. The City hereby covenants with the registered owner of the Bond to take any action that lawfully may be appropriate from time to time during the period that the Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(b) Notwithstanding the provisions of subsection (a) above, the principal of and interest on the Bond will be payable in the first instance from revenues received in connection with the operation of the wastewater system serving the City and surrounding areas, including charges for the use of or connection to such system, all to the extent such revenues are lawfully available for such purpose. To the extent of any such revenues received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(c) The foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on the Bond from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on the Bond any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if such funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project or projects which the Bond is issued to finance or are otherwise available for such purpose, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

(d) Wastewater system revenues are intended to be the dedicated source of revenues with respect to the Bond required by Section 9-1605(d)(1)(iii) of the MWQFA Act. Such

revenues may be referred to by similar, but not exact, references on any applicable exhibits to the Loan Agreement.

(e) References to the levying of taxes provided for in this Section 11 are intended to mean the imposition of taxes as provided for in the Enabling Act.

SECTION 12. (a) Any two or more of the Mayor, the Treasurer and the Comptroller, acting in concert, are the officials of the City responsible for the issuance of the Bond within the meaning of Section 1.148-2(b)(2) of the U.S. Treasury Regulations (the "Treasury Regulations"). Any two or more of the Mayor, the Treasurer and the Comptroller, acting in concert, also shall be the officials of the City responsible for the execution and delivery (on the date of delivery of the Bond) of a certificate of the City (the "Section 148 Certificate") that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations, and such official(s) are hereby authorized and directed to execute and deliver the Section 148 Certificate to counsel rendering an opinion on the validity and tax-exempt status of the Bond on the date of delivery thereof.

(b) The City shall set forth in the Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any monies, securities or other obligations to the credit of any account of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code or the Treasury Regulations (collectively, the "Bond Proceeds"). The City covenants with the registered owner of the Bond that the facts, estimates and circumstances set forth in the Section 148 Certificate will be based on the City's reasonable expectations on the date of issuance of the Bond and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The City covenants with the registered owner of the Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations, and that it will comply with those provisions of Section 148 of the Code and the Treasury Regulations as may be applicable to the Bond on its date of delivery and which may subsequently lawfully be made applicable to the Bond as long as the Bond remains outstanding and unpaid.

(d) In connection with the execution and delivery of the Section 148 Certificate, the authorized officials provided for in this Section 12 are hereby authorized and empowered, on behalf of the City, to make any designations, elections, determinations or filings on behalf of the City provided for in or permitted by the Code and the Treasury Regulations and to reflect the same in the Section 148 Certificate and/or the IRS Form 8038-G filed in connection with the issuance of the Bond or any other documentation deemed appropriate by bond counsel to the City; provided that, only one such identified official must sign the IRS Form 8038-G.

SECTION 13. The City specifically covenants that it will comply with the provisions of the Code applicable to the Bond, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds of the Bond, the use of such proceeds and the facilities financed with such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of the Bond or payments in lieu thereof. The City further covenants that it shall make such use of the proceeds of the Bond, regulate the investment of the proceeds thereof and take such other and further actions as may be required to maintain the exemption from federal income taxation of interest on the Bond. All officials, officers, employees and agents of the City are hereby authorized

and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond as may be necessary or appropriate.

SECTION 14. Notwithstanding anything to the contrary contained in the Ordinance or this Resolution, the City shall use and apply proceeds of the Bond only as permitted by the Loan Agreement, the Clean Water Act (as defined in the Loan Agreement) and the Act (as defined in the Loan Agreement).

SECTION 15. The provisions of this Resolution shall be liberally construed in order to effectuate the transactions contemplated by this Resolution.

[CONTINUED ON FOLLOWING PAGE]

SECTION 16. This Resolution shall become effective upon its adoption.

MAYOR AND CITY COUNCIL
OF CUMBERLAND

(SEAL)

_____
Brian K. Grim, Mayor

ATTEST:

_____
Marjorie A. Woodring, City Clerk

Introduced: _____, 2017

Adopted: _____, 2017

Effective: _____, 2017

#195972;10002.064

# EXHIBIT A

## FORM OF LOAN AGREEMENT

[See Attached]

# LOAN AGREEMENT

By and Between

MARYLAND WATER QUALITY
FINANCING ADMINISTRATION

and

MAYOR AND CITY COUNCIL OF CUMBERLAND

Dated as of May __, 2017

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# LOAN AGREEMENT

THIS LOAN AGREEMENT, made this __th day of May, 2017, between the Maryland Water Quality Financing Administration (the "Administration"), a unit of the Department of the Environment (the "Department") of the State of Maryland (the "State"), and Mayor and City Council of Cumberland, a municipal corporation of the State (the "Borrower").

## RECITALS

Title VI of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act"), as amended by the Water Quality Act of 1987 ("Title VI"), authorizes the Environmental Protection Agency ("EPA") to award grants to qualifying States to establish and capitalize State water pollution control revolving funds ("SRFs") for the purpose of providing loans and certain other forms of financial assistance (but not grants) to finance, among other things, the construction and improvement of publicly-owned wastewater treatment facilities and the implementation of estuary conservation management plans and nonpoint source management programs.

As contemplated by Title VI, the General Assembly of the State at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622 of the Environment Article of the Annotated Code of Maryland, as amended (the "Act"), establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the "Fund") to be maintained and administered by the Administration. The Act authorizes the Administration, among other things, to make a loan from the Fund to a "local government" (as defined in the Act) for the purpose of financing all or a portion of the cost of a "wastewater facility" project (as defined in the Act).

The Borrower, which is a "local government" within the meaning of the Act, has applied to the Administration for a loan from the Fund to assist in the financing of a certain project or projects of the Borrower (the "Project," as defined herein) which constitutes a "wastewater facility" within the meaning of the Act. The Project is one designated for funding in an Intended Use Plan promulgated by the Administration in accordance with regulations issued by the EPA pursuant to Title VI, and the Project conforms to the applicable "county plan" adopted pursuant to the requirements of Subtitle 5 of Title 9 of the Environment Article of the Annotated Code of Maryland, as amended.

The Director of the Administration has determined that the making of a loan to the Borrower for the purpose of assisting the financing of the Project, on the terms and conditions hereinafter set forth, is necessary and desirable in the public interest, will promote the health, safety and welfare of the inhabitants of the State and the United States by assisting in the prevention of pollution of the environment, and will further the purposes of Title VI and the Act.

The Act authorizes the Administration, subject to the prior approval of the Secretary of the Department and the Board of Public Works, to issue its revenue bonds for the purpose of providing monies for deposit to the Fund. The Administration may issue and sell one or more series of such revenue bonds (the "Bonds") for the purpose of providing monies for

deposit to the Fund in an amount sufficient, together with certain other monies expected to be available for that purpose, to enable the Administration to make, or reimburse the Administration for making, a loan to the Borrower and certain other entities to assist in the financing of projects, all as contemplated by the Administration's Intended Use Plan. The revenues from this loan and such other loans, whether or not funded from the proceeds of Bonds, may be pledged by the Administration to secure Bonds.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Administration, each intending to be legally bound, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

Section 1.01. Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Act" means the Maryland Water Quality Financing Administration Act, Sections 9-1601 through 9-1622 of the Environment Article, Annotated Code of Maryland, and all acts supplemental thereto or amendatory thereof.

"Administration" means the Maryland Water Quality Financing Administration, a unit of the Department of the Environment of the State, and its successors and assigns.

"Administrative Fee" means the fee payable by the Borrower pursuant to this Agreement for the general administrative services and other functions and expenses of the Administration.

"Agreement" means this Loan Agreement, including the Exhibits attached hereto and any amendments hereto.

"Application" means the application for the Loan submitted by the Borrower to the Administration, together with any amendments thereto.

"Authorized Officer" means, in the case of the Borrower, any person authorized by law or by a resolution of the governing body of the Borrower to perform any act or execute any document.

"Board" means the Board of Public Works of the State.

"Bonds" means any series of revenue bonds issued by the Administration under the Act.

"Bond Counsel" means a law firm acceptable to the Administration whose legal opinions are generally accepted by purchasers of municipal bonds.

"Borrower" means the local government (as defined in the Act) that is identified in the first paragraph of this Agreement, and its successors and assigns.

"Business Day" means a day other than a Saturday, Sunday, or day on which the offices of the Administration or commercial banks in the State are authorized or obligated to remain closed.

"Change Orders" means any amendments or modifications to any Plans and Specifications or any general construction contract for the Project.

"Clean Water Act" means the Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. §1251 et seq., and rules and regulations promulgated thereunder.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor federal income tax statute or code, and the applicable regulations and rulings promulgated thereunder.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, constitute an Event of Default.

"Department" means the Maryland Department of the Environment, and its successors.

"Director" means the Director of the Administration.

"Eligible Project Costs" means all those costs of the Project permitted by the Act to be funded by a loan from the Fund and which have been approved by the Director.

"EPA" means the United States Environmental Protection Agency, and its successors.

"Event of Default" means any occurrence or event specified in Section 4.01 hereof.

"Fiscal Year" means the period of 12 consecutive months commencing on July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

"Fund" means the Maryland Water Quality Revolving Loan Fund.

"Governmental Authority" means the United States, the State of Maryland, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over the Project, and including EPA, the Department, the Board and the Administration.

"Indenture" means the indenture of trust, bond resolution or other trust agreement between the Administration and the Trustee, providing for the issuance of Bonds, as amended, modified or supplemented from time to time.

"Independent Counsel" means any attorney or attorneys duly admitted to practice law before the highest court of any state who have regularly engaged in the practice of law as their primary occupation for at least five years. Independent Counsel may also serve as Bond Counsel if it qualifies as Bond Counsel.

"Independent Public Accountant" means an individual, partnership or corporation engaged in the accounting profession, either entitled to practice, or having members or officers entitled to practice, as a certified public accountant under the laws of the State of Maryland and in fact independent.

"Loan" means the aggregate amounts which are advanced from time to time by the Administration to the Borrower pursuant to the terms and provisions of this Agreement.

"Loan Closing Date" means the date on which the Note is executed and delivered to the Administration.

"Loan Commitment" means that amount which the Administration is obligated to lend to the Borrower pursuant to the terms and provisions of this Agreement and subject to the satisfaction of the conditions set forth in this Agreement, as such amount may be adjusted as provided in this Agreement.

"Loan Proceeds Questionnaire and Certificate" means the Loan Proceeds Questionnaire and Certificate executed and provided by the Borrower in connection with the Loan, in form and substance satisfactory to the Administration.

"Loan Year" means the period beginning on the first February 1 on which principal of the Loan is payable and each February 1 thereafter and ending on the immediately succeeding January 31.

"Note" means the bond, note or other obligation executed and delivered by the Borrower to the Administration to evidence the Loan, such Note to be substantially in the form attached hereto as Exhibit F.

"Plans and Specifications" means the final plans and specifications for the construction of the Project prepared by the architect or engineer and approved by the Department.

"Project" means the project or projects of the Borrower described in Exhibit B to this Agreement.

"Project Budget" means the budget for the Project as set forth in Exhibit C to this Agreement, as revised in accordance with Section 2.02(d).

"Related Financing" means any bond, note, agreement or other instrument or transaction (other than this Agreement or the Note) pursuant to which the Borrower obtains any monies that may be expended to pay costs of the Project.

"Requirement" means any law, ordinance, code, order, rule or regulation of a Governmental Authority, including, without limitation, a condition set forth in a National Pollution Discharge Elimination System ("NPDES") permit or in a construction permit issued by the Department.

"State" means the State of Maryland.

"Tax-Exempt Bonds" means Bonds the interest on which is excludable from gross income for federal income tax purposes under the Code.

"Trustee" means the trustee for the Bonds.

Section 1.02. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) words importing the singular number include the plural number and words importing the plural number include the singular number;

(b) words of the masculine gender include correlative words of the feminine and neuter genders;

(c) words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof;

(d) the terms "agree" and "agreement" shall include and mean "covenant", and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such;

(e) the headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect; and

(f) any reference to a particular Article or Section shall be to such Article or Section of this Agreement unless the context shall otherwise require.

# ARTICLE II

## REPRESENTATIONS AND COVENANTS OF BORROWER

Section 2.01. Representations of Borrower. The Borrower represents for the benefit of the Administration as follows:

(a) Corporate Organization and Authority. The Borrower:

(i) is a "local government" as defined in the Act; and

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the Project, to enter into this Agreement, to execute and deliver the Note, and to carry out and consummate all transactions contemplated by this Agreement.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Administration in writing that materially adversely affects or (so far as the Borrower can now foresee) that will materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before any Governmental Authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower, or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(d) Borrowing Legal and Authorized. The consummation of the transactions provided for in this Agreement and the Note and compliance by the Borrower with the provisions of this Agreement and the Note:

(i) are within its powers and have been duly authorized by all necessary action on the part of the governing body of the Borrower; and

(ii) will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrances upon any property or assets of the Borrower pursuant to, any indenture, loan agreement or other instrument (other than this Agreement and the Note) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of laws, ordinances, governmental rules, regulations or court orders to which the Borrower or its properties or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Agreement and the Note or receipt of the Loan, would constitute a Default hereunder. The Borrower is not in violation, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or other) of the Borrower or the ability of the Borrower to make all payments due hereunder and otherwise perform its obligations under this Agreement and the Note, and that have not been disclosed in writing to the Administration in the Application or otherwise.

(f) Governmental Consent; Project Consistency.

(i) The Borrower has obtained all permits and approvals required to date by any Governmental Authority for the making and performance by the Borrower of its obligations under this Agreement and the Note or for the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority that has not been obtained is required on the part of the Borrower as a condition to the execution and delivery of this Agreement and the Note or the consummation of any transaction herein contemplated.

(ii) The Project is consistent with (A) the local plan of the Borrower as contemplated under Section 5-7A-02 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; (B) the State Economic Growth, Resource Protection, and Planning Policy established in Section 5-7A-01 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended; and (C) all applicable provisions of *Subtitle 7B*; "*Priority Funding Areas*" of Title 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended.

(g) No Conflicts. No member, officer, or employee of the Borrower, or its designees, or agents, no consultant, no member of the governing body of the Borrower or of any Governmental Authority, who exercises or has exercised any authority over the Project during such person's tenure, shall have any interest, direct or indirect, in any contract or subcontract, or its proceeds, in any activity, or benefit therefrom, which is part of the Project.

(h) Use of Proceeds. The Borrower will apply the proceeds of the Loan from the Administration as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Eligible Project Costs; and (ii) to reimburse the Borrower for all or a portion of the Eligible Project Costs paid or incurred prior to the date hereof in anticipation of reimbursement by the Administration (and subject to compliance with Section 2.02(l) of this Agreement). Except as provided in Sections 3.01 and 3.03(c) of this Agreement, before each and every advance of the proceeds of the Loan to the Borrower, the Borrower shall submit to the Administration a requisition meeting the requirements of Section 3.03 of this Agreement.

(i) Loan Closing Submissions. On or before the Loan Closing Date, the Borrower will cause to be delivered to the Administration each of the following items:

(i) an opinion of Independent Counsel, acceptable to the Administration, dated as of the Loan Closing Date, substantially in the form set forth in Exhibit D to this Agreement;

(ii) an opinion of Bond Counsel [who may rely, as to the validity of this Agreement and the Note, on the opinion of Independent Counsel referred to in (i)], dated as of the Loan Closing Date, and acceptable to the Administration, to the effect that (A) interest on the Loan and the Note will be excludable from gross income for purposes of federal income taxation and (B) interest on the Loan and the Note will not be included in the alternative minimum taxable income of individuals, corporations or other taxpayers as an enumerated item of tax preference or other specific adjustment;

(iii) fully executed counterparts of this Agreement, the Note and the Loan Proceeds Questionnaire and Certificate;

(iv) copies of the ordinance, resolution or other official action of the governing body of the Borrower authorizing the execution and delivery of this Agreement and the Note, certified by an appropriate officer of the Borrower;

(v) a certificate, dated as of the Loan Closing Date, signed by an Authorized Officer of the Borrower and in form satisfactory to the Administration, confirming the Borrower's obligations under and representations in the Loan Agreement and the Loan Proceeds Questionnaire and Certificate as of such date;

(vi) a requisition in an amount not less than the lesser of 5% of the Loan Commitment or $50,000 for (i) reimbursement to the Borrower of Eligible Project Costs together with paid invoices supporting such reimbursement or (ii) payment to third-parties of currently due and payable invoices for Eligible Project Costs or (iii) a combination of (i) and (ii); and

(vii) such other certificates, documents, opinions and information as the Administration may require.

Section 2.02. Particular Covenants of the Borrower.

(a) Maintenance of Project; Insurance. The Borrower shall (i) keep, operate and maintain, or cause to be kept, operated and maintained, the Project in good working order, condition and repair; (ii) make or cause to be made all needed and proper replacements to the Project so that the Project will at all times be in good operating condition, fit and proper for the purposes for which it was originally erected or installed; (iii) not permit any waste of the Project; (iv) observe and comply with, or cause to be observed and complied with, all Requirements; and (v) operate, or cause to be operated, the Project in the manner in which similar projects are operated by persons operating a first-class facility of a similar nature. The Borrower shall maintain or cause to be maintained at its sole cost and expense insurance with respect to the

Project, both during its construction and thereafter, against such casualties and contingencies and in such amounts as are customarily maintained by governmental entities similarly situated and as are consistent with sound governmental practice.

(b) Sale or Disposition of Project. The Borrower reasonably expects that no portion of the Project will be sold prior to the final maturity date of the Loan. In the event that the Borrower shall sell or otherwise dispose of any portion of the Project prior to the final maturity date of the Loan, the Borrower shall apply the net proceeds thereof to the prepayment of the Loan or as the Administration shall otherwise direct unless (i) the Borrower shall have obtained the prior written consent of the Administration to some other proposed application of such net proceeds and (ii) there shall have been delivered to the Administration an opinion of Bond Counsel to the effect that, in the opinion of such firm, such proposed application of such net proceeds will not adversely affect the tax-exempt status for federal income tax purposes of the interest on any Tax-Exempt Bonds applicable to the Project or the Note.

(c) Inspections; Information. The Borrower shall permit the Administration or its designee to examine, visit and inspect, at any and all reasonable times (including, without limitation, any time during which the Project is under construction or in operation), the property constituting the Project, to attend all construction progress meetings relating to the Project and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating to the Project and the financing thereof, and shall supply such reports and information as the Administration may reasonably require in connection therewith. Without limiting the generality of the foregoing, the Borrower shall keep and maintain any books, records, and other documents that may be required under applicable federal and State statutes, regulations, guidelines, rules and procedures now or hereafter applicable to loans made by the Administration from the Fund, and as may be reasonably necessary to reflect and disclose fully the amount and disposition of the Loan, the total cost of the activities paid for, in whole or in part, with the proceeds of the Loan, and the amount and nature of all investments related to such activities which are supplied or to be supplied by other sources. All such books, records and other documents shall be maintained at the offices of the Borrower, as specified on Exhibit B attached hereto, for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Administration. All such books, records and other documents shall be maintained until the completion of an audit of the Project by the EPA or notification from the State or the EPA that no audit is required.

(d) Completion of the Project; Payment of Excess Costs of the Project. The Borrower shall proceed diligently to complete the Project in accordance with the Plans and Specifications, and in accordance with any requirements set forth in the construction and NPDES permits. The Borrower shall satisfy all applicable Requirements for operation of the Project by the completion of the Project, and shall commence operation of the Project promptly upon its completion. No substantial changes may be made to the Plans and Specifications, the general construction contract or the Project Budget, or in the construction of the Project without the prior written approval of the Administration in its discretion. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Project in excess of the amount available to be loaned to the Borrower hereunder. Upon the completion of the Project, the

Borrower shall deliver to the Administration a certificate of the Borrower certifying that the Project was completed as of the date set forth in such certificate.

(e) Cancellation of Loan. As provided by Section 9-1606(e) of the Act, the Borrower acknowledges and agrees that its obligation to make the payments due hereunder and under the Note is cancelable only upon repayment in full of the Loan, and that neither the Administration, the Secretary of the Department, nor the Board is authorized to forgive the repayment of all or any portion of the Loan.

(f) Dedicated Source of Revenue. Pursuant to the Clean Water Act, the Borrower has established one or more dedicated sources of revenue for repayment of the Loan, as described in Exhibit E attached hereto as a part hereof.

(g) Indemnification. To the extent permitted by law, the Borrower releases the Administration, the Fund, the Department, the Board and the State from, agrees that the Administration, the Fund, the Department, the Board and the State shall not have any liability for, and agrees to protect, indemnify and save harmless the Administration, the Fund, the Department, the Board and the State from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Administration, the Fund, the Department, the Board or the State, as a result of or in connection with the Project or the financing thereof. To the extent permitted by law, all money expended by the Administration, the Fund, the Department, the Board or the State as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate provided in the Note from the date of such payment, shall constitute an additional indebtedness of the Borrower and shall be immediately and without notice due and payable by the Borrower to the Administration.

(h) Non-discrimination. The Borrower certifies that it does not discriminate, and covenants that it shall not discriminate, on the basis of (1) political or religious opinion or affiliation, marital status, race, color, creed or national origin, or (2) sex or age, except where sex or age constitutes a bona fide occupational qualification, or (3) the physical or mental handicap of a qualified handicapped individual. At such times as the Administration requests, the Borrower shall submit to the Administration information relating to the Borrower's operations, with regard to political or religious opinion or affiliation, marital status, physical or mental handicap, race, color, creed, sex, age, or national origin, on a form to be prescribed by the Administration.

(i) Compliance with Requirements. The Borrower acknowledges that the Loan and this Agreement are subject to, and the Borrower agrees to comply with, all Requirements applicable to the Project and the financing thereof, including (without limiting the generality of the foregoing) the Clean Water Act, the Act, and all other applicable State and federal statutes and such rules, regulations, orders and procedural guidelines as may be promulgated from time to time by the EPA, the Board, the Department, the Administration, or other Governmental Authority.

(j) Annual Audit. Within nine (9) months of the end of each Fiscal Year (unless such period is changed to comply with terms of the Administration's financings, or a

Requirement, in which case the Administration shall notify the Borrower in writing), the Borrower shall cause financial statements of the Borrower to be prepared with respect to such Fiscal Year in accordance with generally accepted accounting principles, applicable to governmental units, consistently applied, which financial statements shall be audited by, and accompanied by a report of, an Independent Public Accountant. Such financial statements and report shall be delivered upon completion to the Administration within the nine (9) month period or within thirty (30) days from receipt of a report from the auditor, whichever period is shorter.

(k) Bonds Not to Be Arbitrage Bonds. The Administration expects to deliver on each date of issuance of each series of Tax-Exempt Bonds a certificate (such certificate, as it may be amended and supplemented from time to time in accordance with the Indenture, being referred to herein as the "Section 148 Certificate") that complies with the requirements of Section 148 of the Code or applicable successor provisions ("Section 148") and that states the Administration's reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of such Tax-Exempt Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Tax-Exempt Bonds within the meaning of Section 148 (collectively, "Bond Proceeds"). The Borrower covenants to provide, or cause to be provided, such facts and estimates as the Administration reasonably considers necessary to enable it to execute and deliver its Section 148 Certificate including (but not limited to) those updates required in the Loan Proceeds Questionnaire and Certificate. The Borrower further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the Tax-Exempt Bonds and will be, to the best of the knowledge of the officers of the Borrower providing such facts and estimates, true, correct and complete as of that date, and (ii) the Borrower will make reasonable inquiries to ensure such truth, correctness and completeness.

The Borrower covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause any of the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148. The Borrower further covenants that it will comply with those provisions of Section 148 that are applicable to the Tax-Exempt Bonds on the date of issuance of such Tax-Exempt Bonds and with those provisions of Section 148 that may subsequently be lawfully made applicable to such Bonds.

The Administration and the Borrower shall hold and invest Bond Proceeds within their control (if such proceeds are invested) in accordance with the expectations of the Administration set forth in the Section 148 Certificate. If the Administration is of the opinion upon receipt of advice of Bond Counsel that it is necessary further to restrict or limit the yield on the investment of any Bond Proceeds in order to avoid any of the Tax-Exempt Bonds being considered "arbitrage bonds" within the meaning of Section 148, the Borrower shall take such action as is necessary to restrict or limit the yield on such investment, irrespective of whether the Borrower is of the same or a different opinion. Upon the request of the Borrower and receipt of advice of Bond Counsel the Administration may, and upon receipt of an approving ruling from the Internal Revenue Service or a decision of a court of competent jurisdiction the Administration shall, take such action as is necessary to remove or modify a restriction or limitation on the yield on the investment of any Bond Proceeds that was formerly deemed

necessary. The Administration shall incur no liability in connection with action as contemplated herein so long as the Administration acts in good faith.

The Administration contemplates and will use its best efforts to provide for the payment of rebate or penalties in lieu of rebate with respect to the Tax-Exempt Bonds pursuant to Section 148 from the proceeds of the Tax-Exempt Bonds or investment earnings thereon. However, in the event that funds from this source are inadequate to provide for any such payment of rebate or such penalties, the Borrower agrees to pay to the Administration the portion of the rebate or penalties with respect to any Tax-Exempt Bonds fairly allocable to the Loan (as reasonably determined by the Administration) upon written request of the Administration accompanied by an explanation of the method for allocating any such penalties or rebate.

In addition, the Borrower covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the monies deemed to be proceeds of any other Tax-Exempt Bonds of the Administration that would cause any such Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148. The Borrower further covenants that it will comply with those provisions of Section 148 that are applicable to such other Tax-Exempt Bonds on the date of issuance of such Tax-Exempt Bonds and with those provisions of Section 148 that may subsequently be lawfully made applicable to such Tax-Exempt Bonds. The Borrower shall have no obligation under this paragraph unless advised of such in writing by the Administration.

(l) Compliance With Loan Proceeds Questionnaire and Certificate. Without otherwise limiting the covenants or representations set forth in this Agreement or in the Loan Proceeds Questionnaire and Certificate, the representations set forth in Paragraphs 3 through 9, inclusive, and Paragraphs 11 through 14, inclusive, of the Loan Proceeds Questionnaire and Certificate are hereby incorporated as continuing representations of the Borrower, except to the extent that the Administration shall receive an opinion from Bond Counsel to the effect that any variation from such representations shall not adversely affect the excludability of interest on any Tax-Exempt Bonds from gross income for federal income tax purposes. The Borrower shall not take or permit to be taken any action or actions which would cause any Tax-Exempt Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or which would otherwise cause interest on any Tax-Exempt Bonds to be includable in gross income for federal income tax purposes.

(m) Additional Disclosure Information. The Borrower agrees to provide the Administration with such information regarding the Borrower and its finances as the Administration may from time to time request. The Borrower further acknowledges that the Administration may issue one or more series of Bonds pursuant to the Indenture, and that any or all of such Bonds may be secured in part by repayments of the Borrower with respect to the Loan. The Borrower accordingly agrees to provide to the Administration such information regarding the Borrower and its finances as the Administration may from time to time request for inclusion in the official statements or other offering documents to be distributed in connection with the sale of any such Bonds or any annual disclosure document or other informational document prepared from time to time by the Administration to be made available to prospective purchasers or holders of any of such Bonds. The Borrower shall also furnish to the Administration at its request a certificate of an Authorized Officer of the Borrower to the effect

that any information so provided or included contains no material inaccuracy or omission in light of the purposes for which such information is provided or included. The Borrower agrees to notify the Administration promptly in writing of (a) any changes in the condition or affairs of the Borrower (financial or other) that would cause any information regarding the Borrower so provided or included in an official statement or any subsequent offering document, annual disclosure document or other informational document of the Administration that the Borrower has had an opportunity to review and certify as to its accuracy, to contain a material inaccuracy or omission in light of the purposes for which such information is so included, and (b) any event set forth in Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C), as such rule may be amended and supplemented.

(n) Related Financing. The Borrower agrees that the proceeds of any Related Financing shall be expended to pay costs of the Project on a monthly basis proportionately with the proceeds of the Loan, taking into account the total amount of the proceeds of such Related Financing available to pay costs of the Project and the maximum amount of the Loan Commitment. The Borrower agrees to provide the Administration upon its request with such information as the Administration deems reasonably necessary to determine whether the Borrower is in compliance with the provisions of this Section 2.02(n).

## ARTICLE III

## LOAN TO BORROWER; AMOUNTS PAYABLE; GENERAL AGREEMENTS

Section 3.01. The Loan. Subject to the provisions of Sections 3.02, 3.03 and 3.08 hereof, the Administration hereby agrees to advance amounts under this Agreement to the Borrower, and the Borrower agrees to borrow and accept from the Administration amounts advanced under this Agreement, in an aggregate principal amount not to exceed the maximum amount of the Loan Commitment set forth on Exhibit B attached hereto.

Section 3.02. Availability of Funds. The Administration expects to have, and shall use its best efforts to obtain and maintain, funds in an amount sufficient to make advances to the Borrower in accordance with the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Borrower recognizes, however, that the Administration is a governmental entity with limited financial resources and that the Administration's ability to make such advances may be adversely affected by events or circumstances beyond the Administration's control. The Borrower accordingly assumes the risk that monies may not be available to make advances of the Loan to the Borrower, and, in such event, the Borrower specifically agrees that the Administration shall have no obligation to lend any amounts to the Borrower in excess of the amount theretofore advanced to the Borrower.

Section 3.03. (a) Requisitions and Disbursements. Amounts shall be loaned from time to time to pay, or reimburse the Borrower for the payment of, Eligible Project Costs, upon receipt of requisitions of the Borrower. Each such requisition shall (i) state the names of the payees, (ii) describe in reasonable detail the purpose of each payment, (iii) state the amount of each payment (supported by appropriate paid invoices or other evidence satisfactory to the

Administration that the amount requisitioned has been paid or has been incurred by the Borrower and is then due), (iv) state that the amount so requisitioned constitutes a part of the Eligible Project Costs and (v) state that no Default or Event of Default under this Agreement has occurred and is continuing; provided, that this section shall not apply to advances made or deemed to have been made as provided in Section 3.03(c) hereof. In no event shall the Administration be obligated to advance to the Borrower any amount so long as any Default or Event of Default under this Agreement shall have occurred and be continuing. The Administration shall not be required to advance monies on more than one day in each month, and the Administration shall not be required to advance monies for the Project sooner than, or in an amount greater than, the schedule of disbursements for the Project shown on the "Construction Cash Draw Schedule" included in Exhibit C attached hereto. The Administration may require the Borrower to submit requisitions in advance of each such disbursement date in such manner as shall be reasonably acceptable to the Administration.

(b) Conditions Precedent. Before making the first advance of Loan proceeds, the Administration shall receive the following in form and content satisfactory to the Administration:

(i) copies of the Plans and Specifications and of any Change Orders issued through the date of such advance, the general construction contract, and the Project Budget;

(ii) a survey showing the location of existing and proposed easements, rights-of-way and improvements, and the perimeter boundaries of the land upon which the Project will be located, if any Loan proceeds are to be used for acquisition of the land;

(iii) copies of all building permits, if any, pertaining to the Project;

(iv) cost breakdown in trade form showing all subcontracts which represent at least 10 percent of the costs of the Project, and indicating use of the proceeds of the Loan therefor;

(v) a fully executed copy of any contract for the purchase of real property constituting a portion of the Eligible Project Costs described in Exhibit C; and

(vi) evidence satisfactory to the Administration that the conditions (if any) set forth in Exhibit A to this Agreement have been satisfied.

In addition, it shall be a condition precedent to the Administration's obligation to make any advance of Loan proceeds under this Agreement that no Default or Event of Default shall have occurred and be continuing at the time of any such advance.

(c) Interest During Construction. In the event that the Administration has consented to permit the Borrower to pay interest on the Loan from proceeds of the Loan during all or a portion of the period of time related to construction of the Project (as itemized in

Exhibit C) ("Construction Period Interest"), the Administration shall on each February 1 and August 1 during such period advance to the Borrower an amount equal to the interest on the Loan due on such February 1 or August 1 and not theretofore paid by the Borrower. Any such amount of Construction Period Interest advanced by the Administration shall constitute part of the principal amount of the Loan hereunder immediately upon its advance to the Borrower in accordance with this paragraph. Notwithstanding the advance of any Construction Period Interest to the Borrower in accordance with this Section, the Borrower shall pay directly to the Administration the Administrative Fee on the dates and in the amounts set forth in Section 3.04(c), and no amounts shall be advanced under the Loan for the payment of the Administrative Fee.

Section 3.04. (a) Amounts Payable. The Borrower shall punctually repay the Loan in installments on the dates, in the amounts, and in the manner specified in the Note. The outstanding amount of the Loan shall bear interest at a rate per annum equal to the rate or rates of interest set forth in Exhibit B, and shall be payable in accordance with the amortization schedule as specified in Exhibit B attached hereto and more particularly set out in the Note (which amortization schedule is subject to adjustment in accordance with this Agreement and the Note). On or prior to the Loan Closing Date, the Borrower shall execute the Note to evidence such obligation. In addition, the Borrower shall pay to the Administration an Administrative Fee in accordance with paragraph (c) of this Section.

(b) Late Charges. In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Borrower shall pay (i) a late charge for any payment of principal or interest on the Loan that is received later than the tenth day following its due date, in an amount equal to 5% of such payment, and (ii) interest on overdue installments of principal and (to the extent permitted by law) interest at a rate equal to the Default Rate set forth in Exhibit B. Amounts payable pursuant to this paragraph (b) shall be immediately due and payable to the Administration, and interest at the Default Rate shall continue to accrue on overdue installments of principal and (to the extent permitted by law) interest until such amounts are paid in full.

(c) Administrative Fee. (i) On the date specified in Exhibit B for the first payment of the Administrative Fee and on each August 1 thereafter that the Note remains outstanding and unpaid to and including the date of final maturity of the Note (each such date, an "Administrative Fee Payment Date"), the Borrower shall pay to the Administration an Administrative Fee. Subject to paragraph (iv) below, the Administrative Fee for any Administrative Fee Payment Date shall be the (A) Administrative Fee set forth in Exhibit B or (B) after any date on which the outstanding principal amount of the Loan Commitment is reduced by the Administration by a notice in writing to the Borrower in accordance with this Agreement (other than by reason of the repayment of the principal of the Loan) the Administrative Fee set forth in a notice from the Administration to the Borrower in connection with such reduction. Any adjustment of the Administrative Fee in accordance with the foregoing shall be prospective only, and the Administration shall in no event be obligated to refund any portion of any Administrative Fee payment theretofore received from the Borrower.

(ii) In prescribing the Administrative Fee for a loan with a term of thirty years for purposes of paragraph (i) above, the Administration shall employ the following

formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: the Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by the total number of scheduled Administrative Fee Payment Dates. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were $5,000,000 and the Percentage Rate were 5%, and the total number of scheduled Administrative Fee Payment Dates were 31, the Administrative Fee to be paid each year would equal:

$$\frac{\$5{,}000{,}000 \times .05}{31} = \$8{,}064.52$$

(iii) In prescribing the Administrative Fee for a loan with a term of less than thirty years for purposes of paragraph (i) above, the Administration shall employ the following formula, it being understood that any determinations as to the application of such formula shall be within the discretion of the Administration and any Administrative Fee Payment prescribed by the Administration in accordance with the foregoing shall be conclusive and binding upon the Administration and the Borrower: The Administrative Fee equals (A) the aggregate amount of all scheduled payments of principal of and interest on the Note, multiplied by the Percentage Rate (defined in paragraph (iv) below) then in effect, (B) divided by 30. For example, if the aggregate amount of all scheduled payments of principal of and interest on the Note were $4,000,000 and the Percentage Rate were 5%, the Administrative Fee to be paid each year would equal:

$$\frac{\$4{,}000{,}000 \times .05}{30} = \$6{,}666.67$$

(iv) The Percentage Rate for each Fiscal Year shall be fixed as a uniform rate for all borrowers receiving loans from the Fund in order to provide sufficient revenues to pay the expenses of the Administration, as approved in the operating budget of the State by the General Assembly of the State; provided, however, that in no event shall the Percentage Rate exceed five percent (5%). In each Fiscal Year the Administration shall review the Percentage Rate then in effect and adjust it for the immediately succeeding Fiscal Year to reflect its approved budget for the immediately succeeding Fiscal Year, a retainage of not more than ten percent (10%) for an operating reserve within the Administration's general account, and other factors as reasonably determined by the Secretary. No later than June 1 following the end of the Session of the General Assembly in each Fiscal Year, the Administration shall notify the Borrower of the newly established Percentage Rate, which shall be the Percentage Rate applicable to the immediately succeeding Fiscal Year, and of any change in the amount of the Administrative Fee payable by the Borrower in such Fiscal Year as a result of the application of such Percentage Rate.

Section 3.05. Sources of Payment. (a) Dedicated Revenues. In accordance with Section 2.02(f) hereof, the principal of and interest on the Note, and any other amounts due from time to time under this Agreement, shall be payable in the first instance from the dedicated source of revenues described in Exhibit E attached hereto.

(b) General Obligation. In addition, the Note constitutes a general obligation of the Borrower, to the payment of which the full faith and credit and taxing power of the Borrower are pledged.

(c) State Withholding. As further security for the payment of the Note and any other amounts due hereunder, the Borrower hereby pledges the following to the Administration and grants a security interest therein to the Administration: (i) as authorized by Section 9-1606(d) of the Act, the Borrower's share of any and all income tax revenues collected by the State from time to time that would otherwise be payable to the Borrower, and (ii) to the maximum extent permitted by law, any and all other tax revenues, grants, and other monies that the Borrower is or may from time to time be entitled to receive from the State or that may at any time be due from the State, or any department, agency, or instrumentality of the State, to the Borrower. The Borrower further agrees that, upon the occurrence of an Event of Default, among other things, the State Comptroller and the State Treasurer may (i) withhold any such amounts that the Borrower is then or may thereafter be entitled to receive and (ii) at the direction of the Administration, apply the amounts so withheld to the payment of any amounts then due or thereafter becoming due hereunder (including, without limitation, payments under the Note) until the Borrower's obligations hereunder have been fully paid and discharged.

Section 3.06. Unconditional Obligations. The obligations of the Borrower to make payments under the Note as and when due and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any Governmental Authority, any failure of the Administration, the Department or the State to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project, this Agreement, or otherwise or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the Administration, the Department or the State or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

Section 3.07. Loan Commitment. The Borrower acknowledges and agrees that the monies attributable to the Borrower's Loan Commitment are the property of the Administration and are held by the Administration to provide for advances to be made to the Borrower in accordance with this Agreement. Without limiting the foregoing, the Borrower acknowledges and agrees that monies attributable to the Borrower's Loan Commitment may at the discretion of the Administration be pledged or applied to the payment of Bonds.

Section 3.08. Reduction of Loan Commitment. The Loan Commitment is subject to reduction in accordance with the provisions of this Section 3.08.

(a) Any portion of the Loan Commitment not advanced to the Borrower under Section 3.03 of this Agreement at the later of (1) two years from the date of this Agreement and (2) the earlier of one year following (i) actual completion of construction of the Project or (ii) the estimated completion date specified on Exhibit B attached hereto, shall no longer be available to be advanced to the Borrower and the amount of the Loan Commitment shall be reduced by an amount equal to the portion of the Loan Commitment not advanced, unless otherwise agreed to by the Administration in writing.

(b) The Administration may, by a notice in writing delivered to the Borrower, reduce the amount of the Loan Commitment if the Administration should for any reason determine that it will be unable to fund the full amount of the Loan Commitment (including, without limitation, a determination that the Eligible Project Costs to be paid with proceeds of the Loan are expected to be less than the maximum amount of the Loan Commitment), or if it determines that the Borrower is not proceeding satisfactorily and expeditiously with the Project in accordance with schedules and plans provided to the Administration, or if it determines that the Borrower is no longer able to make the certifications required under Section 3.03 in connection with the submission of requisitions. Such notice shall specify the reason for and the amount of the reduction.

(c) Any reduction in the amount of the Loan Commitment shall not affect the obligation of the Borrower to repay the Loan in accordance with the provisions of this Agreement and the Note.

(d) The Administration shall advise the Borrower in writing of any reduction in the amount of the Loan Commitment. In the event of any such reduction, the Borrower shall repay the Loan in accordance with such revised principal amortization schedule (prepared by applying such amount to reduce the installments of principal due under the Note in inverse order of payment, such that any such reduction is applied first to the last installment of principal due under the Note) as may be prescribed by the Administration in accordance with the provisions of the Note executed in connection therewith. The Administration may require, and the Borrower shall deliver, such certificates, documents, opinions and other evidence as the Administration may deem necessary or advisable in connection with any such reduction in the Loan Commitment. If a new Note is delivered in connection with any such reduction, the Administration shall cancel the Note initially delivered to the Administration by the Borrower pursuant to this Agreement.

Section 3.09. Disclaimer of Warranties. The Administration makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the Administration be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 3.10. Prepayments. The Loan shall be subject to mandatory prepayment, in whole or in part, as, when and to the extent required by the EPA's State Revolving Fund Program Regulations. Otherwise, the Loan may be prepaid by the Borrower, in whole or in part, only at such times and in such amounts, and upon the payment by the Borrower of such prepayment premium or penalty, as the Director, in his or her discretion, may specify and approve.

Section 3.11. Assignment. Neither this Agreement nor the Note may be assigned by the Borrower for any reason without the prior written consent of the Administration. The Administration may transfer, pledge or assign the Note and any or all rights or interests of the Administration under this Agreement without the prior consent of the Borrower.

## ARTICLE IV

## EVENTS OF DEFAULT AND REMEDIES

Section 4.01. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Borrower to pay any amount required to be paid hereunder or under the Note when due, which failure shall continue for a period of 20 days;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Administration, unless the Administration shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Administration will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) if (i) at any time any representation made by the Borrower in Section 2.01(f)(ii) is incorrect, or (ii) any other representation made by or on behalf of the Borrower contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, the Loan Commitment or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) if an order, judgment or decree is entered by a court of competent jurisdiction (i) appointing a receiver, trustee, or liquidator for the Borrower; (ii) granting relief in involuntary proceedings with respect to the Borrower under the federal bankruptcy act, or (iii) assuming custody or control of the Borrower under the provision of any law for the relief of debtors, and the order, judgment or decree is not set aside or stayed within 60 days from the date of entry of the order, judgment or decree; or

(e) if the Borrower (i) admits in writing its inability to pay its debts generally as they become due, (ii) commences voluntary proceedings in bankruptcy or seeking a

composition of indebtedness, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a receiver, or (v) consents to the assumption of custody or control of the Borrower by any court of competent jurisdiction under any law for the relief of debtors .

Section 4.02. Notice of Default. The Borrower shall give the Administration prompt telephonic notice by contacting the Director of the Administration, followed by prompt written confirmation, of the occurrence of any event referred to in Section 4.01(d) or (e) hereof and of the occurrence of any other event or condition that constitutes a Default or an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof.

Section 4.03. Remedies on Default. Whenever any Event of Default referred to in Section 4.01 hereof shall have happened and be continuing, the Administration shall have the right to take one or more of the following remedial steps:

(a) declare all amounts due hereunder (including, without limitation, payments under the Note) to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) take whatever other action at law or in equity that may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

Section 4.04. Attorneys' Fees and Other Expenses. The Borrower shall on demand pay to the Administration the reasonable fees and expenses of attorneys and the Trustee and other reasonable expenses incurred in the collection of any sum due hereunder or in the enforcement of performance of any other obligations of the Borrower upon an Event of Default.

Section 4.05. Application of Monies. Any monies collected by the Administration pursuant to Section 4.03 hereof shall be applied (a) first, to pay any attorneys' fees or other fees and expenses owed by the Borrower pursuant to Section 4.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

Section 4.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Administration is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administration to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

# ARTICLE V

# MISCELLANEOUS

Section 5.01. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing. Any such communication shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on Exhibit B attached hereto and to the Administration at Maryland Water Quality Financing Administration, 1800 Washington Blvd., Baltimore, Maryland 21230-1718, Attention: Director.

Section 5.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Administration and the Borrower and their respective successors and assigns.

Section 5.03. Severability. In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 5.04. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

Section 5.06. Captions. The captions or headings in this Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 5.07. Further Assurances. The Borrower shall, at the request of the Administration, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements, certificates and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Agreement and the Note.

Section 5.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties hereto with respect to the Loan. In the event of any inconsistency between the provisions of this Agreement and anything contained in the Application, the provisions of this Agreement shall prevail.

Section 5.09. Amendment of this Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only if and to the extent permitted by the Indenture and by an instrument in writing jointly executed by the Administration and the Borrower.

Section 5.10. Disclaimer of Relationships. The Borrower acknowledges that the obligation of the Administration is limited to making the Loan in the manner and on the terms set forth in this Agreement. Nothing in this Agreement nor any act of either the Administration or of the Borrower shall be deemed or construed by either of them, or by third persons, to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship whatsoever involving the Borrower and the Administration.

Section 5.11. Effective Date. The effective date of this Agreement shall be the date of the Administration's execution.

Section 5.12. Term of this Agreement. Unless sooner terminated pursuant to Article IV of this Agreement, or by the mutual consent of the Borrower and the Administration, this Agreement shall continue and remain in full force and effect until the Loan, together with interest and all other sums due and owing in connection with this Agreement or the Loan, have been paid in full to the satisfaction of the Administration. Upon payment in full of the Loan together with interest and all other sums due and owing in connection with this Agreement or the Loan from any source whatsoever, this Agreement shall be terminated.

Section 5.13. Delegation Not to Relieve Obligations. The delegation by the Borrower of the planning, construction or carrying out of the Project shall not relieve the Borrower of any obligations under this Agreement and any other documents executed in connection with the Loan.

Section 5.14. Additional Terms. This Agreement shall also be subject to the additional terms, if any, set forth in Exhibit A hereto.

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

(SEAL)

WITNESS:

MARYLAND WATER QUALITY FINANCING ADMINISTRATION

_____

_____
Jag Khuman
Director

(SEAL)

ATTEST:

_____

BORROWER:

_____
Name:
Title:

By:_____
Name:
Title:

Approved for form and legal sufficiency

this ____ day of _____, 2017

_____
Local Attorney for
Borrower

Approved for form and legal sufficiency

this ____ day of _____, 2017

_____
Mary R. Sheppard-Walker
Assistant Attorney General

EXHIBIT A
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

**CONDITIONS TO INITIAL ADVANCE UNDER SECTION 3.03(b)(vi) OF LOAN AGREEMENT:**

NONE

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT:**

The provisions of this Exhibit A shall be deemed to be a part of the foregoing Agreement as if set forth in full therein. In the case of any conflict between this Exhibit A and any provision thereof, the provisions of this Exhibit A shall be controlling, notwithstanding any other provisions contained in the Agreement.

1. The first regularly scheduled payment of interest on the Loan shall be due on August 1, 2017.

2. The Borrower agrees to comply with the Davis-Bacon Act requirements of Section 513 of the Federal Water Pollution Control Act for the entirety of construction contract costs of the Project, and shall include specific language regarding compliance in its contracts and subcontracts.

3. The Borrower agrees to comply with the Use of American Iron and Steel requirement of federal law, which provides that all of the iron and steel products used in the Project are produced in the United States, unless a waiver is granted.

DRAFT

EXHIBIT A
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

**ADDITIONAL TERMS APPLICABLE TO LOAN AGREEMENT (CONT.):**

4. The Borrower agrees to comply with EPA's Interim Financial Assistance Conflict of Interest Policy, and report any instances of actual or potential conflicts of interest in the award, administration, or monitoring of subawards arising from procurements or other actions. Any conflicts of interest must be immediately disclosed to the Administration for further guidance.
The EPA's Interim Financial Assistance Conflict of Interest Policy is found at: http://www.epa.gov/ogd/epa_interim_financial_assistance_coi_policy.htm

5. If this Project is financed with the use of federal funds under CFDA #: 66.458, the Borrower may be subject to a single audit to be undertaken by an independent auditor in accordance with uniform administrative requirements, cost principles, and audit requirements for federal awards, 2 C.F.R. § 200.501. The Borrower hereby agrees to obtain such single audit, if required by the Single Audit Act.

DRAFT

EXHIBIT B
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

**DESCRIPTION OF THE LOAN**

(1) Project Name(s): Cumberland CSO Storage Facility (01-10-WWTP)

(2) Maximum Principal Amount of Loan Commitment: $2,992,819

(3) Rate of Interest: ___% (*Based upon 25% of the April, 2017 average of the Bond Buyer 11-Bond Index*)

(4) Amortization Schedule:

(a) 30 years
$1,000 Mini Principal Payment Date: N/A
Date of First of 30 Amortizing Principal Payments: February 1, 2020

(b) Level Principal _____; or
Level Debt Service ___X___; or
Other _____

(5) Annual Administrative Fee: $_____, beginning August 1, 2017.

(6) Estimated Completion Date of Project(s): June 30, 2019

(7) Default Rate: ____% (*Based upon the April, 2017 average of the Bond Buyer 11-Bond Index*)

(8) Description of Project:

The proposed project involves construction of a Combined Sewer Overflow (CSO) Storage Facility and all necessary appurtenances. The underground storage facility will be located in the Mason Recreation Complex area near the City's Enhanced Nutrient Removal (ENR) Wastewater Treatment Plant (WWTP). The purpose of this project is to reduce the frequency and magnitude of CSO events at the WWTP. This project will allow the City to get closer to the ultimate goal of capturing of 85% of the CSO's as set forth under EPA's CSO Control Policy. Once captured, these flows will be treated at the City of Cumberland ENR WWTP. This project will help to improve the water quality in the Potomac River, a tributary to the Chesapeake Bay.

DRAFT

EXHIBIT C
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

**PROJECT BUDGET**

Breakdown of Eligible Project Costs:

A. Portion of Eligible Project Costs to be directly financed:

| Description | Allocated Amount of Loan* |
|---|---|
| Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/ inspection fees and contingencies | |
| **Subtotal Loan:** | $2,882,701 |

B. Portion of Eligible Project Costs for which Borrower will be reimbursed at closing, which the Borrower hereby certifies were paid or incurred prior to the date of the Agreement, in anticipation of being reimbursed through a loan from the Administration (and subject to compliance with Sections 2.02(l) and 3.03(a) of the Agreement):

| Description | Allocated Amount of Loan |
|---|---|
| Eligible Project Costs include administrative and legal expenses, planning/design engineering fees, construction costs, construction phase engineering/ inspection fees and contingencies | |
| **Total Reimbursement at Closing:** | $ 110,118 |
| **Total Loan:** | $2,992,819 |

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EXHIBIT C
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

C. Construction Cash Draw Schedule*

| Federal Quarter | Cash Disbursements* |
|---|---|
| FFY 17 Q3 (Apr 17 – June 17) | $ 110,118 |
| FFY 17 Q4 (Jul 17 – Sep 17) | $ 350,000 |
| FFY 18 Q1 (Oct 17– Dec 17) | $ 350,000 |
| FFY 18 Q2 (Jan 18 – Mar 18) | $ 350,000 |
| FFY 18 Q3 (Apr 18 – June 18) | $ 350,000 |
| FFY 18 Q4 (Jul 18 – Sep 18) | $ 350,000 |
| FFY 19 Q1 (Oct 18 – Dec 18) | $ 350,000 |
| FFY 18 Q2 (Jan 19 – Mar 19) | $ 350,000 |
| FFY 18 Q3 (Apr 19 – June 19) | $ 432,701 |
| **Total Disbursements:** | $2,992,819 |

* SUBJECT TO CHANGE WITH CONSENT OF THE ADMINISTRATION IN ITS DISCRETION UNDER SECTION 2.02(d) OF THIS AGREEMENT

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EXHIBIT D
to Loan Agreement

OPINION OF BORROWER'S COUNSEL

[LETTERHEAD OF COUNSEL TO BORROWER

[CLOSING DATE]

DRAFT

Maryland Water Quality
Financing Administration
1800 Washington Blvd.
Baltimore, Maryland 21230-1718

Ladies and Gentlemen:

We are counsel to [NAME OF BORROWER], a [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower") in connection with the loan (the "Loan") by Maryland Water Quality Financing Administration (the "Administration") to the Borrower of funds to finance all or a portion of the costs of a project (the "Project") described in Exhibit B to the Loan Agreement dated as of _____, 2017 (the "Agreement") by and between the Administration and the Borrower.

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including, without limitation, the Agreement and the Borrower's $ Water Quality Bond, Series 2017, dated _____, 2017 (the "Note"). The Agreement and the Note are referred to herein collectively as the "Loan Documents". Based on such review, and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a validly created and existing [body politic and corporate and a political subdivision] [municipal corporation] [other appropriate description] of the State of Maryland, possessing authority to acquire, construct and operate the Project and to enter into the Loan Documents and perform its obligations thereunder.

(b) The Borrower has duly authorized, executed and delivered the Loan Documents and, assuming due authorization, execution and delivery of the Agreement by the Administration, the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

(c) The Note is a general obligation of the Borrower to which its full faith and credit is pledged, payable if and to the extent not paid from other sources as described in the Agreement from ad valorem taxes, unlimited as to rate and amount, which the Borrower is empowered to levy on all real and tangible personal property within its corporate limits subject to assessment for unlimited taxation by the Borrower.

(d) The Loan Documents and the enforceability thereof are subject to bankruptcy, insolvency, moratorium, reorganization and other state and federal laws affecting the enforcement of creditors' rights and to general principles of equity.

(e) To the best of our knowledge after reasonable investigation, the Borrower has all necessary licenses, approvals and permits required to date under federal, state and local law to own, construct and acquire the Project.

(f) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, the acquisition and construction of the Project nor the fulfillment of or compliance with the terms and conditions of the Loan Documents conflicts with or results in a breach of or default under any of the terms, conditions or provisions of the charter or laws governing the Borrower (including any limit on indebtedness) or, to the best of our knowledge after reasonable investigation, any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or by which the Borrower or its properties are otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Documents.

(g) To the best of our knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body pending or threatened against or affecting the Borrower that, if adversely determined, would materially affect the ability of the Borrower to perform its obligations under the Loan Documents, which has not been disclosed in writing to the Administration.

We hereby authorize Bond Counsel to the Administration to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

DRAFT

EXHIBIT E
to Loan Agreement

Borrower Name: Mayor and City Council of Cumberland
Address: 57 North Liberty Street
Cumberland, MD 21502
Attention: The Honorable Brian K. Grim, Mayor

Project Name: Cumberland CSO Storage Facility (01-10-WWTP)

**DESCRIPTION OF DEDICATED REVENUES***

Sewer user charges, including any and all fees for use of the public sewer system or connection to it.

* The identification of the dedicated source or sources of revenues above is intended to specify a source or sources of revenues available in sufficient amount to provide for the payment of the costs of operating and maintaining the Project as well as the payment of the costs of debt service of any borrowing incurred to finance the Project. The specification of a dedicated source or sources of revenues above is not intended to constitute an undertaking by the Borrower to pledge, segregate or otherwise set aside any specific funds of the Borrower with the expectation that such funds would be used to pay the debt service on the Loan.

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EXHBIT F
to Loan Agreement

$[MAX. AMT.] R-1

REGISTERED

UNITED STATES OF AMERICA
STATE OF MARYLAND

[NAME OF BORROWER]
WATER QUALITY BOND, SERIES 2017
Dated _____, 2017

PAYMENTS OF PRINCIPAL AND INTEREST ON THIS BOND ARE MADE BY CHECK, DRAFT OR ELECTRONIC FUNDS TRANSFER TO THE REGISTERED OWNER AND IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER ALL OR ANY PART OF THE PRINCIPAL OF OR INTEREST ON THIS BOND HAS BEEN PAID.

REGISTERED OWNER: Maryland Water Quality Financing Administration

_____, a [body politic and corporate] [municipal corporation] [other appropriate description] of the State of Maryland (the "Borrower"), hereby acknowledges itself obligated to pay to the Registered Owner shown above, the principal amount of $_____ (the "Maximum Principal Amount") or so much thereof as shall have been advanced from time to time under the terms of the Loan Agreement dated as of _____, 2017 (the "Loan Agreement") by and between the Borrower and the Maryland Water Quality Financing Administration (the "Administration"), plus interest on the unpaid principal advanced under the terms of the Loan Agreement at the rate of _____ per centum (___%) per annum.

The principal advanced under the Loan Agreement shall be paid in installments on the dates and in the amounts as set forth in the following schedule, as such schedule may be amended in accordance with the terms hereof:

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| Due [February 1] | Principal Amount | Due [February 1] | Principal Amount |
|---|---|---|---|
| 2018 | | 2027 | |
| 2019 | | 2028 | |
| 2020 | | 2029 | |
| 2021 | | 2030 | |
| 2022 | | 2031 | |
| 2023 | | 2032 | |
| 2024 | | 2033 | |
| 2025 | | 2034 | |
| 2026 | | 2035 | |

If the Administration determines at any time to reduce the maximum amount of the Loan Commitment (as defined in the Loan Agreement) in accordance with Section 3.08 of the Loan Agreement, the Maximum Principal Amount shall be reduced accordingly and the Maximum Principal Amount as so reduced shall be amortized in accordance with Section 3.08 of the Loan Agreement. The Administration shall deliver, and the Borrower shall acknowledge in writing, a certificate setting forth such reamortized payment schedule, which shall be attached hereto and shall replace and supersede for all purposes the foregoing payment schedule. Any such reduction shall not affect the obligation of the Borrower to pay the principal of and interest on this bond as and when the same shall become due.

Notwithstanding the foregoing, all outstanding unpaid principal amounts advanced under the Loan Agreement, if not previously due hereunder, shall be due on that date which is 20 years after the date of completion of the Project (as defined in the Loan Agreement), as certified by the Borrower to the Administration pursuant to Section 2.02(d) of the Loan Agreement.

Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the date of the respective advances of such principal amount, and shall be paid on _____, 20__, and semiannually thereafter on the 1st day of _____ and _____ in each year until the principal amount hereof has been paid.

This bond is subject to prepayment only in accordance with Section 3.10 of the Loan Agreement.

Both the principal of and interest on this bond will be paid to the registered owner in lawful money of the United States of America, at the time of payment, and will be paid by electronic funds transfer, or by check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owner at such address as the registered owner may designate from time to time by a notice in writing delivered to the [INSERT BORROWER'S AUTHORIZED OFFICER].

DRAFT

This bond is issued pursuant to and in full conformity with the provisions of [INSERT BORROWER'S LOCAL ACT(S)] and the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland, as amended), and by virtue of due proceedings had and taken by the Borrower, particularly [AN ORDINANCE AND OR A RESOLUTION] (numbered ____) [INSERT BORROWER'S AUTHORIZING ORDINANCE OR RESOLUTION] (collectively, the "Resolution") adopted by Borrower.

This bond, together with the Loan Agreement, evidences the Loan (as defined in the Loan Agreement) to the Borrower from the Maryland Water Quality Financing Administration. In accordance with the Loan Agreement, the principal amount of the Loan, being the amount denominated as principal under this bond, is subject to reduction or adjustment by the Administration in accordance with the Loan Agreement.

The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the prompt payment of the principal of and interest on this bond according to its terms, and the Borrower does hereby covenant and agree to pay the principal of and interest on this bond at the dates and in the manner prescribed herein.

This bond is transferable only after the first principal payment date as set forth above or the date upon which the Maximum Principal Amount has been borrowed, whichever is earlier, upon the books of the Borrower at the office of the [INSERT BORROWER'S AUTHORIZED OFFICERS] by the registered owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the [INSERT BORROWER'S AUTHORIZED OFFICER], duly executed by the registered owner or his duly authorized attorney. The Borrower shall, within a reasonable time, issue in the name of the transferee a new registered bond or bonds, in such denominations as the Borrower shall by resolution approve, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds surrendered and with the same maturities and interest rate. If more than one bond is issued upon any such transfer, the installment of principal and interest to be paid on each such bond on each payment date shall be equal to the product of the following formula: the total installment due on each payment date multiplied by a fraction, the numerator of which shall be the principal amount of such bond and the denominator of which shall be the aggregate principal amount of bonds then outstanding and unpaid. The new bond or bonds shall be delivered to the transferee only after payment of any taxes on and any shipping or insurance expenses relating to such transfer. The Borrower may deem and treat the party in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of Maryland and the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond, together with all other indebtedness of the Borrower, is within every debt and other limit prescribed by said Constitution or statutes.

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IN WITNESS WHEREOF, this bond has been executed by the manual signature of the [INSERT AUTHORIZED OFFICERS] and the seal of the Borrower has been affixed hereto, attested by the manual signature of the [INSERT AUTHORIZED OFFICER], all as of the __ day of ____, 2017.

(SEAL)

ATTEST:

_____ By: _____

[OFFICER] [OFFICER]

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Regular Council Agenda
May 16, 2017

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**Description**

Order authorizing the execution of a Billing Agreement renewal with Carter Professional Services, Inc. dba/Medical Claim-Aid to continue to perform billing and claims service on behalf of the City related to EMS transports, fire and rescue incidents and fire department inspection and permit fees for a period of 8 years, renewable for an additional 5 years upon mutual agreement

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# - ORDER -

*of the*

# Mayor and City Council of Cumberland

**MARYLAND**

**ORDER NO. _____** **DATE: ____May 16, 2017_____**

**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT,** the Mayor be and is hereby authorized to execute a Billing Agreement by and between the Mayor and City Council of Cumberland and Carter Professional Services, Inc., dba/Medical Claim-Aid (MCA), to continue to perform billing and claims service on behalf of the Mayor and City Council of Cumberland related to EMS transports, fire and rescue incidents and fire department inspection and permit fees; and

**BE IT FURTHER ORDERED**, that the Agreement will become effective July 1, 2017 at which time MCA will continue responsibility for the billing as herein provided. The term of this Agreement is eight (8) years ending June 30, 2025, which includes a two year extension of the current contract which would have expired June 30, 2019. This contract is renewable for an additional five (5) years upon mutual agreement; and

**BE IT FURTHER ORDERED**, that the City shall be billed the sum of 7.25% of all payments received by the City during the preceding month, related to ambulance transports.

_____

**Mayor Brian K. Grim**

**BILLING AGREEMENT**

This Billing Agreement made this _____ **day of** _____**, 2017**by and between **The Mayor and City Council of Cumberland** (hereinafter **MCCC)** and Carter Professional Services, Inc., doing business as Medical Claim-Aid (hereinafter **MCA**), witnesses that:

(1) **CUSTOMERS**. **MCA** shall perform billing and claims service for **MCCC** related to EMS transports, fire and rescue incidents and fire department inspection and permit fees.

(2) **BILLING**. **MCA** shall submit claims to third party payers (MEDICARE, Carefirst, private insurers, etc). Amounts not paid by third party payers shall be billed to the patient or the patient's representative, unless coordinated with subscription membership. During the first 90 day period (90 days from the time that the claim is referred by **MCCC** to **MCA**) such individual billing shall be such as is necessary to effect collection, but not to exceed what is stipulated by **MCCC**. **MCA** shall have the right to manage accounts receivable and to authorize payment plans, as it deems reasonable and appropriate. **MCCC** shall have the right to determine the total number of bills to each patient (except for that which is mandated by law) and the style and manner of messages to appear on the invoices.

(3) **INQUIRIES**. All inquiries and complaints related to billing (if any) shall be directed to **MCA**.

(4) **EFFECTIVE DATE, DURATION, RENEWAL**. The provisions of this Agreement shall become effective July 1, 2017 at which time MCA will continue responsibility for the billing as herein provided. The term of this Agreement is eight years ending June 30, 2025. His includes a two year extension of our current contract which would have expired June 30, 2019. This contract is renewable thereafter for an additional five year term, based upon satisfactory performance and mutual agreement of both parties.

(5) **NOTICES**. Any and all notices regarding continuation or termination of this agreement to a party shall be deemed given and received by the party three days after written notice has been mailed by certified mail, return receipt requested, providing the notice is addressed as follows:

Mayor and City Council of Cumberland
ATTN: Julie Davis, Fire Administrator
57 N. Liberty Street
Cumberland, MD 21502

CARTER PROFESSIONAL SERVICES, INC. t/a MEDICAL CLAIM-AID
ATTN: Cathy L. Carter
400 Market Street
Denton, MD 21629

In addition to said certified mail notice; each party shall make a reasonable effort to fax a copy of the notice to the other party. **MCA'**s current fax number of 410 479 4793. The foregoing is not intended to be the exclusive method of communication between the parties.

(6) **COMPENSATION**. **MCCC** shall pay to **MCA** the following:

Beginning July 1, 2017 **MCCC** will be billed the sum of 7.25**%** of all payments received by **MCCC** during the preceding month related to ambulance transports. Statements will be sent the first of each month and are due and payable no later than the 10th of that month. Late payments are subject to 1.5% interest per month. **MCA** will not bill any charges for calls for which there are no payments received. In the event of subsequent renewal, all parties will have the opportunity to renegotiate the contingency rate not to exceed 10%.

(7) **PAYMENTS AND PAYMENT INFORMATION**. All Payments shall be payable to **MCCC** at their remittance address **PO BOX 120 Denton, MD 21629**. The cost of the PO Box is paid by **MCA**. **MCCC** shall insure that any payments, which are paid to **MCCC** at their location, are forwarded to **MCA** as often as necessary, but not less than once weekly. This billing information includes all Medicare Remittance Notices, Insurance explanations of benefit, personal payments, requests for additional information, returned mail and other related billing correspondence. **MCCC** is responsible for bank charges for credit card payments at 2.44% of the charged amount and .23 transaction fee per payment. **MCA** is responsible for all other credit card fees, including the monthly fee. **MCA** will insure that all payments received at the post office box are forwarded to **MCCC** every Friday with a detailed credit report.

(8) **COOPERATION**. **MCA** shall insure that all it's records relating to **MCCC**'s billings, claims accounts receivable, etc., are kept up to date and are made available to **MCCC** whenever requested by them. This includes any reports which are deemed necessary by **MCCC**. Reports can be generated on a monthly, quarterly or other timely manner upon request by **MCCC**. Generally 24 hours is necessary for receipt of said reports. (This obligation of **MCA** shall not be effected by any real or perceived contract dispute or other disagreement between the parties.) **MCCC** shall cooperate fully with **MCA** in providing, in a timely manner, all information needed by **MCA** to carry out its duties under this Agreement.

(9) **INVOICES AND SUPPLIES**. All printed material necessary to effect billing (i.e., invoices, statements, envelopes, signature stamp, notice of privacy practices etc will be paid by **MCA.**

(10) **HIPAA COMPLIANCE**. **MCA** shall carry out its obligations under this Agreement in compliance with the privacy regulations pursuant to Public Law 104-191 of August 21, 1996 known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, et seq., as amended ("HIPAA"), to protect the Privacy of any personally identifiable protected health information ("PHI") that is collected, processed or learned as a result of the billing services provided hereunder. In conformity therewith, **MCA** agrees that it will:

a. Not use or further disclose PHI except as permitted under this Agreement or required by law.

b. Use appropriate safeguards to prevent use or disclose of PHI except as permitted by this Agreement;

c. To mitigate, to the extent practicable, any harmful effect that is known to MCA of a use or disclose of PHI by MCA in violation of this Agreement

d. Report to **MCCC** any use or disclosure of PHI provided for by this Agreement of which MCA becomes aware;

e. Ensure that any agents or subcontractors to whom **MCA** provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to **MCA** with respect to such PHI;

f. Make PHI available to **MCCC** and to the individual who has a right of access as required under HIPAA;

g. Incorporate any amendments to PHI when notified to do so by **MCCC**.

h. Provide an accounting of all uses or disclosures of PHI made by **MCA** as required under the HIPAA privacy rule;

i. Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining **MCA**'s and **MCCC;** compliance with HIPAA; and

j. At the termination of this Agreement, return or destroy all PHI received from, or created or received by **MCA** on behalf of **MCCC**

**MCA** agrees to assume the following obligations regarding electronic Protected Health Information (e-PHI):

a. **MCA** agrees to implement administrative, physical and technical safeguard that reasonably and appropriately protect the confidentiality, integrity and availability of the e-PHI that it creates, receives, maintains or transmits on behalf of **MCCC**.

b. **MCA** will ensure that any agent, including a subcontractor, to whom it provides e-PHI that was created, received, maintained or transmitted on behalf of MCCC agrees to implement reasonable and appropriate safeguards to protect the confidentiality, security and integrity of e-PHI.

c. **MCA** agrees to alert **MCCC** of any security incident (as defined by the HIPAA Security Rule) of which it becomes aware, and the steps it has taken to mitigate any potential security compromise that may have occurred, and provide a report to **MCCC** of any loss of data or other information system compromise as a result of the incident.

The specific uses and disclosures of PHI that may be made by **MCA** on behalf of **MCCC** include:

a. The preparation of invoices to patients, carriers, insurers and other responsible for payment or reimbursement of the services provided by **MCCC**;

b. Preparation of reminder notices or documents pertaining to collections of overdue accounts;

c. The submission of supporting documentation to carriers, insurers and other payers to substantiate the health care services provided by **MCCC** to its patients or to appeal denials of payment for same.

d. Other uses or disclosures of PHI as permitted by HIPAA privacy rule.

Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by **MCCC**, in its sole discretion, if **MCCC** determines that **MCA** has violated a term or provision this agreement pertaining to **MCCC'S** obligations under the HIPAA privacy rule, or if **MCA** engages in conduct which would, if committed by **MCCC**, result in a violation of the HIPAA privacy rule by **MCCC.**

(11) **SOFTWARE**. By agreement with and licensing requirements of Tritech Emergency Medical Systems, Inc. (formerly Ortivus NA. The software is the property of **MCA** and cannot be transferred to **MCCC**. The data is the property of **MCCC** and would be provided to them upon termination of this agreement.

(12) **INDEMNIFICATION AND HOLD HARMLESS AGREEMENTS**. MCA will indemnify and hold harmless **MCCC** for all fines and/or penalties that may be assessed for errors or erroneous information contained in claims submitted to third-party payors when and if such errors are the fault of **MCA**. **MCCC** will indemnify and hold harmless **MCA** for all fines and/or penalties that may be assessed for errors or erroneous information contained in claims submitted to third-party payors when such information was incorrectly or erroneously supplied by **MCCC** to **MCA** by way of a Patient Information Report or otherwise.

(13) **REFUND OF AMOUNTS RECEIVED ERRONEOUSLY**. **MCCC** further agrees to refund to third-party payors any payments received by **MCA** on behalf of **MCCC** as a result of the submission of any erroneous claims and to indemnify and hold harmless **MCA** for such amounts. This includes all overpayments which will be reported to **MCCC** by **MCA.**

_____

**MAYOR**

**WITNESS** _____

**CARTER PROFESSIONAL SERVICES, INC., t/a MEDICAL CLAIM-AID**

_____

**CATHY L. CARTER, President**

Regular Council Agenda
May 16, 2017

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**Description**

Order rescinding Order No. 26,124 to re-award the bid amounts for the Combined Chemical Bid FY18 (05-17-UTIL) to UNIVAR, USALCO, SAL Chemical, Shannon Chemical Corporation, and Schmidt Supply to correct an error in the bid award for Liquid Caustic Soda (25%)

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# - ORDER -

*of the*

# Mayor and City Council of Cumberland

**MARYLAND**

**ORDER NO.** _____ **DATE:** _____May 09, 2017____

**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT,** Order No. 26,124 be and is hereby rescinded to correct an error in the bid awarded as noted below; and

**BE IT FURTHER ORERED,** that Caustic Soda 25% was awarded to SAL Chemical in error and the correct award is to UNIVAR for Liquid Caustic Soda 25%; and

**BE IT THEREFORE ORDERED,** that the bids of UNIVAR, USALCO, SAL Chemical, Shannon Chemical Corporation, and Schmidt Supply for the Combined Chemical Bid FY18 (City project No. 05-17-UTIL) be and are hereby accepted in the following estimated amounts:

| | | *UNIVAR* | *SAL* | *USALCO* | *Shannon* | *SH Schmidt* |
|---|---|---|---|---|---|---|
| | **CHEMICAL** | | | | | |
| 1 | Liquid Chlorine | $42.0000 | | | | |
| 2 | Granular Chlorine | $189.5000 | | | | |
| 3 | Potassium Permanganate | | | | $617.0000 | |
| 4 | Sulfur Dioxide | $78.0000 | | | | |
| ~~5~~ | ~~Caustic Soda (25%)~~ | - | ~~$11.1300~~ | - | | |
| **5** | **Liquid Caustic Soda (25%)** | **$ 1.1374** | | | | |
| 6 | Solar Salt (extra coarse) | $16.7000 | | | | |
| 7 | Liquid Sodium Bisulfite | $27.0000 | | | | |
| 8 | Hydrofluosilicic Acid | | $1.9100 | | | |
| 9 | Zinc Orthophosphate | | $4.1700 | | | |
| 10 | DelPac 20/20 | $1.6400 | | | | |
| 11 | DelPac 2000 | | | $1.2900 | | |
| 12 | Methanol 138,000 gal | $1.8500 | | | | |
| 13 | Ferric Chloride (37-42%) | | $1.0550 | | | |
| 14 | Sodium Hypochlorite 12.5% | $0.8940 | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 15 | Sodium Hypochlorite 15% at 1.18 | | | | | $1.6000 |
| 16 | Pool Brite* Chlorine Stabilizer | | | | | $210.0000 |
| 17 | Granular Chlorine/Calcium Hypochlorite | | | | | $160.0000 |
| 18 | Sodium Bicarbonate | | | | | $28.5000 |
| 19 | Calcium Chloride | | | | | $24.0000 |

and:

**BE IT FURTHER ORDERED**, that all other bids received be and are hereby rejected; and

**BE IT FURTHER ORDERED**, that the Mayor be and is hereby authorized to execute chemical purchase contracts with the accepted vendors; and

**BE IT FURTHER ORDERED**, that the contracts shall be awarded for one (1) year periods with the option to renew for two (2) consecutive one-year periods, upon mutual consent of the parties.

**Mayor Brian K. Grim**

***Estimated costs per department***

| | |
|---|---|
| WWTP 003.310.36000 | $ 426,587.00 |
| WFP 002.230.36000 | **$253,534.00** ~~$ 353,460.00~~ |
| Recreation Dept. 001.077.36000 | $ 15,109.00 |

**Combined Chemical Bid - FY18**

**Tally Sheet**

**Chemical Bid**

## City of Cumberland - Water Filtration Plant and Wastewater Treatment Plant Chemicals

| Chemical | UNIVAR 1 | Schmidt 2 | SAL 3 | Gulbrandse 4 | Kuehne 5 | JCI Jones 6 | Kemira 7 | USALCO 8 | Shannon 9 | Klenziod, Inc 10 | Coyne 11 | Quantity | Unit | TOTALS* Annual Cost per Facility |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Liquid Chlorine - 1-ton cylinder - WWTP | 42.00 | | | | 100.00 | ~~35.00~~ | | | | | | 640 | per CWT | 26,880.00 |
| City - WFP | | | | | | | | | | | | 200 | | 8,400.00 |
| Granular Chlorine - 100 lb drum - WWTP | 189.50 | | | | | | | | | | 203.33 | 3 | per CWT | 568.50 |
| DelPac 2000 - Bulk - WWTP | | | | 1.180 | | | | 1.29 | | | | 120,000 | per gallon | 154,800.00 |
| City | | | | GPAC 2000 | | | | | | | | | | |
| Potassium Permanganate - 330.75 lb drum - WFP | 1,150.00 | | 859.95 | | | | | | 617.00 | | 777.19 | 5 | per drum | 3,085.00 |
| City | | | | | | | | | | | | | | |
| Sulfur Dioxide - 1 ton cylinder - WWTP | 78.00 | | | | | ~~72.50~~ | | | | | | 220 | per CWT | 17,160.00 |
| City | | | | | | | | | | | | | | |
| Liquid Caustic Soda (25%) - Bulk - WFP | 1.1374 | | 1.19 | | | | | | | | | 10,000 | per gallon | 11,374.00 |
| City | | | | | | | | | | | | | | |
| Ferric Chloride (bulk) - WWTP | 1.15 | | 1.055 | | | | 1.094 | | | | | 45,000 | per gallon | 47,475.00 |
| City | | | | | | | | | | | | | | |
| Solar Salt - 50 lb bags - WFP | 16.70 | | | | | | | | | | | 378 | per CWT | 6,312.60 |
| City | | | | | | | | | | | | | | |
| Liquid Sodium Bisulfite - 600 lb drum - WFP | 27.00 | | 32.80 | | | | | | | | | 216 | per CWT | 5,832.00 |
| City | | | | | | | | | | | | | | |
| Zinc Orthophosphate - WFP | 4.325 | | 4.17 | | | | | | 5.17 | 5.18 | 4.332 | 11,000 | per gallon | 45,870.00 |
| City | | | | | | | | | | | | | | |
| Hydrofluosilicic Acid (23%) - Bulk Supply - WFP | 1.93 | | 1.91 | | | | | | 2.47 | | | 8,000 | per gallon | 15,280.00 |
| City | | | | | | | | | | | | | | |
| Sodium Hypochlorite (12.5%) - bulk - WFP | 0.894 | | | | 5.00 | | | | | | | 110,000 | per gallon | 98,340.00 |
| City | | | | | | | | | | | | | | |
| DelPac 20/20 - WFP | 1.64 | | | 1.159 | | | | | | | | 36,000 | per gallon | 59,040.00 |
| City | | | | GPAC 2070 | | | | | | | | | | |
| Methanol - WWTP | 1.850 | | | | | | | | | | | 97,132 | per gallon | 179,694.20 |

| Cost per Department | W/DelPAC |
|---|---|
| **WWTP** | 426,578 |
| **WFP** | 253,534 |
| **FY18 Annual Estimated Cost** | 680,111 |

Contract award recommendations in yellow

Item # 11

Attachment number 2 \nPa

**Notes**

**1 - Two ton min delivery Cl.  Solar salt 1 pallet min 49 bags. L. S. Bisulfate 2 drum min. $Zn_3(PO_4)_2$ Carus 3300.**
**2 - Specializes in pool chemicals (see rec dept bid results page)**
**3 - Review spec emailed to WW WFP March 31.**
**4 - Not DelPAC as specified in bid sheets. Price for GPAC 2070 and GPAC 2000. Not sufficient performance test on GPAC products.**
**5 - NA**
**6 - Three ton min delivery Cl. 48 hr notice on Cl and $SO_2$. MAJOR ISSUES in 2000 - Cl leak & late deliveries.**
**7 - NA**
**8 - NA**
**9 - Review spec emailed to WFP March 31.**
**10 - NA**
**11 - Disqualified - no addendum #3**

***Includes DelPAC product pricing & Chlorine/Sulfur Dioxide through UNIVAR**

**** *The bid sheets specified DelPAC 2020 and DelPAC2000* . Gulbrandsen bid GPAC products.  The GPAC offers competitive pricing against the DelPAC product; however, the DelPAC chemical is a primary coagulant/TP remover in each of the treatment plants involved in the bid process.  At this time there is not sufficient qualification information on the GPAC2070 at the WFP or GPAC2000 at the WWTP.**

Regular Council Agenda
May 16, 2017

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**Description**

Order approving the execution of a Lease Agreement with The Dapper Dan Club of Allegany County, Inc. for the use of the former Police Firing Range in Constitution Park for the operation of batting cages for a ten (10) year term effective May 1, 2017 - April 30, 2027

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# - ORDER -

*of the*

# Mayor and City Council of Cumberland

**MARYLAND**

**ORDER NO. _____** **DATE: ____May 16, 2017_____**

**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT,** the Mayor be and is hereby authorized to execute a Lease Agreement by and between the Mayor and City Council of Cumberland and The Dapper Dan Club of Allegany County, Inc. for the use of the former Police Firing Range in Constitution Park for the purpose of operating batting cages; and

**BE IT FURTHER ORDERED**, that this Lease shall be for a term of ten (10) years commencing May 1, 2017 for the rent of One Dollars ($1.00) per year.

_____

**Mayor Brian K. Grim**

# LEASE AGREEMENT

**THIS LEASE AGREEMENT** ("Lease") is made and executed in duplicate, this _____ day of _____, 2017, by and between **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a municipal corporation of the State of Maryland, (hereinafter referred to as "Lessor"), and **THE DAPPER DAN CLUB OF ALLEGANY COUNTY, INC.,** a non-profit corporation organized under the laws of Maryland for charitable purposes, (hereinafter referred to as "Lessee").

**WITNESSETH:**

**THAT FOR AND IN CONSIDERATION** of the agreements contained herein and other valuable considerations, Lessor leases to Lessee for a term of ten (10) years commencing May 1, 2017 and terminating April 30, 2027 for the rent of One Dollar ($1.00) per year, said rent to be paid in advance on the first day of May of each year during the term of this Lease, that certain property located in Constitution Park, Cumberland, Allegany County, Maryland where the former Police Department Firing Range was located (the "Leased Premises") subject to the following terms and conditions:

1. Lessee agrees to pay the rent in the manner set forth above and to make the payments at the office of the City Comptroller of the City of Cumberland.

2. Lessee shall use the Leased Premises for the purpose of operating batting cages. No other uses shall be permitted without the written permission of Lessor. Lessee shall keep the batting cages open to all members of the public, subject to reasonable regulations which Lessee may impose. Three (3) pitching machines, one (1) of which will be for softball only, along with side and overhead netting shall be kept and maintained on the Leased Premises during the term of this Lease.

3. Lessee shall make no alterations to the Leased Premises inconsistent with the batting cage use. If Lessee elects to remove any improvements it placed on the Leased Premises, it shall promptly repair any damage caused by the removal. No permanent improvements or alterations of any kind shall be made on the Leased Premises without the prior written consent of Lessor.

4. Lessee may not assign this Lease or sublet the whole or any portion of the Leased Premises and it may not grant licenses and concessions as to the whole or any portion thereof without Lessor's prior written consent. In the event Lessor consents in writing to a sublease or the granting of a license or concession, Lessor shall remain primarily liable for the full performance of this Lease.

5. Lessee will keep the Lease Premises in good condition and repair and shall make all necessary replacements so as to maintain said status of repair at its own expense. Lessee's repair and maintenance obligations shall include, but not be limited to, the following:

A. The repair and maintenance of the building on the site;

B. Repair and maintenance of the electrical service at the site;

C. Repair and maintenance of the lighting, including, but not limited to, the motion detector with lights around the building;

D. Repair and maintenance of the water service line, water fountain, and lavatory; and

E. Repair and maintenance of the parking lot on the side of the Leased Premises.

Lessor shall have no obligation to maintain or repair the Leased Premises nor shall it be obligated to make any improvements thereon of any kind.

6. Lessee shall pay for electrical service to the site.

7. Throughout the term of this Lease, Lessee shall, at its expense, maintain comprehensive commercial general liability insurance covering personal injury and property damage occurring on the Leased Premises. Said policy shall provide coverage of no less than One Million Dollars ($1,000,000.00) per person and Two Million Dollars ($2,000,000.00) per occurrence. The insurance policy shall name the "Mayor and City Council of Cumberland" as an additional insured and shall include an endorsement requiring the insurer to provide Lessor with no less than thirty (30) days advance written notice of the cancellation or nonrenewal of the policy before the policy may be cancelled or non-renewed. Upon request, from time to time, Lessee shall provide Lessor with certificates of insurance evidencing the procurement of the aforesaid insurance coverage.

8. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, actions, damages, liabilities, and expenses related to the Leased Premises, Lessee's use of the Leased Premises, or arising from, out of, or as an incident to any occurrences on the Lease Premises, however caused. Lessee's indemnification obligation includes, but is not limited to, the responsibility to reimburse Lessor for its reasonable attorneys' fees, court costs and expenses that were incurred as a result of or as an incident to any such claims, actions, damages, liabilities and/or expenses. Lessee waives any claims against Lessor, officers, officials, agents and employees, related to the use or condition of the Leased Premises or arising from, out of, or as an incident to any occurrence on the Leased Premises. The foregoing waiver and release is intended by Lessee and Lessor to be absolute, unconditional, and without exception.

9. Lessee agrees to indemnify and hold Lessor harmless with respect to the reasonable attorneys' fees, costs and expenses Lessee incurs as a result of, arising out of or as an incident to any breach of the terms of this Lease by Lessee.

10. Lessee agrees to be bound by the rules and regulations which Lessor may from time to time adopt and promulgate, and thereafter supplement and amend, applicable to the Leased Premises. Notice of such rules and regulations and of any amendment and supplements thereto shall be given to Lessee, and Lessee agrees thereupon to comply with and observe all such rules

and regulations. A breach of any of such rules and regulations, whether now existing or hereinafter adopted, shall be deemed a breach of this Lease. Lessor shall not be liable to Lessee or responsible for any costs or damages for failure to enforce the rules and regulations uniformly.

11. In the absence of a breach in the terms of this Lease, it shall be terminable at the will of Lessor, for any reason or no reason at all, upon the provision of no less than thirty (30) days advance written notice to Lessee. In the event of a breach in the terms of this Lease, in addition to the other remedies Lessee may have hereunder, at law or in equity, it may immediately terminate this Lease.

12. At the expiration or earlier termination of the term of this Lease, if Lessor elects to require that alterations, additions, improvements, changes, affixations of chattels, or other work made or performed by Lessee to the Leased Premises be removed, Lessee hereby agrees to cause the same to be removed at its sole cost and expense. This removal obligation applies to any alterations, improvements, etc. made to the Leased Premises by Lessee, regardless of whether they were made during the term of this Lease or prior thereto. If Lessee fails to remove the same, Lessor may cause them to be removed at Lessee's expense, and Lessee hereby agrees to reimburse Lessor for the costs of such removal together with all and any damages which Lessor may suffer and sustain by reason of the failure of Lessee to remove the same.

13. At the expiration or earlier termination of the term of this Lease, Lessee shall immediately remove all personal property which it owns and is not prohibited from removing from the Leased Premises under the provisions of this Lease. Should Lessee fail to do so, Lessor, at its option, may cause that property to be removed at the risk and expense of Lessee (both as to loss and damage) or disposed of in the same manner as rubbish, and Lessee hereby agrees to pay all of the reasonable costs and expenses Lessor incurs in doing so, including, but not limited to, sums paid to store the property elsewhere, disposal costs, and/or the cost of any repairs to the Leased Premises caused by the removal of the property. Lessor shall have no obligation to store or preserve any such personal property.

14. This Lease shall be construed under the laws of the State of Maryland. The parties acknowledge that this Lease had been drafted, negotiated, made, delivered and consummated in the State of Maryland.

15. This Lease and the covenants, terms and conditions herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. This Lease contains the final agreement between the parties hereto. No party shall have any obligation not expressly set forth herein, and no party shall be bound by any promises or representations not in writing executed by the parties subsequent to the date hereof.

17. The parties stipulate that the Leased Premises are being leased exclusively for business, commercial, mercantile, or industrial purposes.

18. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH EITHER OF THEMMAY 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 on the date and date first above written.

**WITNESS/ATTEST**

**MAYOR AND CITY COUNCIL OF CUMBERLAND**

_____ By: _____(SEAL)
Marjorie A. Woodring, City Clerk Brian K. Grim, Mayor

**THE DAPPER DAN CLUB OF ALLEGANY COUNTY, MD**

_____ By: _____(SEAL)

Regular Council Agenda
May 16, 2017

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**Description**

Order approving an Historic District Tax Incentive Application for property at 2 Howard Street, owned by Footer Building Development LLC, to provide a property tax credit in the amount of $124,060.19 for a total of five years and a 10-year property tax assessment freeze equaling $232,067, effective with the 2015-16 tax year

**Approval, Acceptance / Recommendation**

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

# - ORDER -

*of the*

# Mayor and City Council of Cumberland

**MARYLAND**

**ORDER NO. _____** **DATE:** __May 16, 2017___

**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT,** the property located at 2 Howard Street, owned by Footer Building Development LLC (Tax Acct. #04-030524), be and is hereby granted a one-time Historic District Property Tax Credit commencing with the 2015-2016 tax year as follows:

1. Property tax credit in the amount of $124,060.19 (10% of total eligible project costs of $1,240,601.85). The credit will be applied to real estate property taxes and is valid for a total of five years. Any credits remaining after that time will expire.
2. Property tax assessment freeze for the maximum 10 years due to an investment equaling 500% of the pre-improvement value of the property ($232,067.00)

_____

**Mayor Brian K. Grim**

## Historic District Tax Incentive Program

**By Kathy McKenney**
**2 Howard Street**
**Owner: Footer Building Development LLC**
**Contact: Michael Joy**
**Tax Account #: 04-030524**

A Historic District Tax Incentive Application has been received from the owners of the property located at 2 Howard Street. Based on research, calculations (within the allowable two-year project time period), and materials received, I would like to make the following recommendation:

- City of Cumberland property tax credit recommended in the amount of $124,060.19 (10% of total eligible project costs of $1,240,601.85). The credit will be applied to real estate property taxes and is valid for a total of five years. Any credits remaining after that time will expire.
- 
- A property tax assessment freeze for the maximum 10 years due to an investment equaling 500% of the pre-improvement value of the property ($232,067.00).