



**MAYOR**

Brian K. Grim

**CITY ADMINISTRATOR**

Jeff Rhodes

**CITY SOLICITOR**

Michael Scott Cohen

**COUNCIL**

Seth D. Bernard

David Caporale

Richard J. "Rock" Cioni

Eugene T. Frazier

**CITY CLERK**

Marjorie A. Woodring

## AGENDA

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

DATE 4/4/2017

**\*Pledge of Allegiance**

**I. ROLL CALL**

**II. PROCLAMATIONS**

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

**III. DIRECTOR'S REPORT**

(A) Administrative Services

1. Administrative Services monthly report for February, 2017

**IV. APPROVAL OF MINUTES**

(A) Routine

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

(B) Administrative / Executive

1. Closed Meeting Announcement - April 4, 2017

**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

**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

## **VII. NEW BUSINESS**

### **(A) Orders (Consent Agenda)**

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

## **VIII. PUBLIC COMMENTS**

All public comments are limited to 5 minutes per person

## **IX. ADJOURNMENT**



Regular Council Agenda  
April 4, 2017

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**Description**

Proclaiming Thursday, April 27, 2017 as Cumberland Arbor Day

**Approval, Acceptance / Recommendation**

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**



Regular Council Agenda  
April 4, 2017

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**Description**

Administrative Services monthly report for February, 2017

**Approval, Acceptance / Recommendation**

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**

March 20, 2017

Honorable Mayor and City Council  
City Hall  
Cumberland, Maryland 21502

Re: Administrative Services Monthly Report for February, 2017

Dear Mayor and City Council Members:

The following report is submitted by the Department of Administrative Services for the month of February, 2017.

### **Management Information Systems**

Management Information Systems reports the following activities for the month of February, 2017:

#### **Statistics**

192 completed help desk requests  
231 open help desk requests

#### **Activities**

Major department initiatives in the past month include:

- Continued working with public works on combined vehicle maintenance software solution
- Work with Tyler Technologies/New World Systems on Tyler Cashiering and Community Development modules
- Open and analyze bids for new copiers and copier maintenance
- Work with Spyglass Systems on communications bill audit
- Work with CPD on covert camera

### **Community Development**

The Community Development Department reports the following activities for the month of February, 2017:

#### **CODE COMPLIANCE**

##### **Code Enforcement:**

Nuisance & Junk <u>Vehicle Complaints</u>	Property Maintenance <u>Complaints</u>	Building Code <u>Complaints</u>
Received: 9	Received: 23	Received: 00
Corrected: n/a	Corrected: n/a	Corrected: n/a

Housing CodeComplaints

Received: n/a  
Corrected: n/a

Zoning Complaints

Received: 0  
Corrected: n/a

## Permits, Applications, and Licenses:

<u>Building Permits</u>	Residential	<u>Rental License</u>	<u>Plan Reviews</u>
Received: 2	Received: 58	Received: 1	Received: 1
Issued: 1	Issued: 58	Issued: 1	Issued: 1

Occupancy Permit

Received: 4  
Issued: 1

Housing Inspections

Conducted: 38  
Passed: 38

Revenue

Building Permits:	\$ 4,152.00
Miscellaneous Permits:	149.00
Occupancy Permits:	105.00
Utility Permits:	0.00
Reviews, Amendments, and Appeals:	0.00
Rental Licenses:	5,700.00
Paid Inspections:	0.00
Municipal Infractions:	0.00
TOTAL	\$6,106.00
Demolition Permit (Bonds)	0.00

**Code Enforcement Activity:**

- Numerous housing complaints have been received and successfully fielded by code enforcement staff
- Continue to research available tools for use in the field by code enforcement. Motivation and follow-up continue to be a focus
- Housing inspections continue to improve using the I-pad technology and streamlined staff processing. Consideration has been discussed for process changes
- 2 Bi-weekly Community Development Coordination meeting were conducted.
- 2 Bi-weekly Code Enforcement meeting were conducted
- Zero demolitions took place in February
- Construction at "The Pointe" continues. Second home near completion
- Single family home addition continues on Shades Lane
- Commercial Projects in various stages of development

- Allegany High School construction continues. Minor setbacks with the temporary access road via Crest Drive.
- Work on expansion of South Cumberland Library continues
- Hampton Inn Project moving forward. All permit issues have been resolved. Footers currently underway
- Mezzo's first floor renovation continues
- Cartridges Galore at 66 Pershing Street and the Creamery expansion continue to be stalled awaiting response from the project architect
- Proposed new restaurant at 45 North Centre Street permit issued. Construction to begin
- Revised plans for Classic Car Wash, 409 Willowbrook Road have been received. Awaiting contractor information
- Footer project is moving into phase two - interior renovation. Awaiting construction drawings and permit application
- Working with CD staff reviewing leasehold grant program applications

**Community Services Activity:**

- Continued normal job duties as provided to direct supervisor in separate report.
- Attended 2 of 4 days of training for New World Software 2/27 and 2/28.
- 55 additional unpaid Rental Licenses (96 units) verified in February and \$5,700 in revenue collected.
- Houzz internet platform went live in February which includes the City's building permit process and link to our website. Local contractors may begin adding their contact information.  
<http://www.houzz.com/city/cumberland>
- Arranged for Bridges to Opportunity (WMHS Community Health and Wellness) to speak March 14, to the SCBCA neighborhood organization.
- Shared NAC brochures with CPD to distribute when officer attends various neighborhood meetings.
- Worked to solve issue of noting tasks on calendars of the code officers when in field.
- NAC met in February 27 with 8 attending. Next meeting will be March 27 in Johnson Heights/Mapleside neighborhood. Mayor and City Council plan to attend all upcoming NAC Neighborhood Outreach meetings.
- NNO Planning Committee met February 16, next meeting is scheduled for week of March 20. Initial email for 2017 event went out to all 177 - 2016 participants with 7 organizations confirming participation immediately. State Police and Allegany County Sheriff's Dept. are considering participating with Cumberland this year.

## **COMMUNIT DEVELOPMENT PROGRAMS**

### **CDBG Activity:**

- Acquired IDIS access for Cindy Hartley
- Created 2017 Annual Plan in IDIS, version2; linked to 2015-2019 5 Year Plan, reviewed the template and HUD guidance to assure meeting all the meeting criteria
- Prepared powerpoint and delivered the CDBG presentation to M &CC as the 1<sup>st</sup> Public Hearing for 2017 CDBG Annual Plan
- Provided a reallocation strategy and posted amendments and sent adjustments to finance from 2 completed amendments creating two new activities and increasing funding for two existing activities,
- Provided independent technical assistance to 4 agencies seeking CDBG funding
- Provided CDBG technical assistance to finance to reconcile CDBG with City records
- Conducted site visits for the ERR on 3 HRDC rental properties awarded CDBG, paperwork for 3 to KM for review
- Developing written summaries for the 2017 Annual Plan meetings
- Completed January draw evaluation and drawdown from IDIS
- Attended Transportation Forum
- Worked on 5 ERR's from 2016 activities as information is submitted, T/A to awardees
- Attended and participated in NAC meeting and HRC meeting and 3 HRC committee meetings
- Planned and facilitated 2 Community Housing Services Committee meetings
- Conducted several CDBG needs assessment meetings: Parks and Recreation, Housing/Blight Committee, Downtown Development Commission, Economic Development with CEDC
- Attended Budget development meetings
- Attended meetings and researched for reconciliation of CDBG records with IDIS records with finance staff

### **Historic Planning/Preservation:**

The Cumberland Historic Preservation Commission met on Wednesday February 8, 2017 at 4pm in the City Hall Council Chambers. There was one Certificate of Appropriateness on the agenda reviewed for the future Washington Street Lighting Project.

There were no administrative reviews or Section 106 reviews processed during the month.

With the assistance of the Sustainable Communities Workgroup, staff submitted the City of Cumberland's Sustainable Communities Designation Renewal application for the January 27, 2017 deadline. This designation provides access to numerous State of Maryland financial assistance programs for the local government, citizens, and property owners.

An application to the Pirates Charities Fields for Kids program was submitted on March 2nd for consideration of funding for Abrams Field.

The contract for the Cumberland Historic Survey project, funded in large part by a Certified Local Government subgrant, was awarded by the Mayor and City Council to Historitecture LLC of LaVale, MD on February 7, 2017 for the completion of several updates to the nearly forty-year-old comprehensive inventory for the Maryland Inventory of Historic Properties. The project will produce an individual Maryland Inventory of Historic Properties (MIHP) form for the Jane Gates and Laura Gates Hamilton House and three MIHP survey district forms for White Oaks, the Dingle, and the Canada Viaduct Districts. Several public meetings will take place during the process and the project is expected to be completed this summer.

A technician from the New World/Tyler Munis met with Community Development staff throughout the last week of the month to begin discussions of the conversion of the permit, code enforcement, and rental licensing software systems to an updated web-based system. Preliminary set-up work was completed and additional tasks were assigned to staff to be completed before the next on-site visit.

Routine grant administration reports were submitted to the Maryland Historical Trust, and Department of Housing and Community Development.

### **Parks & Recreation Department:**

**Pavilion Reservations** began on Monday February 6 for the 2017 season. Six covered Pavilions are available at Cumberland's Constitution Park.

\$ 100.00 for the Large Pavilion and \$ 75.00 for the Small Pavilion. Public response has been good.

### **Reservations made in the month of February – 53**

**Co-ed Volleyball League** - 7 teams, 78 participants, games are played weekly on Wednesday nights at South Penn Elementary School. Play is under the direction of Carol Brown.

3 weeks of games – 9 matches - Attendance 126

### **Areas of work**

- Contact representatives for area leagues, groups and schools intending to use City fields for the upcoming spring/summer ball field and facilities. Begin receiving Facility Use Requests for League and tournament play for 2017 season. Communicating the issue of building & field improvements at Cavanaugh and the upcoming CSO storage project at Mason Complex as related to the leagues and groups using both facilities.
- July 4<sup>th</sup> Fireworks contract was determined to be Starfire Corporation of Carrolltown PA.
- Continue to take and review Seasonal applications for Lifeguards, Day camp, park watchman. (Pool employee interviews to be scheduled for March 25 at FSU pool)

- Continue working on 2017 season for Park Pool and Constitution Park Day Camp
- Continue to receive park reservations and fee payments
- Work related to Budget 2018 preparation
- Scheduling Music and entertainment for the Sunday in the Park Concert Series.
- Related to replacement of Diving Board at Park Pool

### **Meetings**

- Recreation Advisory Board meeting held on February 6
- Staff Meetings each Thursday
- Block Grant Program funding meeting
- Budget meeting
- UM Cooperative Extension Office meetings – Summer programs and Easter Egg Hunt
- Mason Sports complex – CSO Storage facility project/ and Facility usage

### **Upcoming**

- March Recreation Advisory Board Meeting – Monday March 6, 2017
- Continue Field and facility usage approvals and schedules
- Summer Lunch Program training
- Seasonal staff interviews for Day Camp and Park Pool
- Continue plans for the Easter Egg Hunt
- Planning for School Marble Tournaments
- Day Camp and Pool related season for 2017

### **Comptroller's Office**

The Comptroller's office reports the following information for the month of February, 2017:

#### **Cash Flow:**

Attached for your review is a Cash Flow Summary for the month of February 2017.

On February 1, 2017 the City had a cash balance of \$5,088,396. Receipts exceeded disbursements by \$1,704,177 in February leaving the City with a cash balance of \$6,792,573 at February 28, 2017.

As of February 28, 2017, the significant balances were:

Taxes receivable ( General Fund)					\$ 2,396,880
	Jan Balance	New Billing	Collections	Bad Debt	Feb Balance
FY 2017	\$ 1,761,988	\$ -	\$ 220,673	\$ -	\$ 1,541,315
FY 2016	549,048	-	67,723	-	481,325
FY 2015	265,000	-	144,917	-	120,083
FY 2014	36,839	-	1,164	-	35,675
FY 2013	31,212	-	431	-	30,781
FY 2012	33,471	-	165	-	33,306
FY 2011	49,637	-	133	-	49,504
Prior FY's	105,206	-	-	-	104,891
	<u>\$ 2,832,401</u>	<u>\$ -</u>	<u>\$ 435,206</u>	<u>\$ -</u>	<u>\$ 2,396,880</u>

The current year tax receivable balance is comprised of the following:

Real property (non-owner occupied)	\$ 725,888
Non-Corp Personal Property	7,836
Corporate Personal Property	337,740
Real Property (semiannual payments)	469,851
Real Property (Half Year)	-
	<u>\$ 1,541,315</u>

March is a 3-pay month so the cash required to meet payroll is an estimated \$1,650,000.

The City cash position continues to be strong as illustrated in the cash and investments table following table. Restricted cash and investments are comprised primarily of invested bond proceeds restricted to associated capital projects and expenditures.

**Cash and Investment Summary**  
**February 28, 2017**

	Cash	Investments
Beginning Balance	\$ 5,088,396	\$ 7,798,013
Add:		
Cash Receipts	5,903,044	3,693
Investment Transfer	-	-
Less:		
Disbursements	4,198,867	-
Investment Transfer	-	616,040
Ending Balance	\$ 6,792,573	\$ 7,185,666
Restricted	\$ 484,211	\$ 1,290,649

**Capital Projects and Associated Debt:**

The table below illustrates cash restrictions and balances of invested and available bond proceeds associated with capital projects.

**Restricted Cash**

	2/1/2017	Increase	Utilization	2/28/2017
Police Seizures	\$ 277,467	\$ 14	\$ 2,709	\$ 274,772
Bowers Trust	91,395	-	-	91,395
Restricted Lenders	106,341	3	-	106,344
Other	11,703	-	3	11,700
	<b>\$ 486,906</b>	<b>\$ 17</b>	<b>\$ 2,712</b>	<b>\$ 484,211</b>

**Restricted Investments**

	2/1/2017	Increase	Utilization	2/28/2017
DDC	\$ 6,663	\$ 3	-	\$ 6,666
GOB 2013	1,501,709	711	414,594	1,087,826
BAN 2016	397,415	188	201,446	196,157
	<b>\$ 1,905,787</b>	<b>\$ 902</b>	<b>\$ 616,040</b>	<b>\$ 1,290,649</b>

**Available Bond Proceeds**

	2/1/2017	Increase	Utilization	2/28/2017
CDA 2014	\$ 1,452,170	\$ -	\$ 370,354	\$ 1,081,816
CDA 2015	2,574,039	500	58,271	2,516,268
	<b>\$ 4,026,209</b>	<b>\$ 500</b>	<b>\$ 428,625</b>	<b>\$ 3,598,084</b>

The DDC restricted investment was funded through donations and is restricted for the purpose of maintenance of the Wes Han Fountain in the Downtown Mall.

The GOB 2013 bond proceed investments were originally intended for the demolition of Memorial Hospital, with any remaining proceeds earmarked for street repairs and projects. \$415,000 was drawn in February to fund costs associated with the Washington Street Lighting project leaving a balance of \$1.088 million.

The Bond Anticipation Note (BAN 2016) for the Maryland Avenue Redevelopment Project was issued in June 2016. The balance of the bond proceeds is \$196,000.

CDA 2014 and 2015 bond proceeds are intended for a variety of General Fund (\$1.8 million), Water Fund (\$434,000) and Sewer Fund (\$1.34 million) projects and are available to be drawn as required. In February the City drew \$370,000 from CDA 2014 proceeds to fund various street improvement projects that were completed in November and \$58,000 from CDA 2015 to fund various street and sewer improvements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JR', with a long horizontal flourish extending to the right.

Jeff Rhodes  
City Administrator



Regular Council Agenda  
April 4, 2017

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**Description**

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

**CITY SOLICITOR**  
Michael Scott Cohen

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

**CITY CLERK**  
Marjorie A. Woodring

# MINUTES

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

DATE: 2/21/17

## \*Pledge of Allegiance

### I. ROLL CALL

The meeting convened at 6:23 p.m.

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

As Mayor Grim was participating in the meeting via conference phone, a motion was made by Bernard to appoint Councilman David Caporale as President pro tem. Frazier seconded the motion and it carried on a vote of 5-0.

### II. DIRECTOR'S REPORT

#### (A) Police

1. Police Department monthly report for January, 2017

**Item Action:** Approved

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

#### (B) Fire

1. Fire Department monthly report for January 2017

**Item Action:** Approved

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

#### (C) Administrative Services

1. Administrative Services monthly report for January, 2017

**Item Action: Approved**

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

(D) Public Works

1. Maintenance Division monthly report for January, 2017

**Item Action: Approved**

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

2. Engineering Division monthly report for January 2017

**Item Action: Approved**

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

3. Street Improvement Report for Calendar Year 2016

**Item Action: Approved**

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

4. 2015 Allegany County Bridge Inspection Reports as summarized by the Engineering Department

**Item Action: Approved**

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

5. 2016 Annual Shade Tree Commission Report

**Item Action: Approved**

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

### **III. APPROVAL OF MINUTES**

(A) Administrative / Executive

1. Statement of the Closed Meeting held Tuesday, February 21, 2017 at 5:00 p.m.

Mayor Pro Tem Caporale announced that a Closed Session had been held on Tuesday, February 21, 2017 at 5:00 p.m. and read into the record a summary of the 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.

### **IV. UNFINISHED BUSINESS**

(A) Ordinances

1. Ordinance (*2nd & 3rd readings*) - to repeal Sections 2-246 to 2-248 of the City Code thereby eliminating the provisions pertaining to the Economic Development Commission

Mr. Rhodes advised that the Ordinance would remove the provisions that created the Economic Development Commission from the City Code.

SECOND READING: The Ordinance was read in Title only for its second reading. The reading was interrupted and motion to suspend the reading and move to the third was made by Bernard, seconded by Cioni and passed on a vote of 5-0. Mayor Pro Tem Caporale called for questions or comments. Being none, the Ordinance proceeded to its third reading.

THIRD READING: The Ordinance was read in Title only for its third reading and was adopted on a vote of 5-0.

ORDINANCE NO. 3816

2. Ordinance (*2nd & 3rd readings*) - to repeal and reenact with amendments Section 10-89 through 10-94 pertaining to business licensing and Chapter 10 Article IV, Sections 10-111 to 10-159 pertaining to automatic devices and arcades

Mr. Rhodes advised that the Ordinance would eliminate the requirements for arcade licensing and business licenses other than a temporary business license from the City Code. He noted that a very limited number of licenses were required and the small amount collected from the licensing did not warrant the cost associated with distributing the licenses and collecting the fees.

SECOND READING: The Ordinance was read in Title only for its second reading. The reading was interrupted and motion to suspend the reading and move to the third was made by Bernard, seconded by Cioni and passed on a vote of 5-0. Mayor Pro Tem Caporale called for questions or comments. Being none, the Ordinance proceeded to its third reading

THIRD READING: The Ordinance was read in Title only for its third reading and was adopted on a vote of 5-0.

ORDINANCE NO. 3817

## V. NEW BUSINESS

### (A) Orders (Consent Agenda)

#### **Item Action:** Approved

Mr. Rhodes reviewed each item on the Consent Agenda and Mayor Pro Tem Caporale entertained questions and comments, which may be noted below.

Motion to approve Consent Agenda Items 1-8 was made by Bernard, seconded by Cioni, and was passed on a vote of 5-0.

1. Order authorizing the City Solicitor to provide notice to Samson Resources Company that the City intends to terminate the Water Agreement dated August 31, 2010 regarding Samson's use of the City's treated effluent water for drilling purposes

Upon questioning from Dale Samms, Mr. Rhodes advised that the City had entered into this agreement in 2001 to allow Samson Resources the use of the City's effluent water for drilling purposes, but there had been very little activity with regard to this contract. Upon questioning from Mr. Samms, Mr. Cohen stated that the City's decision to terminate the

arrangement had nothing to do with Samson's possible current state of bankruptcy.

ORDER NO. 26,094

2. Order abating taxes and/or utilities on the following City-owned properties: 19 N. Waverly Terrace \$405.58 in taxes for years 2011-2016; 417 Walnut Street \$2,040.45 in taxes for years 2010-2016; 229 Cecelia Street \$269.99 in taxes for year 2015; 34 Virginia Avenue \$837.00 in taxes for years 2011-2016 and \$448.53 in utilities; 318 N. Waverly Terrace \$440.90 in taxes for years 2006-2016 and \$410.30 in utilities

ORDER NO. 26,095

3. Order authorizing Special Taxing District Residential Exemptions for 15 S. Liberty Street 2015/16 taxes - \$520.30 and 2016/17 taxes - \$520.30; 47 Baltimore Street 2015/16 taxes - \$399.83 and 2016/17 taxes - \$399.65; 55 N. Centre Street 2016/17 taxes - \$752.88

ORDER NO. 26,096

4. Order accepting the bid of Shaffer Construction for the Cavanaugh Ball Field Concession Renovations (01-17-RE) in the estimated unit price of \$58,740, to be funded through CDBG funds

ORDER NO. 26,097

5. Order declaring approximately 195 3-Com Phone Handsets to be surplus property and authorizing their disposal through e-cycling

ORDER NO. 26,098

6. Order authorizing a Contract of Sale with Eckels Investments, Inc. for the City's purchase of 307-309 Arch Street for \$14,000; authorizing acceptance of the deed providing settlement contingencies are met; authorizing extension of the closing date for 60 days if necessary; and authorizing the City Administrator and City Solicitor to execute all documentation

ORDER NO. 26,099

7. Order authorizing the execution of a Supplemental Letter of Agreement to the Agreement Recreating the Allegany County C3I Unit, dated April 25, 2012, to address the coordination of law enforcement response and the provision of services in the event of a critical trauma informed response at Frostburg State University

ORDER NO. 26,100

8. Order accepting the sole source proposal from Carl Belt, Inc. for the emergency repair of the 30" water main under I-68 in the estimated amount of \$175,000, as provided for by Section 2-171 (c) of the City Code

ORDER NO. 26,101

## **VI. PUBLIC COMMENTS**

All public comments are limited to 5 minutes per person

Tom Hawk, 778 MacDonald Terrace, Cumberland, provided suggestions for disseminating the valuable information contained in Mayor Grim's State of the City Address (February 7, 2017) to City residents. He asked for Council's continued vigilance in protecting the City's water supply, applauded the Council for having open meetings and listening attentively to their constituents, and presented Council with a copy of a book by Carolyn Lukensmeyer entitled, *Bringing Citizens Voices to the Table*;

A Guide for Public Managers.

**VII. ADJOURNMENT**

With no further business at hand, the meeting adjourned at 6:42 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, February 21, 2017 at 5:00 p.m.

Second Floor Conference Room, City Hall

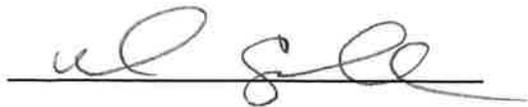
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On Tuesday, February 21, 2017, the Mayor and City Council met in closed session at 5:00 p.m. in the second floor conference room of City Hall to discuss appointments to a Citizen Advisory Commission on organizational wage and benefits, to obtain legal advice regarding the proposed terms of an ordinance to create the commission, and to receive legal advice regarding the terms of a mutual aid agreement for fire and EMS services with Allegany County, Maryland.

Persons in attendance included Mayor Brian Grim via conference phones; Council Members Seth Bernard, David Caporale, Richard Cioni, and Eugene Frazier; City Administrator Jeff Rhodes, City Solicitor Mike Cohen, Donald Dunn, 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 6:15 p.m.

Authority to close the session was provided by the General Provisions Article of the Annotated Code of Maryland, Sections 3-305 (b) (1) and (7).



David Caporale, President Pro Tem

Entered into the public record on 2/21/18.



**MAYOR**  
Brian K. Grim

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**CITY CLERK**  
Marjorie A. Woodring

## MINUTES

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

DATE: 3/7/17

### **\*Pledge of Allegiance**

### **I. ROLL CALL**

The meeting convened at 6:15 p.m.

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

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

### **II. DIRECTOR'S REPORT**

#### **(A) Public Works**

1. Utilities Division & Central Services Monthly Report for January, 2017

**Item Action:** Approved

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

### **III. APPROVAL OF MINUTES**

#### **(A) Routine**

1. Approval of the Regular Session Minutes for January 17 and February 7, 2017

**Item Action:** Approved

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

### **IV. NEW BUSINESS**

#### **(A) Orders (Consent Agenda)**

**Item Action:**

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

1. Order accepting the bid of Excavating Associates for the Amtrak Rail Connection Project (Project No. 11-14-M) in the estimated unit price of \$311,401.00

ORDER NO. 26,102

2. Order authorizing a Contract of Sale with Robert Conteh for the City's purchase of 321-323 Pennsylvania Avenue for \$10,000.00; authorizing acceptance of the deed providing settlement contingencies are met; authorizing extension of the closing date for 60 days if necessary; and authorizing the City Administrator and City Solicitor to execute all documentation

ORDER NO. 26,103

3. Order authorizing a Contract of Sale with Judith Yaider, Donna Lee Struntz, and John William Wilson, Jr. for the City's purchase of 32 Virginia Avenue for \$5,000.00; authorizing acceptance of the deed providing settlement contingencies are met; authorizing extension of the closing date for 60 days if necessary; and authorizing the City Administrator and City Solicitor to execute all documentation

ORDER NO. 26,104

4. Order authorizing a Contract of Sale with Nicholas Walters for the City's purchase of 305 Arch Street for \$12,153.81; authorizing acceptance of the deed providing settlement contingencies are met; authorizing extension of the closing date for 60 days if necessary; and authorizing the City Administrator and City Solicitor to execute all documentation

ORDER NO. 26,105

5. Order authorizing the City Solicitor to provide a notice to the respective parties of the Mutual Aid Agreement for Fire and EMS Protection dated 9/1/03 and the Mutual Aid Agreement for EMS Protection dated 1/22/10, that the City intends to terminate said Agreements within ninety (90) days from the date of notification

ORDER NO. 26,106

**V. PUBLIC COMMENTS**

All public comments are limited to 5 minutes per person

Ed Mullaney, 213 Fayette Street, stated that CSX had been a good community partner overall, but expressed concerns over limited mobility for pedestrians and vehicles caused by certain changes such as too many closed crossings. He discussed concerns with the subway on Queen City Drive and asked for cooperation between CSX and the City to help clean the underpass rather than close it and further hinder pedestrian access to the downtown.

Donna Struntz, owner of 32 Virginia Avenue, thanked the Mayor and Council for taking control of 32 Virginia Avenue, which she and her siblings had acquired upon their parents' passing away.

**VI. ADJOURNMENT**

With no further business at hand, the meeting adjourned at 6:28 p.m.

Minutes approved on \_\_\_\_\_

Brian K. Grim, Mayor \_\_\_\_\_

ATTEST: Marjorie A. Woodring, City Clerk \_\_\_\_\_



Regular Council Agenda  
April 4, 2017

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**Description**

Closed Meeting Announcement - April 4, 2017

**Approval, Acceptance / Recommendation**

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**



Regular Council Agenda  
April 4, 2017

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**Description**

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

**Approval, Acceptance / Recommendation**

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

**Source of Funding (if applicable)**



Regular Council Agenda  
April 4, 2017

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**Description**

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

**Approval, Acceptance / Recommendation**

The first reading of this Ordinance was approved on March 21, 2017.

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, ENTITLED, "AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS SECTIONS 16-1 THROUGH 16-6 OF THE CODE OF THE CITY OF CUMBERLAND (1991 EDITION), FOR THE PURPOSE OF UPDATING EMPLOYEE PAY GRADES."

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that Sections 16-1 through 16-6 of the Code of the City of Cumberland (1991 Edition) be and are hereby repealed and reenacted as follows:

**16-1. Pay grades - AFSCME Employees**

The following pay grades shall apply for all City employees who are, as of the effective date of this section, represented by the American Federation of State, County and Municipal Employees No. 553:

**(a). General Trades and Labor.**

<u>CLASS</u>	<u>GRADE</u>
<b><u>GENERAL TRADES AND LABOR</u></b>	
<b><u>LABOR</u></b>	
Municipal Worker III	5
Municipal Worker II	4
Municipal Worker I	3
Facilities Technician	8
Public Works Technician Entry Level	5
<del>PIP Crew Leader</del>	<del>8</del>
Public Works Technician I	6
<b><u>EQUIPMENT OPERATION</u></b>	
Public Works Technician II	7
<b><u>CRAFTS</u></b>	
HVAC Mechanic	13
<del>Maintenance Mechanic (Bldg. Mtce.)</del>	<del>8**</del>
Parking Meter Supervisor	8
<b><u>EQUIPMENT MAINTENANCE</u></b>	
<del>Maintenance Mechanic, WWTP</del>	<del>8</del>
<del>Mechanic, WWTP</del>	<del>8</del>
Auto Technician II	9
Auto Technician I	8
<b><u>SUPERVISORY</u></b>	
<del>Public Works Crew Leader</del>	<del>9</del>

**PUBLIC UTILITIES****WATER & SEWER OPERATION & REPAIR**

Meter Technician Coordinator	8
Plant Technician III	10
Plant Technician II	8
Plant Technician I	7
Plant Technician Entry Level	6
Pipe Technician III	9
Pipe Technician II	8
Pipe Technician I	7
Pipe Technician Entry Level	6
Lead Utilities Technician	9
Service Technician II	7
Service Technician I	6
Journeyman Electrician	13

**SUPERVISORY**

Public Works Crew Leader	9
Sewer Maintenance Mechanic	9
Water Distribution Supervisor	10

**CUSTOMER SERVICE**

Service Technician II	7
Service Technician I	6

**(b) . Local #553****CLERICAL, FISCAL, DATA PROCESSING AND ADMINISTRATIVE**

<del>Office Associate I</del>	<del>3</del>
<del>Office Associate II</del>	<del>5</del>
<del>Office Associate III</del>	<del>6</del>
<del>Customer Service Associate I</del>	<del>6</del>
<del>Customer Service Associate II</del>	<del>7</del>
<del>Customer Service Associate III</del>	<del>8</del>
Accounting Associate I	6

Accounting Associate II	7
Accounting Associate III	8
Accounting Specialist	9
Accounting Clerk	8
Police Records Specialist	7
Administrative Associate I	7
Administrative Associate II	9
Codes Technician	9
Fire Administrative Officer	9

### ENGINEERING

Engineering Technician I	9
Contract Labor compliance Specialist	10
<del>Senior Engineering Technician</del>	<del>11</del>
Natural Resources Specialist	11

### GENERAL TRADES AND LABOR

<del>Fleet/Maintenance Coordinator</del>	<del>9</del>
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### LABORATORY

Laboratory Technician, WWTP	9
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\*\*FLSA exempt positions unless covered by collective bargaining agreements.

#### **16-2. Pay grades - UFCW employees/law enforcement officers.**

The following pay grades shall apply for all City employees who are, as of the effective date of this section, represented by the United Food & commercial Workers, Local 1994 and/or who are law enforcement officers:

CLASSGRADEPUBLIC SAFETYLAW ENFORCEMENT

<del>Police Patrolman Entry</del>	<del>8</del>
Police Officer	9
Police Corporal	11
Police Sergeant	12

**16-3. Pay grades - IAFF employees/firefighters.**

The following pay grades shall apply for all City employees who are, as of the effective date of this section, represented by the International Association of Firefighters, AFL-CIO, Local #1715, and/or who are firefighters:

CLASSGRADEPUBLIC SAFETYFIRE PROTECTION

Firefighter/EMT	9
Fire Equipment Operator/EMT	10
Fire Lieutenant	12**
Junior Captain	13**

\*\*FLSA exempt positions unless covered by collective bargaining agreements.

**16-4. Pay grades - employees not represented by collective bargaining units.**

The following pay grades shall apply for all City employees who are not represented by a collective bargaining Unit:

<u>CLASS</u>	<u>GRADE</u>
<b><u>CLERICAL, FISCAL, DATA PROCESSING AND ADMINISTRATIVE</u></b>	
<b><u>GENERAL CLERICAL</u></b>	
Assistant to the City Clerk	6
Administrative Associate II	9
Community Development Generalist	10
<b><u>FISCAL AND PROCUREMENT</u></b>	
City Comptroller	18**
Senior Accountant	13**
Accountant	11**
<b><u>DATA PROCESSING</u></b>	
Director of Management Information Systems	17**
IT Specialist	13**
<b><u>ADMINISTRATIVE</u></b>	
Human Resources Officer	12**
Human Resources Associate	10

**ENGINEERING AND ALLIED****ENGINEERING**

<del>Senior Engineer</del>	<del>14**</del>
Director of Engineering	17**
Chief Construction Inspector	12**
Environmental Specialist	14**
Engineering Specialist	12
Project Engineer	13**

**COMMUNITY DEVELOPMENT**

Building and Zoning Officer	12**
Codes Compliance Manager	13**
<del>Senior Building and Zoning Officer</del>	<del>12**</del>
<del>Historic Planner/Preservation Coordinator</del>	<del>13**</del>
Community Development Programs Manager	13**
Economic Development Coordinator	14**
City Planner	14**
Economic Development Specialist	9
Senior Community Development Specialist	14**
Property Improvement Manager	10

**GENERAL TRADES AND LABOR****SUPERVISORY**

Street Superintendent	15**
Street Maintenance Coordinator	12
Public Works Operation Manager	16**
Mall Maintenance Supervisor	5
Facilities/Fleet Maintenance Coordinator	10
Mall Maintenance Worker	3

**PUBLIC UTILITIES****SUPERVISORY**

Water Filtration Plant Superintendent	15**
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Wastewater Treatment Plant Superintendent	15**
Central Services Maintenance Coordinator	15**
Water Services Superintendent	14**
Public Works Utilities Manager	16**
Water Coordinator	11
Sewer Coordinator	11
Sanitary Sewers/Flood Superintendent	13**

## **PUBLIC SAFETY**

### **LAW ENFORCEMENT**

Police Lieutenant	14**
Police Captain	16**

### **FIRE PROTECTION**

<del>Deputy Chief</del>	<del>15</del>
Fire Marshall	14
Fire Captain	14
Battalion Chief	15

## **RECREATION**

### **PARKS AND RECREATION**

Director of Parks and Recreation	14**
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\*\*FLSA exempt positions unless covered by collective bargaining agreements.

## **16-5. Compensation Plan Generally**

(a) The City Administrator shall, when necessary, make recommendations to the Mayor and City Council for changes in base and maximum salaries for the employees

identified in the preceding sections of this chapter, as established by the compensation plan adopted by the Mayor and City Council and set out in this Chapter. Any such changes accepted by the Mayor and City Council shall be implemented by ordinance.

(b) The City Administrator may implement in-grade salary increases or change the grades for particular positions provided funding for such changes is available in existing budgets.

(c) None of the employees identified in the preceding sections of this chapter shall be paid a salary less than the established minimum nor greater than the maximum rates fixed in the compensation plan for the position he or she holds. At the time of the adoption of the plan, no employee shall be paid less than his or her present salary.

(d) The following compensation plan ~~is adopted for fiscal year 2017-18 shall constitute~~ shall be effective from the date of its passage and shall constitute the compensation plan applicable to all employees identified in the preceding section of this chapter. It shall remain in force and effect until such time as it is amended by ordinance of the Mayor and City

Council.

<b>Grade</b>	<b>Base /Minimum Salary</b>	<b>Midpoint</b>	<b>Maximum Salary</b>
18	\$61,622	\$88,032	\$108,279
17	\$56,900	\$81,286	\$99,982
16	\$52,539	\$75,055	\$92,318
15	\$48,512	\$69,303	\$85,243
14	\$44,794	\$63,992	\$78,710
13	\$41,362	\$59,088	\$72,678
12	\$38,192	\$54,560	\$67,109
11	\$35,265	\$50,378	\$61,965
10	\$32,562	\$46,517	\$57,216
9	\$30,067	\$42,953	\$52,832
8	\$27,763	\$39,661	\$48,783
7	\$25,635	\$36,621	\$45,044
6	\$23,670	\$33,814	\$41,591
5	\$21,856	\$31,223	\$38,404
4	\$20,181	\$28,830	\$35,461
3	\$18,634	\$26,620	\$32,743

<b>Grade</b>	<b>Base</b>	<b>Midpoint</b>	<b>Maximum</b>
18	\$ 61,622	\$ 87,657	\$ 113,693
17	\$ 57,356	\$ 81,169	\$ 104,981
16	\$ 53,386	\$ 75,160	\$ 96,934
15	\$ 49,690	\$ 69,598	\$ 89,505
14	\$ 46,250	\$ 64,448	\$ 82,646
13	\$ 43,048	\$ 59,680	\$ 76,312
12	\$ 40,068	\$ 55,266	\$ 70,464
11	\$ 37,294	\$ 51,179	\$ 65,063
10	\$ 34,712	\$ 47,394	\$ 60,077
9	\$ 32,309	\$ 43,891	\$ 55,474
8	\$ 30,072	\$ 40,647	\$ 51,222
7	\$ 27,990	\$ 37,643	\$ 47,296
6	\$ 26,052	\$ 34,861	\$ 43,671
5	\$ 24,249	\$ 32,287	\$ 40,324
4	\$ 22,570	\$ 29,902	\$ 37,234
3	\$ 21,008	\$ 27,694	\$ 34,380

(e) Seasonal, temporary and part-time employees shall receive pay in accordance with the greater of the State or Federal minimum rate or other rates established by the fiscal year budget.

**Section 16-6. Compensation of Board of Zoning Appeals, Officers.**

(a) The Mayor and City Council may compensate

the members of the Board of Zoning Appeals at such rates as established by order.

(b) The compensation for the City Administrator, City Clerk, Chief of the Fire Department, and Chief of the Police Department shall be as is set forth in their respective employment contracts or by Order passed by the Mayor and City Council.

**SECTION 3: AND BE IT FURTHER ORDAINED,** that this Ordinance shall take effect from the date of its passage.

Passed this \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**1st reading: March 21, 2017**



Regular Council Agenda  
April 4, 2017

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**Description**

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

**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: April 4, 2017

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

**THAT**, the Chief of Police be and is hereby authorized to execute a Memorandum of Understanding with other 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.

---

**Brian Grim, Mayor**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, effective this 1<sup>st</sup> day of April, 2017, serves as evidence of the commitment of the agencies listed below to continue the Jane Doe program in Allegany County as members of the Allegany County Sexual Assault Response Team (SART).

### I. PURPOSE

The purpose of this Memorandum of Understanding is to define the policy and protocols, including the handling of evidence in Jane Doe sexual assault cases. Jane Does cases are those in which a victim of sexual assault, sixteen (16) years of age or older, decides to have evidence collection done without committing to moving forward with a police investigation and prosecution. This program provides victims with a time period to contemplate the options available to them, rather than requiring that a decision be made to initiate a police investigation immediately.

### II. RESPONSIBILITIES OF THE PARTIES

The parties to this MOU include the Allegany County Sheriff's Office, the Office of the Allegany County States Attorney, Family Crisis Resource Center, the Maryland State Police, the Combined County Criminal Investigation Unit (C3I), the Cumberland Police Department, Frostburg Police Department, Frostburg State University, Frostburg State University Police Department, and the Western Maryland Health System.

Specifically, the parties agree that:

- a. For some victims who go to a hospital emergency room after a sexual assault, making the decision to move ahead with a criminal investigation and prosecution is difficult and problematic.
- b. Providing victims with a period of time to manage emotions and make educated choices is empowering and beneficial to the healing process.
- c. By collecting evidence immediately after a crime of sexual violence the chances of successful prosecution are increased.
- d. The Jane Doe program can only be offered to victims of crimes that do not meet the criteria for child abuse.

- e. C3I will use standard protocol for evidence pick up and storage of evidence.
- f. Victims will be notified that they have eighteen (18) months to make a report without the evidence being destroyed.
- g. Victims' names will remain confidential until the victim decides to make a report to law enforcement.

**This Memorandum of Understanding will be effective as of April 1, 2017 and will be automatically renewed unless any of the agencies represented request a re-evaluation.**

**Cumberland Police Department**

\_\_\_\_\_  
Chief Charles H. Hinnant

**Maryland State Police**

\_\_\_\_\_  
Lt. Homer Martz

**Allegheny County Sheriff's Office**

\_\_\_\_\_  
Sheriff Craig Robertson

**Office of the States Attorney of  
Allegheny County**

\_\_\_\_\_  
Michael O. Twigg

**Frostburg Police Department**

\_\_\_\_\_  
Chief Royce Douty

**Frostburg State University Police**

\_\_\_\_\_  
Chief Cynthia Smith

**Frostburg State University**

\_\_\_\_\_  
Dr. Ronald Nowaczyk, President

**Western Maryland Health System**

\_\_\_\_\_  
Barry Ronin, President and CEO

**Family Crisis Resource Center**

\_\_\_\_\_  
Sarah Kaiser, Executive Director



Regular Council Agenda  
April 4, 2017

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**Description**

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

**Approval, Acceptance / Recommendation**

The Engineering Division recommends that the contract to transport and dispose of the grit, scum and screenings waste from the Wastewater Treatment Plant by Burgmeier's Hauling be accepted at the lump sum per month of \$2,225 for service starting July 1, 2017 through June 30, 2020. No other bids were received. The contract allows for two additional one-year period extensions if mutually agreed upon.

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

\$2,225 per month OR \$26,700 per year

**Source of Funding (if applicable)**

WWTP (003-310-360)

**- Order -**  
*of the*  
**Mayor and City Council of Cumberland**  
 MARYLAND

ORDER NO. \_\_\_\_\_

DATE: April 04, 2017**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

THAT the bid of Burgmeier's Hauling, Inc., P.O. Box 929, 1356 Old Sixth Avenue Road, Altoona, PA, 16601 for the transportation and disposal of grit, screening and scum from the Wastewater Treatment Plant (4-17-WWTP) be and is hereby accepted in the lump sum per-month amount of Two Thousand, Two Hundred Twenty-five Dollars and No Cents (\$2,225.00) for service starting July 1, 2017 through June 30, 2020, with no other bids being received;

**BE IT FURTHER ORDERED,** that this contract allows for two (2) additional one (1) year extensions upon mutual agreement.

---

**Brian K. Grim, Mayor**

Funding: WWTP (003-310-360)

*Order of Bids:*

Contractor	Bid Amount
Burgmeiers Hauling, Inc.	\$2,225 per month

## 2. BID OR PROPOSAL

Bid of Burgmeier's Hauling Inc. to furnish all equipment and to perform all work in accordance with the Specifications relating to a contract for

### Transportation and Disposal of Grit, Screenings and Scum from the Wastewater Treatment Plant - City Project No. 04-17-WWTP

as set forth in the Contract Documents, on which bids will be received until but not after 2:00 p.m., local time, on the 8 day of March, 2017, as set forth in the Invitation for Bids herewithin.

To the Mayor and City Council  
City of Cumberland, Maryland

Gentlemen:

In accordance with the advertisement of the City of Cumberland, Maryland, inviting bids for the work herein before named and in accordance with the Specifications now on file in the Office of the City Clerk, Art Austin do/does certify that Burgmeier's Hauling Inc. is/are the only person or persons interested in this bid and that the bid is made without collusion with any persons, firm or corporation; that an examination has been made of the Contract Documents, Specifications and Contract form contained herein, Burgmeier's Hauling Inc. do/does propose to furnish all necessary machinery, equipment, and material specified, and labor in whatever manner and sequence required.

Bidder Must Sign

Company Name: Burgmeier's Hauling Inc.

Signature: 

Address: PO Box 929 1356 old sixth ave road. Altoona PA 16601

Telephone Number: 814-329-3054 (cell) 301-777-0416 (local office)

Email Address: ArtA@burgmeiers.com

Date: 3/08/17

**3. AFFIDAVIT OF QUALIFICATION TO BID****AFFIDAVIT OF QUALIFICATION TO BID**

I hereby affirm that

1. I am the Vice President and the duly authorized  
 ( Title )  
 representative of the firm of Burgmeier's Hauling Inc. whose  
 ( Name of Corporation )  
 address is 1356 old sixth ave road. Altoona, PA 16601 and that I  
 ( Address )  
 possess the legal authority to make this affidavit on behalf of myself and the firm for  
 which I am acting.

2. Except as described in paragraph 3 below, I nor the above firm, nor to the best of my knowledge, any of its officers, directors, or partners, or any of its employees directly involved in obtaining contracts with the State or any county, bi-county or multi-county agency, or subdivision of the State have been convicted of, or have pleaded nolo contendere to a charge of, or have during the course of an official investigation or other proceeding admitted in writing or under oath acts or omissions which constitute bribery, attempted bribery, or conspiracy to bribe under the provisions of Article 27 of the Annotated Code of Maryland or under the laws of any State or Federal Government (conduct prior to July 1, 1977 is not required to be reported).

3. State "none" or, as appropriate, list any conviction, pleas, or admission described in paragraph 2 above, with the date; court, official, or administrative body; the individuals involved and their position with the firm, and the sentence or disposition, if any.

none

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I acknowledge that this affidavit is to be furnished to such other agencies as are hereinafter set forth and, where appropriate, to the Board of Public Works and to the Attorney General under Section 16D of Article 78A of the Annotated Code of Maryland. I acknowledge that, if the representatives set forth in this affidavit are not true and correct, any such agency may terminate any contract awarded and take any other appropriate action. I further acknowledge that I am executing this affidavit in compliance with Section 16D of Article 78A of the Annotated Code of Maryland, which provides that certain persons who have been convicted of or have admitted to bribery, attempted bribery, or conspiracy to bribe may be disqualified, either by operation of law or after a hearing, from entering into contracts with the State or any of its agencies or subdivisions.

I do solemnly declare and affirm under penalties of perjury that the contents of this affidavit are true and correct.

2/23/17

\_\_\_\_\_  
( Date )

  
\_\_\_\_\_  
( Signature )

\_\_\_\_\_  
Matthew Burgmeier

\_\_\_\_\_  
Vice President

**B. CONTRACT – Transportation and Disposal of Grit, Screenings and Scum from the Cumberland Wastewater Treatment Plant**

**Project No. 04-17-WWTP**

**THIS CONTRACT**, made this 08 day of March in the year 2017, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND**, a municipal corporation of the State of Maryland, party of the first part, and \_\_\_\_\_  
Burgmeier's Hauling Inc.

A (Corporation) (Firm) (Individual) (Incorporated) (Not Incorporated) under the laws of \_\_\_\_\_  
Pennsylvania

**ADDRESS** 1356 old sixth ave road. Altoona PA 16601

its, his or their heirs, executors, administrators, successors or assigns, party of the second part, hereinafter called the "Contractor".

I hereby certify that I have reviewed and understand all State and Federal Regulations pertaining to Transportation and disposal of Grit, Screenings and Scum at a Sanitary Landfill.

Vice President

(Title)



(Signature)

IN WITNESS, WHEREOF, the parties to these presents have hereunto caused these presents to be executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**MAYOR AND CITY COUNCIL OF CUMBERLAND**

**BY:**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
CITY CLERK

ATTEST:

\_\_\_\_\_  
SECRETARY

  
\_\_\_\_\_  
CONTRACTOR

Trading As: Burgmeier's Hauling Inc.

\_\_\_\_\_  
CONTRACTOR

APPROVED FOR EXECUTION:

\_\_\_\_\_  
CITY ADMINISTRATOR

**C. LOCAL PREFERENCE CERTIFICATION**

1. I am the Vice President of Burgmeier's Hauling Inc.,  
*(Print / type position)* *(Print/type business name)*

hereinafter referred to as the "Business."

2. The Business maintains an active bona fide place of business at:

305 North Lee St.  
 (Street address)

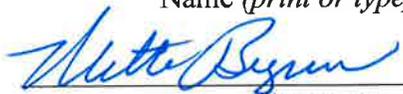
Cumberland MD 21502  
 (City, state, zip code)

The said place of business is located within [check one]:

- The City of Cumberland, Maryland
- Allegany County, Maryland
3. I have made inquiry with the Maryland State Department of Assessments and Taxation. If the Business is required to register to do business with the State of Maryland, it is in good standing with the State of Maryland.
4. I hereby certify under the penalties of perjury that the contents of the foregoing Local Preference Certification are true and correct.

Matthew Burgmeier  
 Name *(print or type)*

3/01/17  
 Date

  
 Signature

NOTE: In order to receive a local preference, City residents' City of Cumberland and Allegany County real and personal property taxes must be paid current through the date of the submission of bids and County residents' Allegany County real and personal property taxes must be paid current through that date. Such taxes shall not be deemed to be current if they are unpaid, in whole or in part, as of the date interest begins to accrue on the unpaid balance thereof in accordance with Ann. Code of Md., art. Tax-Property, §§ 10-102 and 10-10

## D. BID SHEET

### TRANSPORTATION AND DISPOSAL OF GRIT, SCREENINGS AND SCUM AT A SANITARY LANDFILL FROM THE CUMBERLAND WASTEWATER TREATMENT PLANT

For the transportation and disposal of grit, screenings and scum at a sanitary landfill. Within this contract grit, screenings and scum shall be delivered to a sanitary landfill. The City currently has a “Special Waste Agreement” with Mountainview Landfill for the disposal of grit, screenings and scum.

Contract shall be for three (3) years beginning July 1, 2017 and ending June 30, 2020. If mutually agreed upon by the City and the Contractor(s) this contract may be extended for two additional one-year periods.

#### Transportation -- Inorganic Material

The Contractor shall dispose of inorganic material in the following manner:

##### Grit , Scum and Screenings (inorganic):

Contractor shall furnish two (2) -- 4 cubic yard dumpsters on casters/rails for the collection of screening (rags). (*#1 at the head of the plant at the Mechanical Screen on the attached site plan*)

Contractor shall furnish three (3) -- 3 cubic yard dumpsters on casters/rails for the collection of (wet) grit. The dumpsters must be modified to allow for the removal of “free liquids”. (*#2 within the Grit Facilities on the attached site plan*)

Contractor shall furnish three (3) -- 2 cubic yard dumpsters on casters for the collection of scum. Dumpsters shall be modified to allow for the removal of “free liquids”. (*#3 beside each Primary Clarifier on the attached site plan*)

Contractor shall furnish two (2) -- 4 cubic yard dumpsters on casters/rails for the collection of dewatered grit. (*#4 within the Dewatering Building on the attached site plan*)

Contractor shall furnish two (2) -- additional 3 cubic yard mobile dumpsters on casters/rails for the collection of trash. (*#5 beside the Maintenance Building on the attached site plan*)

Contractor shall furnish one (1) -- 4 cubic yard mobile dumpster on casters/rails for the collection of screenings. (*Evitts Creek Pump Station – gated property at Frazier Lake Road, Cumberland, MD*)

All dumpsters shall be modified to allow use with City forklift.

The Contractor shall maintain all dumpsters for the term of the contract (up to 5 years) without additional expense to the City.

NOTE: The City uses granulated chlorine for odor control – chlorine is very aggressive on metal.

All grit, scum and screenings, etc. shall be collected twice a week during the early AM hours of Monday and Thursday. All inorganic material shall be disposed of in an approved sanitary landfill (Mountainview Sanitary Landfill, Frostburg currently accepts this material). The approximate quantity of inorganic material to be removed is fourteen (14) cubic yards per week. Contractor shall be responsible for all landfill tonnage fees; tonnage fees shall be included in the "Lump Sum per Month" figure.

**Lump Sum per Month \$ 2,225.00**



Regular Council Agenda  
April 4, 2017

---

**Description**

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

**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: April 4,, 2017

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

**THAT,** the Mayor and City Council of Cumberland is the record owner of a certain vehicle that has been determined to be of no further value to the City; and

**WHEREAS,** the Mayor and City Council desire to dispose of said vehicle;

**IT IS THEREFORE ORDERED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND THAT** the following vehicle is hereby declared to be surplus property and authorized for sale or trade-in:

1) 1997 Chevrolet Truck

VIN: 1GBHC34FXVE180337

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**Mayor Brian K. Grim**



Regular Council Agenda  
April 4, 2017

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**Description**

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

**Approval, Acceptance / Recommendation**

It is the Engineering Department's recommendation to award the sole source contract to RenoSys for the purchase and installation of a liner for the wading pool and floor of the bath house. This work will be completed prior to the pool opening in 2017. RenoSys was the supplier and installer of the liner for the main pool that was completed in the fall.

Budgeted

1st Reading

2nd Reading

3rd Reading

**Value of Award (if applicable)**

Wading Pool - \$20,000.00

Bath House Floor \$ 28, 253.00

Total \$48,253.00

Discount \$4,174.00

Total Project \$44,079.00

**Source of Funding (if applicable)**

115.099J.63000 Community Parks and Playground Grant

**- ORDER -**  
*of the*  
**Mayor and City Council of Cumberland**  
MARYLAND

ORDER NO. \_\_\_\_\_

DATE: April 4, 2017**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT**, the sole source proposal of RenoSys Corporation, 2825 East 55<sup>th</sup> Place, Indianapolis, IN, 46220, to provide installation of a liner for the wading pool and floor of the bathhouse at the Constitution Park Pool, be and is hereby approved in the total bundled pricing amount of Forty-four Thousand, Seventy-nine Dollars and No Cents (\$44,079.00).

---

**Brian K. Grim, Mayor**

Source of Funding:  
Community Parks and Playground Grant  
115.099J.63000



# RenoSys®

Quote #2017032717-500 City of Cumberland Vendor #304690 3/27/2017
---

**Constitution Park Renovations**  
Outdoor Municipal Wading Pool & Indoor Bathhouse  
Cumberland, MD

## Wading Pool RenoSys PVC Pool Membrane & Bathhouse RecDeck PVC Flooring Quotation

- 1) Install RenoSys 60 mil PVC Membrane System in the existing Wading Pool employing the following components and services:
- 2) Install RecDeck 85 mil PVC Flooring Membrane onto Bathhouse painted concrete floors employing the following components and services:

### INSTALLATION OF THE RENOSYS PVC POOL MEMBRANE

- Broom clean pool surface and void it of all loose debris.
- Coat interior of pool with sanitizing agent. Apply RenoFelt adhesive as required.
- Apply RenoFelt 11 (150 mil) to isolate membrane from the pool.
- Install the 60 mil RenoSys PVC membrane through hot air welding throughout.
- Pool Membrane Termination points to be via 1/4" thick flat pvc plate at floor level of both zero entries. Membrane will taper up along wall and at 6" wide concrete curb, will transition to RecDeck PVC Flooring that will be contoured over curb and will terminate into existing outer perimeter deck level saw cut.
- Cut out for main drains, inlets, skimmers, water features, and lights. All penetrations will be terminated with compression flanges.
- Install Pool Safety Markings onto surface membrane to match existing, if applicable.

### INSTALLATION OF THE RECDECK PVC FLOORING MEMBRANE

- Install Renosteel or PVC Plate attachment pieces as required.
- Apply RecDeck adhesive as required on a smooth surface.
- Install RecDeck PVC 85 mil membrane, chemically seal and/or heat weld all seams throughout.
- Cut out for all existing drain penetrations and non-removable fixture attachment points.
- Termination to be at floor level of room' exterior perimeter. Vinyl Cove Base is available as an upgrade in common areas only.

ALL: Complete additional perimeter caulking, detail work, and finish work to make a complete watertight installation.

- Clean site suitable for pool filling and patron foot traffic. Perform final inspection.
- **RenoSys PVC Wading Pool Membrane** and all welds shall carry a **10 year limited warranty**.
- **RecDeck PVC Flooring Membrane** and all welds shall carry a **5 year limited warranty**.
- Other installation items (e.g. caulk, fasteners at compression fittings etc...) shall carry a **1 year limited warranty**.

### Stand Alone Projects

**Wading Pool Renovations** .....RenoSys PVC Membrane ..... **\$20,000.00**  
Furnished & Installed into 25' 70' Zero Entry Wading Pool w/RecDeck PVC Coping/Curb Wrap **Included**

**Bathhouse Renovation** .....RecDeck PVC Flooring Membrane ..... **\$28,253.00**  
Furnished & Installed in Bathhouse / Includes Men's and Women's Showers & Changing Rooms, Office & Corridor **Included**

### Courtesy Bundled Pricing

**Wading Pool & Bathhouse Membranes** ..... **\$44,079.00**  
Both projects listed above under one contract, requiring a single shipment and crew mobilization **Bundled Pricing**

Courtesy bundled pricing listed above is valid for 10 days due to limited scheduling availability, and is based on 24' x 72' lagoon shaped wading pool with zero entry to 1FT 6IN depths. Dimensions obtained from Water Technology, Inc. Wading Pool Drawing PL1.4 dated 8/8/00, and Taylor Architects, Inc. Bathhouse Drawing A3. Project surface area is not to exceed 3,000sf. On Site Parking and Dumpster provided by customer at no cost to RenoSys. Minimal surface prep for Wading Pool (up to 4 man hours) is included in this quote. As it pertains to the Bathhouse, pricing includes only work specifically listed and detailed above. Minimal surface preparation (up to 4 man hours) as needed to adequately prepare floor around drains is included. Leveling is explicitly excluded from our scope of work. All obstructions, i.e. furnishings, equipment, partitions, toilets, urinals, etc. are to be removed by others in advance of our arrival, and re-installed by others. All wall treatments, i.e. painting must be completed prior to ARS liner crew arrival. Any work stoppages resulting from other workers' delay(s) will incur charges to the City equal to working man hours, including lodging, remobilization, and all applicable charges. If required, additional work may be performed by our personnel and charged on a Time & Material basis at \$125.00 per man hour, upon receipt of an approved Change Order signed by both parties. No taxes (sales, use, local, county, state, B&O, privilege, and/or other applicable taxes), bonds, permits, or prevailing wages, are included in this estimate. Project scheduling is governed by RenoSys crew availability. Priority scheduling requires that all payments and accompanying paperwork be received by our representatives in a timely manner.

For **A.R.S. Inc.**

For **City of Cumberland Department of Parks – Cumberland, MD**

Date \_\_\_\_\_

Date \_\_\_\_\_

Steve C. Comstock/President

ARS Lt Blue / White / Black  
Textured Membrane



Printed Name / Title  
1 of 2

### RenoSys Corporation

2825 East 55th Place • Indianapolis, IN 46220  
Phone 800.783.7005 • 317.251.0207  
Fax: 317.251.0360 • e-mail: "kymw@renosys.com"

ARS RecDeck PVC Flooring  
Dark Gray / Sand / Lt. Gray



Available inventory changes periodically.  
Images shown are examples only, and  
may not represent the color and textures  
currently available.

Item # 10

### Agreement for Installation of a RenoSys PVC Membrane System v2016032416

This contract, entered into between **Aquatic Renovation Systems, Inc.**, and "Purchaser" is for the purpose of having ARS furnish and install the RenoSys PVC Membrane System and for additional services or options, if any, as outlined on page #1 of the attached proposal. Pricing is to include the installation of the RenoSys PVC Membrane System in accordance with the standard specifications and technical directives for a RenoSys PVC Membrane System.

This contract is subject to the following terms and conditions:

- 1) The contract sum listed on page #1 covers only the products and services specifically mentioned therein. No modifications, additions, or deletions will be accepted except by written request via re-submission of modifications to the contract scope and/or approved amount authorized by written changed order signed by both parties.
- 2) Every effort has been made to be as accurate and complete in the takeoff and listing of services as possible. Verification shall be the responsibility of the purchaser during the submittal approval process.
- 3) **Payment terms for the contracted work will be paid as follows: 25% upon contract execution, 50% upon arrival, 15% upon substantial completion (2 days prior to completion) and final 10% Net 30 days after.** \*All custom components require 50% advance payment, due upon receipt of approved submittals, and remaining 50% upon delivery.
- 4) All amounts past due shall be subject to a 1.5% service charge per month as to work or services that have been completed and accepted to date. Utilization of the pool constitutes final completion and acceptance of the PVC Membrane System.
- 5) Although every effort will be made to meet the delivery and installation requirements, ARS will not be held liable for any delays caused by transportation, strikes, fires, Government entities, acts of God or under any circumstances such as *force majeure*. Please be advised that vagaries in weather can and will affect the installation schedule. Any and all Liquidated or Consequential damages are not part of this contract and ARS shall not be financially penalized for any reason.
- 6) Labor will be performed and invoiced by Aquatic Renovation Systems, Inc.
- 7) Material will be shipped and furnished from, and invoiced by, Poolequip LLC.
- 8) Pricing is provided in US Dollars.
- 9) Should the need for change orders arise from either party, no work will be performed prior to the execution of the change order by both parties. Further, the payment terms of any change order will be fifty percent (50%) upon execution of the change order with the balance due upon completion of said change order; unless other arrangements are agreed upon in writing by both parties.
- 10) No sales, use, local, county, state, B&O, privilege and/or other applicable taxes are included in this proposal, and purchaser agrees to pay all taxes imposed upon seller by state and/or federal regulation as it pertains to this contract. Taxes will be added and paid by purchaser unless a valid Sales Tax Exemption Form is provided.
- 11) If either party does not comply with the terms and conditions set forth herein, then in addition to all other remedies available to the other party at law or in equity, the non-complying party shall be liable to the other party for its reasonable attorney fees, costs, and expenses incurred in enforcing the terms and conditions of this agreement.
- 12) This agreement and any amendments thereto shall be binding upon and inure to the benefit of the parties, their respective heirs, assigns, personal representatives and/or successors in interest.
- 13) The State Laws of the State of Indiana shall govern this Contract. Purchaser hereby submits to jurisdiction of any court located in the State of Indiana to resolve disputes arising under this Contract.
- 14) ARS is not responsible for any consequential damages resulting from any hydrostatic "ground water" conditions or from a leaking recirculation system causing the pool membrane to fail from such damage. When applicable; existing pool piping, perimeter gutters and hydrostatic ground water testing will be the complete responsibility of the owner.
- 15) ARS agrees to furnish a standard Insurance Certificate listing Purchaser as an additional insured, indicating proof of workmen's compensation coverage, and listing general liability protection limits of at least one million dollars (\$1,000,000.00).
- 16) RenoSys Corporation is not responsible for filling or draining the pool water. Nor will RenoSys Corporation absorb such cost for any reason.

### Specifications and Contract Conditions for a RenoSys PVC Membrane System Installed

Primary pool lining membrane shall be a flexible 60 mil single ply PVC material UV stabilized, and reinforced with internal polyester webbing. The material shall be formulated using anti-fungal agents and manufactured specifically for use in the commercial pool environments. Clients purchasing RenoSys materials are solely responsible for determining the suitability and compatibility of the RenoSys products for their application. RenoSys will not be responsible for materials reaction to water, sub-straights or pool chemicals.

Geo-textile fabric underlayment of 100% polyester approximately 150 mils thick to isolate and separate the RenoSys PVC Membrane from the pool wall and floor. Depending on field conditions the use of a factory applied of equivalent quality Felt-back membrane product will be utilized.

Provide as required PVC coated RenoSys Steel to make for a satisfactory installation. Sanitizing agents to be applied as required onto the pool sub-straight to discourage microbial growth under the membrane system. Adhesives as required to attach the Geotextile fabric to the pool and the membrane to the Geotextile. Flanges of 1/4" Hard White PVC, custom fabricated for use at all membrane penetrations where required.

The PVC membrane liner and liner installation shall be warranted against leakage for a period of ten (10) years. Deck caulking, concrete work, and any other work shall be warranted for a period of not less than one (1) year or the manufacturers' warranty period, whichever is greater. Pool equipment shall carry the manufacturer's warranty. We propose to provide and install the above system including: sanitizing, adhesives, RenoFelt, RenoSys 60 mil reinforced membrane, all compression flanges, hardware installation, and incidental equipment to make for a satisfactory installation. This quote also includes: general site clean up and training of the owner's representative in repair patch techniques.

ARS shall maintain the right to salvage any fittings, PVC membrane or equipment replaced in the course of executing this installation contract. Standard material overages are supplied for the efficient execution of the project. Any excess material shall remain the property of ARS.

This proposal is based upon an assumption that the pool is of sound substrate suitable for mechanically fastening standard 1/4" to 3/16" sleeve anchors and other drive type fasteners to secure the membrane system at the perimeter and around pool penetrations. Hidden or unforeseen site conditions are to be repaired, if possible, at additional cost to the owner. ARS will execute the change orders prior to commencing work.

By entering into this contract, ARS assumes no responsibility for the correctness of the swimming pools depth in any area of the existing pool. The existing depth of the pool, diving hopper and any modifications required due to any misinformation in their regard are the responsibility of the purchaser. It shall remain the owner's responsibility to assure that all depths, safety features, and markings in the pool comply with applicable local and State pool codes.

In no event will RenoSys Corporation or ARS be held liable for any consequential or other damages whatsoever unless agreed upon in writing. There will be no warranties, or guarantees expressed or implied, given by ARS or it's agents except those provided herein. There will be no warranties, written or implied, for repairing any existing stainless steel gutter systems.

Unless other arrangements are made in advance and stipulated as part of this contract; others are responsible for removing, storing and re-installation of all obstructions that would hinder our work. These items include, but are not limited to: bulkheads, ladders, climbing walls, handrails, water features, equipment, furnishings, pool covers, etc...

The use of the pool by the owner, or those authorized to use the pool by the owner, shall constitute final completion and acceptance of the project by the owner. Issues that may arise with the pool subsequent to final completion shall be addressed in accordance with the terms and conditions of the warranty set forth herein. The parties specifically agree that any warranty issue, or a possible controlled leak, such as through a weep hole, shall not be reason for delayed payment of the amounts due under the terms and conditions of the contract.

### RenoSys Installation Statement Letter

This statement letter is part of an ARS Quotation for RenoSys pool systems installation and, as such, must be initiated and returned with the executed contract, as well as any required down payments. This is to ascertain your understanding of the scope of work, our quote, and your responsibilities in the successful execution of your project. It is our intention to have your project go smoothly and be completed on schedule and within the budgeted amount. Your informing us of any potential complications before construction begins can save time and money. We sincerely want your project to be a model of success on which we all will look back with pride. Your assistance in accommodating our following needs will help us to better serve you.

Unless otherwise specifically noted in our quotation, ARS is expecting the following services and amenities to be freely available to our crews:

- 1.) Restroom facilities.
- 2.) Water with at least 40 lbs. of pressure within 50 feet of pools.
- 3.) 110 electric service & 230V, 60-amp service (when applicable for metal welding) within 50 feet of pools.
- 4.) Clear and reasonable access to the pool.
- 5.) Pools & pool decks are to be drained and/or generally clean upon arrival of our crew.
- 6.) It is expected that our crews will have the opportunity to work, at no additional cost to ARS, between the hours of 8am to 8pm seven (7) days a week; as we deem necessary.
- 7.) Provide parking for our vehicles at no charge to Aquatic Renovation Systems, Inc.

Photos and/or videos may be taken of your project for our own quality internal communication, advertising and marketing purposes. It is to be understood that ARS will be using such photos and videos for general marketing purposes.

Crews are under instructions to accept no direction from anyone onsite unless it is agreed upon prior to work commencement. Please refrain from initiating changes or modifications, or "improvements" with field crewmembers. Owners shall appoint no more than two individuals who will act as the "OWNERS REPRESENTATIVE" to answer questions that may arise, be easily available, and address all pertinent aspects of the project.

Regarding surface preparation; the RenoSys membrane is a reflective material, and any depressions, pits, cracks, or voids may show through the surface. This is not necessarily bad as most such imperfections are only visible when the pool is empty.

Unless otherwise noted this quotation does not cover: special conditions, state, local or use taxes, Union affiliates, Davis-Bacon Wages, or differing site conditions from those detailed.

Page 2 of 2

Initial \_\_\_\_\_

### RenoSys Corporation

2825 East 55th Place • Indianapolis, IN 46220

Phone: 800.783.7005 • 317.251.0207

Fax: 317.251.0360 • e-mail: "kymw@renosys.com"

Item # 10



Regular Council Agenda  
April 4, 2017

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**Description**

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

**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: April 4, 2017

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

**THAT**, the Chief of Police be and is hereby authorized to execute a Memorandum of Understanding between the Mayor and City Council of Cumberland and the Allegany County State's Attorney's Office (SAO) for the Cumberland Police Department to conduct street-level drug interdiction and warrant sweeps on an overtime basis provided by the SAO's Byrne Justice Assistance Grant funds through the Governor's Office of Crime Control and Prevention, in the amount of Nineteen Thousand, Seven Hundred Sixty Dollars and No Cents (\$19,760.00) for interdiction and sweeps conducted through, but no later than, September 30, 2017.

---

**Brian Grim, Mayor**

**MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** (“Memorandum”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **ALLEGANY COUNTY STATE’S ATTORNEY’S OFFICE** (“SAO”) and the **CITY OF CUMBERLAND POLICE DEPARTMENT** (“CPD”).

**RECITALS:**

**WHEREAS**, the SAO is the recipient of \$19,760.00 in Byrne Justice Assistance Grant (“BJAG”) funds through the Governor’s Office of Crime Control and Prevention;

**WHEREAS**, the \$19,760.00 in BJAG funds were granted to enable the CPD to assign officers on an overtime basis to conduct street-level drug interdiction and warrant sweeps within the City of Cumberland (“overtime”);

**WHEREAS**, the SAO desires to contract with the CPD to provide funding in the amount of \$19,760.00 for overtime as hereinbefore described through September 30, 2017.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, and intending to be legally bound hereby, the parties, each with full legal capacity and authority, do hereby agree as follows:

1. **Recitals.** The Recitals set forth above are not merely prefatory. They are incorporated by reference herein and form a part of this Memorandum.
2. **Overtime for Street-Level Interdiction and Warrant Sweeps.** The Chief of the CPD, or his designee, shall determine the times and dates of street-level interdiction and warrant sweeps (“interdiction and sweeps”) with the understanding that the maximum amount available from the SAO BJAG for overtime to accomplish the interdiction and sweeps is a total of \$19,760.00.
3. **Duration & Availability of SAO BJAG Funds for Overtime.** The \$19,760.00 in funding for overtime shall be available for interdiction and sweeps conducted through but not later than September 30, 2017.
4. **Invoicing.** The overtime amounts shall be invoiced to the SAO on a quarterly basis for the interdiction and sweeps conducted during the quarters ending March 31, June 30, and September 30, 2017. Invoices shall be remitted no later than one (1) week after the end the applicable quarter and they shall be directed to:

Allegany County State’s Attorney’s Office – District Court  
123 S. Liberty Street  
Cumberland, MD 21502  
ATTN: Linda M. Thomas, Grant Administrator

- 5. **Overtime Reimbursement.** The overtime amounts will be reimbursed to the CPD by the Allegany County Finance Office from the SAO BJAG funds upon its receipt of grant monies in each respective quarter.
  
- 6. **Term.** This Memorandum shall be in effect from October 1, 2016 through October 31, 2017.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum this the date and year first written at the top of the first page hereof.

**ALLEGANY COUNTY STATE'S  
ATTORNEY'S OFFICE**

**CITY OF CUMBERLAND  
POLICE DEPARTMENT**

By: \_\_\_\_\_  
Michael O. Twigg, State's Attorney

By: \_\_\_\_\_  
Charles H. Hinnant, Chief



Regular Council Agenda  
April 4, 2017

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**Description**

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

**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: April 4, 2017**ORDERED, By the Mayor and City Council of Cumberland, Maryland**

**THAT**, the Mayor be and is hereby authorized to execute a Parking Lease Agreement between the Mayor and City Council of Cumberland and the State of Maryland to the use of the MD DLLR and Department of Tax and Assessments for 47 parking spaces in the George Street Garage for the amount of \$31,020 yearly, payable in monthly installments of \$2,585; and

**BE IT FURTHER ORDERED** that the term of this agreement shall be for a three (3) year period retroactive to November 1, 2016 and shall be renewable for one additional three (3) year term.

---

**Mayor Brian K. Grim**

**STANDARD STATE OF MARYLAND PARKING LEASE FORM**  
**OTHER GOVERNMENTAL AGENCY**  
**(FORM DGS-680-3D)**  
**(Created 12/99)**

**THIS AGREEMENT**, prepared this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand Sixteen, between the Mayor and City Council of Cumberland, Maryland, hereinafter called the Lessor, and State of Maryland, hereinafter called the Lessee to the use of the Department of Labor, Licensing and Regulation and the Department of Assessments and Taxation.

Name of Lessor: Mayor and City Council of Cumberland  
Address of Lessor: 57 N. Liberty Street  
City, State, Zip Code: Cumberland, Maryland 21502  
Person to contact in Lessor's office: Jeff Rhodes, email: jeff.rhodes@maryland.gov  
Number to contact for problems: 301-759-6473

**1.1.** Lessor demises and leases unto Lessee for its employees use, forty-seven (47) parking spaces located at 101 S. George Street, Cumberland, Maryland 21502 (hereinafter referred to as the "Demised Premises").

**1.2.** The term of the Lease is three (3) years and zero (0) months and commences November 1, 2016.

**1.3.1** The rent and expense payments for services due by Lessee to Lessor are Thirty-One Thousand Twenty Dollars and Zero Cents (\$31,020.00) per annum payable in advance in equal monthly installments of Two Thousand Five Hundred Eighty-Five Dollars and Zero (0) Cents (\$2,585.00). The Lessor's Federal Identification Number is 52-6000786.

**1.3.2** Lessee will not automatically pay the rent; Lessor must send a bill for each monthly payment to each State Unit (hereinafter referred to as "Unit") listed in paragraph 2 below for the amounts set forth in paragraph 2.

**1.3.3** Rental payments shall be payable at the office of the Lessor, during normal business hours and shall be due payable on the first day of the month.

**1.3.4** If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Lease succeeding the first fiscal period, this Lease shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Lessor's rights under any termination clause in this Lease. The effect of termination of the Lease hereunder will be to discharge both the Lessor and the State from future performance of the Lease, but not from their rights and obligations existing at the time of termination. The Lessor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Lease. The State shall notify the Lessor as soon as it has knowledge that funds may not be available for the continuation of this Lease for each succeeding fiscal period beyond the first.

**1.3.5.** All invoices for rent or other expenses submitted pursuant to this Lease shall be submitted directly to the appropriate Unit(s) listed in paragraph 2 below unless otherwise specifically provided for herein.

**1.3.6** All invoices shall be made out to the Unit and must contain the following information: state "Invoice" on the bill; reference the Board of Public Works number and date indicated at the end of this Lease; type of billing (i.e. "Rent"); the Federal Employers ID Number or Social Security Number; additional information as may be specifically required elsewhere in this Lease.

**1.3.7** Payments to the Lessor pursuant to paragraph 1.3.1 of this Lease shall be made no later than 30 days after the State's receipt of a proper invoice from the Lessor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

2. The State of Maryland, as Lessee, will assign the use of the Demised Premises to the following of its Units.

<u>Department</u>	<u>No. of Spaces</u>	<u>Monthly Rent</u>
DLLR	40	\$2,200.00
SDAT	7	\$ 385.00
Total	47	\$2,585.00

3.1 Lessee may assign or sublet any or all of the parking spaces but assigning or subletting shall only be allowed upon written consent of the Lessor, whose consent shall not be unreasonably withheld.

3.2 Use of the parking space by a Unit(s) of the State of Maryland other than the Unit(s) designated in paragraph 2 above is not an assignment or a subletting as provided in paragraph 3.1 and may be done at the discretion of the Lessee.

4. Lessor shall maintain the Demised Premises in reasonably good condition and provide for snow removal or plowing during the winter months.

5. The Lessor guarantees that there will be made available, between the hours of 7:00 A.M. and 7:00 P.M. the number of spaces as called for in this Agreement, Monday through Friday except legal State holidays.

6. The Lessee recognizes that the Lessor shall not be responsible for the loss of or damage to the vehicles or to articles of personal property left in vehicles assigned to the Demised parking area.

7. The Lessee will issue an identification card to be displayed in view on the vehicles at all times while on the Demised Premises. The Lessor shall be responsible to assure that only authorized vehicles, assigned by the Lessee, are parked at the spaces provided.

8. The State exercises its right of not paying local taxes.

9.1 Lessee has an option to renew this Lease one (1) time for a term of three (3) years subject to the approval of the State of Maryland Board of Public Works.

9.2 If during the term of this Lease the Demised Premises are so injured by fire or otherwise that the Demised Premises are rendered wholly unfit for use by Lessee and said Demised Premises cannot be repaired within sixty (60) days from the happening of such injury, then the Lessee shall have the option to declare this Lease void from the date of such injury. In such cases, Lessee shall pay the rent apportioned to the time of injury and shall surrender to the Lessor, who may enter upon and repossess the Demised Premises. If the injury is such that the Demised Premises can be repaired within sixty (60) days thereafter, Lessor shall enter and repair with reasonable promptitude, and this Lease shall not be affected except that the rent shall be suspended while such repairs are being made. In case of an injury which shall not render the Demised Premises unfit for occupancy, this Lease shall not be affected, but Lessor may enter upon, and shall repair the said Demised Premises with reasonable promptitude.

9.3. This Lease and the tenancy hereby created shall cease and terminate at the end of the above term, or any renewal term, without the necessity of any further notice from either the Lessor or the Lessee to terminate the same and the continued occupancy of the Demised Premises by the Lessee after the expiration of said term shall not operate to renew this Lease for said term or any part thereof or render the Lessee liable for double rent. Notwithstanding the foregoing the Lessee reserves the absolute right to extend the lease term for a period not to exceed six (6) months. In the event of an extension over by the Lessee, the Lessee shall be and remain liable to the Lessor for rent for the Demised Premises for the time the same are actually occupied by the Lessee, said rent to be at the monthly rate required of Lessee during the immediate preceding term prior to the beginning of the extension period; but nothing herein shall confer upon the Lessee any right to remain on the Demised Premises beyond six (6) months after termination, except with the consent of the Lessor.

10. The waiver at any time by the Lessor or the Lessee of any particular covenant or condition of the Lease shall extend to the particular case only, for the particular time and in the particular manner specified, and such waiver shall not be construed or understood as waiving any further or other rights by any character whatever.

11. Lessor agrees that the terms of this Lease are covered by the provisions of State Finance and Procurement Article, Section 12-205 of the Annotated Code of Maryland and therefore asserts that the annual rent does not exceed fifteen per cent (15%) of the fair market value of the rented Demised Premises at the date of the Lease.

12. The Lessor guarantees that the Demised Premises comply in all respects for the full term of the Lease and all extensions thereof and any holdover period under Section 9.3 of this Lease with (a) the Maryland Building Performance Standards of the Annotated Code of Maryland, Subtitle 4; (b) The Americans with Disabilities Act of 1990 (42 United States Code, Section 12101 et seq.), as amended; and (c) the Occupational Safety and Health Standards of the State of Maryland and the United States, including but not limited to the presence of friable asbestos or other hazardous materials or chemicals, and other (d) applicable law.

13.1 For inquiries concerning the performance of the Lessee's obligations under this Lease, Lessor shall contact Lessee's Facility Manager.

13.2 For inquiries concerning interpretation or modification of the Lease, and inspection of the Demised Premises Lessor shall contact Lessee's Chief, at the Lease Management and Procurement Division, Office of Real Estate, Department of General Services.

14. Time is of the essence and occupancy on the date specified in this Agreement is the essence of this Agreement to the Lessee. If, due to its own fault or negligence, Lessor does not have the Demised Premises available for use by Lessee on the date specified in this Agreement, or within five (5) days after Lessor is notified that this Lease is approved by the Board of Public Works, whichever shall later occur, Lessor agrees to pay liquidated damages to Lessee in an amount equal to the rent for the Demised Premises during the period that the Demised Premises are unavailable to the Lessee, and the rent due from Lessee shall be abated until occupancy.

15. No employee of the State of Maryland, or any Unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Lease, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland, or any Unit thereof.

16. The provisions of this Lease shall be governed by the laws of the State of Maryland.

17. The Lessor agrees: (a) not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places, available to employees and applicants for employment, notices setting forth the substance of this clause.

18. The Lessor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Lessor, to solicit or secure this Lease, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Lease.

19. This Lease may be terminated by the Lessee in accordance with this clause, in whole, or from time to time in part, whenever the Lessee shall determine that such termination is in the best interest of the Lessee. The Lessee will pay all reasonable costs associated with this Lease that the Lessor has incurred up to the date of termination and all reasonable costs associated with this Lease. However, the Lessor shall not be reimbursed for any anticipatory

rentals, expense, or profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

20. In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Lease are applicable to this Lease.

21. The Lessor shall retain and maintain all records and documents relating to this Lease for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

22. The Lessor hereby represents and warrants that:

A. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Lease.

B. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Lease; and

C. It shall obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Lease.

23. The Lessor agrees to fully complete, execute and comply with the "Lease Affidavit", "Addendum A", which is attached hereto and fully incorporated as a part of this Lease by reference thereto.

24.1 This Lease contains by reference and is incorporated herein as if it were fully set out, the contents of the Department of General Services Lease Specifications and Requirements.

24.2 This Lease contains, in writing, the full and complete understanding of the parties and the parties stipulate that there are no oral terms of this Lease.

24.3 This Lease may be amended, but only in writing, signed and executed with all formalities and signatures with which this Lease is signed and executed.

24.4 This Lease contains additional provisions set forth on the following addendum attached hereto, and made a part of this Lease:

25. As a condition of entering into this agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against the Landlord under Title 19 of the State Finance and Procurement Article, as amended from time to time, the Landlord agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Landlord has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract. The Landlord further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The Landlord understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

As a condition of entering into this agreement, the Landlord represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the Landlord may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Landlord retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Landlord understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the Landlord from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

As a condition of entering into this agreement, the Landlord represents and warrants that every subcontract it has entered into or will enter into for the performance of any of the work under this agreement shall include a clause identical to paragraph above.

(a) Addendum "A" - Lease Affidavit which must be fully completed by Lessor.

**IN WITNESS WHEREOF**, the parties hereto for themselves, their successors and assigns set their hand and seal on the day and year first above written.

**LESSOR: MAYOR and CITY COUNCIL OF  
CUMBERLAND, Maryland**

**ATTEST:** \_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
Its Mayor: Brian K. Grim

**LESSEE: The State of Maryland, Maryland  
Department of Labor, Licensing and  
Regulation**

**ATTEST:** \_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
Name: Kelly Schulz  
Its: Secretary

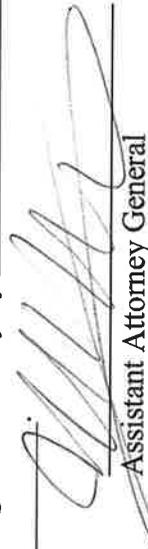
**WITNESS:** \_\_\_\_\_  
**LESSEE: STATE OF MARYLAND, to the use  
of the Department of Assessments and  
Taxation**

By: \_\_\_\_\_ (SEAL)  
Name: Sean P. Powell  
Its: Director

Execution of the above Lease was authorized and approved by the Board of Public Works at a meeting held on \_\_\_\_\_ as Item \_\_\_\_\_-L\_\_\_\_\_.

\_\_\_\_\_  
Department of General Services  
Office of Real Estate

This lease is hereby approved for Form and Legal Sufficiency by Robert A. McCablan  
Assistant Attorney General, on 10/3/16

  
Assistant Attorney General

AFFIDAVIT  
(State as Lessee - Intergovernmental Lease)  
(Revised 8/96)

**A. AUTHORIZED REPRESENTATIVE**

**I HEREBY AFFIRM THAT:**

I am the (title) \_\_\_\_\_ and the duly authorized representative of (governmental entity) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf the governmental entity for which I am acting.

**B. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

**I FURTHER AFFIRM THAT:** to the best of my knowledge, information, and belief, neither the above entity [as defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland], nor any of its officials, officers, agencies or employees directly involved in obtaining or performing contracts with public bodies [as defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland], has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the names(s) of person(s) involved, and their current positions and responsibilities with the entity]:

**C. AFFIRMATION REGARDING OTHER CONVICTIONS**

**I FURTHER AFFIRM THAT:** to the best of my knowledge, information and belief, neither the above entity, nor any of its officials, officers, agencies or employees directly involved in obtaining or performing contracts with public bodies, has:

- (a) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (b) Been convicted of any criminal violation of a state or federal antitrust statute;
- (c) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961, et seq. or the Mail Fraud Act, 18 U.S.C. §§1341, et seq. for acts arising out of the submission of bids or proposals for a public or private contract;
- (d) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (e) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (a), (b), (c) or (d) above;
- (f) Been found civilly liable under a state or federal anti-trust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (g) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved, and their current positions and responsibilities with the business, and the status of any debarment]:

**D. ACKNOWLEDGEMENT**

**I ACKNOWLEDGE THAT THIS AFFIDAVIT** is to be furnished to the State of Maryland and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of a bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, and any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

DATE: \_\_\_\_\_

BY:

\_\_\_\_\_  
(Authorized Representative and Affiant)

\_\_\_\_\_  
Printed or Typed Name



Regular Council Agenda  
April 4, 2017

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**Description**

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

**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: April 4, 2017

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

THAT, the Mayor be and is hereby authorized to execute Lease Agreements allowing for the use of the public right-of-way for outdoor dining and entertainment purposes for the term of April 1, 2017 through March 31, 2018 with the following businesses:

1. Mark's Daily Grind, Inc. / 37 Baltimore Street
2. The New Creamery, LLC / 108 W. Harrison Street
3. Coach's Entertainment Enterprises, LLC T/A Mezzo's / 114 S. Centre Street

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**Mayor Brian K. Grim**

**THIS LEASE AGREEMENT** (“Lease”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the “City”) and **MARK’S DAILY GRIND, INC.** (“Lessee”).

**WHEREAS**, Lessee operates a restaurant at 37 Baltimore Street, Cumberland, MD 21502;

**WHEREAS**, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

**WHEREAS**, Lessee wishes to expand its operation to include outside café dining on a portion of the public right-of-way adjacent to its restaurant; and

**WHEREAS**, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

**1. Demise.** The City hereby leases to Lessee a certain parcel of property located on the public right-of-way adjacent to Lessee’s restaurant, the area of which encompasses that portion of the right-of-way directly to a depth of 15 feet and length of 31 feet, the corners of which shall be marked by the Lessee subject to the approval of the City, which leased parcel of land (hereinafter referred to as the “Demised Premises”) is shown on the plat/drawing attached hereto and incorporated by reference herein as Exhibit 1. Notwithstanding the foregoing, Lessee shall be responsible for allowing pedestrian traffic to pass through the Demised Premises at a location or locations to be approved by the City or as directed by the City, subject to modifications as directed by the City during the term of this Lease.

**2. Term.** The term of this lease shall commence on April 1, 2017 and shall terminate on March 31, 2018 unless sooner terminated as provided for herein.

**3. Use of Property.** The Demised Premises shall be occupied and used by Lessee so as to provide outdoor café dining to Lessee’s restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

**4. Special Events.** The City shall be entitled to suspend Lessee’s use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off the premises of the Lessee. Any such beverages to be consumed with the Demised Premises shall be served in non-breakable containers. Glass bottles or glasses are not permitted in the area of the Demised Premises.

8. **Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's restaurant. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or subletted by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

12. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

13. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

**14. Insurance.** So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and property damage occurring on the Demised Premises which shall include the **“Mayor and City Council of Cumberland”** as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

**15. Indemnification.** Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys’ fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

- a) Lessee’s use of the Demised Premises or the conduct of its business on the Demised Premises;
- b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or
- c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

**16. Default.** After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

- a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.
- b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.
- c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

17. **Repossession Upon Default.** Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee's right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

18. **Other Remedies.** Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

19. **Waiver.** One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

20. **Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Rhodes  
City Administrator  
57 N. Liberty Street  
Cumberland, MD 21502

To Lessee:

Mark Rose  
Mark's Daily Grind, Inc.  
37 Baltimore Street  
Cumberland, MD 21502

21. **Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

22. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

23. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

23. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

24. **Jury Trial Waiver.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. 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.

25. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

26. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

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

**MAYOR AND CITY COUNCIL  
OF CUMBERLAND**

By: \_\_\_\_\_  
Brian K. Grim, Mayor

ATTEST:

\_\_\_\_\_  
Marjorie A. Woodring  
City Clerk

\_\_\_\_\_  
WITNESS

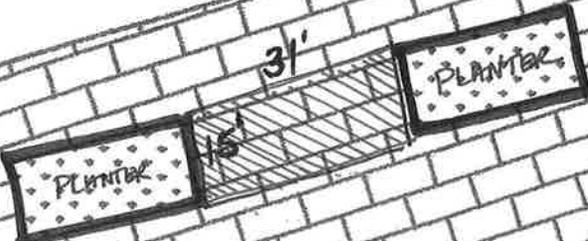
\_\_\_\_\_  
LESSEE 

RBC WEALTH  
MANAGEMENT

B.G.S.&G.

48

B.G.S.&G.



55

FORT  
CUMBERLAND  
EMPORIUM

49

EMBASSY  
THEATRE

47

ART  
GALLERY

43

BALTIMORE  
STREET  
COLLECTIBLES

41

JEWELRY  
STORE

CAFE  
MARK.

CBC

CITI  
FINANCIAL

Item # 13

Mechanic STREET.

**THIS LEASE AGREEMENT** (“Lease”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, be and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the “City”) and **THE NEW CREAMERY, LLC** (“Lessee”).

**WHEREAS**, Lessee operates a restaurant at 108 W. Harrison Street, Cumberland, MD 21502;

**WHEREAS**, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

**WHEREAS**, Lessee wishes to expand its operation to include outside café dining on a portion of the public right-of-way adjacent to its restaurant; and

**WHEREAS**, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

**1. Demise.** The City hereby leases to Lessee a certain parcel of property located on the public right-of-way adjacent to Lessee’s restaurant, the area of which encompasses that portion of the right-of-way directly to a depth of eight (8) feet and width of forty-two (42) feet, the corners of which shall be marked by the Lessee subject to the approval of the City, which leased parcel of land (hereinafter referred to as the “Demised Premises”) is shown on the plat/drawing attached hereto and incorporated by reference herein as Exhibit I. Notwithstanding the foregoing, Lessee shall be responsible for allowing pedestrian traffic to pass through the Demised Premises at a location or locations to be approved by the City or as directed by the City, subject to modifications as directed by the City during the term of this Lease.

**2. Term.** The term of this lease shall commence on April 1, 2017 and shall terminate on March 31, 2018 unless sooner terminated as provided for herein.

**3. Use of Property.** The Demised Premises shall be occupied and used by Lessee so as to provide outdoor café dining to Lessee’s restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

**4. Special Events.** The City shall be entitled to suspend Lessee’s use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

5. **Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

6. **Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

7. **Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off the premises of the Lessee.

8. **Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's restaurant. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or subletted by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

12. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

13. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

14. **Insurance.** So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and

property damage occurring on the Demised Premises which shall include the “**Mayor and City Council of Cumberland**” as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

**15. Indemnification.** Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys’ fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

a) Lessee’s use of the Demised Premises or the conduct of its business on the Demised Premises;

b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or

c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

**16. Default.** After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.

b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.

c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

**17. Repossession Upon Default.** Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee’s right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it

immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

**18. Other Remedies.** Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

**19. Waiver.** One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

**20. Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Rhodes  
City Administrator  
57 N. Liberty Street  
Cumberland, MD 21502

To Lessee:

Linda Freas  
The New Creamery LLC  
108 W. Harrison Street  
Cumberland, MD 21502

**21. Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

**22. Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

23. **Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

23. **Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

24. **Jury Trial Waiver.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. 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.

25. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

26. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

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

**MAYOR AND CITY COUNCIL  
OF CUMBERLAND**

By: \_\_\_\_\_  
Brian K. Grim, Mayor

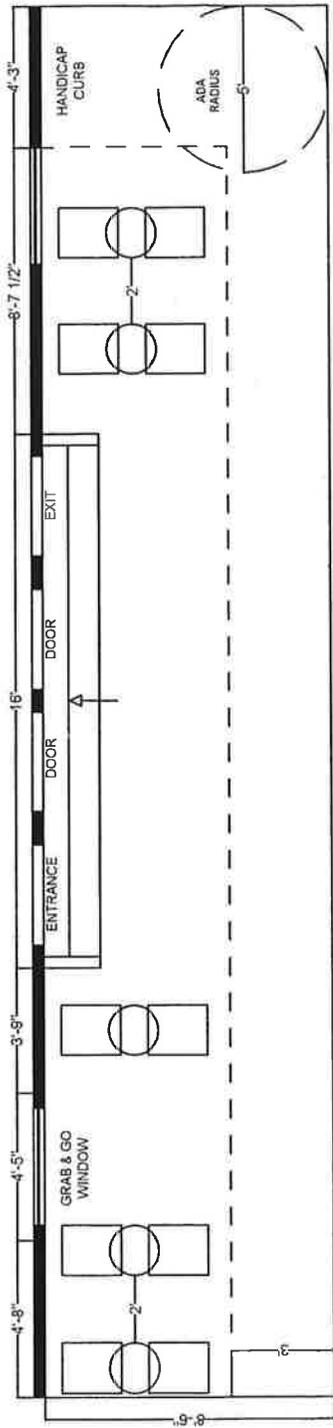
ATTEST:

\_\_\_\_\_  
Marjorie A. Woodring  
City Clerk

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
LESSEE

**EXHIBIT I**



- NOTES**
1. FURNITURE DIMENSIONS:  
TABLES-18" ROUND  
CHAIRS-18"x18"
  2. FURNITURE WILL NOT BE PLACED IN FRONT OF  
ENTRANCE GRAB & GO WINDOW OR HANDICAP CURB
  3. HANDICAP CURB WILL NOT BE OBSTRUCTED
  4. 36" WIDE ACCESSIBLE AREA FOR PEDESTRIANS

**QUEEN CITY CREAMERY: OUTDOOR SEATING AREA**  
SCALE: 3/16" = 1'-0"

**THIS LEASE AGREEMENT** (“Lease”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation (the “City”) and **COACHS ENTERTAINMENT ENTERPRISES, L.L.C. T/A MEZZOS** (“Lessee”).

**WHEREAS**, Lessee operates a restaurant at 114 S. Centre Street, Cumberland, MD 21502;

**WHEREAS**, the City maintains and/or owns the public right-of-way immediately in front of the restaurant;

**WHEREAS**, Lessee wishes to expand its operation to include outside café dining on portions of the public right-of-way adjacent to its restaurant as well as for entertainment purposes on one of the aforesaid rights-of-way; and

**WHEREAS**, the City has determined that it is in the interest of the general public to permit the use of a portion of the right-of-way for café dining.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

**1. Demise.** Subject to the hereinafter set forth provisions, the City hereby leases to Lessee the following parcels of property located on the public rights-of-way adjacent to Lessee’s restaurant:

(a) The area measuring 6 feet in depth and 32 feet in width adjacent to the restaurant building on the South Centre Street side of the restaurant property; and

(b) The portion of the alley located on the northern side of the restaurant property, for the full width of the alley, running with the northeastern corner of the restaurant building through to S. Centre Street.

The demised parcels, being shown on the plat attached hereto as Exhibit 1, are hereinafter referred to collectively as the “Demised Premises” and the portion of the Demised Premises described in paragraph 1(b) above are hereinafter referred to as the “Alley Parcel.”

**2. Term.** The term of this lease shall commence on April 1, 2017 and shall terminate on March 31, 2018, unless sooner terminated as provided for herein.

**3. Use of Property.** The Demised Premises shall be occupied and used by Lessee so as to provide outdoor café dining to Lessee’s restaurant customers. Lessee agrees that, in its use of the Demised Premises, it will comply with all present and future valid local, state and federal laws, ordinances, rules and regulations related to the occupancy or use of the Demised Premises.

The Alley Parcel may be used for the aforesaid purposes on Fridays and Saturdays from 5 p.m. until midnight during the period of each year during the term of this Lease which falls between May 30 and October 31. In addition to the uses applicable to the Demised Premises as a whole, the Alley Parcel may be utilized for the purpose of provided entertainment for Lessee's customers; provided, however, that Lessee shall comply with all requests made by the City of Cumberland Police Department relative to noise control and it may, in its absolute discretion in the event there are noise issues or issues relative to the disorderly conduct of Lessee's patrons, direct that the use of the Alley Parcel be terminated on any particular evening for either outdoor dining, the provision of entertainment or for both purposes.

The Lessee shall coordinate its outdoor entertainment with the Downtown Development Commission so as to ensure that it does not interfere with outdoor entertainment provided by the Downtown Development Commission. To the extent that it interferes, it will not be permitted and shall be subject to being terminated by the City of Cumberland Police Department on any particular evening.

**4. Special Events.** The City shall be entitled to suspend Lessee's use of the Demised Premises during special events, such as Heritage Days, and shall give Lessee notice of such suspension at least ten (10) days prior to the scheduled event.

**5. Rent.** Lessee, in consideration of the leasing of the Demised Premises and the performance by the City of the covenants to be performed by it, agrees to pay rent to the City in the amount of One Dollar (\$1.00).

**6. Permits, Licenses, Fees.** In addition to the rent specified above, Lessee shall obtain all permits and licenses required by any laws, ordinances, rules or regulations of the City and/or any Federal, State or other governmental agency and shall pay all related fees. The execution of this Lease does not constitute permit approval or licensure by or on the part of the City.

**7. Demarcation / Alcoholic Beverages.** Lessee shall place stanchions and chains along the perimeter of the Demised Premises so as to control ingress and egress therefrom. Lessee shall be responsible for monitoring the area so as to assure that patrons do not take alcoholic beverages off of the Demised Premises. Any such beverages to be consumed within the Demised Premises shall be served in non-breakable containers. **Glass bottles or glasses are not permitted in the area of the Demised Premises.**

**8. Furnishings.** Lessee shall be responsible for providing all furnishing and equipment for use by its staff and patrons within the area of the Demised Premises. Any and all such furnishings must be approved by the City before use within said area. Said furnishings may only be placed on the Demised Premises during the hours of operation of Lessee's restaurant. At all other times, said furnishings must be stored in a neat and orderly manner.

9. **Rules And Regulations.** The City shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect to the Demised Premises. Lessee shall faithfully observe and comply with such rules and regulations.

10. **Assignment And Subletting.** This Lease and the rights granted hereby shall not be assigned or sublet by Lessee except with the prior written consent of the City. Said consent may be withheld for any reason or no reason at all.

11. **Utilities, Construction of Improvements.** Lessee shall not construct any improvements in the area of the Demised Premises. The Demised Premises shall be subject to an easement in favor of the City and public and private utilities, including, but not limited to, gas, electric, and telephone service providers, for the full length and width of both parcels comprising the Demised Premises for any existing utility lines, for drainage and for the installation, repair, replacement and/or maintenance of any needed or existing utility lines and storm water management and sediment and erosion control devices and improvements.

12. **Termination.** Except as provided for hereinafter, either party shall have the right to cancel this Lease by giving the other thirty (30) days advance written notice.

13. **Right of Entry.** The City shall have the right to enter upon the Demised Premises at any time for the purpose of operating, maintaining, repairing, restoring or replacing any public utilities. It may also enter upon the Demised Premises for the purpose of inspecting it to ensure that Lessee is complying with its obligations under the terms of this Lease.

14. **Maintenance.** Lessee shall be responsible for keeping the Demised Premises and all items located therein in good condition and repair. The Demised Premises shall be kept free of garbage and refuse.

15. **Insurance.** So long as this Lease is in effect, Lessee shall, at its expense, maintain comprehensive general public liability insurance covering personal injury and property damage occurring on the Demised Premises which shall include the "**Mayor and City Council of Cumberland**" as an additional insured. Such policy shall have minimum single combined liability limits of One Million Dollars (\$1,000,000.00) and shall be written on an occurrence basis. The insurance policy shall include an endorsement requiring the insurer to provide the City with no less than thirty (30) days advance written notice of the cancellation of the policy. Immediately upon the execution of this Lease, Lessee shall provide the City with a certificate of insurance evidencing its compliance with the requirements of this section.

16. **Indemnification.** Lessee shall indemnify, hold harmless and defend the City, its officers, officials, agents, and employees from and against any and all liabilities, damages, claims, costs and expenses, including, but not limited to, attorneys' fees, court costs and litigation expenses, arising from, as a result of, or as an incident to:

a) Lessee's use of the Demised Premises or the conduct of its business on the Demised Premises;

b) any act or omission done, permitted or suffered by Lessee, its contractors, licensees, invitees, agents, representatives, or employees on or about the Demised Premises; or

c) any breach or default in the performance of any obligation of Lessee under the terms of this Lease.

**16. Default.** After the occurrence of any of the following events, the City shall have the right to terminate this Lease immediately:

a) In the event that Lessee shall fail to keep and perform, or shall violate the terms, covenants, and conditions of this Lease on its part to be kept and performed, and Lessee shall not have cured or corrected this failure within five (5) days after written notice shall have been given to Lessee.

b) If Lessee shall make an assignment for the benefit of its creditors, or shall file a petition in bankruptcy or shall be adjudged bankrupt, or the interest of Lessee under this Lease shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation, because of the insolvency of Lessee, or in the event that a receiver or trustee shall be appointed for Lessee or the interest of Lessee under this Lease.

c) In the event that Lessee shall vacate or abandon the Demised Premises (or its restaurant located adjacent thereto), or shall permit them to remain vacant and unoccupied without the consent of the City first obtained.

**18. Repossession Upon Default.** Upon the occurrence of any one or more of the events of default or the expiration of any termination notice, Lessee's right to possession of the Demised Premises shall terminate, and Lessee shall surrender possession of it immediately. In this event, Lessee grants to the City full and free license to enter into and upon the Demised Premises to take possession with or without process of law, and to expel and remove Lessee or any other person who may be occupying it.

**19. Other Remedies.** Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law or equity.

**20. Waiver.** One or more waivers of any term, covenant or condition of this Lease by the City shall not be construed to be a waiver of a further or subsequent breach of the same term, covenant or condition.

**21. Notice.** Except as otherwise provided herein, all notices required to be given by the parties to one another under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery or courier service) and addressed as follows:

To the City:

Jeffrey Rhodes  
City Administrator  
57 N. Liberty Street  
Cumberland, MD 21502

To Lessee:

Daniel Bowser, Member  
Coachs Entertainment Enterprises, L.L.C.  
402 Wempe Drive  
Cumberland, MD 21502

**22. Governing Law.** The laws and decisions of the State of Maryland shall govern and control the construction, enforceability, validity and interpretation of this Lease, and all other agreements, instruments, documents, exhibits, or schedules executed by the parties pertaining or relating to this Lease or the transactions contemplated herein. Any litigation arising out of this Lease or its terms shall be instituted in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto waive any objection to the venue of such proceedings being in said courts and they further waive any claims that such courts constitute inconvenient fora.

**23. Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

**24. Captions.** The marginal captions of this Lease are for convenience only and in no way define or limit the intents, rights or obligations of the parties hereunder.

**25. Severability.** Should any provision of this Lease be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy, the parties intend that its remaining provisions shall nevertheless continue in full force and effect and be binding upon the parties and their respective successors and assigns.

**26. Jury Trial Waiver. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. 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.**

27. **Entire Agreement.** This Lease contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

28. **Binding Effect.** This Lease shall inure to the benefit of the parties hereto and it shall be binding upon their respective personal representatives, heirs, successors and assigns.

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

**MAYOR AND CITY COUNCIL  
OF CUMBERLAND**

By: \_\_\_\_\_  
Brian K. Grim, Mayor

ATTEST:

\_\_\_\_\_  
Marjorie A. Woodring  
City Clerk

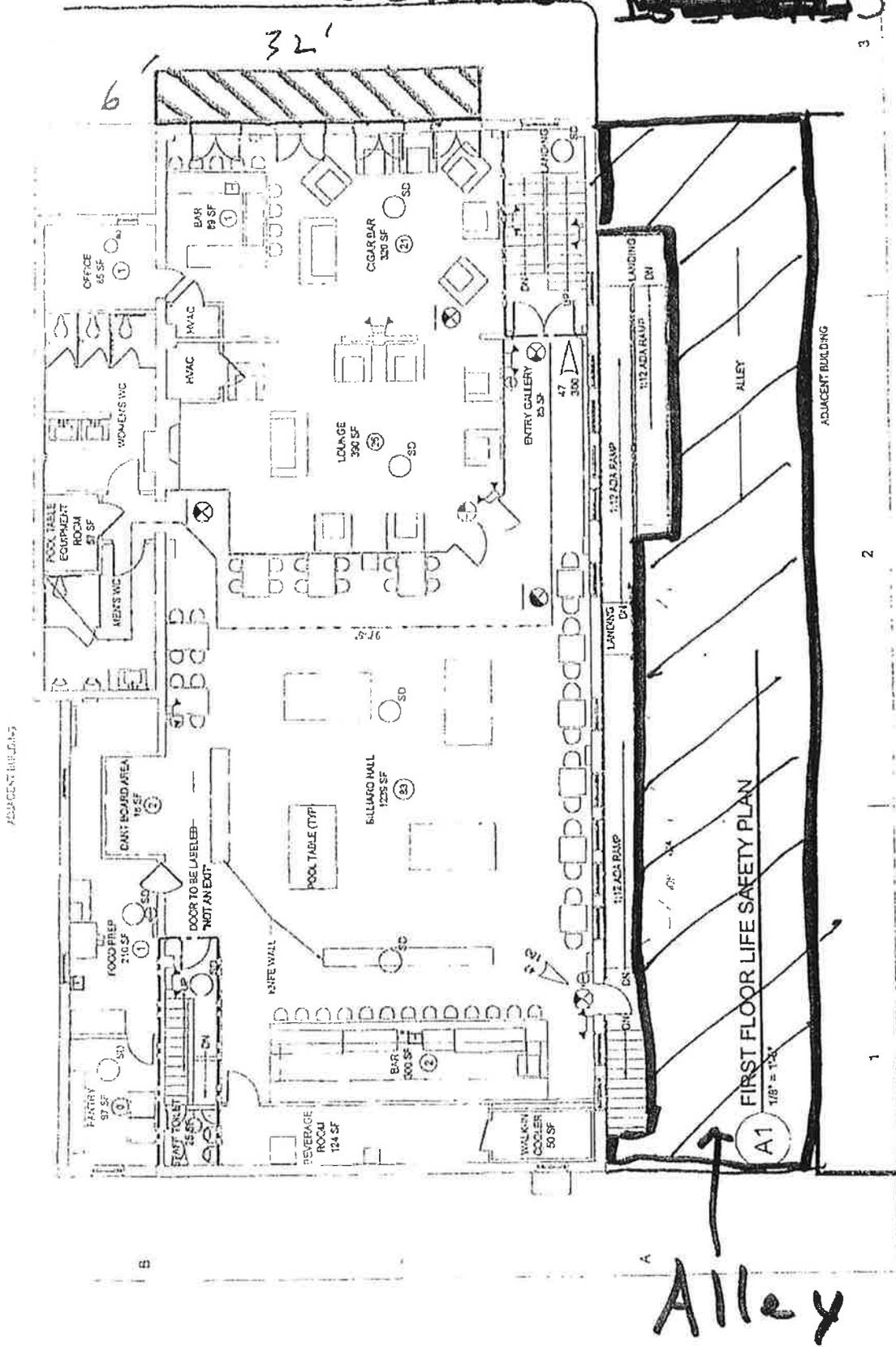
  
\_\_\_\_\_  
WITNESS  
  
\_\_\_\_\_  
WITNESS

**COACHS ENTERTAINMENT  
ENTERPRISES, LLC T/A MEZZOS**

  
By: \_\_\_\_\_  
Daniel Bowser, Member

  
By: \_\_\_\_\_  
Bernard Nichols, III, Member

S. CENTRE ST.



Alley

# EXHIBIT 1