

RESOLUTION NO. R2011- 08

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED A RESOLUTION SUPPLEMENTING AND AMENDING RESOLUTION NO. R2011-02, ADOPTED BY THE MAYOR AND CITY COUNCIL ON MARCH 15, 2011 AND EFFECTIVE ON MARCH 15, 2011 (THE "ORIGINAL RESOLUTION"), IN ORDER TO PROVIDE THAT REFERENCES IN THE ORIGINAL RESOLUTION (1) TO M&T BANK SHALL BE CONSTRUED TO REFER TO AND MEAN MANUFACTURERS AND TRADERS TRUST COMPANY OR A WHOLLY OWNED SUBSIDIARY OR AFFILIATE OF MANUFACTURERS AND TRADERS TRUST COMPANY, (2) TO M&T BANK'S "FIVE (5) YEAR COST OF FUNDS", UPON WHICH THE INTEREST PORTION OF RENTAL PAYMENTS PAYABLE BY THE CITY UNDER THE LEASE PURCHASE AGREEMENT IDENTIFIED IN THE ORIGINAL RESOLUTION SHALL BE CALCULATED, SHALL BE CONSTRUED TO REFER TO AND MEAN M&T BANK'S FIVE (5) YEAR COST OF FUNDS FOR OBLIGATIONS THAT ARE NOT "QUALIFIED TAX-EXEMPT OBLIGATIONS" WITHIN THE MEANING OF SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND (3) TO MARCH 31, 2011 AS THE DATE BY WHICH THE TRANSACTION DOCUMENTS IDENTIFIED IN THE ORIGINAL RESOLUTION SHALL BE EXECUTED AND DELIVERED SHALL BE CONSTRUED TO REFER TO AND MEAN JUNE 10, 2011, SUBJECT TO EXTENSION AS PROVIDED IN THE ORIGINAL RESOLUTION; REVOKING THE DESIGNATION OF THE LEASE PURCHASE AGREEMENT IDENTIFIED IN THE ORIGINAL RESOLUTION AS A "QUALIFIED TAX-EXEMPT OBLIGATION" FOR PURPOSES OF SECTION 265(b)(3)

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OF THE CODE; PROVIDING THAT THE PROVISIONS OF THIS RESOLUTION SHALL BE LIBERALLY CONSTRUED IN ORDER TO EFFECTUATE THE TRANSACTIONS CONTEMPLATED BY THE ORIGINAL RESOLUTION AND THIS RESOLUTION; AND OTHERWISE GENERALLY RELATING TO THE TRANSACTIONS CONTEMPLATED BY THE ORIGINAL RESOLUTION AND THIS RESOLUTION.

### RECITALS

1. Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland (the "City"), intends to undertake the acquisition of an ambulance and three police vehicles (the "Equipment") and desires to finance such acquisition through a lease-purchase arrangement.

2. Section 82B of the City Charter allows the financing of the acquisition of real, personal or mixed property through capital leases, including lease-purchase arrangements.

3. The City conducted a solicitation for proposals to provide such lease-purchase financing and determined that Manufacturers and Traders Trust Company ("M&T Bank") offered the most beneficial terms for the acquisition of the Equipment through a Lease Purchase Agreement (the "Lease Purchase Agreement"), which Lease Purchase Agreement is a capital lease contemplated by Charter Section 82B.

4. Pursuant to Resolution No. R2011-02, adopted by the Mayor and City Council of the City (the "Mayor and City Council") on March 15, 2011 and effective on March 15, 2011 (the "Original Resolution"), the City determined to finance or refinance all or a portion of the costs of acquisition of the Equipment through the lease-purchase transaction described in the Original

Resolution, provided that the maximum principal amount to be financed through such transaction shall not exceed Three Hundred Twenty-nine Thousand Five Hundred Fifty Dollars (\$329,550.00).

5. The Original Resolution provides that (i) M&T Bank will lease the Equipment to the City pursuant to the Lease Purchase Agreement and the City will make rental payments denominated into principal and interest portions (the “Rental Payments”) in order to acquire full and unencumbered title to the Equipment, (ii) the City’s obligation to make the Rental Payments under the Lease Purchase Agreement shall be subject to appropriation of funds sufficient for such purpose in each fiscal year and the City’s obligations under the Lease Purchase Agreement shall never constitute an indebtedness or a charge against the general credit or taxing powers of the City within the meaning of any constitutional or charter provision or statutory limitation, (iii) in the event of a failure by the City to appropriate sufficient funds or in the event of certain defaults under the Lease Purchase Agreement, M&T Bank shall be entitled to assume possession of the Equipment and sell or lease the same, among other remedies, and (iv) M&T Bank (or any affiliate thereof) (the “Escrow Agent”) and the City will enter into an escrow letter or escrow agreement (the “Escrow Agreement”) in order to provide for the deposit by M&T Bank with the Escrow Agent of the principal amount available under the Lease Purchase Agreement to pay or reimburse costs of the acquisition of the Equipment, the investment of such funds and the disbursement of such invested funds.

6. The Original Resolution further authorizes each of the Mayor or the City Administrator, on behalf of the City, acting on his own, to negotiate, approve, execute and deliver the Lease Purchase Agreement and the Escrow Agreement, subject to the limitations provided for in the Original Resolution.

7. The Original Resolution provides that the fixed per annum interest rate used to calculate the interest portion of the Rental Payments will be determined three days prior to closing on the Lease Purchase Agreement and will be based on M&T Bank's "five (5) year Cost of Funds" as defined in Section 3 of the Original Resolution.

8. Section 10 of the Original Resolution further provides for the designation by the City of the Lease Purchase Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

9. The transactions contemplated by the Original Resolution did not close by March 31, 2011, as originally contemplated. Subsequent to adoption of the Original Resolution, City officials and the Mayor and City Council have determined that, due to some refunding transactions the City wishes to pursue, the Lease Purchase Agreement cannot be designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. M&T Bank has agreed to enter into the transactions contemplated by the Original Resolution with the understanding that the Lease Purchase Agreement will not be a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, provided that the fixed per annum interest rate used to calculate the interest portion of the Rental Payments will be determined based on M&T Bank's five (5) year Cost of Funds for obligations that are not "qualified tax-exempt obligations", and that certain other clarifying changes to the Original Resolution be made.

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

SECTION 1. The Recitals hereto constitute an integral part of this Resolution and are incorporated herein by reference. Capitalized terms used in the Sections of this Resolution and not defined therein shall have the meanings given to such terms in the Recitals hereto.

SECTION 2. From and after the effective date of this Resolution, all references to M&T Bank in the Original Resolution shall be construed to refer to and mean Manufacturers and Traders Trust Company or a wholly owned subsidiary or affiliate of Manufacturers and Traders Trust Company.

SECTION 3. From and after the effective date of this Resolution, all references to M&T Bank's "five (5) year Cost of Funds" in the Original Resolution shall be construed to refer to and mean M&T Bank's "five (5) year Cost of Funds", as defined in Section 3 of the Original Resolution, as calculated with respect to obligations that are not "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

SECTION 4. From and after the effective date of this Resolution, Section 9 of the Original Resolution is hereby amended by deleting from the second line of such Section the date "March 31, 2011" and inserting in place thereof the date "June 10, 2011".

SECTION 5. From and after the effective date of this Resolution, the Original Resolution shall be amended by deleting in its entirety Section 10 of the Original Resolution and inserting in place thereof: "SECTION 10. [INTENTIONALLY LEFT BLANK]". The Lease Purchase Agreement shall not be a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code and the designation of the Lease Purchase Agreement as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code provided for in the Original Resolution is hereby revoked.

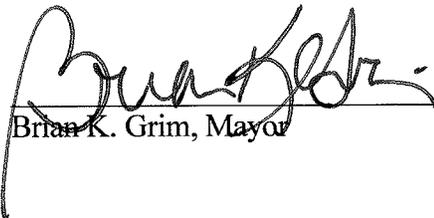
SECTION 6. The provisions of this Resolution shall be liberally construed to effectuate the transactions contemplated by the Original Resolution, as supplemented and amended by this Resolution.

SECTION 7. From and after the effective date of this Resolution, the Original Resolution shall be deemed supplemented and amended as provided herein and all other terms and provisions of the Original Resolution shall remain in full force and effect and applicable to the lease-purchase transactions contemplated by the Original Resolution.

SECTION 8. This Resolution shall become effective immediately upon its adoption.

MAYOR AND CITY COUNCIL OF  
CUMBERLAND

(SEAL)

  
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Brian K. Grim, Mayor

ATTEST:



Marjorie A. Eirich  
City Clerk

Introduced: March 15, 2011

Adopted:     **May 24**    , 2011

Effective:     **May 24**    , 2011

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