



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

MINUTES

DATE: September 4, 2018

I. Closed Session

1. 5:00 p.m. - Convene in Open Session for the purpose of closing the meeting for an Executive Session pursuant to Section 3-305(b) (7) and (8) of the General Provisions Article of the Annotated Code of Maryland to confer with legal counsel regarding the terms of a development agreement between the City, the Cumberland Economic Development Corporation, and Cumberland Gateway Real Estate, LLC, and to obtain legal advice regarding matters related to the CSX bridges and to consult with staff regarding the CSX matters

Mayor Grim convened the public meeting. Motion to move into closed session was made by Frazier, seconded by Cioni, and was passed on a vote of 5-0.

2. Executive Session

II. Open Session

1. 6:15 p.m. - Reconvene into Open Session

III. Pledge of Allegiance

IV. Roll Call

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

ABSENT: Councilman Seth Bernard

ALSO PRESENT: Jeffrey D. Rhodes, City Administrator; Michael S. Cohen, City Solicitor; Marjorie Woodring, City Clerk

V. Statement of Closed Meeting

1. Summary Statement of Closed Meeting(s)

Mayor Grim announced that a Closed Session had been held on Tuesday, September 4, 2018 at 5:00 p.m. and read into the record a summary of that session, which is attached hereto and made a part of these minutes as required under Section 3-306(c)(2) of the General Provisions Article of the Annotated Code of Maryland.

VI. Certificates and Awards

1. Presentation of City Star Award to Guy Bentham for helping his neighbors and tirelessly working to make Lower Gephart Drive a better place to live

Mayor Grim presented the City Star to Mr. Guy Bentham and thanked him for going above and beyond to help his neighbors and make the city a better place to live.

VII. Approval of Minutes

1. Approval of the Regular Session Minutes of June 19, 2018

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

VIII. Approval of Minutes

1. Approval of the Closed Session Minutes of May 15 and June 5, 2018

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

IX. New Business

(A) Orders (Consent Agenda)

Mr. Rhodes reviewed each item on the Consent Agenda and Mayor Grim called for questions or comments. Motion to approve Consent Agenda Items 1 - 4 was made by Caporale, seconded by Frazier, and was passed on a vote of 4-0.

1. Order accepting the sole source proposal from Gwin, Dobson & Foreman to provide engineering services for the design, permitting, and bid phase portions of the "Smouse's Mill Pumping Station Upgrades" project, in the lump sum not-to-exceed fee of \$30,000

ORDER NO. 26,347

- 2.

Order declaring City-owned property at 12-14 Marion Street (Tax ID No. 35-001794) as surplus property with the intent to convey the property to 5 National Highway, LLC in exchange for that entity's demolition of the improvements on the property at its expense

ORDER NO. 26,348

3. Order authorizing the execution of a Release, Waiver of Liability and Agreement to Indemnify by 5 National Highway, LLC and the M&CC to enable 5NH to demolish property at 12-14 Marion St. before taking title to that property

ORDER NO. 26,349

4. Order allowing for a Special Taxing District tax exemption for the 2018/2019 tax year for 33 N. Centre St. in the amount of \$625.39

ORDER NO. 26,350

(B) Letters, Petitions

1. Letter from Sean and Kristie Thomas, Co-Chairs of the 69th Annual Halloween Parade, requesting permission on behalf of the South Cumberland Business & Civic Association, Inc. to hold this year's parade on Wednesday, October 24, 2018 beginning at 7:00 p.m.

The Mayor and Council provided consensus to approve the request.

X. Public Comments

Mayor Grim asked that individuals who were signed up to comment specifically on the CSX bridges to please hold their comments until the September 18th Public Meeting that will be held to address that issue alone. Details of the meeting time and place will be provided at a later date, but a location will be found to accommodate everyone.

Nick Gelles, Pear Street, asked whether the City had come with us a solution regarding the safety concerns he has previously spoken about regarding the Pearl Street and Pine Avenue intersection. Mr. Rhodes replied that this issue has been forwarded to the Traffic Group for a recommendation, but he has not yet received feedback from them on the issue. He added that they had been given another suggestion based on some of the comments that had been received and he would follow up with him. Mr. Gelles advised that the school bus sign on Pine Avenue had been knocked down and requested that it be replaced.

Terry Murphy, 706 Washington Street, discussed concerns regarding the closure of the Washington Street Bridge. She stated that the residents feel like their concerns are not being heard and that opening the bridge was not the primary goal of the City. She asked that citizens also be allowed to be at the negotiating table. Mayor Grim stated that the City has been meeting with CSX regarding these issues for years and has been committed to 3 vehicular bridges on the West Side through all discussions.

Carter Wagner, 17 Prospect Square, stated that he was not able to attend the September 18th meeting and will not be able to come to the September 18th meeting, and wanted to discussed his opinion that it is critical to keep vehicular traffic on all West Side bridges.

Amy Reynolds Davis, 8 N. Johnson Street, asked if there was an safety plan in effect for emergency vehicles to get to people, considering the state of the West Side. The Mayor replied that emergency plans were in place and the Chief of Police and the Fire Chief could reaffirm that.

Russell Shorto, 406 Washington Street, thanked Council for scheduling the special meeting regarding the bridge issues and asked whether any unilateral decision could be made during the private meeting with CSX on the 11th that would pre-empt public discussion on the 18th. The Mayor advised that no formal action could be taken outside of the public forum. Mr. Shorto further advised that the bridge area was becoming unsightly with barriers, sand bags busted open, and crooked signs and requested that the City tidy up the area. Mr. Rhodes advised that it would be taken care of.

All public comments are limited to 5 minutes per person

XI. Adjournment

With no further business at hand, the meeting adjourned at 6:54 p.m.

Minutes approved on December 4, 2018

Brian K. Grim, Mayor

ATTEST: Marjorie A. Woodring, City Clerk



Regular Council Agenda
September 4, 2018

Description

5:00 p.m. - Convene in Open Session for the purpose of closing the meeting for an Executive Session pursuant to Section 3-305(b) (7) and (8) of the General Provisions Article of the Annotated Code of Maryland to confer with legal counsel regarding the terms of a development agreement between the City, the Cumberland Economic Development Corporation, and Cumberland Gateway Real Estate, LLC, and to obtain legal advice regarding matters related to the CSX bridges and to consult with staff regarding the CSX matters

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
September 4, 2018

Description

Executive Session

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
September 4, 2018

Description

6:15 p.m. - Reconvene into Open Session

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
September 4, 2018

Description

Summary Statement of Closed Meeting(s)

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

Mayor and City Council of Cumberland

Closed Session Summary

September 4, 2018 at 5:00 p.m.

Second Floor Conference Room, City Hall

On Tuesday, September 4, 2018, the Mayor and City Council met in closed session at 5:00 p.m. in the second floor conference room of City Hall to confer with legal counsel regarding the terms of a development agreement between the City, the Cumberland Economic Development Corporation, and Cumberland Gateway Real Estate, LLC, and to obtain legal advice regarding matters related to the CSX bridges and to consult with staff regarding the CSX matters. Authority to close the session was provided by the General Provisions Article of the Annotated Code of Maryland, Section 3-305 (b) (7) and (8).

Persons in attendance included Mayor Brian Grim;

Council Members Seth Bernard via conference phone, David Caporale, Richard Cioni, and Eugene Frazier; City Administrator Jeff Rhodes, City Solicitor Mike Cohen, City Clerk Marjorie Woodring, Mike Getty, CEDC representative.

On a motion made by Councilman Frazier and seconded by Councilman Cioni, Council voted 5-0 to close the session.

No actions were voted upon and the meeting was adjourned at 6:28 p.m.



Brian K. Grim, Mayor

SEP - 4 2018

Entered into the public record on _____



Regular Council Agenda
September 4, 2018

Description

Presentation of City Star Award to Guy Bentham for helping his neighbors and tirelessly working to make Lower Gephart Drive a better place to live

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
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

MINUTES

DATE: June 19, 2018

I. Closed Session

1. 5:00 p.m. - Convene in Open Session for the purpose of closing the meeting for an Executive Session pursuant to Section 3-305(7) of the General Provisions Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding the CSX bridges

Mayor Grim convened the public meeting.

Motion to move into closed session was made by Caporale, seconded by Cioni, and passed on a vote of 5-0.

2. Executive Session

II. Open Session

1. 6:15 p.m. - Reconvene into Open Session

Mayor Grim reconvened the public meeting at 6:30 p.m.

III. Pledge of Allegiance

IV. Roll Call

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

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

V. Statement of Closed Meeting

1. Summary Statement of Closed Meeting

Mayor Grim announced that a Closed Session had been held on Tuesday, June 19, 2018, at

5:00 p.m. and read into the record a summary of that session, which is attached hereto and made a part of these minutes as required under Section 3-306(c)(2) of the General Provisions Article of the Annotated Code of Maryland.

VI. Certificates and Awards

1. Presentation of City Star to Gayle Griffith in recognition of her years of work organizing Cumberland's annual Heritage Days Festival

Mayor Grim recognized Ms. Griffith for her many years of work organizing the Annual Heritage Days Festival. Ms. Griffith also spoke, stating that many others also contributed to the festival's success and recognized several committee members, some of whom were in attendance, including Lee Schwartz, Desire Growden, Sharon Bennet, Brian Cuba, Corey Ruan, Julie Westerdorf, Mikayla Dodge, and Vic Rezendes. She also thanked the City for its support of the event and for the support of City staff. This year's first annual Miss Heritage Festival Queen, Sarah Farmer, was in attendance and was recognized.

VII. Director's Reports

(A) Public Works

1. Utilities Division monthly report for May, 2018

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

2. Maintenance Division monthly report for May, 2018

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

3. Engineering Division monthly report for May, 2018

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

(B) Fire

1. Fire Department monthly report for May, 2018

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

VIII. Approval of Minutes

1. Approval of the Budget Work Session Minutes of April 3, 2018

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

IX. Public Hearings

1. Public Hearing to receive comment on the proposed Ordinance authorizing the issuance and sale of general obligation debt not to exceed \$2,471,000 to be issued under the State of Maryland's Local Government Infrastructure Financing Program

Mayor Grim convened the public hearing at 6:36 p.m.

Mr. Rhodes reviewed the proposed Ordinance that would authorize the issuance of bonds to fund capital projects across all funds and provided a breakdown of the amount of debt that would be associated with each fund.

Mayor Grim opened the floor and called for questions or comments from Council or those in attendance. No comments or questions were put forth.

Mayor Grim closed the public hearing at 6:38 p.m.

X. Unfinished Business

(A) Ordinances

1. Ordinance (*2nd and 3rd readings*) - to provide new rates for refuse collection effective July 1, 2018

Mr. Rhodes discussed the proposed rate increase, stating that a 5% rate increase would amount to \$0.52 per month on the average bill or a \$6.24 yearly increase on the average bill.

SECOND READING: The Ordinance was presented in title only for its second reading. The reading was interrupted and motion to suspend the second reading and move to the third after comment was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

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

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

ORDINANCE NO. 3838

2. Ordinance (*2nd and 3rd readings*) - to repeal and reenact with amendments, Section 24-86 of the Code to provide for a new schedule of water rates to be effective July 1, 2018

Mr. Rhodes discussed the proposed rate increase, stating that a 5% rate increase would amount to \$0.83 per month on the average bill or a \$9.96 yearly increase on the average bill.

SECOND READING: The Ordinance was presented in title only for its second reading. The reading was interrupted and motion to suspend the second reading and move to the third after comment was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

Mayor Grim opened the floor for comments or questions. Being none, the Ordinance

proceeded to its third reading.

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

ORDINANCE NO. 3839

3. Ordinance (*2nd and 3rd readings*) - authorizing the issuance and sale of general obligation debt not to exceed \$2,471,000 to be issued under the State of MD's Local Government Infrastructure Financing Programs to finance or refinance the costs of a) information technology improvements, equipment and software, b) new and/or replacement vehicles and equipment, c) facility and property improvements (including HVAC units for Mun. Serv. center), d) water and wastewater filtration plant improvements, e) water distribution infrastructure, waterline, valve, meter and dam design and improvement/replacement

Mr. Rhodes reviewed the proposed Ordinance that would authorize the issuance of bonds to fund capital projects across all funds.

SECOND READING: The Ordinance was presented in title only for its second reading. The reading was interrupted and motion to suspend the second reading and move to the third after comment was made by Caporale, seconded by Bernard, and was passed on a vote of 5-0.

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

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

ORDINANCE NO. 3840

XI. New Business

(A) Resolutions

1. Resolution to approve a project to work with the Cochran Studio to put together an aesthetic design plan for the Baltimore Street Project in partnership with the Downtown Development Commission and the Cumberland Economic Development Commission

Mr. Rhodes advised that Paul Kelly, Executive Director of the Cumberland Economic Development Corporation, had requested that this Resolution be tabled at this time. Introduction would be rescheduled at a later date.

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

(B) Orders (Consent Agenda)

Mr. Rhodes reviewed each item on the Consent Agenda and Mayor Grim opened the floor

for questions or comments from Council or the public.

Motion to approve Consent Agenda Items 1-6 was made by Bernard, seconded by Caporale and was passed on a vote of 5-0.

1. Order authorizing execution of Extra Work Order No. 1 to the existing contract with Carl Belt, Inc. for the Willowbrook Road Waterline Replacement Project (1-16-W) for an increased estimated unit price amount of \$288,000 contingent upon MDE approval; bringing the new contract amount to \$682,800

ORDER NO. 26,303

2. Order accepting the sole source proposal from Bennett, Brewer & Associates LLC to provide professional construction phase services for the Willowbrook Road 12-inch Water Line Replacement Project (01-16-W) in the estimated amount of \$32,000 contingent upon MDE approval

ORDER NO. 26,304

3. Order accepting the proposal from Erie Insurance to provide fleet coverage in the amount of \$104,879 and parking garage/building and liability coverage in the amount of \$5,358 for the period 7/1/18 through 6/30/19

ORDER NO. 26,305

4. Order accepting the proposal of PMA Companies to provide workers compensation insurance for the period July 1, 2018 through July 1, 2019 in the estimated amount of \$1,109,767 and authorizing the execution of an agreement with PMA to effect this coverage (Premium coverage = \$272,037; Cash Collateral Fund = \$810,000; Claim Service Fund = \$27,730)

ORDER NO. 26,306

5. Order authorizing execution of a Contract of Sale with Allen and Donna Little for property at 616-618 Maryland Avenue (Tax Acct. 04-013794) for the purchase price of \$15,000 provided settlement contingencies are met and authorizing execution of documents to effect the transfer

ORDER NO. 26,307

6. Order declaring one (1) Horizontal Compressor / Purifier (HCP) System to be surplus equipment and authorizing it to be donated to the Oldtown Volunteer Fire Department

ORDER NO. 26,308

XII. Public Comments

Robin Hood Constitution, 623 Quebec Avenue, questioned the Mayor on his stance on several issues pertaining to the creation of a deputy mayor position and allowing write-in candidates.

All public comments are limited to 5 minutes per person

XIII. Adjournment

With no further business at hand, the meeting adjourned at 6:54 p.m.

Minutes approved on _____

Brian K. Grim, Mayor _____

ATTEST: Marjorie A. Woodring, City Clerk _____

Mayor and City Council of Cumberland

Closed Session Summary

Thursday, June 19, 2018 at 5:00 p.m.

Second Floor Conference Room, City Hall

On Tuesday, June 19, 2018, the Mayor and City Council met in closed session at 5:00 p.m. in the second floor conference room of City Hall to consult with counsel to obtain legal advice regarding the CSX bridges. Authority to close the session was provided by the General Provisions Article of the Annotated Code of Maryland, Section 3-305 (b) (7).

Persons in attendance included Mayor Brian Grim;

Council Members Seth Bernard, David Caporale, Richard Cioni, and Eugene Frazier;

City Administrator Jeff Rhodes, City Solicitor Mike Cohen, City Clerk Marjorie Woodring; City Engineer John DiFonzo, Senior Engineer Bobby Smith

On a motion made by Councilman Caporale and seconded by Councilman Cioni, Council voted 5-0 to close the session.

No actions were voted upon and the meeting was adjourned at 6:24 p.m.



Brian K. Grim, Mayor

JUN 19 2018

Entered into the public record on _____



Regular Council Agenda
September 4, 2018

Description

Approval of the Regular Session Minutes of June 19, 2018

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

Mayor and City Council of Cumberland

Closed Session Minutes

City Hall, 57 N. Liberty Street, Cumberland, MD 21502

Second Floor Conference Room

Tuesday, May 15, 2018

5:45 p.m.

The Mayor and City Council convened in open session at 5:45 p.m. for the purpose of closing the meeting for an Executive Session pursuant to Section 3-305 (b) (9) of the General Provisions Article of the Annotated Code of Maryland to discuss negotiation issues with the UFCW Local #1994.

MOTION: Motion to enter into closed session was made by Councilman Bernard, seconded by Councilman Caporale, and was passed on a vote of 5-0.

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

ALSO PRESENT: Jeffrey Rhodes, City Administrator; Michael Cohen, City Solicitor; Charles Hinnant, Chief of Police; Marjorie Woodring, City Clerk

Mayor and City Council of Cumberland

Closed Session Minutes

City Hall, 57 N. Liberty Street, Cumberland, MD 21502

Second Floor Conference Room

Tuesday, June 05, 2018

5:30 p.m.

The Mayor and City Council convened in open session at 5:30 p.m. for the purpose of closing the meeting for an Executive Session pursuant to Section 3-305 (b) (7) and (8) of the General Provisions Article of the Annotated Code of Maryland to discuss potential litigation relative to an issue regarding an employee's benefits.

MOTION: Motion to enter into closed session was made by Councilman Bernard, seconded by Councilman Caporale, and was passed on a vote of 5-0.

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

ALSO PRESENT: Jeffrey Rhodes, City Administrator; Michael Cohen, City Solicitor; Ken Tressler, City Comptroller; Marjorie Woodring, City Clerk



Regular Council Agenda
September 4, 2018

Description

Approval of the Closed Session Minutes of May 15 and June 5, 2018

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)



Regular Council Agenda
September 4, 2018

Description

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: September 4, 2018

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

THAT, the sole source proposal from Gwin, Dobson & Foreman, 3121 Fairway Drive, Altoona, PA 16602, to provide engineering services for the design, permitting, and bid phase portions of the Smouse's Mill Pumping Station Upgrades Project (29-18-W) for a lump sum fee not to exceed Thirty Thousand Dollars and No Cents (\$30,000.00) be and is hereby accepted.

Brian K. Grim, Mayor

Funding: 002.299X.63000



August 23, 2018

Robert Smith, P.E., Senior Engineer
City of Cumberland
57 North Liberty Street
Cumberland, MD 21502

**RE: Professional Engineering Services Proposal
Smouses Mill Pumping Station Upgrades
Project Number: 29-18-W**

Dear Mr. Smith:

Per your request, Gwin, Dobson & Foreman, Inc. (GD&F) is pleased to present the following engineering services proposal for your Smouses Mill Pumping Station Upgrades project. It is our understanding that you wish to replace the pumps, VFDs, piping, etc., and add an emergency generator.

Understanding of the Project

GD&F proposes to provide engineering services for the design, permitting and bid phase portions of the project. The project includes replacement of the two (2) existing booster pumps, variable frequency drives (VFDs) and pump controls along with the mechanical piping and valves. The City plans to retain the existing precast building structure. The design would also evaluate the three (3) existing hydro-pneumatic tanks. The design will include a new permanent emergency generator, transfer switch and the necessary electrical requirements.

The existing building is very congested. The design will evaluate removing at least one (1) hydro-pneumatic tank and reconfiguration of the mechanical piping to improve accessibility.

Proposed Services

GD&F proposes the following Scope of Work:

1. GD&F will attend an onsite kick-off meeting with the City to discuss the overall scope of the project. The proposed scope of work will be submitted to the City for review and approval prior to commencing design.
2. GD&F will prepare all required demolition drawings of the existing pumps, tanks, piping, valves, instrumentation and electrical components.
3. GD&F will provide design calculations and sizing of the new pumps, valves, piping, VFDs and electrical. These calculations will be used to prepare a design engineer's report.

4. GD&F will prepare and submit permit forms, a design engineer's report, drawings and specifications as required to obtain the construction permit.
5. GD&F will prepare modification drawings including all associated mechanical and electrical work.
6. GD&F will prepare a complete set of Contract Specifications including all bidding and contract information, general requirements, and detailed specifications regarding demolition, equipment, mechanical, instrumentation and electrical work.
7. GD&F will meet with the City throughout the project design as necessary.
8. GD&F will provide SCADA interconnection details as required.
9. GD&F will provide four (4) complete sets of all Contract Bidding Documents including the Specifications and Contract Drawings.
10. GD&F will provide limited Bid Phase Services including preparing bidding forms and other bidding documents. The City will perform the advertisement for bids, issuing of Addendums, bid evaluation and awarding of the contract. GD&F will address bidder questions and attend an onsite pre-bid conference.

Proposed Schedule

GD&F is available to attend a kick-off meeting immediately upon written authorization from the City. The design will be completed within two (2) to three (3) months and no later than November 2, 2018 if written authorization is provided prior to September 1, 2018. It is anticipated to submit the project for permit review within two (2) months of authorization. The expected bid phase is two (2) to four (4) weeks after design is complete.

Proposed Cost

GD&F will provide the above scope of services for an estimated, not-to-exceed, fee of \$88,000.00 per the breakdown below. Invoices will be submitted on a monthly basis. Payment will be made on a lump sum basis in proportion to the amount of work completed during the month, less previous invoices. The lump sum fee includes direct expenses such as printing/copying, mileage, postage, etc. as necessary to complete the services. Payment is due within thirty (30) days of invoicing. GD&F will perform the services identified in accordance with our attached Standard Terms and Conditions. Design is based upon an estimated construction cost of \$150,000.

GD&F will perform the services listed above based a lump sum fee of **\$30,000** as follows:

| | | |
|----|--------------------|-----------|
| 1. | Preliminary Design | \$ 10,000 |
| 2. | Permitting | \$ 3,500 |
| 3. | Final Design | \$ 13,000 |
| 4. | Project Bidding | \$ 3,500 |

See attached hourly estimate cost of service breakdown for additional information.

City of Cumberland
August 23, 2018
Page 3

We appreciate the opportunity to submit this proposal. To authorize the services, please complete the following authorization section of this proposal and return a signed copy to our office. If you have any questions, please contact our office at your convenience.

Respectfully submitted,
GWIN, DOBSON & FOREMAN, INC.

Christopher M. Eckenrode

Christopher M. Eckenrode, P.E.
Senior Project Engineer

Enclosures
CME/amk
Prop/2018/CumberlandSMPumpSta_EngServProp_8-23-18.doc
cc: File

ACCEPTANCE OF PROPOSAL

The City of Cumberland hereby accepts the above service and cost proposal according to the attached Terms and Conditions.

Authorized Representative

Date

Attest/Witness

**Smouses Mill Pumping Station Upgrades
City of Cumberland**

**Gwin, Dobson & Foreman, Inc.
Engineering, Design, Permitting and Bid Phase Services
Estimated Cost of Engineering Services**

Estimate Scope of Services

Confirm new pump sizing, output and electrical requirements; layout and design of pumps and components, confirm pump dimensions; review building space needs; modify mechanical piping to accommodate new pumps; confirm motor output; SCADA interface and motor starters and electrical revisions based on motor sizes; design electrical interconnections including pump controls and VFDs; prepare CAD drawings with sufficient detail for proper installation; coordinate layout and design with Owner and mfg'r.; prepare Construction Permit for revised pump sizes/outputs including permit application and design engineers report; compile specifications based on mfg'r. standard specs; project design meetings; perform bid phase services including attending prebid meeting

Estimated Cost of Services

| Labor Personnel | Hours | Rate | Total Cost |
|---|--------------|-------------|---------------------|
| James Balliet, Facilities Planning Director | 10 | \$ 135.00 | \$ 1,350.00 |
| Chris Eckenrode, P.E., Sr. Project Mechanical Engr. | 80 | \$ 107.50 | \$ 8,600.00 |
| Andrew Johnson, P.E., Sr. Project Electrical Engr. | 20 | \$ 135.00 | \$ 2,700.00 |
| Andrew Arnold, P.E., Design Operations Director | 10 | \$ 110.00 | \$ 1,100.00 |
| Matt Richey, Electrical Designer | 40 | \$ 80.00 | \$ 3,200.00 |
| James Anna, Senior CAD Designer | 100 | \$ 78.75 | \$ 7,875.00 |
| Heidi Orner, Electrical CADD Technician | 40 | \$ 65.00 | \$ 2,600.00 |
| Mary Alice Kauffman, Admin. | 30 | \$ 60.00 | \$ 1,800.00 |
| Sub-Total, Labor | 330 | | \$ 29,225.00 |
| Reimbursable Expenses | | | |
| Mileage | 300 | \$ 0.55 | \$ 165.00 |
| Reproduction (ppc) | 1500 | \$ 0.13 | \$ 195.00 |
| Reproduction (drawings) | 150 | \$ 2.00 | \$ 300.00 |
| Telecomm (at cost) | \$ 75 | LS | \$ 75 |
| Postage/Courier Service (at cost) | \$ 200 | LS | \$ 200 |
| Miscellaneous (at cost) | \$ 100 | LS | \$ 100 |
| Sub-Total, Reimbursable Expenses | | | \$ 1,035.00 |
| Total Estimate Cost of Services | | | \$ 30,260.00 |
| | USE | | \$ 30,000.00 |

GWIN, DOBSON & FOREMAN, INC. Proposal/Agreement Date: August 23, 2018
General Conditions for Name of Client: City of Cumberland
Consulting Services Project Name: Smouses Mill Pumping Station Upgrades

These General Conditions are a part of each agreement between Gwin, Dobson & Foreman, Inc. (GD&F) and its client for the performance of consulting services. In these General Conditions, Gwin, Dobson & Foreman, Inc. who will be performing the services is called GD&F, the party for whom the services are performed is called "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement".

Section 1: Services by GD&F

- 1.1 Scope of services; standard of care.** GD&F will perform the services described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both parties. In performing the services, GD&F will exercise the degree of care and skill ordinarily exercised by reputable companies performing the same or similar services in the same geographic area. GD&F will not have any obligation to perform services not expressly described in this Agreement or in work release documents or change orders signed by GD&F.
- 1.2 Estimates.** Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by GD&F will represent its best judgment based on its experience and available information. However, Client recognizes that GD&F has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, GD&F does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by GD&F.
- 1.3 Hazardous materials.** GD&F services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a site where GD&F is to perform services or of contamination of the site by Oil or Hazardous Materials not previously disclosed to GD&F in writing shall entitle GD&F to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.
- 1.4 Other contractors.** GD&F shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. GD&F services and/or presence at a site shall not relieve others of their responsibility to Client or to others. GD&F shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities, and Client agrees to indemnify, hold harmless and defend GD&F against any claims arising out of such failures.
- 1.5 Health and safety.** GD&F shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. GD&F shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site. For separate consideration and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Client agrees to indemnify, hold harmless and defend GD&F to the fullest extent permitted by law against any and all claims resulting from or related to bodily injury or

death arising out of such conditions or deficiencies or the actions or failure to act of others, regardless of whether GD&F is claimed or deemed to have been negligent in connection therewith. So as not to discourage GD&F from voluntarily addressing health or safety issues while at Client's site, in the event GD&F does address such issues by making observations, reports, suggestions or otherwise, GD&F shall nevertheless have no liability or responsibility arising on account thereof, and Client's indemnity set forth above shall apply to any claims arising therefrom.

- 1.6 Litigation support.** GD&F will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event GD&F is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse GD&F for its costs and compensate GD&F at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.
- 1.7 Confidential information.** Although GD&F generally will not disclose without Client's consent, information provided by Client or developed by GD&F in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in GD&F possession, or is obtained from third parties), GD&F shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. GD&F shall notify Client (in advance, except in emergency) of any such disclosure.
- 1.8 No warranty.** NO WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

Section 2: Responsibilities of Client

- 2.1 Client requirements.** Client, without cost to GD&F shall:
- (a) Designate to GD&F in writing a person to act as Client's representative with respect to the services.
 - (b) Provide or arrange for access and make all provisions for GD&F to enter any site where services are to be performed.
 - (c) Furnish GD&F with all available information pertinent to the services.
 - (d) Furnish GD&F with all relevant information about site conditions and with topographic, property, boundary and right-of-way surveys, as needed.
 - (e) Furnish GD&F with all approvals, permits and consents from government authorities and others as may be required for performance of the services.
 - (f) Notify GD&F promptly of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Materials, and of any other conditions requiring special care, and provide GD&F with any available documents describing the nature, location and extent of such materials, contamination or conditions.
 - (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices GD&F has expressly agreed in writing to give.
 - (h) Inform the owner of the site (if different from Client) of any contamination by or release of Oil or Hazardous Materials at the site.
- 2.2 Hazards.** Client represents and warrants that it does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials except as expressly disclosed to GD&F in writing.

2.3 Confidentiality. Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to GD&F and agrees not to disclose it or otherwise make it available to others without GD&F express written consent.

2.4 Documents. All reports, notes, calculations, data, drawings, estimates, specifications and other documents and computerized materials prepared by GD&F are instruments of GD&F services and shall remain GD&F property. Documents or computerized materials provided to Client are for Client's use only for the purposes disclosed to GD&F, and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or any other project or purpose for which they were not prepared, without GD&F express written consent.

Section 3: Changes; Delays; Excused Performance

3.1 Changes. Unless this Agreement expressly provides otherwise, GD&F proposed compensation represents its best estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the conditions and circumstances under which the services will be performed. As the services are performed, conditions may change or circumstances outside GD&F's reasonable control (including changes of law) may develop which would require GD&F to expend additional costs, effort or time to complete the services, in which case GD&F will notify Client and an equitable adjustment will be made to GD&F compensation and the time for performance. In the event conditions or circumstances require the services to be suspended or terminated, GD&F shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.2 Force majeure. GD&F shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond GD&F reasonable control, and GD&F compensation shall be equitably adjusted to compensate it for any additional costs it incurs due to any such delay.

Section 4: Compensation

4.1 Rates. Unless otherwise agreed in writing, GD&F shall be compensated for its services as its standard rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the service.

4.2 Invoices. GD&F may invoice Client on a monthly or other progress billing basis, invoices are due and payable upon receipt by Client. On amounts not paid within thirty (30) days of invoice date, Client shall pay interest from invoice date until payment is received at the rate of 1.5% per month, or if less, the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it shall notify GD&F in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice, and shall pay the portion not in dispute.

4.3 Suspension, etc. If payment is not received within forty-five (45) days of the invoice date, GD&F may upon seven (7) days' notice suspend or terminate the services and receive compensation for services previously per-formed and for costs reasonably incurred in connection with the suspension or termination.

- 4.4 Collection.** Client shall reimburse GD&F for its costs and expenses (including reasonable attorneys' and witnesses' fees) incurred in any litigation for collection under this Agreement in which GD&F obtains a judgment in its favor.
- 4.5 Taxes, etc.** Unless expressly agreed in writing, GD&F fees do not include any taxes, excises, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse GD&F for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide GD&F with a valid exemption certificate.

Section 5: Insurance; Dispute Resolution; Allocation of Risk

- 5.1 Insurance.** GD&F will maintain workers compensation insurance as required by law; employers liability, comprehensive general liability and automobile liability insurance each with coverage of at least \$1 million per occurrence and will furnish insurance certificates to Client.
- 5.2 Disputes.** If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation or, if that fails, through non-binding mediation under the rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitations, and GD&F may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.
- 5.3 Indemnification.** Client agrees to identify, hold harmless and defend GD&F from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which GD&F may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") based on or arising in whole or in part out of GD&F performance under this Agreement or out of Client's violation of law or breach of this Agreement; provided, however, that Client shall not be obligated to indemnify GD&F to the extent such damages are caused directly by the negligence or willful misconduct of GD&F.
- 5.4 Indemnification regarding hazardous materials.** Client acknowledges that GD&F does not have any responsibility for pre-existing Oil and Hazardous Materials at the site, or for their previous detection, monitoring, handling, storage, transportation, disposal or treatment, that GD&F compensation is not commensurate with the unusually high risks associated with such materials, and that insurance is not reasonably available to protect against such risks. Therefore, for separate consideration and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in addition to the indemnification provided in Section 5.3, Client agrees to indemnify, hold harmless and defend GD&F against all Damages arising out of or related to any Oil or Hazardous Materials located at or removed from the site, including Damages such as costs of response or remediation arising out of the application of common law or statutes such as RCRA, CERCLA, amendments to "Superfund" laws (SARA), etc. which impose strict liability or joint and several liability; provided, however, that Client shall not be required to indemnify, hold harmless or defend GD&F to the extent such Damages are caused directly by GD&F's gross negligence or willful misconduct.

- 5.5 **Limitation of liability.** GD&F liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, or any other theory of liability, is limited to the total compensation received by GD&F from Client under this Agreement. In no event shall GD&F be liable for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost profits, even if GD&F has been advised of the possibility of such damages.
- 5.6 **Employee injury.** Client agrees not to plead or to bring an action against GD&F based on any claim or personal injury or death occurring in the course or scope of the injured or deceased person's employment with GD&F and related to the services performed under this Agreement.
- 5.7 **Defense.** Any defense of GD&F required to be provided by Client under this Agreement shall be with counsel selected by GD&F and reasonably acceptable to Client.

Section 6: Miscellaneous Provisions

- 6.1 **Notices.** Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged facsimile.
- 6.2 **Assignment, etc.** Neither Client nor GD&F shall assign or transfer any rights or obligations under this Agreement, except that GD&F may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and GD&F, without the express written consent of both parties. The relationship between Client and GD&F is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.
- 6.3 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of Pennsylvania.
- 6.4 **Entire agreement, etc.** The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by GD&F, unless GD&F signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings that comprise this Agreement, the other writings shall govern.



Kim Root <kim.root@cumberlandmd.gov>

Re: Smouses Mill Pumping Station Upgrades

1 message

Jeff Rhodes <jeff.rhodes@cumberlandmd.gov>

Tue, Aug 28, 2018 at 1:45 PM

To: "Robert Smith, PE" <robert.smith@cumberlandmd.gov>

Cc: Ken Tressler <ken.tressler@cumberlandmd.gov>, Rodney Marvin <rodney.marvin@cumberlandmd.gov>, John DiFonzo <john.difonzo@cumberlandmd.gov>, Kim Root <kim.root@cumberlandmd.gov>

Approved

Jeffrey D. Rhodes, ICMA-CM
City Administrator
City of Cumberland, Maryland
301-759-6424

On Fri, Aug 24, 2018 at 3:57 PM, Robert Smith, PE <robert.smith@cumberlandmd.gov> wrote:

After our plant assessment meeting with Gwin, Dobson and Foreman last week, I requested a quote for GDF to perform the design work for the Smouses Mill Pumping Station Upgrades project. This project was recommended in the WFP report. The proposal is attached at a cost of \$30K for GDF to perform the design, assemble bid documents and to be available to answer questions during the procurement period. The City will be responsible for all bidding activities and contractor selection. I am requesting permission to sole-source the design of this project to GDF due to their familiarity with the project due to the assessment. I do not believe the Engineering Department has the expertise to assemble an RFP to competitively bid the design work. To me, it makes sense to continue our relationship with GDF. Please advise if this is acceptable so that it may be added to the agenda for the next M&CC meeting. Thanks.

Robert Smith, P.E.
Cumberland Senior Engineer
[57 N. Liberty Street](#)
[Cumberland, MD 21502](#)
[Office 301-759-6600](#)
Direct 301-759-6601
Cell 301-268-1180
FAX 301-759-6608
email: robert.smith@cumberlandmd.gov



Regular Council Agenda
September 4, 2018

Description

Order accepting the sole source proposal from Gwin, Dobson & Foreman to provide engineering services for the design, permitting, and bid phase portions of the "Smouse's Mill Pumping Station Upgrades" project, in the lump sum not-to-exceed fee of \$30,000

Approval, Acceptance / Recommendation

It is the Engineering Department's recommendation to award the sole source design to Gwin, Dobson & Foreman (GDF) for the design work for the Smouse's Mill Pumping Station Upgrades. GDF is familiar with the project due to the assessment that was recently completed. This proposal will include the design work, assembling of bid documents and GDF being available to answer question during the procurement period. The proposal price from GDF for the design/bid phase work is a lump sum cost of \$30,000.00.

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

\$30,000.00

Source of Funding (if applicable)

002.299X.63000

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

ORDER NO. _____

DATE: September 4, 2018

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

THAT, the following Residential Exemption from the Special Taxing District Levy for the 2018-2019 tax years be and is hereby granted:

| Property / Owner | Tax Year / Account No. | Total Tax Due | Exemption Amt. |
|-----------------------------------|----------------------------|---------------|----------------|
| 33 N. Centre St. – Sasaki/Gusella | 2018-2019 Tax No. 14002847 | \$322.17 | \$625.39 |

BE IT FURTHER ORDERED, that this exemption is hereby granted pursuant to the provisions of Section 235 of the City Charter.

Brian K. Grim, Mayor

**City of Cumberland
SPECIAL TAXING DISTRICT REQUEST FOR EXEMPTION**

Tax Year 2018

ACCT. # 14 0 0 2847

I, TOMIYO SASAKI / ERNEST GIBELLA request an exemption from the Special Taxing District Levy for property owned by me at: 33 N. CENTREST.

My request is based upon the fact that:

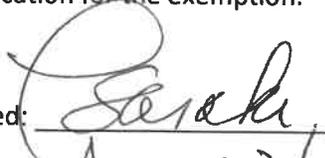
X **Residential** - this property, or portion thereof, is occupied and used by the owner for his or her residence;

 Industrial - this property, or portion thereof, is used solely for light manufacturing purposes, and qualifies for a similar exemption according to the tax provisions of Allegany County, Maryland.

If only part of the property is used for an exempt purpose, designate the percentage so used:

Residential 66 % (66%)
Industrial %

As to approved applications, the exemption shall be granted for all fiscal years falling within the calendar year preceding the date of the submission of the application for the exemption.

Signed: 
Date: Aug. 03 / 18

For City use

Tax Account No: 14 002847 - 4P

| | Assessed Amount | Tax Amount |
|----------|-----------------|---------------|
| Original | <u>207800</u> | <u>947.57</u> |
| Exempt | <u>137148</u> | <u>625.39</u> |
| Billable | <u>70652</u> | <u>322.17</u> |



Regular Council Agenda
September 4, 2018

Description

Order allowing for a Special Taxing District tax exemption for the 2018/2019 tax year for 33 N. Centre St. in the amount of \$625.39

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: September 04, 2018

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

THAT, the Mayor be and is hereby authorized to execute a Release, Waiver of Liability and Agreement to Indemnify by 5 National Highway, LLC (5NH) and the Mayor and City Council of Cumberland to enable 5NH to demolish the property at 12-14 Marion Street before it takes title to that property in order to assist with the further development of 5NH -owned property at 491-493 Baltimore Avenue.

Mayor Brian K. Grim

**RELEASE, WAIVER OF LIABILITY
AND AGREEMENT TO INDEMNIFY**

THIS RELEASE, WAIVER OF LIABILITY AND AGREEMENT TO INDEMNIFY (“Agreement”) is made this 4th day of September, 2018 by 5 National Highway, LLC (“5NH”) and Mayor and City Council of Cumberland (the “City”).

WHEREAS, 5 NH owns and is developing the real property and improvements thereon located at 491-493 Baltimore Avenue, Cumberland, MD 21502 (“Baltimore”);

WHEREAS, where the City owns the real property and improvements thereon adjacent thereto as 12-14 Marion Street, Cumberland, MD 21502 (“Marion”);

WHEREAS, the City intends to proceed with the introduction of an order declaring Marion surplus and the introduction of an ordinance approving its conveyance to 5NH;

WHEREAS, 5NH acquired Baltimore with the intention of developing that property into a restaurant;

WHEREAS, Baltimore and Marion are blighted properties;

WHEREAS, in order to develop the properties, the improvements thereon will need to be demolished;

WHEREAS, in exchange for 5NH demolishing the improvements on Marion, City staff agreed to recommend that the Mayor and City Council convey that property to 5NH;

WHEREAS, 5NH wishes to proceed with the demolition as soon as possible, before Marion is conveyed to it, in order to take advantage of beneficial pricing offered by its contractor; and

WHEREAS, the City is willing to allow 5NH to proceed with the demolition of the improvements on Marion before it takes title to that property subject to the hereinafter set forth terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the City and the County agree with the other, as follows:

1. **Recitals**. The recitals set forth above are not merely prefatory. They are incorporated by reference herein, forming a part of this Agreement.

2. **Permitted Entry**. The City hereby grants 5NH, its agents, employees, representatives and contractors the right to enter upon Marion for the purpose of

demolishing the improvements thereon and conducting activities in furtherance of and ancillary to said demolition.

3. Release. 5NH, for itself, its successors and assigns, hereby releases, waives, discharges, and covenants not to sue the City, its agents, employees, officers, officials, representatives, independent contractors and subcontractors (collectively, the “Releasees”) with respect to liability of any kind or nature arising out of, as an incident to or as a result of the performance of the activities listed in Section 2 of this Agreement. 5NH, for itself, its successors and assigns, further covenants and agrees not to institute, make or pursue any claims, actions, suits, procedures, costs, fines, expenses, damages or liabilities of any kind against the Releasees which may arise out of, as an incident or a result of the performance of the activities listed in Section 2 of this Agreement.

4. Indemnification. 5NH, for itself, its successors and assigns, agrees to defend, indemnify and hold the Releasees harmless from any and all claims, actions, suits, procedures, costs, fines expenses, damages and liabilities, including, but not limited to, attorneys’ fees, court costs and litigation expenses arising out of, as an incident to or as a result of the performance of the activities listed in Section 2 of this Agreement.

5. Insurance. Throughout the term of this Agreement, 5NH or its demolition contractor shall, at their expense, maintain (i) comprehensive general public liability insurance covering personal injury and property damage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, and (ii) workers’ compensation insurance in no less than the statutorily required minimum amounts. They shall furnish the City with copies of the declaration pages for the policies and certificates of insurance prior to the commencement of any demolition work on the Marion property. Each policy shall provide that it shall not be subject to cancellation, material change, or non-renewal without at least fifteen (15) days’ prior written notice to the City. All applicable insurance policies shall name “Mayor and City Council of Cumberland” as an additional insured.

6. Miscellaneous.

6.1. Interpretation. The parties intend that the rights granted to 5NH under Section 2 of this Agreement shall not result in any prejudice or harm to or liabilities for the City. This Agreement shall be interpreted as broadly as is permitted by applicable law in order to effect this intent.

6.2. Remedies for Breach of Agreement. Notwithstanding any provisions in this Agreement to the contrary, the parties hereto reserve the right to seek any remedies available in equity or law upon a breach of the terms of this Agreement. In the event of a breach of the terms of this Agreement, the breaching party shall pay the reasonable attorney’s fees, court costs and other expenses incurred by the non-breaching party as a result of the breach.

6.3. Severability. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other parties or circumstances will not be affected thereby, and to this end, the provisions of this Agreement are declared severable.

6.4. Captions. The captions and titles to the paragraphs, sections and subsections of this Agreement are for convenience purposes only and are not in aid of the interpretation of this Agreement, and to this end, shall not limit, restrict or expand the provisions hereof.

6.5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

6.6. Governing Law; Jurisdiction; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Maryland. It shall be enforceable with an action commenced in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County, and the parties hereto agree to be subject to the jurisdiction of such Courts and further waive any claim that any action or proceeding arising out of or relating to this Agreement and commenced in such courts in commenced in an inconvenient forum or one that lacks proper venue. This provision shall be construed to proscribe any action or remedy being brought or asserted by either party in any other forum located in any other jurisdiction unless the Circuit Court of Allegany County, Maryland or the District Court of Maryland for Allegany County determine that the action must be transferred to another jurisdiction.

6.7. Definitions. Whenever used in this Agreement, the singular shall include the plural; any gender shall include the other gender, and vice-versa.

6.8. Entire Agreement. This Agreement contains the final and entire agreement between the parties hereto with reference to the provisions hereof, and neither they nor their agents shall be bound by any terms, conditions or representations not contained herein. This provision shall not be read to limit the terms of Section 6.1 hereinbefore in any way.

6.9. Jury Trial. The parties waive their right to a jury trial in a proceeding brought by any party based upon or arising out of or as an incident to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written, it being their intention that it constitute an instrument under seal. In signing below, the signatories hereto certify under the penalties of perjury that they are duly authorized to execute this Agreement on behalf of the entity each of them signs for.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL
OF CUMBERLAND**

Marjorie A. Woodring,
City Clerk

By: _____ (SEAL)
Brian K. Grim, Mayor

5 NATIONAL HIGHWAY, LLC

By: _____ (SEAL)

printed name and title of signatory



Regular Council Agenda
September 4, 2018

Description

Order authorizing the execution of a Release, Waiver of Liability and Agreement to Indemnify by 5 National Highway, LLC and the M&CC to enable 5NH to demolish property at 12-14 Marion St. before taking title to that property

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: September 4, 2018

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

WHEREAS, the Mayor and City Council is the record owner of a certain parcel of property known as 12-14 Marion Street in the City of Cumberland; and

WHEREAS, said property has been determined to be surplus property by the Mayor and City Council;

IT IS THEREFORE ORDERED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

1. The following described property be and is hereby declared to be surplus property by the Mayor and City Council for future disposition, in accordance with the provisions of Section 1 of the Charter of the City of Cumberland, it being the intention of the Mayor and City Council to convey the property to 5 National Highway, LLC in exchange for that entity's demolition of the improvements on the property at its expense :

12-14 Marion Street. Tax ID No. 35-001794. Deed Reference: Book 2373, Page 334 of the Allegany County Land Records

Brian K. Grim, Mayor



Regular Council Agenda
September 4, 2018

Description

Order declaring City-owned property at 12-14 Marion Street (Tax ID No. 35-001794) as surplus property with the intent to convey the property to 5 National Highway, LLC in exchange for that entity's demolition of the improvements on the property at its expense

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

THE SOUTH CUMBERLAND
BUSINESS & CIVIC ASSOCIATION, INC

Mayor and City Council
57 N Liberty St
Cumberland, Maryland 21502

August 15, 2018

Dear Mayor Grim and City Council,

On behalf of the South Cumberland Business & Civic Association, we are requesting to hold the 69th Annual South Cumberland Halloween Parade on Wednesday, October 24th, 2018. Units will begin to form in the designated formation areas starting at 6:00 pm with the parade beginning at 7:00 pm. The parade will last approximately three hours.

We have been in contact with Lt. J.W. Yarnall of the Cumberland Police Department to assist with traffic control, etc. We will be in contact with the Cumberland Street Department at the appropriate time for no parking sign placement and cone/barricade placement for the parade. We are also in the process of submitting the Special Event Permit to the State Highway Administration due to the parade involving State Route 51.

Any questions or concerns please feel free to contact us at 301-722-6759 or seanbt@atlanticbb.net

Sincerely,

Sean and Kristie Thomas
Co-Chairs, 69th Annual Halloween Parade



Regular Council Agenda
September 4, 2018

Description

Letter from Sean and Kristie Thomas, Co-Chairs of the 69th Annual Halloween Parade, requesting permission on behalf of the South Cumberland Business & Civic Association, Inc. to hold this year's parade on Wednesday, October 24, 2018 beginning at 7:00 p.m.

Approval, Acceptance / Recommendation

Budgeted

1st Reading

2nd Reading

3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)