



Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Seth D. Bernard
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilwoman Laurie P. Marchini

City Administrator Jeffrey D. Rhodes
City Solicitor Michael S. Cohen
City Clerk Marjorie A. Woodring

AGENDA

M&CC Special Meeting
City Hall, Cumberland, Maryland

DATE: June 11, 2019

OPEN SESSION - 4:00 P.M.

Pledge of Allegiance

Roll Call

New Business

(A) Orders (Consent Agenda)

- 1. ORDER 26,459** - authorizing the execution of a Confidentiality and Non-Disclosure Agreement by and among CSX Transportation, Inc., The Wilson T. Ballard Company, and the Mayor and City Council of Cumberland regarding certain information set forth in the Agreement in connection with the conduct of engineering feasibility studies regarding the Fayette and Washington Street Bridges

Adjournment

Item Attachment Documents:

1. Order authorizing the execution of a Confidentiality and Non-Disclosure Agreement by and among CSX Transportation, Inc., The Wilson T. Ballard Company, and the Mayor and City Council of Cumberland regarding certain information set forth in the Agreement in connection with the conduct of engineering feasibility studies regarding the Fayette and Washington Street Bridges

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

ORDER NO. _____

DATE: June 11, 2019

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

THAT, the Mayor be and is hereby authorized to execute a Confidentiality and Non-Disclosure Agreement by and among CSX Transportation, Inc., The Wilson T. Ballard Company, and the Mayor and City Council of Cumberland regarding certain information set forth in the Agreement in connection with the conduct of engineering feasibility studies regarding the Fayette Street and Washington Street Bridges.

Raymond M. Morriss, Mayor

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (this "Agreement") is made and entered into as of June 4, 2019 (the "Effective Date"), by and among CSX Transportation, Inc., a Virginia corporation (the "Discloser"); The Wilson T. Ballard Company, a Maryland corporation ("WTB"); and the Mayor and City Council of Cumberland a Maryland municipal corporation (the "City" and collectively with WTB, the "Recipients" and each individually, a "Recipient"). The Discloser and the Recipients are sometimes referred to collectively in this Agreement as the "Parties" and individually as a "Party".

The Discloser is willing and agrees to disclose to the Recipient, under the terms and conditions set forth below, certain historical plans and historical survey data (excluding any survey work performed by WTB in connection with the Project), in CAD format or otherwise, in the discretion of Discloser, regarding the bridges passing over Discloser's railroad tracks on Fayette Street and Washington Street in the City of Cumberland, Maryland (the "Confidential Information") in order to allow WTB to conduct engineering feasibility studies (the "Studies") for the City regarding the Fayette Street and Washington Street bridges (the "Purpose").

1. In consideration of the willingness of the Discloser to provide the Confidential Information to the Recipient, and in recognition of the confidential nature of such Confidential Information, Recipient agrees that the Confidential Information shall be kept strictly confidential, used solely for the Purpose, and not disclosed to any third party other than to the other Recipient or an employee or officer of Recipient (each, a "Representative"), without the prior written consent of the Discloser. Unauthorized reproduction and/or distribution of the Confidential Information is specifically prohibited.

2. Recipient agrees that: (i) it shall only disclose the Confidential Information to the other Recipient on an as needed basis for the Purpose and those of its Representatives who need to know the same for the Purpose; (ii) its Representatives shall keep such Confidential Information confidential in accordance with the terms and conditions of this Agreement; (iii) it shall, prior to disclosure of Confidential Information to its Representatives, ensure that its Representatives are bound to it by obligations of a nature sufficient to comply with the terms and conditions of this Agreement; and (iv) it will be responsible to the Discloser for any violation of this Agreement by itself and its Representatives.

3. The Confidential Information is provided for the sole use by the Recipient for reference purposes only on an "AS-IS" basis, and no warranty or representation is made as to the completeness, accuracy, relevance, timeliness or reliability of such Confidential Information. Potential errors may exist due to electronic or mechanized modifications of the media or deterioration inherent to the subject media. By signing this Agreement, the Recipient agrees to hold harmless, release, discharge, and indemnify the Discloser and its affiliates from and against any responsibility, obligation or liability as to the accuracy or completeness of the Confidential Information.

4. Recipient agrees to take such steps to protect and maintain the security and confidentiality of the Confidential Information as the Recipient would take in the case of its own confidential information of similar nature, which in no case shall be less than a reasonable degree of care, and that it will not use the Confidential Information, or any improvement to or other modification of the Confidential Information, or any data derived from the Confidential Information, for securing intellectual property rights.

5. The Recipient agrees to notify the Discloser immediately upon discovery of any unauthorized use or disclosure of the Confidential Information, or any other breach of this Agreement by the Recipient or its Representatives, and will cooperate with the Discloser in every reasonable way to help the Discloser regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

6. The obligations of this Agreement shall not apply to any of the Confidential Information to the extent that such Confidential Information: (a) is at the time of disclosure or subsequently becomes part of the public domain through no fault of the Recipient or its Representatives in breach of this Agreement; (b) is known by the Recipient on a non-confidential basis at the time of disclosure and such prior knowledge can be demonstrated through written records; or (c) is received by the Recipient in good faith from a third party lawfully in possession thereof and having no current obligation to keep such information confidential.

7. The Recipient shall not be liable for disclosure that is required by law, legal process or governmental order, provided that the Recipient timely notifies the Discloser and cooperates with the Discloser so that the Discloser is afforded a reasonable opportunity to oppose any such requirement or otherwise seek an appropriate protective order or other confidential treatment. Notwithstanding the foregoing, Recipient agrees that the Confidential Information may include trade secrets, confidential commercial information, confidential financial information, confidential geological or geophysical information and other information prohibited from inspection without redaction pursuant to the Maryland Public Information Act (Md. Gen. Prov. Code Ann. §§ 4-101, et seq., the "Act") (collectively "Protected Information"). The City agrees to assert this position in response to any request for access to Confidential Information including Protected Information including Confidential Information held by Recipient under this Agreement pursuant to the Act, including taking all formal steps permitted formally and finally to adjudicate the issue. The Recipient will promptly notify Discloser of any such request and permit Discloser to participate fully in such response at its own expense.

8. The aforesaid WTB-prepared engineering feasibility Studies regarding the Fayette Street and Washington Street bridges shall not, in and of itself, be deemed to be Confidential Information. However, to the extent the Studies include Confidential Information, the procedure for the dissemination of that Confidential Information shall be as is provided for hereinbefore. In the event the Discloser is unwilling to disclose the Confidential Information contained in the Studies or in the event inspection and copying of the Studies is requested under the terms of the Act, upon the written request of the City and/or WTB made to the Discloser by e-mail to Jason Marques, Esq. (Jason.Marques@csx.com), Derek Mihaly (Derek.Mihaly@csx.com) and Tony Bellamy (Tony.Bellamy@csx.com), the Discloser shall provide the Recipient with a copy or copies of the requested Study or Studies with the Confidential Information redacted therefrom. The redacted copy or copies shall be provided to the Recipient no later than five (5) days from the request and, once provided, the Recipient may share the redacted document(s) with third parties to the extent required for the Project or under applicable law. The redacted copies shall be provided to the City by e-mail directed to Michael Scott Cohen, Esq (michaelcohen@atlanticbbn.net), Jeff Rhodes (jeff.rhodes@cumberlandmd.gov) and Robert Smith (Robert Smith robert.smith@cumberlandmd.gov and for WTB to Krista Ziegenfuss (kristaz@wtbco.com)). Failure to provide redacted documents within the aforesaid five (5) day period shall be deemed to be consent to the disclosure of the applicable Confidential Information.

9. All other notifications or communications required under the terms of this Agreement shall be given by e-mail in the same manner as described in the preceding section.

10. All Confidential Information shall remain the property of the Discloser, and no license or other rights to the Confidential Information or other intellectual property is granted or implied hereby. The Recipient shall not have the right to use the Discloser's or its affiliates' names, or any trademarks or trade names of such parties, without express advance written permission of the Discloser. It is agreed and understood that all documents and other materials which embody the Confidential Information may be kept by the Recipient, provided the Confidential Information is clearly marked as being confidential and not for release to third parties.

11. Recipient agrees that money damages will not be a sufficient remedy for any material breach of this Agreement, and the Discloser shall be entitled, in addition to money damages, to seek specific performance and injunctive relief and any other appropriate equitable remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

12. The Recipient's obligations under this Agreement shall continue for a period of three years from the Effective Date and with respect to trade secrets, so long as such Confidential Information remains trade secret under applicable law.

13. This Agreement shall not be assigned by Recipient without the prior written consent of the Discloser. Any assignment in violation of this Agreement is void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of successors and permitted assigns.

14. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction. Any litigation arising from or as a result of the terms of this Agreement shall be instituted and maintained in the Circuit Court for Allegany County, Maryland.

15. This Agreement may be executed in counterparts that together shall be deemed to constitute one valid and binding agreement, and delivery of the counterparts may be effected by means of facsimile transmission or electronic transmission by email, with the same effect, in each case, as if original copies had been delivered.

This Agreement and its terms and conditions are acknowledged, accepted and agreed to:

CSX Transportation, Inc.

The Wilson T. Ballard Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Mayor and City Council of
Cumberland

By: _____

Raymond M. Morriss, Mayor

