

ORDINANCE NO. 3732

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED AN ORDINANCE AMENDING AND SUPPLEMENTING ORDINANCE NO. 3692, PASSED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND ON MAY 24, 2011 AND EFFECTIVE ON JUNE 23, 2011, IN ORDER TO PROVIDE THAT PROCEEDS OF THE ORIGINAL REFUNDING BONDS AND THE SUBSEQUENT REFUNDING BONDS IDENTIFIED IN AND AUTHORIZED BY ORDINANCE NO. 3692 MAY BE APPLIED TO FUND RESERVES DEEMED NECESSARY OR DESIRABLE WITH RESPECT TO SUCH REFUNDING BONDS IN ADDITION TO THE OTHER PURPOSES PROVIDED FOR IN ORDINANCE NO. 3692; PROVIDING THAT THIS TITLE IS A FAIR SUMMARY OF THIS ORDINANCE; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE ORIGINAL REFUNDING BONDS AND THE SUBSEQUENT REFUNDING BONDS AUTHORIZED BY ORDINANCE NO. 3692.

RECITALS

1. As authorized by Section 82B of the Charter of the City of Cumberland, as published in Municipal Charters of Maryland, as replaced, supplemented or amended (the "Charter") and a Resolution adopted by the Mayor and City Council (the "Mayor and City Council") of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland (the "City"), on December 12, 2006 and effective on December 12, 2006, the City, as lessee, entered into an Energy Performance Contract Municipal Lease/Purchase Agreement dated as of December 29, 2006 (the "2006 Lease Purchase Agreement"), with Manufacturers and Traders

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Trust Company (by whatever name currently known, "M&T Bank"), as lessor, for the public purpose of financing or reimbursing a portion of the costs of the acquisition and installation of certain equipment (the "Equipment") designed to control the energy consumption and associated costs stemming from the daily workings of the City's municipal buildings, facilities and systems, which Equipment is identified in or pursuant to a Performance Contract (including all Schedules thereto) dated September 28, 2006 between the City and Johnson Controls, Inc. and on Schedule A to the 2006 Lease Purchase Agreement.

2. Pursuant to the 2006 Lease Purchase Agreement, M&T Bank leased the Equipment to the City for a term commencing on the date of execution and delivery of the 2006 Lease Purchase Agreement and ending on May 1, 2022, subject to earlier termination in accordance with the provisions of the 2006 Lease Purchase Agreement. In order to acquire full and unencumbered title to the Equipment, the City is obligated under the 2006 Lease Purchase Agreement to make Rental Payments to M&T Bank on each November 1 and May 1, commencing November 1, 2007 and ending May 1, 2022, which Rental Payments are denominated into principal and interest components and the interest component of which is calculated at a rate of 4.097% per annum. The City may prepay its Rental Payments as described in Ordinance No. 3692 and the 2006 Lease Purchase Agreement.

3. Pursuant to the authority of Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended, Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"), Sections 81 and 82A of the Charter of the City of Cumberland, as published in Municipal Charters of Maryland, as replaced, supplemented or amended, and Ordinance No. 3692, passed by the Mayor

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and City Council on May 24, 2011 and effective on June 23, 2011 (“Ordinance No. 3692”), the City authorized general obligation refunding bonds to be issued in one or more series from time to time in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000.00) (identified in Ordinance No. 3692 as the “Original Refunding Bonds”) for the public purpose of providing all or a portion of the funds needed (i) to refund or advance refund the 2006 Lease Purchase Agreement in whole as of any applicable Rental Payment date in accordance with the provisions of Sections 3.2 and 10.1 thereof by paying the Rental Payment due on such applicable date and the corresponding Purchase Price set forth on the Schedule of Payments to the 2006 Lease Purchase Agreement and any other amounts due on such date, in order to realize an objective authorized by the Refunding Act, as determined in the Resolution (as defined in Section 6 of Ordinance No. 3692), (ii) to finance or reimburse all or a portion of related costs of issuance of such refunding bonds, including, without limitation, legal and financial costs and costs of any credit enhancement, and (iii) to the extent determined by the Mayor and City Council pursuant to the Resolution, paying interest on such refunding bonds (as identified in Ordinance No. 3692, the “Refunding Project”).

4. Ordinance No. 3692 also authorizes the City to issue one or more series of subsequent general obligation refunding bonds (identified in Ordinance No. 3692 as the “Subsequent Refunding Bonds”), within the limitations set forth in Ordinance No. 3692, for the purpose of refunding or advance refunding in whole or in part any of the Original Refunding Bonds authorized thereby, including the payment of all or any portion of any prepayment premium and all or any portion of any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Original Refunding Bonds to be refunded, paying or reimbursing all or any portion of costs and expenses incurred in connection with the issuance, sale and delivery of such Subsequent

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Refunding Bonds, and, to the extent determined by the Mayor and City Council by resolution, paying interest on such Subsequent Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison or present value basis or in order to accomplish any debt restructuring that is permitted by applicable law.

5. City officials have been advised by a bank that has expressed an interest in potentially purchasing the Original Refunding Bonds that such bank may want the City to establish a reserve to secure any such Original Refunding Bonds. Although the establishment of a reserve to secure general obligation bonds is unusual, and bond counsel to the City has advised that it may not be permissible under the Internal Revenue Code of 1986, as amended, and the related U.S. Treasury Regulations to establish any such reserve in connection with the issuance of general obligation bonds on a tax-exempt basis, the City desires to amend and supplement Ordinance No. 3692 in order to permit proceeds of the Original Refunding Bonds and the Subsequent Refunding Bonds to be applied to fund any such reserves deemed necessary or desirable in order to preserve its options. If Original Refunding Bonds or Subsequent Refunding Bonds are issued on a tax-exempt basis, a determination as to whether bond proceeds legally may be applied to fund any reserve will be made prior to issuance.

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

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

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SECTION 2. From and after the effective date of this Ordinance, Section 2 of Ordinance No. 3692 is hereby deleted in its entirety and inserted in place thereof is the following:

“SECTION 2. Pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, the City hereby determines to borrow money and incur indebtedness from time to time for the public purpose of providing all or a portion of the funds needed (i) to refund or advance refund the 2006 Lease Purchase Agreement in whole as of any applicable Rental Payment date in accordance with the provisions of Sections 3.2 and 10.1 thereof by paying the Rental Payment due on such applicable date and the corresponding Purchase Price set forth on the Schedule of Payments to the 2006 Lease Purchase Agreement and any other amounts due on such date, in order to realize an objective authorized by the Refunding Act, as determined in the Resolution (as defined in Section 6 hereof), (ii) to finance or reimburse all or a portion of related costs of issuance of such refunding bonds, including, without limitation, legal and financial costs and costs of any credit enhancement, (iii) to fund any reserves deemed necessary or desirable, and (iv) to the extent determined by the Mayor and City Council pursuant to the Resolution, paying interest on such refunding bonds (collectively, the ‘Refunding Project’). The total cost of the portion of the Refunding Project to be paid from proceeds of the Original Refunding Bonds identified in Section 3 hereof will not exceed Four Million Dollars (\$4,000,000.00).”

SECTION 3. From and after the effective date of this Ordinance, Section 7 of Ordinance No. 3692 is hereby deleted in its entirety and inserted in place thereof is the following:

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SECTION 7. Pursuant to the authority of the Refunding Act, the Enabling Act and the Charter, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, its general obligation refunding bonds in one or more series from time to time (collectively, the ‘Subsequent Refunding Bonds’), for the purpose of refunding or advance refunding in whole or in part any of the Original Refunding Bonds authorized hereby, including the payment of all or any portion of any prepayment premium and all or any portion of any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Original Refunding Bonds to be refunded, paying or reimbursing all or any portion of costs and expenses incurred in connection with the issuance, sale and delivery of such Subsequent Refunding Bonds, funding any reserves deemed necessary or desirable, and, to the extent determined by the Mayor and City Council by resolution, paying interest on such Subsequent Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison or present value basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any issue of the Subsequent Refunding Bonds shall not exceed one hundred thirty percent (130%) of the aggregate principal amount of the Original Refunding Bonds refunded therefrom. Any such series of the Subsequent Refunding Bonds may consist of one or more bonds and any such bond may be issued in installment form. Prior to the issuance, sale and delivery of any series of the Subsequent Refunding Bonds and pursuant to the

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authority of Section 82A(d) of the Charter, the Mayor and City Council shall adopt a resolution or resolutions authorizing such series of the Subsequent Refunding Bonds and specifying, prescribing, determining or providing for the determination of, providing for, or approving or providing for the approval of, such matters, details, forms, documents or procedures as may be authorized or required by applicable law, including the purposes of the Refunding Act achieved by the issuance of such series of the Subsequent Refunding Bonds and the types of determinations described in Section 6 of this Ordinance. Unless the Mayor and City Council determines otherwise in a resolution providing for any series of the Subsequent Refunding Bonds, each series of the Subsequent Refunding Bonds shall be sold on a negotiated basis without solicitation of bids, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial interest rate or rates and/or beneficial restructuring terms by undertaking a private (negotiated) sale.”

SECTION 4. From and after the effective date of this Ordinance, references in Ordinance No. 3692 to (i) the Refunding Project shall be to the expanded definition of the Refunding Project provided for in Section 2 of this Ordinance and (ii) the purposes for which proceeds of the Subsequent Refunding Bonds may be applied shall be to the expanded purposes provided for in Section 3 of this Ordinance.

SECTION 5. From and after the effective date of this Ordinance, Ordinance No. 3692 shall be deemed amended and supplemented as provided herein in order to allow proceeds of the Original Refunding Bonds and the Subsequent Refunding Bonds to be applied to fund reserves

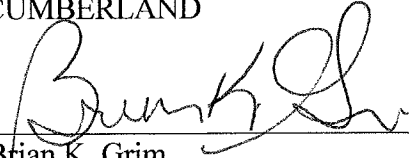
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deemed necessary or desirable, in addition to the other purposes respectively set forth in Ordinance No. 3692, and all other terms and provisions of Ordinance No. 3692 shall remain in full force and effect.

SECTION 6. The title of this Ordinance shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 7. This Ordinance shall become effective thirty (30) days after its passage pursuant to the provisions of Section 82A of the Charter, subject to the petition-to-referendum provisions of Section 82A(c) of the Charter.

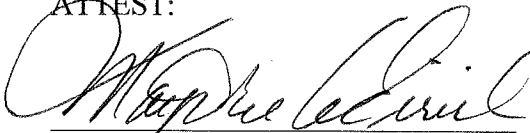
MAYOR AND CITY COUNCIL OF
CUMBERLAND



Brian K. Grim
Mayor

(SEAL)

ATTEST:



Marjorie A. Eirich, City Clerk

Introduced: January 15, 2013

Passed: January 29, 2013

Votes for passage: 5

Votes against passage: 0

Abstentions: 0

Effective: February 28, 2013

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